# SENATE—*Friday, August 6, 1993*

*(Legislative day of Wednesday, June 30, 1993)*

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable HARRIS WOFFORD, a Senator from the State of Pennsylvania.

## PRAYER

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

Let us pray:

*Rest in the Lord * * * .—Psalms 37:7.*

Gracious God our Father, busy people tend not to take care of themselves personally. They work tirelessly, often to the neglect of personal health and family. These have been tempestuous days in the Senate and the Senators need a vacation. Despite the pressure of time and agenda, enable the Senate to complete its work today so that it may begin its August recess. Help the Senate to resist all irrelevant issues for the sake of the essentials.

Grant journeying mercies and safe return to all who must travel. Help them make time for family, personal recreation, and rest.

"The Lord bless you and keep you. The Lord make His face to shine upon you and be gracious unto you. The Lord lift up His countenance upon you and give you peace." Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, August 6, 1993.*

*To the Senate:*

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

ROBERT C. BYRD,
*President pro tempore.*

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

## RESERVATION OF LEADER TIME

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

## OMNIBUS BUDGET RECONCILIATION ACT—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. The Senate will now proceed to the consideration of the conference report accompanying H.R. 2264, which the clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994 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 ACTING PRESIDENT pro tempore. 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 August 5, 1993.)

The ACTING PRESIDENT pro tempore. Under the previous order, the first 2 hours of consideration of the conference report will be limited to debate only.

Mr. SASSER. Mr. President, we are ready to proceed on the conference report which was taken up last evening, and may I ask of the distinguished ranking member of the Senate Budget Committee, Senator DOMENICI, do you have someone on the floor to speak at this time?

Mr. DOMENICI. I was going to tell the chairman, Senator PACKWOOD did not have a chance to speak last night. He is going to lead off for us this morning. So at the Senator's pleasure, we will do what you think. He is ready, if that is your pleasure.

Mr. SASSER. We are pleased to let the distinguished Senator from Oregon lead off this morning.

Mr. PACKWOOD. Mr. President, I might just read into the RECORD the phone calls that we have had in both my Oregon office and the Washington, DC, office after the President's speech on Tuesday night, and Senator DOLE's response, as to whether or not the public favored or opposed the President's tax plan.

In my Oregon office, the phone calls after the two speeches of the President and Senator DOLE—those that were opposed were 1,283; those in favor, 248. That is about a 5-to-1 ratio. In the Washington office, those opposed were 516; those in favor 110, again about a 5-to-1 ratio. This is through 5:30 p.m. last night, Thursday, August 5.

Interestingly, the number of phone calls were greater on Thursday than on Wednesday, and the strength of the opposition got greater on Thursday than on Wednesday.

Mr. President, everyone who rises to speak says, "I am going to try not to be partisan. I realize the opposition is being partisan, but I will not be," and that is always in the eye of the beholder. So I am going to speak mostly historically and will attempt to present the tax bill that is before us in historical perspective.

I am going to start with this premise: All governments that have what they regard as extra money will spend it. They very unlikely will rebate it to the taxpayers or use it to pay down the deficit. Governments will spend it. It is true of dictatorships, true of democracies, and it is true throughout the world. It does not appear to be a Republican versus Democratic argument or a conservative versus liberal argument. It seems to be endemic in all governments that given money to spend, they spend it.

Example: In 1950, all of the governments of the United States—the Federal Government, State and local governments, fire districts, water districts, school districts, all of the governments put together in the United States—taxed about 21 percent of the gross national product. We took about $1 in $5, 21 percent. Collectively, however, we spent 23 percent. So all of the governments in the United States together in 1950 had a deficit: Taxed 21 percent, spent 23 percent. If we fastforward to 1992, 42 years later, and take all of the same governments, nothing has changed. We still have State and Federal governments, school districts, and fire districts, and all of those governments now tax 30 percent of the gross national product; taxing has grown to $1 in $3. We are now spending 34 percent.

We still have a deficit. We have raised taxes rather significantly over the last 42 years. We have raised spending even more. So that if, in 1950, taxes were here and spending was here, 40 years later it has gone up, and taxes are here and spending is here. We still have a deficit and have not used the extra taxes to rebate them to the taxpayer. We have not used the extra taxes to narrow the deficit. We have spent it.

I ask unanimous consent that a table showing those years and sources, the budget base lines from the OMB, be printed in the RECORD at this point.

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

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

FEDERAL, STATE/LOCAL, AND TOTAL GOVERNMENT TAXES AND SPENDING AS A PERCENTAGE OF GROSS DOMESTIC PRODUCT: 1950–92

| | Federal | | State/local [1] | | Total | |
|---|---|---|---|---|---|---|
| | Tax | Spend | Tax | Spend | Tax | Spend |
| Year: | | | | | | |
| 1950 | 15 | 16 | 7 | 7 | 21 | 23 |
| 1955 | 17 | 18 | 7 | 7 | 24 | 25 |
| 1960 | 18 | 18 | 8 | 8 | 26 | 26 |
| 1965 | 17 | 18 | 9 | 9 | 26 | 26 |
| 1970 | 20 | 20 | 10 | 10 | 30 | 30 |
| 1975 | 19 | 22 | 11 | 10 | 29 | 32 |
| 1980 | 20 | 23 | 10 | 9 | 30 | 31 |
| 1985 | 19 | 24 | 11 | 9 | 29 | 33 |
| 1990 | 19 | 22 | 11 | 10 | 30 | 33 |
| 1991 | 19 | 24 | 11 | 11 | 30 | 34 |
| 1992 | 19 | 24 | 11 | 11 | 30 | 34 |

[1] This column does not include the receipt or spending of grants-in-aid from the Federal Government, which are counted as Federal expenditures.

Note.—All figures rounded. Totals may not add due to rounding.

Source: "Budget Baselines, Historical Data, and Alternatives for the Future," Office of Management and Budget, January 1993.

Mr. PACKWOOD. Second, Mr. President, here is a similar table. This is prepared by the Organization for Economic Cooperation and Development. This is an organization composed of the major industrial countries of the world that is principally a fact-gathering organization. Its statistics are very good. They use a slightly different method of counting government taxes and spending than we do, but for the purposes of this comparison it does not matter. I am simply using this table to show what happened in the United States—taxes going up and spending going up—has happened throughout the world.

This is true of all of our major industrial competitors. Let us take a couple of examples. Let us take the Netherlands and Denmark. OECD statistics only go back to 1965. In 1965, the Netherlands was taxing 37 percent of its gross national product; it was spending 39 percent. So it had a deficit. Twenty-five years later, it is not taxing 37 percent of its gross national product; it is taxing 50 percent, and it is spending 56 percent as a deficit.

Denmark: In 1965, Denmark was taxing 31 percent of its gross national product and spending 30. They actually had a slight surplus. Twenty-five years later, it is not taxing 31 percent of its gross national product; it is taxing 56 percent of its gross national product. It is spending 58 percent as a deficit. Taxes have gone up tremendously. Spending has gone up tremendously, and a deficit exists.

I ask unanimous consent that at this point, a table from the OECD showing the taxing and spending percentages of the different industrial countries be printed in the RECORD.

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

TOTAL GOVERNMENT TAXES AND SPENDING FOR SELECTED ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT [OECD] COUNTRIES AS A PERCENTAGE OF GROSS DOMESTIC PRODUCT, 1965–90

| | 1965 | | 1970 | | 1980 | | 1985 | | 1990 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Tax | Spend | Tax | Spend | Tax | Spend | Tax | Spend | Tax | Spend |
| Switzerland | 23 | 20 | 27 | 21 | 33 | 29 | 34 | 31 | 34 | 31 |
| Japan | 20 | 20 | 21 | 19 | 28 | 33 | 31 | 32 | 35 | 32 |
| United States | 27 | 28 | 29 | 32 | 31 | 34 | 31 | 37 | 31 | 33 |
| United Kingdom | 33 | 36 | 40 | 39 | 40 | 45 | 42 | 46 | 40 | 42 |
| Germany | 36 | 37 | 38 | 39 | 45 | 48 | 46 | 48 | 43 | 46 |
| Canada | 28 | 29 | 34 | 35 | 36 | 41 | 39 | 47 | 42 | 47 |
| France | 38 | 38 | 39 | 39 | 46 | 46 | 48 | 52 | 47 | 50 |
| Italy | 30 | 34 | 30 | 34 | 33 | 42 | 38 | 51 | 42 | 53 |
| Norway | 37 | 34 | 44 | 41 | 54 | 51 | 55 | 46 | 56 | 55 |
| Netherlands | 37 | 39 | 42 | 44 | 53 | 58 | 54 | 60 | 50 | 56 |
| Denmark | 31 | 30 | 42 | 40 | 52 | 57 | 57 | 59 | 56 | 58 |
| Sweden | 40 | 36 | 47 | 43 | 57 | 62 | 60 | 65 | 64 | 61 |

Note.—All figures rounded. The percentages in this chart are compiled by the Organization for Economic Cooperation and Development (OECD), an association of the major industrialized countries of the world. The OECD uses a slightly different method of calculating government expenditures and revenues than the standard budget accounting method used by the U.S. Government. Therefore, while the figures in this chart give an accurate comparison of the spending and revenue trends of our major competitors, these figures should not be compared directly to other data.

Source: Prepared by Greg Esenwein of the Library of Congress from OECD data, April 1993.

Mr. PACKWOOD. Now, Mr. President, I use these two tables, again, to illustrate what happens when the Government has extra money. We spend it. And in the bill that we are considering—and I want to confine my comments to this bill; not some promise for the future, not some hope that we are going to have a deficit reduction trust fund, not some ephemeral statement that later on we will cut spending—I want to take this bill and what this bill guarantees will happen.

This bill has about $255 billion in taxes and user fees in it. They are real, they are now, and they are permanent; and most of them, the big tax increases, are retroactive to the first of this year. They are going to be in effect, and do not worry about it. There is no sunset law in these. They are going on forever.

In this bill, that has taxes and user fees of about $255 billion, there are guaranteed spending cuts of about $65 billion. These are mostly in Medicare and Medicaid, and they come out of the hides of hospitals, doctors, laboratories—what we call providers. Those are in the bill. You have a ratio of about 4-to-1, taxes to spending cuts.

There is a hope that we will—now this is a hope; this is not in the bill—there is a hope that we will get savings from reduced interest costs because if we pass this bill and if the taxes are used to reduce the deficit—if—then we should have slightly less to borrow and our interest rates would come down. But that is based upon what we might do in the future.

I say again: This bill has $255 billion of taxes and $65 billion in spending cuts; about a 4-to-1 ratio. There is also a hope—because the bill contains what we call caps, limitations on discretionary spending—that if we go above a certain level of spending, automatically there is supposed to be a sequester, a cut across the board if we pass bills that go above the spending. But that is a hope and a promise for the future.

I was intrigued with the headline in the Washington Post this morning in their story about the passage of the bill in the House of Representatives last night. The headline reads:

President Woos Last-Minute Votes With Pledge of More Cuts Later

And, the Washington Post story says:

As part of the deal, the administration promised to introduce legislation this fall that would have the effect of lowering the 1994 Federal spending ceiling by $5 billion to $10 billion and implementing the recommendations from Vice President Gore's National Performance Review to streamline Government. The legislation also would give lawmakers the opportunity to propose additional cuts in discretionary and mandatory spending beyond the $255 billion in spending reductions proposed in the budget package.

I appreciate the generosity of the President in giving us the opportunity to propose them, and we get to propose them. The story goes on to say:

Also, Clinton and Democratic leadership promised Members votes on a proposed balanced-budget amendment to the Constitution and on legislation designed to discourage the growth of entitlement programs.

These are all promises of what may happen in September or October when we get back. They are not in this bill.

So here comes this extra $255 billion of taxes. Now, what is going to happen? Every group that has been convinced that it has been shorted in the last 12 years by the allegations of cheapness of the Reagan and Bush administrations are going to come to President Clinton and say, "Mr. President, you've got this extra $255 billion and we are just a little program. Ours only costs $500 million, and we just need $100 million."

Or, "Ours only costs $2 billion, and we need $1 billion more."

We talk about entitlement programs. Entitlement programs are programs that automatically pay money without any further action of Congress. Social Security is the one we know best. Medicare is another. As to Social Security, you work so many years, you receive so much money and reach a certain age, there is an automatic computation, and here is your check. It does not require any further legislation by Congress. That is called an entitlement.

As a matter of fact, we have over 400 entitlement programs in this Government. Some of them are small. Some of them cost $100,000 or $500,000 a year. Some of them, like Social Security, cost several hundred billion dollars. This money is spent automatically. Here comes this $200 billion, and these entitlement programs, unless we say you cannot have it, you are going to get it.

Then comes what we call the discretionary programs. These are programs that do not get money automatically; we have to vote it each year. Education, the Environmental Protection Agency, the Drug Enforcement Agency, the FBI, the Department of Justice, the Customs Service, the Coast Guard, all of these we have to vote for the money every year. They are going to say, "Mr. President, we have been so shorted," or, "The problems of drug interdiction are getting so great," or the problems of crime, or the problems of environmental protection, or the money we need for education, or just put in dot, dot, dot. "Can you not ask Congress to vote us an extra $100 million this year, or an extra $1 billion, or an extra $2 billion?"

But none of them, Mr. President, are coming in and asking for cuts.

So what has happened in the past is going to happen again in the future. You know, the argument is made that during the Reagan-Bush years, Congress and the administration was very cheap; we did not fund programs adequately, and they could not keep up with the rate of inflation. They just could not keep even with the rate of inflation.

Let us take what happened from 1980 to 1993. These are the Reagan-Bush years. From 1980 to 1993, inflation in those years was 75 percent, total. Taxes in the same years went up 121 percent. Spending went up 145 percent.

Is it any wonder the deficit got bigger? We did not have any trouble keeping up with inflation. We spent at almost twice the rate of inflation.

So, again, along comes this extra $255 billion that is going to be coming into the Federal Treasury, guaranteed and permanent, as soon as this bill passes. And if history is any indication, we are going to take this money and spend it.

Here I want to comment, and I do not mean exactly to be critical about this, but I mean to be factual, because the programs that are absorbing most of the Federal money are programs that are, by and large, very popular.

I am going to take just four of the so-called entitlement programs: Medicare, Medicaid, Social Security, and other civilian or military Federal retirement—just those programs plus interest. Interest is not technically called an entitlement, but when people buy a Government bond, we promise to pay them. If we do not pay them, they can sue us. If that is not the ultimate entitlement, I do not know what is. As to these other entitlements, if we want to change the law, we change the law. If we want to change the law on Social Security, we could do it. I do not think we can change the law on the money we owe to people who lend us money.

Those four programs—Medicare, Medicaid, Social Security, and other Federal retirement, plus interest, in 1963 were 23 percent of the entire budget; of all the Federal Government spent, we spent 23 percent on those four, plus interest. That was in 1963.

In 1973, on the same programs, we spent 36 percent; in 1983, we spent 46 percent; in 1993, we spent 55 percent. In the year 2003, just 10 years away, if we do not change the laws—it is automatic—69 percent of all the money the Federal Government collects, everything we collect, is going to go for those four programs and interest.

What do you think is going to happen to the other programs in Government? One of two things is going to happen. If we keep giving a bigger and bigger portion of the pie to these four programs, plus interest, everybody else—education, environmental protection, the Coast Guard, everybody else—is going to get less unless we increase the taxes to spend on these other programs to keep them at least whole, or perhaps increase our spending on them. And if we do, then the extra taxes raised in this bill are not going to go for deficit reduction.

I know the President has said he is going to sign an Executive order saying that these taxes must go into a deficit trust fund and they cannot be spent.

Mr. President, we have been down that road before. I do not know how often we have to be burned before we learn. Remember the old adage: Fool me once, shame on you; fool me twice, shame on me.

In 1978, we passed what was known as the Byrd law. That was not named after Senator BYRD from West Virginia. It was named after Senator Harry Byrd of Virginia. I am quoting it; it is only 18 words. We passed this in 1978.

> Beginning with FY 1981, the total budget outlays of the Federal Government shall not exceed its receipts.

Very clear; very simple. In 3 years, we were to balance the budget. These were the days when the deficits were $50 billion and $60 billion. We could have done it.

But we got to 1980. We realized we were not going to make it by 1981. So we amended the Byrd law to read as follows—remember, the law did say:

> Beginning in FY 1981, the total budget outlays of the Federal Government shall not exceed its receipts.

We added the following words in 1980:

> The Congress reaffirms its commitment that—beginning in fiscal year 1981, et cetera.

Now it is no longer exactly a binding law. It is our commitment that we will observe this law. Commitments are not suable in court.

That was not enough. We get to 1982—we have now gone past 1981 and we did not comply with it. In 1982, we passed this language:

> Congress reaffirms its commitment that budget outlays of the United States Government for a fiscal year may not be more than the receipts of Government for the same year.

That is the law, too. That is the law today. And the President is going to sign an Executive order, in essence, saying he wants to do the same thing this law says. The President's order is not binding.

I will tell you a further problem with this bill— emergency spending. Emergency spending is, in theory, what the name implies. There is an emergency, an unexpected happening—the floods in the Midwest are a real emergency. Although, ironically, you could probably, on average, say we are going to set aside $5 to $10 billion a year into a trust fund, because, on average, there are going to be emergencies—hurricanes in Florida, floods in the Midwest, fires in the national parks. You can assume, on average, you are going to have them.

But President Clinton has already declared a variety of emergencies this year. The first one occurred the day after he was sworn in. Under the Gramm-Rudman-Hollings law, which was the law of the land, he was required to cut spending across the board because we were above the totals that the Gramm-Rudman-Hollings law said the deficit was to be. And if you are above it, you are to cut spending across the board unless you want to make technical corrections.

So the day after he was sworn in as President, the President waived the 1993 sequester of $22 billion and he waived the 1994 sequester of $42 billion. He declared an emergency.

Then he is not in office a month and in comes his stimulus program—$19 billion. He declares an emergency. We have to have this as an emergency in order to avoid the spending caps and limits. Fortunately, the Republicans were able to defeat that by, frankly, filibustering it to death.

Then comes the unemployment compensation bill. This is a spending increase that is supposed to be paid-as-

you-go under the law. Really unemployment, while it is an emergency to the person unemployed, is not unforeseeable to Congress. But the President gives us a bill and says it is an emergency; we are going to borrow the money; we do not need to pay for it.

Flood relief is a genuine emergency. We are going to borrow the money and not pay for it.

Then, the national service bill that we passed just a couple days ago, will establish a new program and spend new money. We are going to borrow it. We are not going to pay for it.

My hunch is that when the President asks for Russian aid, we will borrow the money and not pay for it. And if we expand our operation in Bosnia, we will borrow it. We will not pay for it.

In this bill, here is what happens; and under the laws that exist, here is what happens. This is why the Republicans feel so vehemently about declaring an emergency. Let us say that you have a spending cap that says the Government, on all these named programs, will spend no more than $1,000. And in comes the President with a bill that says, I want to spend $1,200—not $1,000, but $1,200—and it is an emergency. So a bill is introduced in the Congress and we want to spend $1,200. It is an emergency. Now it only takes a majority to pass a bill that declares an emergency. And, if it passes, then the spending limit does not count.

Here is the catch-22 situation. If the Republicans want to say that is not an emergency—"Mr. President, I move to raise a point of order to strike out of this bill the emergency provision"—we have to have 60 votes out of 100 to strike it out, because if we strike it out, then there is no emergency provision and then the spending will be above the legal cap.

So, all the President has to do is say this is an emergency for whatever he wants and, if he has a majority, it passes. It passes.

Now, would Congress do a thing like that? If the President says this is an emergency, would Congress do it? We do it when it is not an emergency.

Remember, in this bill, in this bill itself, is a provision to get rid of the deduction of lobbying expenses. When the garden club now goes to the State capitol to lobby or goes to the planning commission, or when anybody who lobbies—that is, goes to petition your Government—they will not be able to deduct the legitimate expenses for doing it.

I am not going to get into an argument as to whether or not it is wise policy.

But the President says, I want to eliminate the deduction and I want the money to go into a deficit reduction trust fund.

What did Congress do? Wow. Here is over $1 billion. Do you know what we did? This proposal was not hot for 3 days. We passed a bill in this Senate demanding public financing of congressional campaigns. It cost $1.2 billion.

Do you know what we used for the money? The elimination of the lobbying deduction produced just about the same amount of money. This is the money the President wanted in the deficit trust fund. Gone; just like that. It went by him so fast he never saw it.

Second, when we were working on this bill in the Finance Committee—which had the jurisdiction of the tax part of it—we had professionals that estimate how much money the bill will produce. Between the time that the bill was reported out of the Finance Committee and it came to the floor, the revenue estimators—I am not being critical of them—estimated there was about $3 to $4 billion more to be produced than we thought. Hallelujah. We can reduce the deficit $3 to $4 billion. Oh, no. The same day we knew we had $3 to $4 billion, we spent it.

What we did was allow small business to do what we call expense equipment to a greater degree than they could. The present laws says, if you buy a computer or other equipment and you are a small business, you can expense $10,000 a year. Expense it means you can deduct the whole cost. You do not have to depreciate it. Buy equipment for $5,000 and you can take $5,000 as expenses. We raised that amount to $20,500 and used up the $3 billion or $4 billion because we had this extra money.

Well, that was only $3 or $4 billion. Now we are going to have $255 billion extra to spend. The mind of man cannot comprehend how many things we can spend this on. So, Mr. President, I think there is no doubt as to what is going to happen.

I will make one last quote from the President. This was when his bill passed the House last May to start the process. Here is what the President said: "I think it will help the economy, bring in more revenues and permit us to spend more."

So I will make you this bet. I am willing to risk the mortgage on it, Mr. President. One year from now we will be back, and what we will discover is as follows: We have passed an awful lot of emergency bills to use up this $255 billion. It has not gone for deficit reduction. And 1 year from now the deficit will be bigger than we are now predicting.

Two, unemployment will be higher than we are now predicting, because if you are going to pass $255 billion in new taxes, if you are going to say to the person that owns the hardware store or the dairy, "We are going to increase your personal tax, we are going to increase your business tax, we are going to increase your gasoline taxes, now go out and hire more people," that just is not going to square. They are not going to hire more people.

So the deficit will be up; unemployment will be up; in my judgment, inflation will be up.

And here will be the excuses as to why we missed on the estimates: Revenues did not come in from individuals and business as fast as we thought and predicted they would come in. Of the $x$ billion, they came in at $x$ minus 50, so we are $50 billion short. we had to pay out a little more for unemployment compensation. We had to pay more unemployment compensation than we thought because the unemployment is higher than we had predicted.

Oh, and by the way, we did not save all that money on interest that we thought we were going to save. By the time this bill had passed and the markets had really looked at it, they realized it was not going to reduce the deficit $500 billion as was promised. Therefore, they have discounted that, as they call it. And the interest rates are higher to borrow than we thought, so instead of saving $55 billion over these 5 years of interest, we are only going to save $15 billion, another $40 billion.

So we come back next year with a deficit that is anyplace from $75 to $150 billion higher than we thought. I do not mean a deficit of $75 to $150 billion, I mean higher than we thought.

Then next year we will have a debate about should we raise the taxes to narrow the deficit, and somebody will say, "What happened to these other taxes and the deficit reduction fund?" The answer will be, "We had these emergencies." Mr. President, it is the tiger chasing its tail. I cannot emphasize more strongly what is going to happen if this bill passes: Bad for the economy, bad for employment, bad for the deficit; good for those who like Government programs, who want to expand them. Because they are going to have a cornucopia of new money, uncommitted to any specific purpose other than deficit reduction. Somehow that is going to occupy a very low priority in the minds of those who want to spend more money on Government.

I thank the chairman and ranking member of the Budget Committee for letting me speak first.

The PRESIDING OFFICER (Mr. MATHEWS). The Senator from Tennessee is recognized.

Mr. SASSER. Mr. President, I thank the Senator from Oregon. His views are always of great interest. He is a very knowledgeable member of the Senate Finance Committee, having served as chairman for a period, now serving as ranking minority member. And his knowledge of the entitlement programs and how they work is very complete.

I do not, of course, agree with the conclusions of my friend from Oregon, but I always listen to his views with great interest.

Mr. President, there is some good news today. The Labor Department announced this morning that the unemployment rate fell to 6.8 percent in

July. That is the lowest unemployment rate we have had in this country in over 2 years. The unemployment rate fell from 7 percent in June to 6.8 in July. In July of this year, 162,000 new jobs were created for our fellow Americans. Since the beginning of this year more than 1 million new jobs have been created here in the United States. So far during the Clinton administration, the monthly job gains have averaged 172,000 new jobs every month. That compares to the average of 40,000 new jobs during the previous administration.

So, something is working here. Since the election in November, critical long-term interest rates have fallen more than 1 full percentage point. Average mortgage rates have fallen more than a percentage point since the election, from 8.3 percent to 7.2 percent on the average. Home construction is running 7 percent ahead of the rate at the beginning of last year.

So what we have here: Unemployment rates coming down in July, the lowest unemployment figures in 2 years; 162,000 new jobs created in July; over 1 million new jobs created since the beginning of this year; mortgage rates have fallen more than a full percentage point since the election, now averaging 7.2 percent; and home construction is up 7 percent over what it was since the beginning of last year.

Mr. DOMENICI. I wonder if the Chairman will yield for a question?

Mr. SASSER. I am happy to yield for a question.

Mr. DOMENICI. I wonder if all that wonderful news would not be a grand argument for leaving things alone. Things are going well, you are saying. What would you want to put all these taxes on if they are going so well?

Mr. SASSER. I am glad my friend asked that question, because I think this economy is coming back partly based on the expectation and the anticipation that at long last, after 12 years—12 long years of neglecting the economy and neglecting the fiscal health of this country, at long last there is a plan to do something about it.

I remember talking just a few weeks ago to one of the leading businessmen in my State, indeed, one of the leading businessmen in this country, who has an international operation. His company is one of the top 100 companies in the Forbes 100. I asked him about the plan that President Clinton had presented to the Congress and what his view of it was. He said, "Well, I think it is a good plan." He said, "It is not perfect, but it has given me and my colleagues the reassurance we need that at long last there is someone at home in the White House; that someone at long last is managing the store; that someone at long last has a plan."

I asked him, "Well, what would be the effect, in your judgment, if this plan was rejected by the Congress?"

He said, "There would be an immediate fallout in the financial markets." In his view, interest rates would go up. But the most damaging long-term repercussion in the economy and in the business world would be that no one was in charge, that no one was running the Government of the United States, which is the largest government on the face of the globe. So, clearly this plan has a lot to recommend it.

Dr. Alan Greenspan, the Chairman of the Federal Reserve Board, indicated that, should this plan fail it would send a "clearly negative" signal to the financial markets across the country.

My friends on the other side of the aisle, and many others, have invested a lot of time and lot of energy, and indeed a lot of money in trying to misinform the American people about this proposal before this body today. We have seen front groups spring up all across the country with catchy names, buying television advertising, radio advertising, newspaper advertising, direct mail campaigns—to try to frighten and propagandize the American people, to make them believe that this program is purely a tax program, that a tax will be levied on them.

Let me lay that controversy to rest right now. I have a chart before me which indicates what will happen with regard to taxes on this bill. Income taxes will only be raised on the very top income brackets in this country. As a matter of fact, joint filings—that is a husband and wife—would have to have a gross income of $180,000 before they would pay one dime of additional taxes under this bill. Let me restate that so there can be no confusion. In order for your income taxes to go up, joint filers must be making about $180,000 a year before their taxes will go up.

Let me just call the attention of my colleagues to this chart as to who is paying the income taxes. In these brackets here from zero to $25,000 there is no increased income tax. As a matter of fact, these people making less than $25,000—in fact making less than $30,000—will actually experience tax cuts under this particular proposal. No income tax increases from those making between $50,000 and $180,000. No income tax increases for joint filers who make less than $180,000 a year. I hope the American people hear that and understand it.

Let us just look at who is actually paying the increased taxes. If you have a gross income of between $180,000 and $310,000, then your tax rate will go up 5 percent—well, your effective tax rate will go up 5 percent. If you make in excess of $310,000, then your effective tax rate will go up 8.6 percent.

Some will say, "Well, that is terrible to even be raising the taxes on those who make in excess of $180,000 a year." Why are we doing that, and how much are we actually raising their taxes? The effective tax rate of the top 1 percent in this country, who make over $200,000 a year who have average incomes of $560,000 a year, in 1979, their effective tax rate was 33.7 percent. That was cut beginning in 1981 to 27.9 percent.

During this period of time, remember, between 1981 and now, the Federal deficit and the national debt has quadrupled, has gone up four times.

So what we are saying under this proposal is let us bring the tax rate of the top 1 percent, those making in excess of $310,000, with an average income of $560,000 a year, let us just bring their tax rate back up to almost where it was in 1979—not quite there. They were paying an effective tax rate of 33.7 percent in 1979. Let us bring it back up to 33.1 percent.

So much for the scare tactics of trying to tell the average American working family that their taxes are going up. They are not going up. They will not go up unless you are making, as joint filers, a gross income of about $180,000 a year.

Mr. President, I want to be fair about it, and I want to say to the American taxpayers, yes, there is a gasoline tax in this bill that every American motorist will pay. It is 4.3 cents per gallon. According to the American Almanac of Statistics, which was quoted in a New York Times story just last Sunday, the average American automobile is driven 12,250 miles a year. With an additional 4.3 cents a gallon gasoline tax, that means the average American motorist will pay over a year's time $27.50 in additional taxes. That is all the average person is going to pay, if they drive a car; $27.50 in additional taxes.

What do they get for that? Because of the effectiveness of this proposal and the fact that this administration, for the first time in 12 years, is giving evidence that it will grapple with the long-term problem of catastrophic deficits, we are seeing interest rates come down.

What does that mean for the average American? If you make $40,000 a year and if you have a mortgage on your house that totals $100,000 and that mortgage you took out at a 10-percent rate, and because rates have come down as a result of the anticipation of fiscal discipline—rates have come down to 7.5 percent—if you went back to your banker or mortgage company and said, "I want to refinance my $100,000 mortgage. Take it down from the 10 percent that were the rates when I took it out, to the 7.5-percent that is effective now," that $40,000 income family would save $175 a month on that mortgage rate. That is what I call a net plus for the average American family. That is why it is so necessary that this proposal be put in place.

As a highly successful, knowledgeable businessman from my State said—a man who is an international success,

a nonpartisan individual—as he told me, if this plan should fail, it would send the signal to the financial markets that no one was in charge of the Government of the United States. It would send a signal that would be very disruptive to the financial markets and a signal that would clearly indicate that it is time for interest rates to go up.So it is critical that we pass this proposal.

Mr. President, it has been a long and arduous journey from the State of the Union Message on February 17, when a new young President addressed the Congress in a joint session, to this particular moment on the floor of the U.S. Senate. But the measure of this journey is not by its length nor by its difficulty. The measure of this journey is what we have achieved: $496 billion in deficit reduction over 5 years. We have achieved tax fairness, and we are achieving economic growth.

Passage of the President's deficit reduction plan will begin the process of putting our country back on a sound fiscal and economic foundation by taking control of this deficit. By taking control of this deficit, Mr. President, we, in this body, along with our countrymen, can once again take control of our future.

It is no secret that I believe the President's economic plan deserves the Senate's support. It is a good plan. It is a fair plan. But most important, it is the only credible plan that has been before this body. Without it, this country's fiscal crisis threatens to undermine the very credibility of our governing structure.

I think it is fair to say that our fellow citizens have been cheated—have been cheated—by the economic debauchery of the past 12 years, and that is what this deficit reduction plan is all about, Mr. President. This deficit reduction plan is about change. It is about changing the way the Government has been doing business for the past 12 years. It is about changing the tax burden from the middle-class, struggling, working family where a man and his wife are working trying to raise their children and have a decent standard of living and getting ahead. It is about changing the tax burden from them to the very wealthy who increased their wealth very substantially during the past 12 years.

I have no problem with people doing well in our economic system. I wish them well. I wish we had a nation of 280 million multimillionaires, but we do not. What we are simply saying is those who did so well during the last 12 years, we are asking you now to come on and join us and pay the same effective tax rate that you paid in 1979 and join the rest of us in paying your fair share to try to do something about bringing this deficit under control.

Mr. President, it is my sincere desire—and I am confident we will—have a sensible and civil debate on this bill. It is a clean bill. It is free of extraneous matter.

So there should not be any Byrd rule challenges. It is a bill on which one can say there are many merits, and I hope we can discuss these merits rationally.

Yes, this is the largest deficit reduction package in history. The deficit is reduced by $496 billion over 5 years through $255 billion in real spending cuts and $240 billion in new revenues.

It was interesting that a moment ago my good friend from Oregon, the distinguished ranking member of the Senate Finance Committee, indicated that the bill consisted of 255 billion dollars' worth of taxes and user fees. He was characterizing user fees, I suppose, as a tax. Well, user fees have always been characterized in budgeting as savings. They were so characterized in the budget proposal captioned the Dole-Domenici budget plan that was presented here a few weeks ago when this matter was being debated in this Chamber.

Why is it all right for our friends on the other side of the aisle to characterize user fees as savings but characterize them as taxes when they are utilized here on our side of the aisle?

So let us be fair. What is good for one side or creditable for one side ought to be creditable for the other.

But the $241 billion in new revenues are imposed almost exclusively on the wealthiest 2 percent of the country, and we made hundreds of specific cuts that get us more than halfway home to the $496 billion in deficit reduction. We made cuts in entitlements. We made cuts in discretionary spending.

Now, let us look at the entitlements which have attracted such a lot of attention in recent months and which my good friend from Oregon referred to a moment ago.

This plan cuts mandatory and entitlement programs by $88 billion. There are 30 specific cuts, cuts that are named in Medicare and Medicaid alone, the two fastest growing entitlement programs, that reduce the deficit by $63 billion. And let me hasten to add that these cuts are not on our senior citizens. They are on providers. They are on doctors. They are on hospitals.

My friend from Oregon a moment ago referred to the telephone calls that were coming into his office in support and in opposition to the plan. We have been getting calls in my office, too. In one of my offices, we were getting a disproportionate number of negative calls and finally we realized what was happening. There was an organized effort in the medical community—doctors, hospital administrators, those who work for hospitals, those who work for pharmaceutical companies, prescription drug companies, they were calling our offices in an organized fashion in opposition to this plan.

And well they should, because they are the ones who are going to take some of the heat. When the spending cuts go into effect, there is going to be less money for the hospitals, less money for the doctors, less money for the prescription drug companies. But this is not going to affect what is available for our senior citizens under Medicare and Medicaid because their benefits are not going to be cut.

Now, there are specific and substantial cuts in Federal and military retirement entitlements. There are cuts in banking and housing programs. There are cuts in agricultural programs and in commerce and communications programs. The cuts are real, and they are creditable, and they were adopted in toto without exception in the minority plan.

Now, is that not interesting? Our friends on the other side of the aisle say these cuts are not enough; they are ineffective; they do not go into effect until the outyears, in 1995, 1996, 1997. But they adopted every one of the cuts in the proposal that they offered. What they did is they took the President's program, took all of his spending cuts, slapped on top of it an entitlement cap, which everyone knows cannot work, and called that their proposal. They were not critical of the President's spending cuts when they adopted them in their own proposal which they offered here on the floor of the Senate as the so-called Dole-Domenici proposal.

I do not fault them for that. I think these spending cuts are good. I think they are well-timed. Any time you can come up with almost 265 billion dollars' worth of spending cuts, they should adopt them. But I do not understand why they then criticize the President's program after adopting his spending cuts in the same sequence in which the spending cuts become effective, why they criticize the President's program and say, well, these spending cuts do not become effective until the outyears.

Well, let us talk about discretionary spending. The President's deficit reduction plan found 100 domestic programs which could be cut by $100 million each.

Mr. DOMENICI. Mr. President, could I——

Mr. SASSER. Let me yield to my colleague.

Mr. DOMENICI. I did not hear what the Senator said about these 100 cuts. Could the Senator just preface that again?

Mr. SASSER. I said that there are 100 domestic programs which will be cut by $100 million apiece and these cuts—the President's plan had 100 domestic programs that were cut by $100 million each.

May I inquire of my friend, the Senator has others here who wish to speak?

Mr. DOMENICI. I have not spoken yet this morning, so I am going to speak next, whenever the Senator is finished.

Mr. SASSER. I am going to conclude here very rapidly.

Mr. DOMENICI. Do not go on my score.

Mr. SASSER. Yes.

Mr. President, I remind my colleagues on the other side of the aisle that the alternative to the Clinton deficit reduction plan did not include a single new specified cut that the President did not include in his plan. It did not include a single specific spending cut beyond the President's deficit reduction plan. As I said earlier, every cut in the Dole-Domenici plan is right here in the original, the President's deficit reduction plan.

Mr. President, as we have seen, there is $1.06 in spending cuts for every $1 in new revenues in the President's plan. There has been an effort to twist these ratios and to try to make it appear that is not the case. But these ratios of $1.06 in spending cuts to every $1 in new revenues are valid and have been so validated by the Congressional Budget Office.

Mr. President, I do not want to go on unduly. I will have more to say later. We have a lot of time. I see the Senator from North Dakota is in this Chamber, and he wishes to speak. And I know the distinguished ranking member would wish to speak. The distinguished chairman of the Finance Committee is on the floor, along with others. So I will yield the floor now and inquire of my friend from New Mexico how long he might anticipate speaking.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Let me say to the chairman, I think I will take about 15 minutes, no more than 20. But I would like to inquire of the Senator, we have many Senators who want to speak and we are going to try to accommodate them, as is the Senator. We had envisioned in the unanimous consent that we would speak 1 hour on each side, after which time we might proceed to a point of order on this side, but that we would each have an hour on each side of just full debate.

I am wondering if the chairman would like to increase that to an additional half-hour, so it would be an hour and a half before we make a point of order.

Mr. SASSER. I am being advised that the unanimous-consent agreement does not provide that.

The PRESIDING OFFICER. The Chair advises the Senator that the point of order is in order after the expiration of the 2 hours.

Mr. DOMENICI. Could we go an additional half-hour on each side?

Mr. SASSER. Yes. I have no objection to that.

Mr. DOMENICI. That would be an hour and a half on each side. I so request.

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

Mr. DOMENICI. This time allocation will allow a few more Senators on each side to speak before we are distracted by some rather specific issues.

Mr. President, first let me say that I concur wholeheartedly with the chairman. While this is a very serious debate with very big differences between the two parties, it is my hope that we will conduct this debate in a very civil manner. I believe we will. I do compliment the chairman on the content of his first speech here today and the way he has presented matters so that perhaps during the day we can both enlighten our constituents and the American people in a very reasonable and high-level manner.

Mr. President, today we begin the final debate on the President's budget and the tax proposals. This is the end of a very long legislative journey. It is the culmination of much discussion and debate in this Chamber and around America. But one result of the debate has been to expose a clear and fundamental contrast between what the two parties believe is best for the American economy at this point in time; the debate points to a philosophical rift.

The Democrats have cobbled together a plan beginning with higher taxes and ending with higher taxes. They have tried to make less of the fact through budgetary hocus-pocus and some gimmickry such as calling fees imposed on the public spending cuts. The most recent gimmick proposed by the President and not the Democrats in this Senate is a deficit trust fund.

But the truth is clear. The plan before us is anchored by increased taxes on Americans. And what does the Democratic plan offer for America? It will force Americans to pay higher taxes. In total this will be the largest tax in American history, $255 billion net. I might suggest there may be some taxpayers out there who are wondering how come they are getting hit so much when it is $255 billion, and they were told they were not going to get hit unless they were millionaires.

Actually, the total new taxes are $275 billion. In this very bill, which is supposed to be a deficit reduction exercise, it creates spending an additional $25 billion in new Government domestic programs at the same time we are trying to cut spending. Maybe the American people understood this tax-and-spend approach all along. We would put on $275 billion in taxes, and right away in the very bill that did that we would have $25 billion in direct spending that is in this bill. We are spending taxpayer money on such things as FCC operating costs, Customs officers foreign language proficiency, food stamps—SSI, social services block grants, $100 million for the Presidential fund for campaigns. The sum total is $25 billion.

For starters, it seems to me that the philosophy was tax and then spend right in the same bill that you tax some more.

I might say that for a long time we talked about this budget as the most honest and sincere. Actually it is full of very questionable cuts. I will not now, but in due course I hope to ask the chairman where the Congressional Budget Office is on a number of these items so that we might know what the real numbers are according to them. I am not going to do that now.

Last, the American people should know unequivocally this plan does not reduce our long-term deficit. What I am suggesting is, if you like these taxes, wait around because the deficit starts back up in 1998 even with all of these taxes and more will be needed. And I ask where are we going to get the spending cuts and the money to bring it under control? My guess is more taxes year after year.

That is what is before us. Once you strip away the White House public relations veneer, you get to the truth. And the truth about this program is clear.Passing the largest tax increase in American history will destroy jobs. Small business, that portion of small business regardless of the charts on percentages, the most productive part of American small business in terms of jobs creation gets hit the hardest by this. In fact, we believe that portion of small business which produces 75 percent of the jobs today and are expected to produce it in the future, are the ones that get hit hardest by this income tax increase from 31 to 36 percent. When you add on the other taxes imposed, the rates can be as high as 44 percent.

Job producing small business will get hit harder than we have ever clobbered a single group of taxpayers before in one single add-on to the Tax Code.

Senior citizens get hit. Some will speak of how important the tax treatment of Social Security is to those who are currently paying into the Social Security trust fund. In a very real and simple sense, to get the deficit under control, this is a license to dig deeper into the wallets of the American people in an effort to control a budget that is not out of control because taxes are too low, but is out of control because spending is out of control.

If we do not control spending, in particular the entitlement programs of this country, all of these taxes are eaten up, gobbled up, and those programs continue on their merry way to bring us back into a $300, $400, $500 billion deficit.

I am amazed—I think I understand why—but I am literally amazed that today we are talking about getting together and cutting some more spending in September. You see, there are apparently some Senators who are very reluctant, on the Democrat side to vote for this package. Their message is, "not enough cuts."

Let me say to the Senate and those who may be listening, do you think the

business of your country is being handled properly when the largest cut in history is being imposed in the name of deficit reduction, which I assume meant cutting spending, and in order to get the votes to make sure it passes, the President is announcing that Congress will get together and choose some additional spending a month from now? If we need more spending cuts, why not in this bill? In this program? And in these caps?

So I conclude by talking about what we think ought to be done. We want to cut spending, not only first, but permanently. We believe that Government, not the American taxpayers, should be the first to sacrifice. And we agree that the deficit must be reduced. But we do not agree that simply taxing our people is the solution.

That has been tried before. It does not work. The problem is not that the American people are undertaxed. The problem is that Government is growing too fast. So in a sense I compliment the President for focusing on the right problem. He is attacking the right problem. But I think also it is the wrong program.

Let me just to prove one simple point and I believe these numbers are confirmed by the Congressional Budget Office.

I believe we have made a series of inquiries, program by program. Since they did not want to pass judgment on the budget, we did it program by program, and this chart that I am going to go over, very simply, gives full credit not only to what is in this bill, but to what the Democrats expect the caps to do in the future.

In the year 1994, net new taxes are $31.7 billion. Look over at the spending cuts for the year 1994. No wonder we are going to have another meeting in September to talk about cuts. The net spending cuts, I say to the distinguished chairman from New York, are zero. Some will stand up and say, "We cut this program and that program." Let me remind you that I just told you that in this bill, $25 billion in new spending occurs, and as you go through it all, we believe this is the right number—zero—in real reductions on the cut side.

In the second year, taxes go up to $45.9 billion net, and the cuts amount to $4.3 billion. I know that people are saying this just cannot be true. How in the world can this be a dollar-for-dollar—$1 in taxes, $1 in spending—when in the first year there is zero spending, the second 4.3. Let me wrap up with 1996—$52.1 billion in new net taxes and $19.6 billion in cuts, if it all works.

What is that year? That year is the end of this President's first term. And after the first term is over, 80 percent of the cuts which are expected in spending occur.

So let me summarize on this point. The taxes start 21 days before the President is sworn into office—new taxes, 21 days before he is sworn in. Eighty percent of the cuts occur after his first term. It is entirely possible that the 80 percent of the cuts would occur after he leaves office.

Mr. President, I do not believe this is the way to reduce the deficit. I want to go through the deficit reduction claims item by item—seven of them—because I said there are some very interesting cuts that I am not sure are really cuts, and savings that are accounted for that I do not believe are really attributable to this budget, savings achieved in the 1990 budget agreement. We believe those are already there, and there are $44 billion which are taken credit for in this one. The American taxpayer already paid for that in the 1990 agreement.

The Congressional Budget Office, the authenticator, estimates the administration's debt management is $10 billion off the mark. Lower interest savings, using CBO's capped baseline assumptions—and that is just jargon, but they contend that is $5 billion overestimated on interest. We will go through the rest quickly and then insert this into the RECORD. I suggest that I hope before the day is out, each of these will be answered by the majority, if they see fit. Frankly, we think we have a Congressional Budget Office letter backing up each one of these. So it will be interesting to see where their numbers come from.

Two final remarks. If it has not been said already, it will be said soon. It will be said soon that this deficit that is very large today ought to be laid at the cornerstone of the Republican Party. I will also insert into the RECORD the history of all of the reconciliation bills since 1981. That is the instrument by which we saw fit to either spend money or increase taxes, or cut programs, which basically dictated policy.

It would be amazing, I think, to many to find out that on each and every one, from 1981 through 1986, and then on to 1990, over 50 percent of the sitting Democrats in the U.S. Senate voted for each and every one of them. Eighty-three Senators voted for the tax cut that President Reagan asked for, which some are saying is the reason we have a deficit, which was clearly bipartisan, and the facts probably are untrue.

Aside from that, I want to make one more case with reference to what the Republicans did during the last 3 months. It is being said that we did nothing, that we did not come up with a plan.

First of all, let me say one more time that Senator DOLE, Senator DOMENICI, and Senator PACKWOOD wrote to the President in January. First, we told him to please use the Gramm-Rudman sequester rule. Second, we said we would be glad to help and put a different budget together, and we would like to work on it. We offered amendments to the 1994 budget in markup in committee. Republicans offered 29 amendments. On the reconciliation bill on the floor, we offered 12. Amendments offered by Republicans in markup, 29. Did any of them win? Zero. Zero were accepted.

We offered seven amendments which reduced both his tax increases and spending increases during debate on the resolution and we got zero. On this reconciliation bill, we offered three amendments that reduced taxes and spending. We got zero amendments which reduced taxes.

I hope we do not spend the whole day revisiting the past and that we focus on this reconciliation bill. I believe these numbers are right. I believe they are. There is every reason in the world for our President to be saying to some who are doubtful of this plan: Vote for it and we will have another meeting and maybe another summit on spending cuts. My only comment on that is: You can count on it. You can count on it.

The spending cuts will not happen, and the taxes are real; they are in place. I do not know if anybody around here contemplates giving the taxes back to the public if we do not get the spending cuts that we are going to meet and talk about in September.

I yield the floor.

Mr. MOYNIHAN. Mr. President, may I begin by expressing my appreciation to, and admiration of the Senator from New Mexico, the sometimes chairman of the Budget Committee, a person of the highest personal sense of honor, integrity, and a timely and formidable mastery of these numbers. I believe he and his counterpart, the Senator from Tennessee, have begun this debate in just the manner we would hope for but do not always see in the U.S. Senate.

I want him to know how much I appreciate that.

Mr. DOMENICI. If the Senator will yield for an observation. I thank the Senator, and I also say to him that I have the highest respect and admiration for you, Senator, and I am very pleased that we are friendly opponents here today. I gather you are probably going to win, perhaps by one vote, perhaps at 9 o'clock tonight, if everything works well on your side, as planned.

I do compliment you on the hard work. I am not sure I compliment you on the final product, and I know you would not expect me to do that.

Mr. MOYNIHAN. I would be alarmed if you had done that.

Mr. President, I will have to confirm one of the many objections of the forecasts and forebodings of my friend from New Mexico, in that I am going to talk just a little bit about the past.

We must ask how we reached this moment, in a sense, entering the second decade of protracted stalemate, disagreement, and agony over public spending and debt.

The very able author, journalist Thomas B. Edsall, wrote about this in the Outlook section of the Washington Post just a little while ago on July 25. His article has the ironic title "Parking the Red Ink" and subtitle "Will the Reagan Deficit Swallow the Clinton Program?" Mr. Edsall hearkened back to an argument which I had advanced on this floor in some detail over a long period in the 1980's, that in the early days of the Reagan administration it had been decided that a deficit in the Federal budget would force the Congress to cut programs that were deemed to be superfluous, or worse. These programs were sometimes known as waste, fraud, and abuse. But call it whatever you wish. The deficit would be the driving force.

This was a hard idea to be absorbed. It was hard to believe that anybody would create a crisis. I remember having published this in the "New Republic" in 1983, and people being not certain of events. Hidden behavior was not problem solving. That got one nowhere. Who is he? What is he doing in Washington?

Later, Mr. Stockman, who was part of the exercise, published this all in his book "The Triumph of Politics." He explained that the plan had not worked, that politics had overcome it because the cuts were not made as craven politicians are expected to do. I think we can revisit this with a certain serenity, reminded of things past.

I used the phrase at that time, and Mr. Edsall quotes it, of strategic deficits—strategic—a big word. If Senator BYRD were on the floor he would remind us it arises from the Greek word for general.

The idea was that these deficits would force us to reduce spending. You know for all that, it was a certain level of hidden behavior which Mr. Stockman, as I said later, was admirably candid about. In fact, no one was more candid or less deceptive among Presidents than Ronald Reagan. The man was beloved, and it is because he was so open.

Sixteen days after his inauguration, President Reagan said, and Mr. Edsall quotes:

> There were always those who told us that taxes could not be cut until spending was reduced.

Well, you know, we can lecture our children about extravagance until we run out of voice and breath, or we can cut their extravagance by simply reducing their allowance. And you can see the Gipper saying it: What are you going to do with those kids up on Capitol Hill? You are going to have to make it hard for them, and they will come along.

Of course, Mr. President, that did not happen; did it? Far from putting an end to the extravagance, this is what happened. There is the Federal debt—the gross debt, I should say. But you see it moving along as it did in the fifties and sixties, flat; nothing kind of special. It then begins to rise in the seventies and then takes off almost perpendicularly. It looks like an F–15—swoosh, from under, you know; from about $800 billion up to around $4 trillion today.

The Washington Post, in an editorial this morning, speaks of this. Speaking of this budget, the editorial is entitled "A Budget for Conservatives Too."

"Why do conservatives not support this measure? It is what they asked for."

But it says:

> The Republicans all bemoan its weakness; they'll vote no. These are the same defenders of fiscal principle on whose watch the national debt was allowed to quadruple to more than $3 trillion in the past 12 years; then they call this President soft for undoing in a budget only a part of the grievous damage their policies have done.

I am not really sure I would want to use that word grievous damage. I will explain. I think we are involved here with problems of understanding and a transition from one era of our public life to another.

I stand here, Mr. President, as something of a missing link, who has lived in one of those eras and now is in this other, and can feel the difference.

This huge increase in the deficit came about because of two miscalculations, both of them human, both of them understandable, both of them forgivable, if we can just bring you the understanding required. I would like to say to my friends on the other side and some of my friends on this side, we are still in a state which psychologists, medical doctors, have called denial. Denial, Mr. President.

My friends—and they are friends—on the other side of the aisle and on this side of the aisle just do not know. No, this did not happen. The world began on January 20 and the deficit has gone up since.

But it did happen. And why?

Well, for two reasons: The first was the huge miscalculation made about the course of world events from the late seventies into the eighties. The miscalculation which apposited, if that is a phrase I could use, a Soviet Union growing stronger and more aggressive; therefore, more dangerous.

It is the irony of President Reagan's strategic deficit that while he wanted to cut waste, fraud, whatever, in domestic matters, he asked for large increases in defense areas. Mark Shields, who is I regret to say a keen observer of life on Capitol Hill and in the White House, remarked the other day that in contrast to Mr. Clinton's budget, Mr. Reagan came along and said to the American people: Now, American people, you are called to large and fateful duties in this decade that will demand things of you. We are going to have to arm against the Soviet Union, and to do so, Mr. and Mrs. America, I am going to have to cut your taxes 40 percent.

Well, many brave citizen rallied to that challenge. It was not the most difficult, I suppose.

The miscalculation, on the other hand, was real. We, if you will recall, thought we might have to stand off the Soviet threat on the Rio Grande, it was believed, and anyone who so believed could not honorably act unwise. And the defense buildup went on and on.

It stopped in the mid-eighties, but even then, we did not understand the Soviet Union was dangerous only to the extent that its breaking up could have calamitous consequences, including nuclear consequences.

I can recall, because this is very important, I was one of the Senators—there were a dozen of us who were asked to observe the Strategic Arms Reduction Talks in Geneva, so that, contrary to SALT II, when a treaty was returned to the Senate, there would be those who could say, "Well, we watched it being negotiated." We did not do any negotiating, but we had seen it.

And I recall, Ambassador Max Kampelman, who was there at the time—I would come to Geneva and be given lunch—and I would say to our negotiators, "Now, when you are finished with the mind-numbing details of this treaty on strategic nuclear weapons with the U.S.S.R., what makes you think there will still be a U.S.S.R.?"

And I could say, Mr. President, these men of enormous ability and energies beyond anything I could conceive, much less summon, they did not say, "Well, that is a good question. You know, we have thought about it, but really we decided there will be a U.S.S.R." They just did not hear the question. It was beyond their reach. As the youth of today would say, they could not access that file.

And, indeed, when the treaty came to the Committee on Foreign Relations, I asked the two chief negotiators, men of great distinction—the country owes them a great deal—"If this treaty is between the U.S. and the U.S.S.R. but there is no U.S.S.R., who is this treaty with?"

And they named four countries, of which I had only heard of two. And I said, "Well, how do we know it is with these four countries?"

They said, "Well, we have letters."

"Where did you get them?"

"They were sent from Lisbon."

But, of course, we now have a problem of a nuclear Ukraine, a Byelarus, maybe not, apparently doing better—and the President very wisely had the President of the Byelarus here—and Kazakhstan.

But more of that was foreseen, and so spending took place which could have been moderated. And there is a sense, Mr. President, in which we appear to the world as, and have the risk of, being in disarray.

I hope I am not causing unease on the other side.

The PRESIDING OFFICER (Mr. DORGAN). The Chair would ask for order in the Senate while the Senator is speaking.

Mr. MOYNIHAN. I thank the Chair.

We do not want the kind of disarray that settled on our cold war opponents to settle on us.

But Mr. President, I said there were two miscalculations. Let me now talk about the second, which is what really is involved here and will continue to be involved here.

That first miscalculation was a one-time event, a past event. What about now?

The Senator from New Mexico has said spending is out of control. I want to say to my friend from New Mexico I think he is right.

But I would ask you: Why is he right? Is he right in terms of the old model of legislators, willing to spend anything, willing to spend but not tax and so forth—in our case, we are accused of doing both, tax and borrow, tax and spend—or is something happening to costs, relative costs, that change the setting of our political economy?

Mr. President, I would like to ask you—we are still in early morning and we can think this way— I would like to ask you to imagine our country if the citizens had only two things they needed; only needed two things. That is the way economists talk—imagine.

Say all they needed was food and education. That is not so impossible. I can think of my family. We do not need any more clothes. I have all the clothes I need. We have a house. We need food and education.

Now, suppose that the Government provided free food, but each family had to buy its own education.

Now I could tell my distinguished friend, the Presiding Officer, who is from North Dakota—I do not have to tell him—that if the only thing the Government had to do was provide free food, we would have a tax cut every year, because the price of food keeps going down, and down, and down.

On the other hand, if families had to buy their own education, half the families in the country would be sitting around the kitchen table with a family budget crisis every year as they figure out how to pay for high school, the cost of which is going up again. That is called the cost disease of personal service.

I associate William Baumol of NYU and William Bowen, when they wrote their book in the 1960's. Literature, which has been around for a quarter of a century, but we are just beginning to read it.

Mr. President, in our way of Government, we have just the opposite. Instead of providing free food, the Government provides free schools. And instead of having to buy education, the family has to buy food. So it is not just family budgets. In that sense, family budgets with respect to food are easy all the time, where the public budget is strained.

That is not going to change, Mr. President. The activities which tend to migrate to the public sector because they have cost disease are going to go on and on and on, and we are going to have to think about it.

I said earlier, I offered the idea that we have moved from one era in the matter of the political economy to another, and that I can remember the other. Indeed, I do.

I came to Washington in the administration of President Kennedy. I remember Arthur Goldberg, then Secretary of Labor, in his generous way, would take me over to the White House mess for lunch. And the talk of the White House mess in 1961 was the problem of fiscal drag, a dread malady characterized by the fact that, as the economy grew and you went towards full employment, revenues grew but Congress would not spend them, which depressed the recovery and you never reached full employment.

Walter Heller, Chairman of the Council of Economic Advisors under President Kennedy, came up with an idea; a good idea. He said on revenue sharing: "If Congress will not spend the money, the Governors will." Those Governors love to spend money.

I do not think he quite knew it, but the cost disease had hit the State houses before it hit Washington. And eventually President Nixon did get revenue sharing with States and cities, lost in the 1980's as cost disease consumed us, as well.

But, it was a very difficult thing getting all this straight.

In the first half of our century the great issue was whether the private economy could work; whether the recessions and depressions would not prove destabilizing to the point where the whole thing would have to be scrapped. Unemployment, the great social malady, was not understood. There is no unemployment on the farm. There is not much of anything else in marginal agriculture, but it was a new experience for the species. I am talking about something new under the Sun. And it almost destroyed Western civilization.

The Great Depression, communism—a heresy within the Western civilization—sweeping nations, sweeping sectors of opinion, followed by the Second World War: Civilization was in the balance, and just made it.

But before it was over we had begun to learn how to manage the economy. It turned out that the Great Depression did not represent the fundamental rottenness of Western civilization. John Maynard Keynes came along and others like him came along and said, no, it is a question of money supply. The Central Bank contracted the money supply when they should have expanded it. The Chicago school had a different view from Keynes, but in the same world.

I had a letter the other day from that most wondrous of men, Erwin Griswold, sometime dean of the Harvard Law School and Solicitor General of the United States. He was in the Solicitor General's office in 1933. He recalls that the third act of the New Deal was to cut all Federal pay, individual salaries, by 10 percent. President Roosevelt ran against Mr. Hoover—I wish Mr. HATFIELD were on the floor—ran against Mr. Hoover as a big spender. He promised retrenchment until he realized experience began to direct you other ways. It was trial and error.

Finally, analytic economics came. It did not take long. In 1947, Herbert Stein, who would be a member of the Council under President Nixon—Herbert Stein, working then for the Committee for Economic Development, which is a blue chip business group here in Washington, developed the idea of a full-employment budget.

What is a full-employment budget? I am going to ask you to believe me. I can see others—I think there are probably those on the floor listening who will not believe me—my friend from Texas will. He is an economist. A full-employment budget, as developed by Herb Stein in 1947, has a built-in deficit. The outlays represent what would be the revenues of the Federal Government at full employment, even though the revenues are less than such because we do not have full employment. But that deficit will stimulate you in the direction of full employment—a built-in deficit, a deliberate deficit: A sound Republican idea. Stein developed this in his masterful work—his master work, "Fiscal Revolution in America."

Mr. GRAMM. And a surplus in expansion.

Mr. MOYNIHAN. The Senator from Texas very aptly states when you get an expansion and you reach full employment, then you better have a surplus to keep yourself from overheating and inducing inflation. Yes.

George Shultz wrote the introduction to Stein's book "Fiscal Revolution in America." He was dean of the business school at the University of Chicago. And as Director of the Office of Management and Budget under Mr. Nixon, George Shultz sent a budget to the Congress with a built-in deficit designed to stimulate the economy to full employment.

That was then. We do not have to do that anymore. President Reagan never sent a balanced budget to this Congress, and I do not suppose any President in the rest of this century will. Cost disease has taken hold. We, the Federal Government, have brought on board more and more activities, in which there is very little growth in productivity, which are necessary—policemen, teachers, health care providers, even, as we will no doubt learn

later in this session, actors and painters—and those prices go up and up. In consequence you have this phenomenon.

I would like to think we are going to learn about it and teach it to each other and study it. It took a long time to get those lessons of the Keynesian and the Chicago school through. But they did. I think we can learn this because the simple fact is, if the relative costs of education go up while the relative costs of food go down, you are not worse off. The fact is you are better off. I mean, the U.S. News & World Report, I think last week, had a cover on computer wars. There were the price tags of computers: Down, down, down. Today, for $1,700 you can buy what $10 million could possibly have got you 15 or 20 years ago. That is productivity. It is a miracle. And it is nice. But it is not happening to public sector services. So we have to think how it can do.

I was very pleased the President has agreed to revisit the subject of expenses after the August recess. I hope we will do so—as Vice President GORE talks about reinventing government—I hope we can do so in the spirit of "Let's not deny what has been happening." There is a little bit of blame. Everybody has some blame. None of us is without transgression. But in the main we are dealing with forces that are no more evil than the misunderstandings which led to the Great Depression—or led to the long and unavailing efforts to get out of it. We did not get out of it until World War II, which it brought on.

But we have before us an honest effort to address the maladies. I will not say that without fail the programs we are proposing here are going to succeed. Most social programs have a very chancy prospect. We know that. I am not sure—I have had very earnest letters from the National Bureau of Economic Research, saying, "These higher tax rates will produce avoidance behavior. You will not bring in the revenue." I accept that prospect.

I know this bill is front-loaded in taxes and back-loaded in cuts. That is, alas, human. But it is an acceptance of the fact that we have a problem. It is an end of a period of denial.

I remember the National Economic Commission, which was established in the last months of 1988. I was a member. We worked all after the election toward the inaugural time for President Bush. We were all ready, as a Republican and Democratic group, to say to him: "Do something about the deficit. Do it before it takes hold of you and it is yours and you cannot get rid of it. Pretend, if you need be, that you did not know this was going on, but do it now."

We almost got there, Mr. President, but at the last moment "wiser heads prevailed" and the President said, "Kill it." The Republicans, the majority, filed a report that said "Do not do anything," and we filed a minority report that said, "Well, you will be sorry," and he was, was he not?

At least this President has come in and said, "All right, it has to be done and I have to do it. The buck stops here." It is a naval term, Mr. President, who gets served first in a ward room. It moves every day. Harry Truman made it a symbol of a Presidency prepared to take responsibility.

That, Mr. President, is what we have here today, and which we are going to vote on before this day is ended, and which I am confident we are going to vote on successfully, if narrowly, because there is only, at best, a narrow agreement if even this must be done. Therefore, as the President said the other evening, we have only begun our work.

I have spoken at length. I would like to thank the Chamber for the courtesy with which it has heard me. I hope I have kept to the high standards with which the Senator from New Mexico began. If I have said anything that was needlessly assertive, I only ask to be understood where feelings are high, voices sometimes tend to be raised. I do not think I raised mine. But in any event, I want to thank all who listened so attentively and thoughtfully.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I would like to ask how much time in the hour and a half we each have under the unanimous consent agreement?

The PRESIDING OFFICER. The Senator from New Mexico has 45 minutes remaining, and the Senator from Tennessee will control 26½ minutes.

Mr. DOMENICI. Mr. President, I wonder at this point, the other side has used up about 19 minutes more than we have, going back and forth. I have two Senators who want to speak very briefly, Senator WALLOP and Senator THURMOND; that is, 3 or 4 minutes. I wonder if we might schedule 19 minutes worth and then go back to the Senator from Tennessee?

Mr. SASSER. I think that is satisfactory. The Senator from North Dakota has been waiting for some time, but we have taken more than our share of the time this morning. That will be an agreeable arrangement that you would take 19 minutes and then we will come back to our side.

Mr. DOMENICI. We may not do that because the third speaker wants to speak longer than that. I yield 4 minutes to the Senator from Wyoming. I am pleased the Senator is on the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for 4 minutes.

Mr. WALLOP. Mr. President, the level of forgetfulness, the lack of a sense of history in this body is only exceeded by the claims that this package is the largest deficit reduction package in history.

I take the Senate back, in fact, to October 17, 1990, when the majority leader, on the Senate floor, said:

> This is the first serious deficit reduction effort in 10 years, a $500 billion deficit reduction package . . .

Also on October 17, 1990, the Senator from Tennessee said:

> I say to my colleagues that with the adoption of this budget reconciliation bill today, this budget reconciliation bill that will reduce the indebtedness of our children and our children's children by $500 billion . . .

The Senator from Tennessee, celebrating passage of the 1990 Budget Act, said:

> At the risk of sounding immodest, we are on the verge of giving the largest deficit reduction package in the history of this republic, putting that deficit reduction package in the law.

The fact of it is, according to their own figures, they only have $496 billion, not $500 billion, as claimed. The 1990 Budget Act also had $496 billion in deficit reduction. The 1990 Budget Act raised taxes. It cut Medicare. It raised gasoline taxes by 5 cents. It contained unenforceable cuts, and it did not work. Similarly, this bill before us will not, either. The hypocrisy that continues to go on claiming that this bill is something that it is not is almost unbelievable.

Mr. President, I ask unanimous consent to print in the RECORD a series of comparative quotes of then-Congressman and Chairman of the House Budget Committee, Leon Panetta, now Director of OMB, and of other Senators and Members of the House of Representatives that show the debate now in 1993 is no different from the debate in 1990. The messages are the same, as will be the result.

There being no objection, the quotes were ordered to be printed in the RECORD, as follows:

1990 AND 1993: WHO SAID WHAT WHEN?

President Clinton—1992 campaign debate with Bush & Perot: "Hillary gave me a book about a year ago in which the author defined insanity as doing the same thing over and over again and expecting a different result."

Leon Panetta—1993, on Meet the Press:

NBC's Tim Russert: "Why are you going to do now, what didn't work in 1990?"

Panetta: "My assertion would be that those spending cuts in fact did work: we stuck to the caps, we got the discretionary savings that were required, and we had the entitlement savings that were part of that plan."

Russert: "But the deficit went up and the economy stalled."

Panetta: "But what happened obviously was the economy went into a recession. Not caused by that plan. I would reject the assertion. It was caused by a lot of other factors that were in play at the time. But once you go into a recession, once we have to bail out

the savings and loan industry, and take on a few other challenges like that obviously, the deficit went up. Clearly we had to put that $500 billion package in place or we would be in worse shape today. And if we don't do this $500 billion package we will be in even worse shape for the future. That's why we have to do it."

Vice President Al Gore (8/1/93, CBS' "Face the Nation"): "It's just playing political games to pretend otherwise—because there is no alternative. People say, well, let's wait and have a budget summit. We've had six summits in the last 10 years as the national debt has quadrupled."

THE FIRST PRESIDENT—TO EVEN ADMIT THERE IS A DEFICIT?

1993—Senator David Pryor, on floor of U.S. Senate: "This is the president, the first president I have seen in a long time around here who's had the courage to even admit there is a deficit, who's had the courage to even try to do something about the deficit."

1990—President Bush (9/30/90 Rose Garden ceremony): "The bipartisan leaders and I have reached agreement on the federal budget. Over five years it would reduce the projected deficit by $500 billion, that is half-a-trillion dollars."

Senator George Mitchell (10/17/90, on Senate floor): "Whatever the intention, the effect of this amendment [to strike the gas tax] will be to destroy this deficit reduction effort. The first serious deficit reduction effort in 10 years, a $500 billion deficit reduction package, will be undermined and fatally effected by this amendment. That is what is at stake here. Are we for deficit reduction or are we not for deficit reduction?"

WHO'S LIABLE FOR THE LAST THREE YEARS OF FISCAL IRRESPONSIBILITY?

*1993*—Senator Jim Sasser (in Senate Budget Cmte.):

"Now lets bear in mind while we are being critical of this administration, this president. [President Clinton] did not create this deficit. These deficits are the result of twelve years of the most irresponsible fiscal policy in the history of the United States of America."

*1990*—Senator Sasser (10/17/90, on Senate floor): "In terms of deficit reduction, [this reconciliation] package contains more out-year savings than any reconciliation bill that has ever been enacted. * * * [W]e have assembled a package that seeks to make up for the fiscal excesses and deficiencies, I would submit, of an entire decade. * * * [T]he proposal that we present to our colleagues today accomplishes real genuine deficit reduction without fakery, without deception, and without shrinking from the stark reality of the fiscal problem that faces this country."

Senator Sasser (10/17/90, on the Senate floor): "I say to my colleagues that with the adoption of this budget reconciliation bill today, this budget reconciliation bill that will reduce the indebtedness of our children and our children's children $500 billion over the next five years, we will have demonstrated * * * that we here in this Chamber, and we in this Government know how and can govern."

THE LARGEST DEFICIT REDUCTION PLAN EVER PROPOSED?

*1993*—Senator Jim Sasser (on Senate floor): "It bears repeating that this is the largest deficit reduction plan ever proposed by any president of the United States. Let me repeat that so there can be no misunderstanding. This is the largest deficit reduction plan ever proposed by any President of the United States."

*1990*—Senator Sasser (celebrating 1990 budget agreement):

"At the risk of sounding immodest, we are on the verge of giving the largest deficit reduction package in the history of this republic, putting that deficit reduction package in the law."

Senator Sasser (10/17/90, on Senate floor): "In terms of deficit reduction, [this reconciliation] package contains more out-year savings than any reconciliation bill that has ever been enacted.

OMB Director Leon Panetta (1993 on "Meet the Press"): "Clearly we had to put that $500 billion package in place [in 1990] or we would be in worse shape today. And if we don't do this $500 billion package we will be in even worse shape for the future. That's why we have to do it."

RECONCILIATION PASSAGE NEEDED TO AVERT CERTAIN ECONOMIC COLLAPSE

1993—Vice President Al Gore (8/1/93 CBS's "Face the Nation"): "But we have been putting together a majority for quite some time. We're very confident about it. And one reason we're confident is that the alternative is totally unacceptable. The alternative is gridlock, the alternative is more delay, more increases in the deficit, rising interest rates, a return to recession. We simply cannot go down that road. * * * And I don't think anybody seriously doubts that the consequences throughout our economy and the global economy would be absolutely devastating."

1990—House Majority Leader Richard Gephardt (on House floor):

"So we can produce a reconciliation bill in 10 days or two weeks that we can bring out here. And get 218 votes—half of this side and half of this side. So that we can address this deficit problem that everybody in this room knows has to be solved—for the future of this country and, I would even say, the future of the world."

Senator Sasser (10/27/90, on Senate floor):

"So, in short, we must act to reduce our needs for borrowing. We must act to reduce the deficit. If we do not, the rates of interest we must pay to attract the necessary capital will simply have to go up. The higher interest rates will combine with the rising cost of oil to strangle economic growth. Our steadily weaker economy will further weaken our already tenuous financial institutions which will, in turn, be unable to provide the investment capital we need to get off our knees.

"The whole thing could turn into a nightmarish economic death spiral with high interest rates and economic weakness forcing higher interest rates still.

"That all has to be avoided. That is why I submit, Mr. President, that it would be fundamentally irresponsible to vote against this conference report here today."

House Budget Cmte. Chair Leon Panetta (on House floor): "You can't develop a deficit reduction package that doesn't involve sacrifice on the part of everyone. The economy is in desperate straits. * * * And the question we have to ask tonight is: What happens if we fail? That's the question you have to ask. What happens to this economy if we fail to adopt a serious deficit reduction package for this country? The answer to that is, if we fail, it is almost comparable to an act of irresponsibility by us, because we know that if we fail we doom our economy to a deep recession."

Senator Boren (10/8/90, on Senate floor):

"We all know that the state of our economy is very fragile. If we demonstrate that we lack the will to truly deal with the budget deficit even when asked by the President and congressional leaders of both parties, we run the grave risk that the final vestiges of confidence in our economy will be destroyed. Such a loss of confidence could well do serious damage to our economy for decades to come and endanger the future for the next generation.

"This budget resolution is not perfect, but the alternative could well be economic chaos for our country. The risk of defeating it is too great."

DEFICIT REDUCTION-LOWER INTEREST RATES

1993—Vice President Gore (8/1/93, CBS' "Face the Nation"): "Well, don't take my word for it. Listen to Alan Greenspan * * * he's been saying loudly and clearly to anybody who will listen that failure to pass this plan is going to drive interest rates up. * * * President Clinton was able to go [to the G–7 summit] and do what no president's been able to do for more than a decade: offer leadership to the global economic community because he has a serious effective plan to reduce the deficit, invest in jobs, and get our economy moving again."

1990—Senator Mitchell (10/8/90, on Senate floor): "The single most important contribution that we can make to America's economic future is to bring the deficit down so interest rates can come down. High interest rates are the greatest barrier to the expansion of our economy. The need to provide jobs for our people, jobs in a free market economy, the best social program ever devised, the best solution to our economic problems, the best way to have productive families, living in decent homes with their children going to good schools; in short, to give American families a chance to achieve the American dream. That is what we can help contribute to it we vote for this budget resolution."

FIRST RATE PROGNOSTICATION ABILITY

Senator Christopher Dodd (10/8/90, on Senate floor):

"I happened to have voted against the Reagan tax bill in 1981, and I voted against the Reagan budget in 1981 as well because, as I said then, Mr. President, I did not think that "it presents the fiscal policy needed to increase productivity, employment, trade and growth while restraining inflation.'"

Senator Dodd (10/18/90, on Senate floor):

"This budget plan isn't perfect to this Senator either. But it is a real beginning toward serious deficit reduction. This budget will help us address the problems of the next century and put our Nation back on track. This budget truly is about our Nation's future: Without a solution to our budget crisis, we will continue mortgaging our children's future."

NOT PUTTING THE BURDEN OF DEFICIT REDUCTION ON THE MIDDLE-CLASS

Senator Gore: "We are not going to let the Government pick middle-income Americans' pockets with this budget. We are not asking those who can least afford it to find money they do not have to pay someone else's bills. We are asking those who can most afford it to pay more of their fair share. * * *

"All the working families, all the seniors, all who have no more to give and who have been holding on to their pocketbooks can feel a little better about this package today * * *

"Reducing the deficit is our first priority. But, as this [reconciliation] agreement shows, we do not have to shake down seniors or middle-income families to do it." (Record, 10/27/90, p. 17510)

Senator Sasser: "I do not believe we should ask middle-income Americans, those who

have been stretched and squeezed by the policies of the 1980's, to work overtime in the gristmill of deficit reduction. I think all of us would agree that middle-income Americans have done their fair share, and it is only fair that the 700,000 upper-income households that benefitted most from the policies of the 1980's, who saw their tax rates cut in half and then income in many cases double, should contribute proportionately to help solve this Nation's deficit crisis. * * * [T]his proposal will not suffocate middle-income Americans. It seeks only a 2-percent tax rate increase for middle Americans." (Record, 10/17/90, p. S15451)

Senator Sasser: "Yes. We tell the American people that there will be some sacrifice in this package. But we tell them at the same time that it will be fair, that no American is going to be asked to make more sacrifice than another. We tell them that the wealthiest in our society are going to pay their fair share. I say, Mr. President, that if we can implement this, if we can move this deficit reduction plan into place quickly before our economy deterioriorates further, then we stand a good chance of receiving real benefits, a chance of receiving real substantial gains." (Record, 10/17/90, p. 15451)

Senator Mikulski: "I am here today to speak for the middle class. In speaking for the middle class, they have no more to give, no more to give. They are either tuition poor, or they are mortgage poor; or they are poor because they do not have a long-term care policy, and they are taking care of their mothers and fathers.

"They have no more to give because they pay high property tax, they pay high health insurance, and they pay for their car insurance. When they get to their bottom line, they have no more to give.

"We have two parents working now because they need to out of economic desperation. Our middle class is shrinking.

"Mr. President, regardless of what we do on this amendment, all subsequent amendments and so on, let us remember the middle class in this country has no more to give. The poor have nothing to give. So let us go and get it from those who have it." (Record, 10/17/93, p. S?????)

Senator Daschle: "Asking the wealthy to give back just a little of what they have been handed by the administrations of Ronald Reagan and George Bush is fair.

"Asking ordinary families, who have been handed nothing over the past 10 years except bills, to bear a 12-cent per gallon increase in the gasoline tax and take a $60 billion Medicare cut is not fair.

"My votes for South Dakota have been designed to chop just as many pennies as I possibly can off that gas tax, to restore just as much of those Medicare and farm income cuts as is humanly possible and to pay for these things by cutting unnecessary spending like foreign military aid and asking the wealthy to bear their fair share of the deficit reduction burden.

"In the budget bill before us today we have moved the gas tax increase down from the President's 12 cents per gallon to 5 cents per gallon phased-in over 5 years. We have slimmed the Medicare reductions from the President's $60 billion to $40 billion, most of which will be borne by physicians and hospitals rather than individuals seniors." (Record, 10/27/90, S17540)

Senator Dodd: "I said that I wanted to support a budget resolution that would responsibly adjust spending priorities to perform the budget process without reducing economic growth and require the most affluent of our Nation to bear some fair share of the cost of government without shoving the brunt of that cost onto the middle-income taxpayers of this country." (Record, 10/8/90, S14720)

Senator Kohl: "But I would like to make clear that my support for this goal will not extend to the reconciliation bill that implements the budget resolution if that bill does not do two basic things. First, and most importantly, it must add to, not subtract from, the progressivity of the Tax Code. Second, that bill must not ask for unreasonable sacrifice from the most vulnerable members of our society: the poor, the elderly, the ill, and the children. In other words, to keep my support, the reconciliation bill has got to be fair. Deficit reduction involves cutting benefits, stopping programs, and raising taxes; there is no way to make those actions painless. But there are ways to make them fair. In the days ahead, I will be doing everything I can to make sure that we do deficit reduction, and that we do it in a fair and progressive way." (Record, 10/8/90, S14739)

John F. Kennedy—12/14/62, The Economic Club of New York:

"We shall therefore neither postpone our tax cut plans, nor cut into essential national security programs. This administration is determined to protect America's security and survival and we are also determined to step up its economic growth. And I think we must do both.

"Our true choice is not between tax reduction on the one hand and the avoidance of large federal deficits on the other. It is increasingly clear that no matter what party is in power so long as our national security needs keep rising, an economy hampered by restrictive tax rates will never produce enough revenues to balance our budget, just as it will never produce enough jobs or profits.

"Surely the lesson of the last decade is that budget deficits are not caused by wild-eyed spenders but by slow economic growth and periodic recessions, and any new recession would break all deficit records.

"In short, it is a paradoxical truth that tax rates are too high today and tax revenues are too low. And the soundest way to raise the revenues in the long run is to cut the rates now."

HISTORIC PROPORTION OF $500 BILLION IN DEFICIT REDUCTION

Senator Daschle: "It seemed absolutely essential that we agree on a budget compromise that would provide for serious long-term deficit reduction; a budget resolution that represents real progress toward the Federal deficit in a coherent manner.

"Mr. President, I intend to support the budget resolution now before us. * * * It represents the largest deficit reduction package in history. It preserves the overall summit agreement, including deficit reduction of $40.1 billion in fiscal year 1991, and $500 billion over fiscal years 1991-95." (Record, 10/8/90, S14720)

Senator Daschle: "From day one my personal bottom line on this deficit reduction fight has remained the same. The Government of the United States must be forced to cut at least $500 billion from its budget over the next 5 years. And the cuts made to achieve this goal are absolutely unacceptable unless they include significant contributions from the very richest Americans whose bank acccounts have been so fattened by the policies of the last 10 years." (Record, 10/27/90, p. S17540)

Senator Dodd: "The [reconciliation] resolution preserves the overall summit agreement on deficit reduction. It is the largest deficit reduction package ever considered by the Congress, including deficit reduction of some $40 billion in fiscal year 1991 and $500 billion over fiscal years 1991 through 1995." (Record, 10/18/90, p. S15864)

Senator George Mitchell: "Whatever the intention, the effect of this amendment [to strike the gas tax] will be to destroy this deficit reduction effort. The first serious deficit reduction effort in 10 years, a $500 billion deficit reduction package, will be undermined and fatally effected by this amendment. That is what is at stake here. Are we for deficit reduction or are we not for deficit reduction." (Record, 10/17/90, p. S15534)

DEFICIT REDUCTION IS CRITICAL AND OF HISTORIC PROPORTIONS

Senator Dodd: "This budget resolution is imperfect, as all budget resolutions are. But the solid deficit reduction it provides is far more important, Mr. President, than its flaws.

"Our country must have a national budget, which means compromises have to be made. If this resolution fails, the growing deficit and the ongoing paralysis in budget making will continue to erode our ability to govern.

"Once and for all, we must begin erasing this Federal deficit that has plagued this Nation for the past 10 years, and now is the time to end this fiscal insanity. All of us must come together in the spirit of cooperation to help solve this financial crisis." (Record, 10/8/90, S14720)

Mr. SASSER. May I inquire?

Mr. WALLOP. On your time.

Mr. SASSER. May I inquire of the Senator from Wyoming, is he going to insert the statements of those on your side of the aisle who supported the 1990 agreement, including the distinguished ranking member? After all, this was an agreement that was entered into by a President of your party. I would think it was a nonpartisan agreement. I hope that it would not be characterized today in a partisan fashion and that there would be statements inserted by those who support it from both sides of the aisle.

Mr. WALLOP. Mr. President, I would only say, I was contrasting the language of those Members who now claim that this bill is the largest deficit reduction package in history, who also made the very same claims, using precisely the same deficit reduction figures in 1990. I agree that it was passed by a bipartisan majority. The reason it is not going to be bipartisan now is because some of us have learned that it did not work.

Mr. President, speaking of the retroactive tax increases contained in this bill, I would note that the first thing they will do is to tax the most productive taxpayers, the risk-takers, and the businesses who employ.

Retroactive taxes are the single most scurrilous aspect of this bill, and the administration itself knows it. They understand the pain that these retroactive taxes will cause because they are going to provide for those of us who may have to pay them—I do hope that I am not one—the ability to pay by installment.

It is very interesting what Treasury has to say about these installments. Did you know that the Treasury Secretary is given the ability to terminate the installments and demand that the whole of the unpaid tax be paid? Has anybody taken a look at who has been given this power? For example, what if you are contesting an audit and the IRS says either agree to this or we will call on you to pay your supertax extension on demand right now? What kind of power are we giving these people?

Mr. President, a New York Times article claims that these retroactive taxes are a burden—a burden we know the administration has recognized—and that the installment payments amount to an interest-free loan to the rich.

Mr. President, whose money are we talking about? Are all the efforts of Americans first the Government's? Do we not have a tax rate of 36 percent but a loan rate of 64 percent? Is that what the Democratic Party and the leadership of this country is claiming for us? Do Democrats really believe that all the work of Americans belongs to Washington, that our earnings are theirs and that we keep what we keep only by grace? And do they really believe that this is an interest-free loan of our own money? Is that what we are hearing today?

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

Mr. WALLOP. I thank the Chair, and I thank the Senator from New Mexico.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I yield 5 minutes to Senator THURMOND.

The PRESIDING OFFICER. Senator THURMOND is recognized for 5 minutes.

Mr. THURMOND. Mr. President, I rise today to express my strong opposition to the conference report to the Budget Reconciliation Act of 1993. This bill, also known as President Clinton's deficit reduction plan, is no such thing. It is essentially a tax-and-spend plan. It contains no real spending cuts to reduce the deficit or improve our Nation's economic outlook, and I shall vote against it. It was a bad bill when it came up in the Senate in June, and it is still a bad bill.

The major thrust of this package is to raise revenues through increased taxes. I have long been an advocate of deficit reduction, but believe me, Mr. President, increasing taxes is not the answer to our economic woes. We must cut spending, or we will never pull ourselves out of this fiscal mudhole in which we are floundering. Of the spending cuts which are included in the bill, 80 percent will be delayed until after 1996. This is a smoke and mirrors approach to deficit reduction, and it will not work.

I cosponsored the Republican alternative to this plan, which would have reduced the deficit through real spending cuts, without any increase in taxes. Unfortunately, this amendment was defeated by the Democrats.

Mr. President, we need to assist Americans and American businesses. What we do not need to do is burden our people with a wide array of new taxes. The budget reconciliation bill will increase the corporate and individual income taxes. It will levy a 4.3-cent increase in the tax on gasoline, which hurts my people very much because a lot of them travel a long way to work. It will increase the tax on Social Security benefits. Many small businesses will be especially hard hit with the increase in the income tax rates, as well as the surtax on earnings over $250,000. The higher gasoline tax will likely place an unfair burden on farmers and residents of rural areas.

Mr. President, the phones in my office have been ringing off the hook, and the overwhelming majority of the calls have been from people in my State and around the Nation who see through the haze of Democratic rhetoric. Americans do not want to pay higher taxes. They believe, as I do, that fiscal responsibility begins with reduced spending and not increased taxes.

Our Nation is struggling to recover from an economic slump. I am concerned that any increase in taxes will discourage growth and the creation of new jobs; both of which are essential if we are to get back on our feet again economically. You can call a donkey a racehorse all you want, but it is still a donkey; and you can call this a deficit-cutting package all you want, but it is still the same old tax-and-spend policy.

This is our last chance to save the American people from increased taxes and big spending. Mr. President, I say again—I will vote against this bill, and I strongly encourage my colleagues to vote against it as well.

Mr. President, I ask unanimous consent that an article entitled "Senate Should Insist on Cuts Now" which appeared in the Charleston Post and Courier on August 6, 1993, follow these remarks.

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

SENATE SHOULD INSIST ON CUTS NOW

The former Rhodes Scholar from Arkansas who occupies the White House signed up for full course-load in economic and social reform when he took office in January. It was too much. He has already failed at stimulus and taken incompletes in welfare and health care reform. Today he gets his final grade in his remaining major subject—the budget. From here it looks like he deserves to fail.

The Democrats and the President have manufactured a fiction that this budget breaks all records for deficit reduction. That has repeatedly been shown to be a fatuous fable.

To lay claim to a $496 billion, five-year deficit reduction package, they dismissed the spending caps voted by previous Congresses for fiscal years 1994 and 1995, but claim credit for similar caps they have proposed for the next three years. They can't have it both ways. Strike $44 billion in claimed savings.

The remaining $452 billion in projected savings relies heavily on $250 billion in hoped for new revenue from taxes mostly on wealthy individuals and corporations, who have repeatedly shown that they can find various ways to reduce reported income when they perceive that taxes are too high. Respected—albeit admittedly conservative—economists have argued recently that such behavior could reduce the expected tax take by three-fourths, or more.

While the proposed tax increases are being made retroactive to Jan. 1, the proposed spending cuts are delayed until the later years of the budget plan, and are far from being cast in concrete.

The President has promised that new tax revenues will be put into a deficit reduction trust fund—hoping thereby to garner a critical vote or two in the Senate. That this promise can't be kept is made evident by the fact—reported by the respected, bipartisan Committee for a Responsible Federal Budget—that budget conferees "agreed to make tax rate increases retroactive to Jan. 1 to make room for some new spending" for food stamps and low-income tax credits in an apparent effort to nail down liberal votes in the House.

This new spending is on top of the House-Senate plan to increase domestic discretionary spending by about $100 billion over the next five years and the Senate plan to increase selected entitlement spending by at least $17 billion.

Reported last-minute Senate maneuvering to pass the budget has raised the possibility, proposed by Sen. Bob Kerrey (D-Neb.), of a special session of Congress later in the year devoted exclusively to cutting federal spending.

If that is the plan, what's the rush to pass this budget before the needed cuts? The 1990 deficit reduction plan was rejected at a comparable stage in the legislative process and was sent back for last minute changes—to satisfy Democratic liberals. Today the conservatives seemingly have the upper hand. They should use it to insist on meaningful spending cuts now.

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

The Senator from Tennessee.

Mr. SASSER. Mr. President, may I inquire of the Senator from North Dakota how much time he wishes?

Mr. CONRAD. I had earlier been told I would have 20 minutes.

Mr. DOMENICI. Senator GRAMM wishes to speak for 20 minutes, also. The Senator is a little long on time, but what is his pleasure at this point?

Mr. SASSER. Mr. President, unless it discommodes the Senator from North Dakota unduly, I would have no objection to Senator GRAMM going first and then coming back to our side because we only have 19 minutes remaining. Perhaps I could get a minute or 2 by unanimous consent to give the Senator.

Mr. CONRAD. That will be fine.

Mr. SASSER. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. I yield 20 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 20 minutes.

Mr. GRAMM. I thank the Senator for his generosity.

Mr. President, a budget is not just about numbers. It is not just about taxes and spending. It is not just about the deficit. It really is the one document that we adopt each year which says something about our vision for the future of America.

We have before us a budget that outlines a vision. In fact, in the last 14 years in looking at these budgets, I have found that they basically fall into one of two visions. One is a vision of Government growing, providing more benefits and more services to more people. I think that is what this budget is. The other is a vision of America growing, providing more opportunities for more people. I think that is what this budget is not.

The real conflict comes in that you cannot have unlimited opportunity and unlimited Government. That is what this debate is about. It is in that context, Mr. President, that I would like to talk about this budget.

We have before us a plan that will raise taxes and fees by $255 billion. Income tax rates at the highest marginal rate will go up by 32 percent. The estimate that we have is that between 60 and 70 percent of those taxes will be paid by proprietors, partnerships, and subchapter S corporations. As many as 1.5 million of these businesses file as individuals under the Tax Code.

In other words, between 60 and 70 percent of these higher taxes that are imposed on individual incomes will actually be imposed on small businesses and family farms. The corporate tax rate will go up. Social Security taxes will rise. Those who have worked a lifetime, built up a modest nest egg, achieved a level of security with a retirement income of $34,000 a year will now have 85 percent of their Social Security benefits taxed.

The gasoline tax will go up. We have all heard the figure that the President has said and the Ways and Means Committee has said of $28 a family. But when you examine their claim, Mr. President, that figure appears to be the per capita consumption of gasoline times the tax. When you actually look at the gas tax, you will notice two things. First of all, there is a new tax of 4.3 percent. Second, there is an extension of an expiring tax, a temporary tax that was part of the 1990 budget summit agreement, of 2.5 percent. So if this bill passes, gasoline taxes will rise 6.8 cents a gallon in my State. That means the average family in Texas, given the amount we drove in 1990, will pay $134.57; over the 5 years of this budget, $573.93. That is a long way from $28.

What tax hikes are in this budget? Income taxes, gift taxes, estate taxes, gasoline taxes, Medicare taxes, Social Security taxes, unemployment insurance taxes, diesel fuel taxes, custom taxes, corporate taxes, and alternative minimum taxes.

Altogether, these taxes add up to primarily a tax on business that when compared to the after-tax profits of all American businesses last year, you find a fairly remarkable number. What percentage of aftertax profits of corporate America last year would be taken by all the taxes imposed on businesses, large and small, contained in this budget? The answer is 15.8 percent—15.8 percent of all profits of all corporate businesses in America would be taken by the higher taxes imposed on business through this bill, and that would be true every year for the next 5 years.

Now, I ask my colleagues, if you owned stock in a company and its profits fell by 16 percent, and you knew that the policies were in effect to hold them down by 16 percent every year for the next 5 years, would you want to buy that stock, additional stock, or would you want to sell?

I think the answer is that people would sell.

Mr. President, second, I am very concerned about what this bill is going to do in terms of incentives. We are going to raise taxes on the people who do the investing in America. Their marginal tax rates are going to go up by 32 percent. We are going to raise taxes on the small businesses and on the large companies that make the investments that create the jobs. Can we tax investors and get them to invest? Can we tax job creators and get them to create jobs? I think the bottom line is we cannot. I am deeply concerned that this tax bill is a one-way ticket to a recession, and by my telephone calls that are running 10 to 1 against this bill, America does not want to go.

I thought people might be interested in what these new taxes will do to the portion of the economy that is taken by the Government. When fully implemented, the President's plan will produce a situation where the Federal Government is getting 19.6 percent of gross domestic product. Government at all levels will get about 40 cents out of every dollar earned. I thought it would be interesting to look back and find out what happened in the last year that Government took 19.6 percent of the gross domestic product.

That year was 1980. Jimmy Carter was President. And as Ronald Reagan would say, let me take you down memory lane.

In 1980, the poverty rate was 13 percent. It rose 1.3 percent that year.

In 1980, 29.3 million people were living in poverty, 3.2 million more people went into poverty in 1980.

In 1980, median family income in America fell by $1,817.

In 1980, the inflation rate was 12.5 percent, and the dollar lost one-eighth of its value.

Finally, the annual unemployment rate in 1980 rose from 5.8 percent to 7 percent, and it continued to go up for the next 2 years.

I do not believe that this is a history that we are eager to replicate.

What about spending cuts? We have heard a lot of talk about them. And there are some spending cuts in this bill. Defense is cut by $72 billion. Medicare is cut by $56 billion. Our colleagues jump up and say, well, nobody is going to be cut except the hospitals. I remind my colleagues that when the Government undercompensates hospitals for Medicare, that means people that are paying their own hospital bills, their insurance company, and out of their pockets paying, they are going to see their bills go up to pay for the amount of hospital care Medicare does not pay for.

But what happens after these defense cuts, the largest in the history of the country, and these massive cuts in reimbursement under Medicare to hospitals? What happens to spending?

If you look at the number, I think most people would be startled to find that spending next year under this budget goes up by $54 billion. In fact, if you look back and see what spending would have grown by if we did not pass this budget, you find remarkably the number is $54 billion. In other words, every penny of defense cuts next year, every penny of underreimbursement to your community hospital that you will have to pay for in your medical bill if you go to the hospital, every penny of that money is going to be spent on something else.

Next year, given the bill that we adopted the day before yesterday for flood relief—and we voted against paying for it 55 to 45—spending will go up by $68 billion in 1995.In fact, by 1998, the last year of this budget, spending actually goes up faster than taxes.

So in short, during President Clinton's term, all the defense cuts and all the Medicare cuts are used for new spending programs. And then, after 1996, the budget promises that cuts are going to be made. Maybe they will be, and maybe they will not be, Mr. President. But I can say this: I have seen Democrat budgets and I have seen Republican budgets. And never have I seen cuts promised 3 and 4 years into the future made by anybody.

There is one dead giveaway that proves no spending is actually cut. I ask my colleagues to remember the day, those who were in Congress, that we voted on the Reagan budget. I ask them to remember the day we voted on Gramm-Rudman. I ask them to remember the budget we voted on in 1985 where we had real spending cuts. And if they remember any one of those 3 days, they remember their phones were ringing off the hooks, and people were saying, "Do not cut my program; vote no." They walked into the Chamber through a tidal wave of humanity, people waving, holding up signs, saying, "Don't cut my program."

Well, is it not funny, Mr. President, that yesterday my office got 1,800 telephone calls, 10 to 1 saying vote against this bill, but nobody said vote against it because it is cutting my program. Everybody said vote against it because it is raising my taxes. I ask my colleagues to walk into the hallway and look for lobbyists saying, "Don't cut my program." They were there in 1981. They were there in 1985 twice. Where are they today? Where are the people that are saying, "Don't cut my program"? They are not there because they know their program is not being cut. They know that during the first term of the Clinton administration, which I believe is going to be the last term, that their programs will grow, not be cut.

I ask my colleagues to remember that we have been down this road before. In 1990, President Bush negotiated with the Democratic leadership, took $160 billion of taxes, big promises of cuts to be made in the future. The taxes went into effect, the economy went down, the cuts were never made. We are about to replicate that mistake except now the taxes are almost twice as big.

What is the alternative? I am sure that there will be those here who say there was no alternative. I want to remind my colleagues that we have had 29 amendments in committee and on the floor of the Senate where we had an opportunity to cut spending, and 29 times Democrats have rejected those amendments. We had eight amendments to eliminate the Social Security tax and cut spending, and eight times Democrats defeated those amendments. We had 12 opportunities to eliminate energy taxes, and 12 times those taxes were endorsed relative to cutting spending. And eight times we had amendments to exempt small businesses and family farms from these taxes and to cut spending or to cut Clinton add-on spending, and eight times it was rejected.

Mr. President, my guess is, given what happened in the House, that there are still enough post offices to be named, enough reservoirs to be built, enough arms to be twisted that this bill is probably going to pass.

And it calls to my mind a statement that Abraham Lincoln made in the second week of what had been a disastrous first week as President. Abraham Lincoln said he was reassured by the belief that no program of any single administration in 4 years could do permanent harm to America. We are about to put Lincoln's faith to the test.

You know, Mr. President, I believe that we will overcome the negative impact of this program. I believe this program is going to make the economy weaker. I believe that hundreds of thousands of people are going to lose their jobs as a result of this program. I believe that Bill Clinton will be one of those people. I believe that there will be those who vote for these taxes today who will join him in that unemployment line or in another profession.

But I also believe that America will overcome not only the illness, which will be the recession, but the absurd prescriptions of the doctor, which will be the Clinton program. I am always skeptical about government. I am never skeptical about America. I have no doubt that the American economy will ultimately overcome the program that we impose today. I am hopeful to be part of repealing this program and doing something about spending.

But let me say that if the program is adopted, tomorrow it will be the law of the land, and it will be everyone's obligation, to the maximum extent possible, to try to make it work. I hope I am never here so long that I start getting up every morning hoping something bad happens to America because it is going to help my party politically. I hope I am wrong and that this program is going to work. I hope we are going to defy history and prove that raising taxes on investors, raising taxes on job creators, can promote investment and promote job creation, that really Government ought to be bigger and not smaller. Only in Cuba and North Korea and Washington, DC, does anybody believe that today. But perhaps the whole world is wrong. I hope I am wrong in what I am saying today, but I do not believe I am.

Finally, let me say, just by chance, that there is one soul who is still undecided about this budget, let me conclude by suggesting what we do if it fails, and this would be hard for everybody, but I, for one, would be willing to do it.

I would say, if this tax bill fails, the American people are rejecting raising taxes, and they have honest-to-God said "cut spending first." I think Republicans ought to begin by sitting down and putting together a concrete program to cut spending by $500 billion. We ought to take it to the Congressional Budget Office, get it certified, and we ought to take it down to the White House. We ought to ask the President to do exactly the same thing. We ought to put both of those plans on the table, and where they overlap, we ought to agree in advance that we are going to accept it. Then we ought to take the Republicans' and President Clinton's list and we ought to pick one-half of his cuts. He ought to take our list and pick one-half of our cuts.

We would have a proposal that we would all hate. I am sure there would be programs on Clinton's list that we would take—because the others would be worse—that I would be for. But the net result is that we would hate it, but the economy would love it. If we did that, I have no doubt that all of this private response that the Clinton administration is hoping for on this bill would really happen.

I really believe we should, this year, do something that we have not done here in a decade, and that is: Cut spending first. That, I think, is the alternative. That is what would happen if we rejected this plan. I guess at this point we are going to have a 50–50 vote, and the Vice President is going to break the tie. But I would simply like to say that that is my commitment to work with the President if we defeat this plan. It will be that the American people have said we are not willing to raise taxes now and cut later. We want to cut spending first. I, for one, would be willing to work to do that, and I pledge to the President today, on just the off chance that we might get an opportunity to put our vote where our mouth is, that I would work with the President to do that.

I thank my colleagues for listening to me today. I think this is a very important vote. I think each of us will be remembered for how we voted here, at least by our constituents. As the great majority leader from Maine once said, "The essence of democracy is accountability."

So I ask that when the names are taken down, people look at what our vision for America was and hold us accountable.

I yield the floor.

Mr. SASSER. Mr. President, I yield such time as he may require to the distinguished Senator from North Dakota.

How much time do we have remaining?

The PRESIDING OFFICER. The Senator from Tennessee has 24 minutes 45 seconds.

Mr. SASSER. Could my friend from North Dakota give me any idea how much time he might consume?

Mr. CONRAD. About 19 minutes.

Mr. SASSER. I yield 19 minutes to the distinguished Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota [Mr. CONRAD], is recognized for 19 minutes.

Mr. CONRAD. I thank the chairman of the Budget Committee. We have just heard another remarkable speech on the floor of the Senate. Mr. President, it is a good thing that consistency is not required for speeches on the floor of the U.S. Senate, because we have just heard the Senator from Texas talk at length about, No. 1, this being the largest tax increase in history. It is not.

He has talked about the evils of tax increases. I think all of us would prefer not to have tax increases. But even worse is the growth of the debt. And even the Senator from Texas recognized that in 1982 when, as a Member of the House, he voted for what was in fact the biggest tax increase in history.

It is fascinating how soon it is forgotten, what happened, and who did what. But, in 1982, Republicans controlled the U.S. Senate; they had the

White House, and they had effective control of the House of Representatives, and they passed a tax increase that, in 1993 dollars, would be $298 billion. That is the Republican tax increase of 1982. The Senator from Texas is recorded in the CONGRESSIONAL RECORD as voting in favor of it.

This tax measure that includes spending cuts and taxes, in 1993 dollars, is $219 billion—far less than the tax package the Senator from Texas voted for in 1982, and I might add, that was shepherded through the Senate by the Republican leader, who now rails against any tax package.

I assume they voted for that tax package because they recognized what we face today. We face a debt that is growing out of control.

Mr. President, why is it that we have before us a package of deficit reduction of some $496 billion that includes tax increases, but also includes spending reductions? It is because this is where we find ourselves today. This shows the growth of the Federal debt since 1950. Here is 1950, 1955, and 1960. We did not see the national debt explode until the Reagan era. President Reagan came to power, and we had a national debt of about $900 billion. Look what has happened since then. The national debt has absolutely skyrocketed to over $4 trillion today. And if we fail to act, it is headed for well over $6 trillion in the next 5 years.

Mr. President, there is only one vote today that is going to do something about this explosion of debt, and that is to vote "yes." As difficult as it is, as painful as it is, there is only one vote today that is going to address this skyrocketing national debt. There has been too little focus, and there has been too little discussion of why it is that the vote today we must cast is a vote to start to reduce the skyrocketing deficits that build this national debt.

That is what we must do, Mr. President. And the reasons are clear. This chart shows what is happening to interest spending as a percentage of our gross domestic product, again, from 1955 to the year 2003, and one can see that interest is starting to eat up our Federal budget. It is starting to grow dramatically as a percentage of our total economy and similarly as a percentage of our total budget.

Mr. President, these numbers have real consequences. This chart shows what has happened to the U.S. position in the world with the growth of the debt. As the debt has grown dramatically, our position in the world has slipped dramatically, and the two are connected. We have gone from being the largest creditor nation in the world, as recently as 1981, to now being the largest debtor nation in the world. And that is growing inexorably. Year after year our debt owed to other countries grows and grows and grows.

Mr. President, it is time to act.

There are real consequences, real consequences for families of our failure to reduce this debt. This chart shows what our children's economic position will be in the year 2020 under two different scenarios. Scenario one, no action. Today, we do not vote to cut spending and to raise taxes and to reduce the deficit. Today, we just continue on the same old course. We follow the advice of the other side. We followed their advice previously and we saw this debt skyrocket. If we stay on that course we see the per capita gross national product in the year 2020 will be $23,875.

If instead we move toward balancing our budget by the year 2001, we can expect per capita gross national product to be $32,555 in the year 2020, in an economy that is almost 40 percent larger if we make the hard choices, if we have the courage to cut spending and raise taxes and reduce the deficit. That is the choice that is before this body today.

(Mrs. MURRAY assumed the chair.)

Mr. CONRAD. Madam President, this chart shows the deficit reduction in the Senate plan. It shows the business as usual approach versus the choice that is before us today of supporting the President's package.

Madam President, starting in 1989 deficits increased each and every year of the Bush administration. If we stay on a business as usual course those deficits will continue to grow and the debt will continue to grow. If instead we adopt the plan before us today, the deficits will decline and for the first time we will turn and move this country in a different direction.

Madam President, the other side has talked a lot about their alternative. Indeed, they had an alternative. They introduced an alternative that called for reducing the deficits over 5 years by $359 billion. That is more than $100 billion less in deficit reduction than the package we have before us in the vote we will cast today.

The Republicans have talked a lot about the need for deficit reduction, but when it came their turn, when it came their time, for the 6 years they controlled the United States Senate, for the 8 years they controlled the White House under President Reagan and the 4 additional years of the Bush term as President, the deficits and the debt skyrocketed, and now when it comes time for them to present their alternative in 1993 here is the difference—$359 billion of deficit reduction versus our package, which provides $496 billion of deficit reduction.

Madam President, this chart shows the costs and benefits to middle-income households of this overall economic plan. This tax change—and the only impact on middle-income Americans on the tax side is not in the income tax. Ninety-eight percent of Americans will pay no higher income tax as a result of this plan. Let me repeat that. Ninety-eight percent of Americans will pay no higher income tax as a result of this plan. The only part of the tax plan that affects middle America is the gas tax of 4.3 cents a gallon, about $29 a year. That is in contrast to the Btu tax which would cost $117 per person per year.

There is a real benefit to be gained, and that benefit is in lower interest rates. Let me just give you an example of a family that has a $100,000 mortgage and refinances, reducing their interest from 10 to 7½ percent. They will find real savings of a $175 monthly reduction in their house payment as a result of these lower interest rates.

Madam President, we have also heard a lot about the changes in the income taxes. If you listen to this debate, you would think that we are headed toward income tax rates we have never seen before. Nothing could be further from the truth. In 1960, the top individual income tax rate in this country was 91 percent through the sixties; in the seventies and the eighties, the top rate averaged over 70 percent, and then we had the dramatic reduction in the early eighties in the top individual income tax rate. We got down to a low of 31 percent.

This legislation raises that to 39.6 percent, still far below the income tax rates that we experienced in the sixties and seventies and, by the way, that was a period of much higher economic growth.

So, Madam President, I would say the lesson that one would learn from the information that is available is that the enormous growth of the debt has hurt us most, and there is one vote today that is going to do something about reducing deficits. That is to vote "aye."

Madam President, we also heard a lot of talk about the impact upon small business. The fact is most small businessowners will not pay higher taxes. In fact, many small businessowners are going to see a reduction in what they pay because nobody talks about it, but the fact is expensing for small business is being increased by over 70 percent. That means that the average small businessowner in Washington State or in my State of North Dakota is going to be able to get a tax reduction.

Nobody has talked much about the tax reductions that are included in this package. Not only are most small businessowners going to get a tax reduction, but many individual taxpayers are going to get a tax reduction as a result of this plan. In fact, on average, almost anybody earning less than $30,000 a year in this country is not going to have a tax increase. They are going to have a tax reduction. And that is because of the earned income tax credit provisions of this legislation.

Nobody talks about it. You do not hear the other side saying an awful lot of Americans are going to have a tax reduction, but it is true. Most small businessowners are going to have a tax reduction. Only 4 percent are going to pay higher taxes.

Madam President, we have also heard a lot of talk about spending, and we have heard over and over and over that there are no spending cuts in this package. That is not true. There are spending cuts in this package. All one has to do is look at defense. Defense, which is one of the largest categories of spending in the U.S. budget this year will be $277 billion in fiscal year 1994. In 1998, spending on defense, 5 years from now, will be $235 billion.

Madam President, that is a real cut. That is a real cut. That is less money 5 years from now than we are spending today.

Madam President, when you factor in inflation, it is even a larger cut. When people say there are no cuts here——

Mr. DOMENICI. Will the Senator yield for a question?

Mr. CONRAD. They are not being accurate.

No. I would like to complete my statement, and then I would be happy to answer questions.

Beyond that, domestic discretionary spending is going to have a hard freeze for 5 years. At the end of 5 years, we will be spending no more on domestic discretionary spending than we are spending today.

Madam President, let's also look at total spending as a percent of gross domestic product, the spending of the Federal Government compared to the size of the economy. That is what economists will tell you matters.

Very interesting. We look at the 4 years of the Bush administration. Spending went up every year as a percentage of gross domestic product; every year spending went up under the 4 years of the Bush administration.

Under this plan, for the 4 years of this Clinton administration, the first 4 years, spending will go down as a percentage of gross domestic product each and every year.

Madam President, that is the real story on spending.

Finally, I thought we should do a reality check on spending and look at what has happened in the last 30 years. What has happened to spending in this country?

Do you know what I found, Madam President? I found that 30 years ago, we spent about 19 percent of our gross domestic product through the Federal Government. In fact, it was 19.3 percent. Today, we spend 23.5 percent of our gross domestic product. So Federal spending over 30 years has gone up, measured against the size of our economy. No question about that.

So then I asked the next question: Where has the spending gone up? And I found a very interesting thing. I found that spending has gone up in four areas, while it has declined in all the others.

Those four areas where spending has gone up are Medicaid—it was zero 30 years ago, today it is about 1 percent of gross domestic product; Medicare—that was zero 30 years ago; today it is about 2 percent of gross domestic product. Social Security 30 years ago was 2.6 percent of gross domestic product; today it is 4.9 percent. And the biggest increase of all, interest on the debt. Thirty years ago, that was 1.2 percent of the gross domestic product; today it is 3.4. percent.

So the total increase in spending that we have experienced over the 30 years is in four areas: Medicaid, Medicare, Social Security, and interest on the debt.

That is why, when the President says the next phase of deficit reduction in getting control of our fiscal destiny is health care reform, he is exactly right.

This is just a first step. The next step is aimed right here at the skyrocketing costs of healthcare.

Madam President, all other parts of Federal spending have actually declined from 15.3 percent of gross domestic product to 11.9 percent. That is the history of spending in this country over the last 30 years.

Madam President, I end as I began. There is only one vote today that will reduce the deficit, and that is to vote yes to cut spending, to raise taxes, to reduce the deficit, to get this country back on track.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, how much time do we have and how much does the other side have at this point?

The PRESIDING OFFICER. The Senator from New Mexico controls 15 minutes 18 seconds; the Senator from Tennessee controls 5 minutes 8 seconds.

Mr. DOMENICI. Madam President, I yield 8 minutes at this point to the Senator from New Hampshire, and then Senator MACK will take the remainder. If he cannot finish his remarks in that time, I will yield some additional time.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Madam President, I thank the Senator from New Mexico. I appreciate that.

You know, I think there is a common strain in American politics, and that strain is that the American people have a lot of common sense. The calls which we have been receiving over the last few days have reflected the American people have taken a look at this package and concluded that it does not make sense for them. They have reached that conclusion because they see it as basically a rerun of the classic tax and spend proposals that this legislative body has been passing for so many years.

This is a $260 billion tax proposal. It is the largest tax proposal in history.

In the first year, it has $30 of new taxes for every dollar of spending cuts. In the second year, it has $10 of new taxes for every dollar of spending cuts. As a result, basically, it is a tax package. It is not a spending reduction package.

In fact, if you look at this package overall, it has a dramatic increase not only in taxes but a dramatic increase in spending. And that is what I want to focus on today.

People may have been a little charted out here over the last few days, but if you look at this chart here, it reflects the relationship of the revenue increases and spending increases.

You will see that in the first year, the revenue that has increased in the Federal budget is $102 billion, but in the first year spending goes up $54 billion.

In the second year of this budget, revenue goes up $90 billion, but spending goes up $66 billion.

In the third year, revenue goes up $69 billion, but spending goes up $50 billion.

In the fourth year, revenue goes up $71 billion, but spending goes up $64 billion. So that you basically have a wash there. Revenue and spending increases are the same.

In the fifth year of the budget, spending actually increases faster than revenues in this budget. That, by definition, is a classic tax and spend budget.

Yes, it increases revenue and, yes, it increases spending, and that is about all that it does.

The representations that there are spending cuts in this budget simply do not come to fruition on its own terms. The fact that there are major new taxes and the fact that there are major new increases in spending do come to fruition. And that is old-time politics, and it is old-time politics that the people of this country are tired of.

You know, they elected Bill Clinton President of the United States with the expectation that he would do something different. He said he was. He said during the campaign that he would cut $3 in spending for every dollar of tax increases that occurred. Yet, here we get the reverse, or worse than the reverse, really, in the first year. We are getting $30 in new taxes for every dollar of spending cuts.

It is ironic and unfortunate that once again the American people find themselves having been taken, essentially, by the political process.

So you ask yourself: How did we get to this point? How do we get to the point where we have a budget which is so fundamentally inconsistent with

what the American people thought they were voting for? How do we get to the point where we have a budget where literally millions of people, on their own volition, called the Congress today and yesterday, saying, "Don't pass it. Don't hit us with this new tax and spend bill."

Well, as I mentioned, we have a new President and he ran under the theory that he would be a centrist President; that he would govern in a new way and there would be change.

Unfortunately, he has been governing as an old-time Democratic liberal politician.

But still, he is the new Democratic President. And I think the Democrats in Congress feel they have to help him so that his Presidency will not fail and be harmed.

Really, that is about the only argument that is left on the side of this budget. You hear it all the time in private conversations around here. Many Democrats will say they are voting for this plan because the only thing worse than its passage is the effect of its defeat on this Presidency.

And as the process has moved along from the budget resolution to the budget reconciliation, this Presidential aspect has intensified. Any critic of the plan becomes a critic of the President. Any change in the plan is deemed as hurting the President. The President has to win because the Democrats have to prove that a Democratic President can govern. As a result, partisanship and differences were accentuated and possible alternative coalitions were ignored.

I take, for example, the BOREN-DURENBERGER proposal as an area where at least some responsible Members of the body decided to put forward another approach. It was ignored. It was rejected. It was spurned by the other party and the leadership of the White House.

So this vote becomes an easy vote for Republicans and a tough vote for the Democrats. Senators know that, and that is how the pundits characterize it. We are fairly confident the substance and politics are with us. We recognize the 1990 budget deal failed. It was a tax-and-spend agreement, and it did not reduce the deficit, and this is "deja vu all over again." This is the 1990 budget deal once again presented us. Whereas the Democratic Members of this Congress are put in the position where many have become more concerned, quite honestly, with Presidential prestige than with the substance of this plan. And the President's interests have become, or at least have overwhelmed, the national interests. When the Congress votes to protect Presidential prestige, is it undermining its role as a representative of the people? I believe it is. As this bill makes painfully clear, bad legislation results when Congress begins to represent the President rather than the people.

So I believe this plan fails on two levels. It fails clearly on substance. It is a tax plan with very low cuts. It is a tax-and-spend plan. The numbers of the proposal speak for themselves.

But it also fails more fundamentally. It fails in the area of governing, because we as a body are not here to represent the President. We are here to represent the people of this country, and we should not put protecting the prestige of the President's office ahead of the need to protect the people's concerns. The result when we do that is Government as usual and politics as usual. Congress has failed here. It has failed to act in its leadership role, and it has failed to deliver a package which was called for by the American people in the last election.

As I said, President Clinton was elected because the American people expected something different and they hoped for something better in the way the Government operates. Unfortunately, this plan fails to achieve those goals. The American people expected better, and I oppose this plan because I believe the American people deserve better.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Madam President, I ask unanimous consent we move back the time an additional 10 minutes at which a point of order may be raised, and that those 10 minutes be charged against the time under the control of the majority.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Reserving the right to object, I understood that was for one speaker?

Mr. SASSER. That is correct.

Mr. DOMENICI. Then we will follow using our remaining time with Senator MACK, and that will still be within the time agreement the Senator just asked consent for?

Mr. SASSER. That is my understanding.

Mr. DOMENICI. I have no objection.

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

The Senator from Tennessee.

Mr. SASSER. Madam President, I yield 15 minutes to the distinguished Senator from Wisconsin, Senator FEINGOLD.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, this situation today, voting on the President's budget package, reminds me a little bit of an experience I had in early 1983. I had just been elected to the State Senate in Wisconsin, in a predominantly Republican district, and had only won by 37 votes out of 47,000. I was informed shortly after the election that the first thing I would get to do is deal with the fact that our State of Wisconsin was $1 billion in debt. That does not sound like a lot out here. But in Wisconsin, $1 billion in debt is big trouble. In fact, we had a greater debt than the State of California had at the time, and we knew we were in trouble. We had no choice. The first bill I had to vote for as a freshman State senator, my very first vote required me to vote to raise taxes by $1 billion.

A number of the Republican aides informed me that I would be a one-term State senator, and the thought crossed my mind that could happen. But, of course, we had to do it. We could not just leave that $1 billion sitting there. We had to solve the problem.

Yes, 10 years later when I sought to become a Member of this distinguished body, I did hear about that vote. My opponent, the incumbent, ran ad after ad after ad saying the first thing RUSS FEINGOLD did when he got elected was vote to raise taxes. He just could not wait. And I had to watch that and wonder whether it would make it impossible for me to win that election.

It is the same situation today. The people of this country voted for change, and they voted for change in our race in Wisconsin because they know we have a problem and that there is only one alternative and that is solving the problem: dealing with the deficit; bringing down the spending; and in some cases, having to raise taxes. We have no other alternative.

The Republican leader has been heard to say on this floor—and I have seen him on television saying this—that he thinks we ought to have a plan that the American public would like. The American public does not like the President's plan. We should have one that they will like. And he has a plan.

I think that is part of the problem. The question is not whether the American people should like a deficit reduction plan. How in the world could they like a deficit reduction plan? What is there in there to like? There are taxes and there are spending cuts, more spending cuts than taxes. But the truth is it is about half and half.

People may want spending cuts, they may believe they are necessary, but they do not really enjoy them. The truth is that a spending cut involves eliminating people's jobs.

I have been involved in fighting the duplication in Radio Free Europe and Radio Liberty, and I regret to say my success in that area, getting that effort moved forward, will mean that some people will, unfortunately, lose their jobs. That is not nice for anyone. That is not something we enjoy voting for. But we do have a problem.

This is an important vote for me as a freshman. This morning I decided, since this was a big vote, that I would hold one of these radio news conferences out of my office. It is a wonder of modern technology. I can talk to all the radio stations in the State at the

same time and they can ask me questions. The questions they asked really gave me the opportunity to focus on what I wanted to talk about today.

The first question I got was: Senator, you are going to vote for this bill, but are you comfortable voting for the bill? Can you do it in good conscience?

I waited for a minute. I thought, wait a minute. I am not comfortable. The word comfort is not what comes to mind. I am not comforted by voting for this bill. That is not what we are here to do, to do things that are comfortable. But I can vote for it in good conscience. In good conscience, I feel I have to vote for this bill. I have four children. I hope someday to have grandchildren—not too soon, believe me—but I hope someday to have them. I do not want them to say, "Gee, my dad, or my grandfather, was a U.S. Senator. Big deal, he came down here and spent the money that we could have today. He got his name in the paper, everybody knew who he was. But he left me the bill."

I do not want them thinking that about me. And that is what is going to happen if we do not get the ball rolling today on dealing with the deficit.

Then I got another question: Senator, how are the phone calls going on this? I said something like, "I was afraid you were going to ask me that question." The truth is the phone calls in my office are going pretty strongly against this bill; about 4 to 1. The people of Wisconsin are saying in the phone calls: "Don't vote for this thing."

I do have to tell you the phone calls to my office are also going 10 to 1 against confirming Judge Ginsburg. That does not quite square with what I hear when I go home. Fortunately, I do hold listening sessions in every one of Wisconsin's 72 counties, and that is not what I hear at home about Judge Ginsburg or about the President's plan.

But the phone calls are important. I do not want to suggest for 1 minute those people do not have a right to tell me what they believe and that I do not have to listen to them. They are good citizens. They care enough to pick up that phone and call. They deserve a response. You know, I would just love it if those phone calls were the other way; if they were 4 to 1 in favor of the President's bill. I do not want people to just think I am hard working and get around the State. I want them to think I am exercising a reasonable judgment when I cast my vote. So I regret those phone calls are not going the way I would like. But there is a reason for it, and the reason is that two serious myths have been perpetrated about the President's bill that are simply untrue. It is a terribly unfortunate thing to have these kinds of distortion.

The first is really symbolized by this little sticker I was handed yesterday in the Capitol. It is kind of small. I do not know if people can see it. It has a red line through the words, "Middle-Class Tax." "Stop The Middle-Class Tax," it says. "Declare Tax Independence."

This is not terribly creative. This kind of mechanism has been used many times before. But, of course, it is false. It is true that there is an increase in Social Security taxes for 20 percent of the Social Security recipients and some of those people are middle class. It is also true that there is a 4.3-cent-gas-tax increase, which will cost American families maybe $20 or $25, and that will affect the middle class.

But everyone knows that that is not what this sticker is trying to say, that is not the message that has been conveyed to the American people. In fact, many people in that middle-income category who pay the gas tax will actually end up getting a tax cut because of the improvement in the earned-income tax credit.

But what this is about is the intentional effort to distort the truth, to make middle-class and even upper-income Americans think that their taxes are going to go up.

The truth is that unless a working couple makes over $180,000, approximately, their income taxes are not going to go up.

I was asked today on that radio program whether we were slipping in a new income tax on people who make $15,000 to $20,000. I just had to laugh. It was so far from reality. But people out there have been led to believe and make phone calls thinking that they are going to get an income tax increase.

One of my colleagues here told me he had a businessman call him up and say that he made $85,000 a year and this new income tax was just going to kill him, it is going to prevent him from being able to hire some new people. The Senator said to him, "Well, now wait a minute, are you married?" "Yes." "Does your wife work?" "No." "Well, sir, I have to tell you then, you make less than half of what it would take to get one penny of new income tax under this bill."

This distortion is not just wrong, it does not just mislead the American people and lead to phone calls about what is the reality going on here. These distortions actually depress our economy. If somebody believes that they are going to get hit with a big tax, a businessman or businesswoman, they may have already decided not to hire the young intern in their office, whom they might have hired if they did not think they were having a big tax load coming up.

That is what is depressing this economy: The negative talk and the myth that more than 1 percent of the American people will be paying that tax.

I have news for the folks who perpetuate this myth. It is not just the wealthy who create jobs. It is also people who make less than $100,000, even less than $40,000, and these people are being fooled into believing that this bill will tax them more. They will find out in April that that is not the case. They will say, "What were they talking about? I don't have more taxes."

This is fraud, it is wrong and it hurts our country.

There is another myth going on here. I go around the State and people say, "Why doesn't the President's bill have any spending cuts?" I just look at them. Part of me wants to laugh and part of me wants to do something else. Fortunately, now I do have this list here of 203 spending cuts in the President's bill.

The effort has been made to actually pretend that there are no spending cuts. That is the first effort. Yet it does not seem terribly consistent because the Republican leader's plan, the Republican plan, actually begins by taking all of the President's spending cuts and adding to them. Well, if there are no spending cuts, why are they building the base of their plan on the very thing that the President has proposed? That is the first level of falsehood.

Mr. SASSER. Will the Senator yield for a question?

Mr. FEINGOLD. Yes.

Mr. SASSER. Is the Senator aware that in the Republican plan offered, in which they adopt entirely all of the President's spending cuts, any cuts that they put on top of that are unspecified entitlement caps which the Chairman of the Federal Reserve Board and the Director of the Congressional Budget Office say have no validity? They are not even scorable under CBO procedures.

Mr. FEINGOLD. I thank the Senator for the question. I am painfully aware of that because I was presiding when the plan was presented. I was struck by the fact that the only specificity offered under the plan is what the President already proposed. That is exactly the point.

The second level of distortion on this myth about no spending cuts is: The other side says that there is no complete elimination of programs; that we do not get rid of any whole programs.

Let us assume that is true for the moment. So what? As to Radio Free Europe and Radio Liberty, we may cut $500 million over the next 5 years. We may not eliminate everything in international broadcasting, but I think the American people consider it worthwhile to cut half of a program if you cannot get it all. The same goes for the wool and mohair subsidy. I sought to eliminate the whole thing. We got some of it. We got the ball rolling, and that helps us lead up to the $500 billion.

Maybe there are spending cuts, maybe some are partial, maybe some are complete. But they do not take effect right away, they do not take effect for 4 or 5 years.

Let us assume that is true for a moment. Again, I say so what? We are passing the law today that will be signed by the President; that if everything is left the way it is will force these cuts to be made over the next 4 or 5 years. The truth is that the taxes do not all get collected this year. There are $240 billion in tax increases, but those are raised over 5 years, not 1 year.

So in every instance, the American people are being misled. It is a disservice to them. Unfortunately, unlike the myth about middle class taxes, people will not discover they are being misled about spending cuts very easily. They are going to find out there is not a tax increase when they see their tax return, but this one is a tough one. It is no wonder that one gets phone calls like this.

This plan is one that is going to look better every day after we pass it tonight. People will realize that the country has not come down, and they will see that this is just a beginning, but an important beginning, a $500 billion beginning toward solving the debt and doing it in a fair manner.

The best thing to me, as I conclude, is that I believe that this bill is the key to whetting an appetite that I think I have noticed in this place in the last 7 months. It is a growing appetite. It is an appetite to cut spending. For 12 years there has been a very different hunger here. That is a hunger for spending and especially excessive defense spending. That hunger has led to so much eating in the form of spending that this country is just plain bloated with spending.

Since I have arrived here, I have had the chance to talk to many Members of this body who, I think, are hungry to cut spending, Members who are more eager to bring home the cuts than the bacon. I have been inspired by it. I think it will build on the President's leadership.

I see my friend, the senior Senator from Arkansas [Mr. BUMPERS], whom I consider to be the principal advocate for deficit reduction in this body. He invited me to cosponsor with him bills to cut star wars, the Trident missile, the space station, the superconducting super collider. And I learned right away it was not just the freshmen here, but some of the more senior Members who are absolutely dedicated to bringing this deficit down.

He also had the guts to stand here on the National Endowment for Democracy, which may be a good program, but we are asking tough questions because people know we have to cut spending.

I also want to laud the efforts of the two Senators from Nevada, Mr. BRYAN and Mr. REID, who have had the courage to take on an outdated subsidy that directly benefits a significant industry in their State.

The Senator from Pennsylvania [Mr. WOFFORD] too, has provided particularly effective advocacy in cutting spending from our overseas broadcasting.

Both Senators from North Dakota, Mr. CONRAD and Mr. DORGAN, have been preeminent in fighting for spending cuts and deficit reduction. North Dakota, like Nevada, is indeed fortunate to have both their Senators so thoroughly committed to deficit reduction.

I also want to commend the Senator from Arizona [Mr. DECONCINI], not only for his ongoing work to identify and pursue spending cuts, but also for his ground breaking leadership in the establishment of a deficit trust fund.

The Senator from Ohio [Mr. METZENBAUM] and the Senator from New Jersey [Mr. BRADLEY] have taken on the especially difficult task of reviewing tax expenditures, and of continually pruning that area of special interest spending, an area that requires even more scrutiny.

Deficit reduction is by no means the exclusive province of Democrats, and I want to commend my Republican colleagues on the Foreign Relations Committee for their work in reducing unjustified spending in the committee's jurisdiction.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. FEINGOLD. Madam President, let me conclude by saying there are many others here who fit that description. I want to work with them. For us to move forward, we must pass this bill tonight. I do vote for it with enthusiasm and in good conscience.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, how much time do we have?

The PRESIDING OFFICER. The Senator from New Mexico controls 7 minutes.

Mr. DOMENICI. I yield myself 30 seconds, and the remainder of the time to the distinguished Senator from Florida.

In due course I will get into some further detail on why the President's budget does not cut any spending in the first year and $4.3 billion in the second, because what is being forgotten is, for every cut there are new expenditures.

One can say we are cutting, but the question is, what is the net effect on the budgets of the United States and the resulting deficits? It turns out many programs are going up in dollars and new ones are being created.

I yield the remainder of the time to Senator MACK.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MACK. Madam President, I thank the Senator for yielding. At this time, I will attempt to compare 1990 to 1993, but the significance of the repeal of the luxury tax to this proposal, indicate that we will not see tax collections increase as projected under this plan, show that the plan costs Americans jobs, and demonstrate that the spending cuts which have been proposed, if they ever take place, won't happen until the fourth and fifth year.

The American people are confused. They hear different facts, see different charts, are presented with different sets of information on both sides of the debate. Still there is a fair way for the average person to determine whether or not they should support what we are doing here. That would be to compare what we are doing now to what we did in 1990.

In 1990, Congress came up with a huge $500 billion deficit reduction plan. That plan called for a 5-cent gasoline tax; raised the marginal rate on the wealthy; pushed spending cuts out into the fourth and fifth year; cut Medicare by $45 billion.

Compare that to 1993: A 4.3-cent gasoline tax; a $500 billion deficit reduction package; an increased tax rate on the so-called wealthy; spending cuts pushed out into the fourth and fifth year; and $56 billion worth of Medicare cuts. And just as in 1990, there is no significant cap on entitlement spending growth.

Therefore, I think it is fair for the American people to ask the question: If such a parallel exists between the 1993 plan and the 1990 plan, did the 1990 plan work?

Was the deficit slashed? Were millions of new jobs created? Did America get moving again? I think the American people clearly understand that the 1990 plan was another failure, and the 1993 plan will fail as well.

Now, what is interesting about this proposal is that there is a repeal of the luxury tax. Do you remember in 1993 we were told, let us raise the tax on the wealthy? In order to get the wealthy to pay more taxes, let's sock them with a luxury tax.

Everyone knows today that the luxury tax does not work, that it was not the wealthy who ended up paying more in taxes. Instead, the American working people—the boat manufacturers, the plane manufacturers lost their jobs. They are the ones who paid the real tax.

Yet even while everyone now agrees that we ought to repeal the luxury tax, some want to take the same concept and impose it on the incomes of the wealthy, on the same flawed assumption, just as in 1990, that tax changes do not affect people's behavior. They now claim that the wealthy will not alter their behavior to protect their incomes.

Now, the third point. Simple math: Since we are not going to collect all the tax money that the plan claims, the result will be an even higher deficit. Just look at the revenue from the

tax that was imposed in 1991. We only have that 1 year since the passage of the 1990 tax. We find that the wealthy in the country, believe it or not, paid $6.5 billion less in taxes in 1991 as a result of higher marginal tax rates—$6.5 billion less. You might be quick to say, wait a minute, that's just because it was a bad year. Consider this, in 1991 incomes for all Americans increased by 3.3 percent. But the taxes paid by the wealthy came down. Tax revenues from everyone else went up.

This bill will cost America jobs, no doubt about it, but let me be more specific. Several days ago an administration spokesman went to Florida and indicated that this plan would increase employment in the State of Florida by over a million between now and 1996. That is an average of 250,000 jobs per year.

Guess what? They are trying to tell the people of Florida that we are going to create more jobs under this plan than we did through the roaring eighties. During the eighties, in Florida, we created 181,000 new jobs each year. But the administration tells us, that their plan is going to create 250,000 new jobs a year, and at the same time they go to the Chairman of the Federal Reserve and plead with him for an accommodative monetary policy to offset the contractive fiscal policy they are trying to push through.

With respect to spending cuts, it is very clear to me—and clear to anyone who takes the time to look at this proposal—that the big mistake in every deficit reduction plan which has been proposed in the last 10 years, is that each one of those delays spending cuts until the fourth and fifth years.

If you look at the first and second and third years of this plan, you will find that there are $24 billion proposed in spending cuts in 3 years. In that same period of time, there are $130 billion in new taxes. It is no wonder that the American people believe, and believe very strongly, that this plan is just like all the other ones that has been passed by the Congress of the United States with respect to deficit reduction.

This plan simply won't work. It has pushed the tough decisions about spending cuts out into the fourth and fifth years. It saddens and enrages me that I made exactly that same point back in the debate in 1990, yet here we are again. What we were asking the Congress to do in the fourth and fifth years of that plan was to stand up and vote for individual cuts of a greater magnitude than the sequestration that would have taken place in 1990.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MACK. No one ever believed we would do it. They were right, we did not do it. This plan will not work, and I ask my colleagues to vote against it.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Madam President, may I ask how much time remains?

The PRESIDING OFFICER. The time has expired for both sides under the 3-hour limit.

The Senator from Tennessee controls 3 hours and 20 minutes; the Senator from New Mexico controls 3 hours and 30 minutes.

Mr. SASSER. May I inquire of the Chair. It was my understanding that the Senator from New Mexico or someone on his side was going to raise a point of order, and may I ask my friend from New Mexico when we might anticipate that?

Mr. DOMENICI. We are ready right now, I was going to say to the chairman. I do not think it is clear under the rules, and it is certainly not provided in the statute, as to how much time would be allowed for it. Half-hour on a side?

Mr. SASSER. It is my understanding it is an hour equally divided.

Mr. DOMENICI. We intend to do that. Is that the Senator's pleasure at this point?

Mr. SASSER. Yes, although we have a number of speakers on our side who might wish to speak beyond the 30 minutes, we will yield additional time off the bill to let them speak on this particular point of order should they wish to do so.

Mr. DOMENICI. If Senators speak beyond the half-hour on that side, it is going to come out of the Senator's time, the time remaining?

Mr. SASSER. That is the way I understand it.

Mr. DOMENICI. Madam President, I yield to the distinguished Senator from Arizona [Mr. MCCAIN] to make a point of order.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I make a constitutional point of order that the retroactive tax increases in the conference report which predate April 8, 1993, are in violation of the due process clause of the fifth amendment of the Constitution.

The PRESIDING OFFICER. Under the precedents and practices of the Senate, the Chair has no power or authority to pass on such a point of order. The Chair, therefore, under the precedents of the Senate, submits the question to the Senate, Is the point of order well taken?

Debate on this question is limited to 1 hour equally divided and controlled in the usual form pursuant to section 305(c)(2) of the Congressional Budget Act.

The Senator from Arizona controls 30 minutes, the Senator from Tennessee controls 30 minutes.

Who yields time?

Mr. MCCAIN. Madam President, before we begin, could I ask a parliamentary inquiry of my friend from New Mexico? I understand that there may be additional time used on the other side, as was just mentioned in the colloquy between the Senator from New Mexico and the Senator from Tennessee. Would my friend from New Mexico anticipate additional time then taken from his time on the bill in response to that?

Mr. DOMENICI. Let me say to my friend, I have so many requests for time on this bill that I am not prepared to say that at this point. Clearly, we will wait until the hour is up and then we will consult with the Senator, as the leader of this, and those who are with him as to how we are going to yield additional time.

Mr. MCCAIN. I thank my friend from New Mexico because it would be important in the allocation of time because there are a number of Senators who would like to speak on this issue.

Madam President, I yield myself 5 minutes.

Madam President, this constitutional point of order comes in response to the outrage of the American people who find themselves in the unique situation of having to pay taxes backdated to the first of January of this year. Before this President took office, before this Congress came into session, and certainly in violation of commitments that were made not only by the President of the United States but also by the leadership of this body itself, we are now about to pass a retroactive tax.

Let me quote, with all due respect, the distinguished chairman of the Finance Committee, who I see in this Chamber, on June 6, 1993, on ABC "This Week with Brinkley."

Question. Will the taxes on individuals be retroactive?

Mr. MOYNIHAN. No.

Question. They will not?

Mr. MOYNIHAN. No. It doesn't feel right to anybody, not me.

And Majority Leader MITCHELL on this issue, June 7, 1993, NBC News "Today Show":

Question. It's my understanding, Senator, that the tax increases will not be retroactive. Is that right?

Mr. MITCHELL: That's what I hope will happen. I have long urged that the tax increases not be retroactive and take effect either July 1 or some date around there.

Madam President, what we are talking about here is fairness for the American people. We are talking about perhaps in the view of the opponents of this constitutional point of order that the people of this country may be bound by a very strict interpretation of the Constitution.

I note there is a letter from the Assistant Attorney General circulating—I guess the Attorney General is too busy—Assistant Attorney General saying that retroactive taxes are constitutional.

Madam President, we are talking about what the American people expect, and that is fairness. They believe

that retroactively imposed taxes on the living and the dead back to January 1, 1993, is the height of unfairness.

I would also ask my colleagues if the next time they are on talk shows and give answers that are fairly straightforward, they stick to those answers because millions of Americans, either rightly or wrongly, take them at their word.

Madam President, I am not going to use the whole 5 minutes. Some supporters of the retroactive tax say President Clinton gave Americans fair warning during the 1992 Presidential campaign that he would raise taxes on the wealthy. But I will also note he said he was against the gas tax increase, and in favor of the middle-income tax cut.

I would remind my colleagues that this point of order is only against taxes that predate April 8, 1993. That was the time that a message was sent from the President of the United States to this Congress that he intended to raise taxes. This is not a blanket repeal of retroactive tax increases.

But, Madam President, I bet it comes as a heck of shock to poor old departed Uncle Louie who never guessed Clinton, with the IRS, would hound him through the afterlife for yet another contribution or another investment. Can the administration not confine its broken promises to the living and let the dead rest in peace? Now on his deathbed instead of asking for a priest or for his dearly beloved to gather around him, Uncle Louie must ask for his tax lawyer to see him through his last moments, and his last earthly comments will be, "Quick, shift all of my investments into shelters."

This pay-today, pay-tomorrow, pay-yesterday tax plan establishes a precedent that is frightening to every American. Mark Twain once observed that, "No man's property is safe while the legislature is in session."

We were not in session on January 1, 1993. Who would have known that the Congress would someday punish Americans who celebrated New Year's Day confident that for at least that day their savings were safely out of our reach.

Madam President, I repeat, this is an issue of fairness. This is an issue of whether we are going to tell the American people that we can retroactively tax there productivity to January 1. If this, then why not over the last 10 years?

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. I yield 10 minutes to the Senator from Washington [Mr. GORTON].

The PRESIDING OFFICER. The Senator from Washington [Mr. GORTON] is recognized.

Mr. GORTON. Madam President, there is no question that the American people consider retroactive taxes and taxes on dead people to be harsh and oppressive. The immediate question before this Chamber is whether Members of the U.S. Senate agree with the American people. That obvious conclusion causes this legislation to be subject to a point of order because since 1938 in Welch versus Henry, harsh and oppressive retroactive taxation has been determined to violate the due process clause of the fifth amendment.

Note that our point of order does not challenge every retroactive aspect of this tax bill but only those harsh and oppressive elements of the bill, that is to say, the taxes that it imposes on income and estates earned before April 8, the day the President's budget informed Americans that he was proposing taxes not just on future income but on income already earned. All these retroactive taxes are unfair. Those before April 8 are unconstitutional.

In addition, the Supreme Court ruled as recently as 1984 in *Pension Benefit Guaranty Corporation* v. *R.A. Gray & Company* 467 U.S. 717 that "(R)etroactive does have to meet a burden not faced by legislation that has only future effects. If does not follow * * * that what Congress can legislate prospectively it can legislate retrospectively. The retroactive aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justification for the latter may not suffice for the former."

Although Congress is granted broad judicial deference with respect to retroactive taxes, recently courts have identified occasions where taxpayers' constitutional rights have indeed been violated. For instance, the Ninth Circuit Court of Appeals held just last year in a case involving our 1986 tax reform, Carlton versus United States, that "retroactive application of the tax laws is not 'automatically' permitted so long as a wholly new tax is not involved." Based on previous Supreme Court decisions, including Welch versus Henry, United States versus Darusmont, and United States versus Hemme the panel in Carlton established a two part inquiry to determine whether the tax was harsh and oppressive and thus, a violation of the taxpayer's constitutional rights.

The ninth circuit panel asked:

First, did the taxpayer have actual or constructive notice that the tax statute would be retroactively amended? Second, did the taxpayer rely to his detriment on the pre-amendment tax statute, and was such reliance reasonable?

Applied to the facts surrounding the legislation before us, the answer to the first question is an emphatic "no." The earliest possible notice that can be argued is the April 8 date on which the President sent the text of his proposed budget to Congress. Yet the date to which these taxes are retroactive is January 1, more than 3 months before the earliest notice. In this case and other Supreme Court decisions I have found, the constitutional requirement for due process was met by prior notice to the American taxpayers, notice found in the public record, such as bills in Congress or committee reports, always in print prior to the retroactive date of the new tax. Here, no such notice was given to the American taxpayer until after the President's April 8 message.

The answer to the second question—as to potential detriment to the taxpayer—is an obvious "Yes." Americans reasonably relied on the President and Congress to avoid at the very least a retroactive increase in their taxes.

Late this spring, the distinguished majority leader, Mr. MITCHELL agreed. In responding to a question about whether or not the taxes would be retroactive said, "I have long urged that the tax increase not be retroactive and take effect either July 1 or some date around there."

These words of fairness and sympathy for the taxpayers were echoed by the chairman of the Finance Committee, Mr. MOYNIHAN, as well. On June 6 while appearing on "This Week with David Brinkley", the chairman was asked:

"Will the taxes on individuals be retroactive?" His answer: "No." Asked again, he replied: "No. Doesn't feel right to anybody, not me. July 1."

The profound unfairness of this repudiation of these assurances to the taxpayers is clear. Many live on a tight budget, and spend money from paycheck to paycheck, based on a predictable take home pay, after withholding to reflect the expected tax rate. Now Democrats in Congress and President Clinton, with a retroactive income tax increase, would tell the taxpayer that he or she has been spending too much money since January, and come next April must find the extra cash to pay extra taxes that he or she did not even know about. Indeed, last January, the taxpayer was still happily waiting for Bill Clinton's famous middle class tax cut, and was on notice to spend more money and have less taxes withheld.

Today, Democrats propose government by surprise. But the Constitution forbids it. And let me emphasize that it is our independent duty to determine constitutionally at this point, imposed on us by our oath of office.

Mr. President, our phones are ringing off the hook because: First, American taxpayers did not have notice of retroactivity; and second, they will in fact be hurt by these surprise taxes. That qualifies this proposal before us as hopelessly harsh and oppressive and thus most outrageously unconstitutional.

This constitutional doctrine, of course, reflects the elemental fairness required of all of us in Congress and of the President.

In the case of the retroactive estate tax increases in this reconciliation bill,

the constitutional violation is even worse. The unfairness to the taxpayer of a retroactive estate tax increase is more radical even than that of an income tax increase. An ill person who carefully prepared a will in January with the best legal advice, and then died in February, could have all his or her carefully laid plans destroyed by this retroactive estate tax hike in August. Now, in August, the dead person obviously cannot fix his or her will so that children can receive what was intended. It is profoundly callous for Congress to seek to upset the plans and heirs of the recently deceased in this cavalier and unconstitutional manner. They say that nothing is certain but death and taxes, but can't we have the simple decency to prohibit new taxes after death itself? The Constitution says we must.

A few days ago, the White House published a list of 14 retroactive tax increases since 1917. In not a single one of those instances was the new tax retroactive to a date both earlier than the inauguration of the President recommending and approving the tax and before the convening of the Congress imposing the tax. Yet that is exactly what this bill would do for the first time. This bill is the first to attempt to remove all of the limits to the retroactivity of tax increases. Under this theory, the Democratic fiction of Reagan era excesses would permit a retroactive tax hike covering all of the Reagan-Bush years. Some may like that idea, but the Constitution forbids it.

In view of the unfairness and unconstitutionality of these retroactive taxes I find myself in agreement with my distinguished friend and colleague, the junior Senator from Arkansas [Mr. PRYOR]. In a Senate finance subcommittee hearing in February 1992 he attacked all retroactive tax increases saying, "One of the more disturbing trends that I see in the Federal system is the tendency to move toward more * * * retroactivity [of taxes]. I do not think it is justified. I do not think it is fair. In fact, I do not even think it is legal." I agree. The Senate should agree with me and with the Senator from Arkansas.

So Senators must ask themselves a simple question: Do they believe that the unprecedented retroactive taxes on dead as well as working Americans in this plan are fair and equitable? If so, they can vote against this constitutional point of order. Or do Senators believe, as the American people do, that they are harsh and oppressive and therefore unconstitutional? If so, they must vote for this point of order.

We are sworn to uphold the Constitution and must do so here. The constitutional point of order should be sustained.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. I yield 4 minutes to the Senator from Pennsylvania [Mr. SPECTER].

Mr. SPECTER. Madam President, I oppose the budget bill for many reasons, but one of the key reasons is the fact that it imposes retroactive taxation. I believe this is a bad bill because the American people are overtaxed at the present time, and there will be an enormous additional tax burden placed upon Americans by a bill which does not sufficiently address the need for budget cuts.

This bill has been opposed by both Republicans and Democrats, and I believe that if we had a secret ballot, it would fail in this body by 90–10, and it may be that it could not even get 10 votes if it were not for the party pressure for Senators to back the bill. One of the significant reasons for the opposition is that it imposes taxes back to January 1. If you take a bill which is signed into law in August and apply the tax rates for the balance of the year, which is really the measure of fairness, the tax rate is overwhelming and really confiscatory, and I think violates the principles of due process of law.

Madam President, I have not hesitated in my tenure in the Senate to cross party lines if the bill is a good bill. But this bill simply has so many bad features in terms of not having sufficient cuts in expenses, in terms of imposing so many taxes, and especially in terms of imposing a retroactive tax. The vote in the House of Representatives was fascinating last night. It was 215–215 for a long time, until three of the four remaining Democrats could be persuaded to vote for the bill.

In raising this constitutional point of order, it is my hope, Madam President, that we will persuade perhaps one Senator on the other side of the aisle to join with us. It is anticipated that this vote will be very close—perhaps 50–50.

I do not believe the Democrats can spare an extra vote, and I think they may have some people in reserve under the reserve clause. But they will not have an extra vote. We seek to persuade one, perhaps two, or perhaps even three of the Members of the other side of the aisle to vote against this patently unfair, intrusive, and really confiscatory tax.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Madam President, on this whole issue of retroactivity, let me just say that the Supreme Court has already ruled. Back in 1981, the Court said that a 1976 retroactive increase in the minimum tax was constitutional.

I am looking here at an article that appeared today in the Chicago Tribune. I ask unanimous consent that this article be printed in the RECORD.

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

[From the Chicago Tribune, Aug. 6, 1993]

HYPERBOLE ASIDE, RETROACTIVE TAXES NOT NEW

(By Michael Arndt)

WASHINGTON—Leading the final charge against President Clinton's deficit-reducing tax package, Senate Republican Leader Bob Dole of Kansas told a national TV audience Tuesday night: "Never before in American history has the government increased tax rates retroactively." Wrong.

Though not done automatically, rates have been raised retroactively at least 23 times since the federal income tax was permanently imposed in 1913. And the last two times Congress did so, under President Ronald Reagan in the 1980s, Dole was instrumental in enacting both measures.

Morever, contrary to assertions by Dole and other Republicans, the U.S. Supreme Court has ruled in at least a half dozen cases that retroactive increased are constitutional and don't violate due process guarantees. The most recent ruling was in 1981.

In that unanimous decision, the court quoted from a 1930 opinion by U.S. Judge Loarned Hand; "Nobody has a vested right in the rate of taxation, which may be retroactively changed at the will of Congress at least for periods of less than 12 months."

While retroactive tax increases are legal, many tax analysts agree with Dole and other Republicans that they seem unfair.

Retroactive increases "absolutely violate basic principals of good tax policy," said J.D. Foster, chief economist of the Tax Foundation. "One of the important attributes of a tax system is that it be transparent and that you can rely on it."

The outcry had an effect on the tax bill's authors. After Dole's assault—and after the measure evidently was finalized—the Clinton administration and Democratic leaders in Congress modified the provision that would raise income tax rates on wealthy taxpayers as of last Jan. 1.

Under the modification, these upper income people would be given three years to pay the new taxes owed because of higher rates. Congressional aides said the idea originated with Treasury Secretary Lloyd Bentsen.

The administration also launched a public relations counteroffensive distributing a list of 14 instances of retroactive tax rate increases.

Congress began imposing back-dated tax increases early in this century. In 1917, for example, the revenue act raised individual and corporate tax rates retroactive to the start of that year. The law was passed Oct. 3. A year later, Congress again increased rates retroactively.

More recently, in 1982, when Dole was chairman of the tax writing Senate Finance Committee, Congress retroactively raised income taxes of 5.3 million out-of-town people by subjecting more of their unemployment compensation to taxes. Though not enacted until Sept. 3, the increase was effective Jan. 1.

In 1988, Congress raised taxes retroactively again, when Dole was Senate majority leader. In that year's tax bill, signed into law Oct. 22, several business tax shelters were reduced, retroactive to Jan. 1.

In its 1981 ruling, the Supreme Court rejected the arguments that Dole and other Republicans are now making.

The plaintiffs in the case, E.M. Darusmont and his wife, B.L., had made a capital gain of $51,332 on the sale of two Houston condominiums on July 15, 1976. Nearly three months later, on Oct. 4, the Tax Reform Act was signed into law.

Among its other permanent changes, the law raised the minimum tax rates and reduced exemptions retroactive to Jan. 1, thus subjecting the Darusmonts to an additional $2,280 in taxes. The couple sued, contending the law violated the due-process clause of the 5th Amendment.

But the Supreme court declared 9–0 that the law was constitutional, noting that "in enacting general revenue statutes, Congress almost without exception has given each such statute an effective date prior to the date of actual enactment."

The court also said the couple couldn't claim to be surprised by the rate increase since it had been under public discussion for almost a year before President Gerald Ford signed it.

Democrats in Congress and some tax analysts argue that affected taxpayers have had plenty of warning this time, too.

Twice in 1992 the Democratic-controlled Congress passed tax legislation that would have hiked income taxes of the affluent, if President George Bush hadn't vetoed the measures. And throughout his presidential campaign, Clinton vowed he would raise taxes of the wealthiest 2 percent of Americans.

Heading these warning some upper-income taxpayers moved income into 1992 by taking early bonuses, among other things. In that way, they reduced their ultimate tax liability. These actions often were publicized, allowing others to follow suit.

"People were on fair notice" at least back to Clinton's Nov. 3 victory, said Clinton Stretch, director of tax and legislative affairs for accountants Deloitte & Touche.

Moreover, Democrats point out that some of the tax breaks in the Clinton package would be retroactive to as far back as July 1, 1992. Yet Dole is not making an issue of this, they noted.

Dole is unmoved. In a statement Thursday denouncing the retroactive tax hikes, he said. "Here's one where even the Russians are ahead of us. Article 57 of their draft constitution specifically bans retroactive tax increases."

RETROACTIVE TAX INCREASES ARE OFTEN-USED WASHINGTON TACTIC

[Retroactive tax increases have been legislated at least 26 times in this century. The U.S. Supreme Court upheld the practice in a unanimous decision, Jan. 12, 1981, that supported the 1976 Tax Reform Act. Some major examples of retroactive tax increases]

| Retroactive tax increases | Date passed | Retroactive to |
|---|---|---|
| Revenue Act of 1917 | Oct. 3, 1917 | Jan. 1, 1917. |
| Revenue Act of 1918 | Feb. 24, 1919 | Jan. 1, 1919. |
| Revenue Act of 1935 | Aug. 30, 1935 | June 30, 1935. |
| Revenue Act of 1936 | June 22, 1936 | Dec. 31, 1935. |
| Revenue Act of 1938 | May 28, 1938 | Dec. 31, 1937. |
| Revenue Act of 1940 | June 25, 1940 | Dec. 31, 1939. |
| Second Revenue Act of 1940 | Oct. 10, 1940 | Dec. 31, 1939. |
| Revenue Act of 1941 | Sept. 9, 1941 | Dec. 31, 1940. |
| Revenue Act of 1943 | Feb. 26, 1943 | Dec. 31, 1942. |
| Excess Profits Act of 1950 | Jan. 3, 1951 | June 30, 1950. |
| Revenue Act of 1951 | Oct. 31, 1951 | Jan. 1, 1951. |
| Revenue and Expenditure Control Act of 1968 | Oct. 22, 1968 | Apr. 1, 1968. |
| Tax Reform Act of 1976 | Oct. 4, 1976 | Dec. 31, 1975. |
| Tax Equity and Fiscal Responsibility Act of 1982 | Sept. 3, 1982 | Jan. 1, 1982. |
| Tax Reform Act of 1986 | Oct. 22, 1986 | Jan. 1, 1986. |
| Fiscal 1994 budget | Yet to pass | Jan. 1, 1993. |

Source: Treasury Department.

Mr. SASSER. This article quotes the distinguished minority leader, Mr. DOLE of Kansas, as saying to a television audience Tuesday night:

Never before in American history has a government increased tax rates retroactively.

The article goes on to say:

Wrong. Rates have been raised retroactively at least 26 times since the Federal income tax was permanently imposed in 1913, and the last two times Congress did so under President Ronald Reagan in the 1980's.

Mr. DOLE was chairman of the Senate Finance Committee.

So there is adequate precedent for raising taxes retroactively. It has been done 26 times since 1913. I recall that here on the floor, in 1982, when the distinguished minority leader was chairing the Finance Committee, that we modified the employment tax retroactively, if I am not mistaken. I think I will be proved correct on that.

But on the whole question of retroactivity, let me just say that this is an effort, really, to kill this bill. Our friends on the other side know that these provisions are clearly constitutional. They are simply using this point of order as a ploy to try to bring down the whole bill, to bring down the whole package of spending cuts, along with the revenue increases and the deficit reduction that is here before us.

It is interesting that our friends are concerned about the retroactivity of the tax increases in this bill, but say not a word about the retroactivity of the tax cuts in this bill. In fact, one of our friends on the other side said just a moment ago that there were no tax cuts, as I understood him.

Well, as a matter of fact, there are in this bill, $21 billion in tax cuts that go to working families making under $30,000 a year. Let me repeat that: In this bill on this floor, in this reconciliation bill, there are $21 billion of tax cuts that go to working families that make less than $30,000 a year. And with regard to increases in the income tax, as I have said earlier, you have to have a gross income of about $180,000 for joint filers to have any income tax increase at all. It is one of the great tragedies that the American people have been so misinformed about this whole bill.

Tax cuts for those making under $30,000; no income tax increases for those in the great middle class. You have to be making about $180,000 in gross income before you have any income tax increase at all. A majority of these income tax increases come to people who are making over $200,000 a year. With regard to retroactivity, the research and experimentation tax credit in this bill is retroactive back to January 1. I hear no one on the other side saying that the research and experimentation credit is unconstitutional because it is retroactive, it being a tax cut that seeks to reward and encourage research and development in American industries so we can be more competitive.

No one on the other side of the aisle has asked that the direct expensing provision of the bill that allows small businesses to take a direct, immediate writeoff when they buy a piece of capital equipment, which is retroactive to January 1—none of our friends is complaining about that provision which is a great tax cut to small business. No one complains about that being retroactive. That provision is not being called unconstitutional by our friends on the other side.

How about the repeal of the luxury excess tax about which so many crocodile tears had been shed? That is retroactive. I do not hear anybody saying that the repeal is unconstitutional.

Or, how about the 25 percent deduction, for those who are self-employed, on their health insurance? That is retroactive to January 1. Do our friends find that unconstitutional?

Or, what about the tax relief in the bill for real estate professionals? That is retroactive to January 1. It amounts to a tax cut. No one on the other side seems to be concerned that that would be unconstitutional.

Madam President, I am bothered by retroactivity myself. I do not like it, but it is constitutional. The income tax increases on those with gross incomes above or exceeding $180,000 are retroactive. But the tax cuts are also retroactive.

The only tax increase on the middle class in this bill, on those working Americans making less than $180,000 for joint filers, is a gasoline tax of 4.3 cents a gallon. As I said earlier, the American Almanac of Statistics says that the average American automobile is driven 12,250 miles a year. So if the motorist drives his or her automobile

the American average, they will have to pay $27.50 more gasoline taxes. That is the only tax on working Americans with incomes of less than $180,000 a year, and those making under $30,000 get tax cuts. And the tragedy is the American people do not know it.

I have never, in my years in public life, seen such an organized, coordinated effort to misinform the American people about a piece of legislation before this body as on this particular bill.

Madam President, I see the distinguished Senator from New York, the chairman of the Finance Committee on the floor. He knows much more about this subject than I. It is in his area of expertise. He is an expert.

I yield to the distinguished Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I do thank the able and learned chairman of the Budget Committee.

Madam President, I have not a great deal to say about this point of order because there is not much to say. The Supreme Court has disposed of the matter in the most explicit terms and within the time in which I have served on the Finance Committee. And I remember the ruling; it is United States versus Darusmont, 1981.

The practice of adjusting the dates of when taxes become effective—tax increases, tax decreases, tax extensions, tax cessations—is an informal one in the Finance Committee and the Committee on Ways and Means. We will frequently, for example, provide that a tax bill take effect on the day we report the bill out of committee. Sometimes we refer to the day a bill was first proposed and other times we make the adjustment prospective or retroactive.

In the case cited, the Court—and I am now reading from a Congressional Research Service memorandum:

> In United States v. Darusmont, the Supreme Court recognized that retroactive application of tax laws is sometimes required by the practicalities of producing national legislation and deemed it a customary congressional practice. The Court upheld the constitutionally of this practice. We have no reason to believe that a retroactive increase in income tax rates, such as that proposed in the reconciliation legislation, would violate the Fifth Amendment of the Constitution.

This memorandum of law was prepared in anticipation of this particular point of order. The Court has ruled and said that retroactive application of tax law is customary congressional practice.

I could use up time, if that had any purposes, in listing such practices. But I would simply point out that the Revenue Act of 1917 was passed on October 3, 1917, a wartime measure. It was an increase in tax retroactive to January 1.

At that point, Madam President, the income tax would have been 4 years old in the United States. It required a constitutional amendment, of course.

From the very beginning of the income tax, we have made adjustments that have been made effective retroactively, on a date certain at time of adoption, or prospectively. It is, in the terms of the Supreme Court, something required by the practicalities of producing national legislation.

There is nothing more to be said on the constitutional matter, but a great deal more to be said concerning the reasons this nonissue is raised.

I see my friend from Arkansas on the floor. I believe he will have something to say to this point.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. AKAKA). Who yields time?

Mr. SASSER. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. The Senator has 16 minutes and 50 seconds.

Mr. SASSER. I yield such time as he may consume to the distinguished Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas [Mr. PRYOR] is recognized.

Mr. PRYOR. Mr. President, I thank the manager.

I first rise to thank my colleague from Washington, Senator GORTON, because he brought my name into this debate unexpectedly and he did me a real service. He indicated, through a past statement I made in a committee hearing, this Senator's disdain and dislike for what we are talking about today, retroactive taxes.

I do not think that that is any secret back home. I do not think that that is any secret among the conferees who put this particular tax package together. The Senator is absolutely correct. I do like retroactive taxation. I did not like it in the past. I do not like it now.

However, because of the necessity of the moment, and because of the fact that this retroactivity only applies to 1 percent of the highest of the high-income taxpayers, I am going to support this package, notwithstanding the fact that it does contain a very small degree of retroactivity which is the issue of the moment.

But now that the Senator from Washington has brought my name into this debate, I would like to bring his name into this debate. I would like to remind my good friend from Washington State, and other friends on the other side of the aisle, what has been going on around here for the past decade.

I refer my colleagues to a chart. At the top of the chart it says simply "Republican Retroactive Tax Bills." I have just chosen four tax bills since the year 1981. Surprisingly, in 1981, 1982, 1984, and 1986, my good friend from Washington State and friends on the other side of the aisle have supported retroactive tax measures, that is, going back and having people pay more taxes.

By the way, the Senator from Pennsylvania, who also questioned the validity, and why we should have retroactive taxes, voted in 1982 and in 1986 for retroactive taxes.

Mr. President, what is this issue really all about? The issue that we are faced with on this particular point of order—that retroactive taxation is unconstitutional—is not, in fact, the issue.

The issue is: Who are the people on the other side of the aisle trying to protect?

Let us look, if we might, Mr. President, at TEFRA, the 1982 tax bill. At that time, the Republicans controlled the Senate and the Republicans controlled the Finance Committee.

That particular tax bill, Mr. President, I think it might be interesting to note, was supported by exactly 80 percent of the Republican Members of the Senate at that time, reduced—reduced—the threshold for computing the amount of unemployment compensation subject to tax from $20,000 down to $12,000 for single taxpayers and from $25,000 to $18,000 for married couples.

In simple translation, Mr. President, what that translates to is a tax increase on those people in 1982 who were unemployed; tax on unemployment benefits on those individuals without a job in 1982, reached back from September of 1982 to January 1, 1982.

So is the issue really retroactive taxes, Mr. President? That is not the issue. The issue for our friends on the other side of the aisle is: Who do you want to tax? Or who do you want to protect from tax? Do you want to tax unemployed people—as 80 percent of the Republicans on the other side of the aisle did—or do you want to protect from tax that 1 percent of the highest-income taxpayers in America, as will be affected by this particular retroactive tax increase?

Mr. President, I think it is very, very interesting to note that this morning on the floor of the U.S. Senate—in fact, the time exactly was 11:26 this morning—our good friend from the State of Wyoming, the Senator from Wyoming [Mr. WALLOP] got up on the floor and started talking about the hypocrisy of the Democrats.

Mr. President, I was sitting in my office and I could not believe my ears when my good friend, Senator WALLOP, started talking about the hypocrisy of the Democrats, when I knew and he knew of these various tax proposals that he voted for; that many of us voted for—in this particular decade, that ultimately became the law of the land.

Mr. President, as I arrived at my office yesterday morning, I found the people, who answered the phones, covered up in telephone calls.

So I took off my jacket. I said "Look, I have an hour or so. I'm going to sit here and help answer some of these phone calls."

They were calling and we could not get enough people to answer all of those phone calls. I sat there and sat there and picked up that receiver.

I can tell you that people from our State have been given so much wrong information that I could not believe it. I was trying to find out where this information was coming from. I will not go into that at this time.

But once we had the opportunity to say, "Wait just a minute. Do you make $180,000 a year?" The answer came back over and over "Of course not; no." We do not have many people in Arkansas making that amount of money.

I said, "Well, then you are not going to have to pay any additional income tax."

They said, "Oh, I didn't know that. Is that the truth?"

I said, "That is the truth, and I will send you information on it."

One gentleman called me, Mr. President, and said: "Senator PRYOR, I am 70 years old, and I live on my Social Security check. I do not have any outside income. My tax is going to be 75 percent of my Social Security check."

I said, "Sir, that is not right. Where did you get that information?"

He said, "Well, I heard it on the radio. It was on a talk show, and they told us to call all of our Senators and Representatives."

Now some of these people are calling the 1-800 number and they are flooding our offices. That is part of democracy.

But, Mr. President, there is another part of democracy. There is a part of democracy that says that we have to tell the truth. And this is the time to tell the truth.

This President did not create but he inherited the largest deficit and the largest debt of any President in the history of this country. He is trying to do something about it. And all we get from that side of the aisle are people who say, "Oh, my goodness, you have got retroactive taxes on 1 percent of the highest-income taxpayers in the country. We can't stand it. It ought to be ruled unconstitutional."

Mr. President, that is hypocrisy. We believe that today is the time to tell the American people the truth; that we cannot continue passing this debt, this load, this tremendous obligation that we have incurred in this generation and especially in this past decade, we cannot pass that responsibility on to the next generation.

Mr. President, I hope that this debate is going to be a good debate. I hope it will be constructive. But I also hope that we will engage in the facts, we will tell the people the truth, and that, when we talk about what has happened in this decade of taxation, we will tell the whole story, not just part of the story.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator has 13 minutes and 15 seconds.

Mr. MCCAIN. And the other side?

The PRESIDING OFFICER. The other side has 7 minutes and 10 seconds.

Mr. MCCAIN. Mr. President, I yield 2 minutes to the Senator from Missouri [Mr. DANFORTH].

The PRESIDING OFFICER. The Senator from Missouri is recognized for 2 minutes.

Mr. DANFORTH. Mr. President, I thank the Senator from Arizona.

Mr. President, every time a tax measure is debated in Congress and every time it is discussed by politicians at any level, the key question that is raised is one of the fairness.

We are constantly told that purpose of tax legislation is not just to raise some revenue, but to be fair. Fairness is the test for the tax laws. And it is said by people who are advocating this legislation that it is in the name of tax fairness.

Well, it happens that, under the due process clause, the constitutional test is exactly the same test that we apply politically to tax laws—the test of fairness. The issue under the due process clause is whether the provision in the law is fundamentally fair.

So that is the question that we will be voting on the floor of the U.S. Senate. It is a very simple question. It is not a court's interpretation of fairness. It is the Senate's interpretation of fairness.

The issue is whether or not we, as Senators, believe that the retroactive application of a tax law before reasonable notice is given that the law will take effect is fair? Is it fair or is it not? Yes or no. That is the issue on which we are about to vote.

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

The PRESIDING OFFICER. Is there a sufficient second?

Mr. SASSER. Parliamentary inquiry, Mr. President. I was engaged here. Has a point of order been raised?

The PRESIDING OFFICER. A request has been made for the yeas and nays.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MCCAIN. Mr. President, I yield 3 minutes to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized for 3 minutes.

Mr. MACK. Mr. President, my first comment is related to a statement made earlier by the Senator from Tennessee, who wondered why we did not raise the question of the retroactivity with respect to the tax cuts that are in this bill. I do not think anyone would conclude that the fifth amendment, which says that one cannot be deprived of property without due process, would conclude that tax cuts are unconstitutional. So that was kind of a silly way to start the debate, to tell you the truth.

The second point I would like to make concerns our constituents' perspective.

This is not a constitutional issue to them. They are talking about whether they can believe their elected officials. They have heard over and over again this tax is not going to be retroactive. They feel like they have been lied to. They feel like they have been betrayed. They feel like they have been deceived. They are angry—and rightly so.

A democracy works on the premise that those who are being governed will accept the leadership of those who are governing. The people accept that role because of their faith in their elected officials.

Instead, there is a very strong sense of betrayal on the part of the American people. I will just read one letter. This is from Augusto Villalon, of Cape Coral, FL. He says:

* * * somehow the government is not working the way it was supposed to work. I do not know if it is the result of Alvin Toffler's predictions on "Future Shock" or simply the amount of TV we are watching, but the consensus out there in the "small businessman's world" is clear as Bahamian waters. The government of our country is trying to destroy us from every direction possible."

He goes on to say:

What is going to be my tax liability (retroactive to January) this year and next?, What is going to be my portion of the Health Care cost?, What are EPA, DNR, OSHA, HHS, and 72 other parasitic agencies cooking up against me? How do I plan my "comeback"?, How do I get out of this rut?, Is there a Costa Rica in my future?, Do I jump on the NAFTA bandwagon and move to Mexico?

Do I still belong in business * * * or should I throw in the towel now?

Another letter says: "I love my country but I fear my elected officials."

While this is being debated as a constitutional issue, it is really a question about whether the people of this country can still have faith in their Government. What is being proposed here will destroy that faith. Once Americans believe that laws can be made retroactive on taxes or anything else, they will never again feel secure about their Government, and their trust will erode. The American people have every right to be afraid of their Government if today's laws punish yesterday's actions.

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

Who yields time?

Mr. SASSER. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. The Senator from Tennessee has 7 minutes remaining.

Mr. SASSER. May I ask how much time our friends on the other side have remaining?

The PRESIDING OFFICER. They have 7 minutes and 24 seconds.

Mr. SASSER. Mr. President, I see no one on our side wishing to speak at the moment, although I am advised there may be a speaker on the way. But I would be pleased to yield to our colleagues on the other side if they have additional speakers.

Mr. MCCAIN. How much time is remaining?

The PRESIDING OFFICER. The Senator from Arizona has 7 minutes and 24 seconds.

Mr. MCCAIN. Mr. President, I ask unanimous consent that an article from the Wall Street Journal by Mr. Stephen Glazier be printed in the RECORD.

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

[From the Wall Street Journal, Aug. 5, 1993]

TAX BILL: RETROACTIVE, UNCONSTITUTIONAL . . .

(By Stephen C. Glazier)

As this page went to press, the new budget bill was heading toward passage by Congress. Yet the bill contains provisions that are unconstitutional because they are retroactive. These retroactive provisions need to be debated and corrected. If they are not, and the bill becomes law; we can expect taxpayer litigation to overturn the provisions.

Specifically, the bill contains tax provisions that would raise income tax rates and certain estate tax rates retroactively to Jan. 1 of this year. Yet Article I, Section 9, Clause 3 of the Constitution says that "no * * * ex post facto law shall be passed." The Founders' purpose here was to ensure that laws are general and prospective, rather than specific and retroactive.

Specific, retroactive laws tend to look more like judgments and penalties from juries than like legislation in the national interest. Retroactive laws also would allow a new party taking power after an election to, in effect, legislate history—to undo the past of its opponents. Indeed, the current budget has the flavor of a partisan effort by a new party in the White House to "repeal the decade of greed," i.e., punish the taxpayer for 10 years of economic growth during Republican administrations.

SAME OLD CONSTITUTION

The nation's courts have long wrestled with the issue of retroactivity. An 1878 Supreme Court case, *Burgess* v. *Salmon*, looked at taxes specifically. In that case, a tax increase on tobacco sales was signed into law on the afternoon of March 3, 1875. The court refused to apply the increase to a sale that took place on the morning of that March 3, saying that the (retroactive) imposition of the increase on a sale that took place before the president put pen to paper would subject the taxpayer to a "criminal punishment or penalty [in the amount of the increase]" that would be an ex post facto law. The court went on to say that if the case had been brought by the government as a criminal indictment for violating the tax law, then it would be even more clearly an ex post facto problem * * * this issue, but the courts and Congress unfortunately have. In this century, with the invention of income tax and the growth of government intrusiveness, the courts have tended to limit the ex post facto concept mostly to the area of criminal law. Particularly in the case of income taxes, some retroactivity has been allowed. This budget bill's retroactive income and estate taxes, however, go beyond even these new stretched rules.

The more modern cases have allowed some retroactive tax increases but limited them by requiring specific prior notice to the taxpayer. (This is a simple application of the Constitution's procedural due process protection). Specifically, these cases tend to look at the notice of the proposed change that the taxpayer received. If the Senate or House had bills in debate detailing the tax increase by a given date, then, it is argued, the taxpayer still had enough notice to plan his affairs.

But even such stretching of the retroactivity rules has not to date applied to transfer taxes, such as estate taxes. In a 1927 case, *Nichols* v. *Coolidge*, the Supreme Court struck down a retroactive estate tax. The court said that such a law "is arbitrary, capricious and amounts to confiscation" and therefore violates the Constitution. In *Untermeyer* v. *Anderson*, a 1928 case, the Supreme Court struck down a retroactive gift tax. Both taxes were found to be unconstitutional violations of due process. The idea is that no one can properly plan his affairs if actions today can be affected somehow by future law.

Of course, any person who wrote his will in January 1993 planned according to current law. If that person died before August, he could not possibly change his will to accommodate the new law. One practical effect of the current estate tax proposal is that certain wills drafted before this year—may fail to allocate the inheritance among the deceased's children equally—despite the intent of the deceased—because of Congress's attempt at law by surprise. Shirley Peterson, a former commissioner of internal revenue, documented this recently in the New York Times.

In this century, Congress has not succeeded in passing a retroactive estate tax increase. This despite efforts such as those struck down in *Nichols*. Yet this year, Congress is even proposing to tax the dead retroactively.

Under this century's precedents, income tax increases (as opposed to estate tax increases) may have some retroactivity, but not as much as this bill's authors desire. In the 1981 case *U.S. v. Darusmont*, the Supreme Court upheld retroactive 1976 increases in the minimum tax and discussed notice requirements. But in that case, the court found that the taxpayer had notice because the specific changes were found in Senate and House reports that appeared prior to the date the law went into effect.

Discussing the same notice test in 1984 (*PBGC v. Gray & Co.*), the Supreme Court upheld a retroactive pension law on employers. The retroactive law was designed to prevent employers from taking advantage of lengthy legislative processes and withdrawing from covered pension plans while Congress debated the change. But both the cases set a modern limit to retroactivity for income-tax increases. That limit is the date that the specific increase was first proposed in Congress.

On Jan. 1, the taxpayer had no such specific notice of the tax increases that the president and Congress are currently proposing. Indeed, on that date most Americans were still waiting for the famous "middle-class tax cut." Not until Florio's speech making it clear that he was going to raise taxes. Looking at the precedents, even that is not enough to provide specific notice. The effective notice could not have happened until April 8, when the language of the budget was actually proposed. This tax-by-surprise leaves the taxpayer in a tight spot. We have been living within a budget and spending money from paycheck to paycheck, based on our take home pay with a certain rate of withholding. Now Congress contemplates telling us that we have spent too much money and next April we must find the extra cash to pay extra taxes that we did not know about.

CONGRESSIONAL RESEARCH

Congress's own in-house law firm, the Congressional Research Service, has even supported this analysis of the notice requirement. In a 1986 report to support the retroactive tax increases of that year, CRS lays out the notice test for due process but argues that the 1986 increases passed muster because their effective date, although retroactive, was after the increases were first proposed in writing in Congress. But the current budget bill fails this test described by Congress's own lawyers. Clearly, this Congress doesn't care who says what about the Constitution, when it comes to taking more of our money.

It is impossible to predict reliably the outcome of any case that might go before the Supreme Court. The larger issue here, though, is not economic or legal—it is political. This type of unconstitutional legislation is the norm that will continue until the current majority of Congress is removed. Self-satisfied incumbents in Washington might like to take a look at the current draft of the new Russian constitution. That document's own Article 57 states that "laws introducing new taxes * * * are not retroactive." It seems that, in this instance, Boris Yeltsin may have more respect for the U.S. Constitution than the majority of our own House of Representatives.

Mr. MCCAIN. I yield 4 minutes to the Senator from Georgia [Mr. COVERDELL].

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. COVERDELL. Mr. President, it is true that there is court precedent for sanctioning retroactive taxation. But there also is court evidence that challenges such activity as well.

I might say the retroactive taxation, as embraced in this proposal, reaches new limits. This retroactive tax goes back to a former administration. This retroactive tax occurs before the President was inaugurated. This retroactive tax goes back before any of us were officially seated. I believe it, in that reach, goes to new limits that stretch the constitutionality, as has been proposed here this afternoon.

I also add, comments by the Senator from Arkansas, my good friend, actually points specifically to the reason the forefathers said no bill of attainder, no ex post facto bill shall be passed in order to protect retroactive punishment, or singling out of any of our citizens for unique treatment, such as was perfectly described by the Senator from Arkansas.

Of the thousands of calls we have all received from Americans throughout the United States, the questions I hear asked most often are these: "What does it take to communicate with you people in Washington? Why isn't anyone listening?"

What they are telling us is that this type provision, this reaching back for nearly a year and changing all the rules, is an example they were trying to complain about in the 1992 election when they said they wanted things done differently. And it is a demonstration of the disconnect between this city and the people of this country.

We are hearing all sorts of legal machinations, but the real jury is the American people. And the American people know—know—that this is wrong, that it is bad policy, and that it ought to be corrected.

And as a matter of interest, as I yield, some 19 Members of this body have now joined in the authoring of a constitutional amendment that would prohibit this egregious behavior from occurring again.

I yield the floor to the Senator from Arizona.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Are there any other speakers on that side?

Mr. MCCAIN. Is it the intention of the Senator from Tennessee to have more speakers?

Mr. SASSER. I do not think we are going to have any more speakers on our side. I am still waiting to see if one additional speaker is going to appear.

Mr. MCCAIN. I will go ahead and use the remainder of my time.

Mr. President, we have one speaker remaining and then it is my understanding the Republican leader is going to use a couple of minutes of his time and that will complete our effort on this side.

I yield to the Senator from Washington for whatever time remains.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes and 47 seconds.

Mr. GORTON. Mr. President, I have listened with interest to this constitutional debate. This is, in fact, a constitutional debate. At this point it is not on the merits of this legislation however few there may be.

I must say I have heard at least two entirely bizarre constitutional theories presented here this afternoon. My distinguished friend, the manager of this bill, the Senator from Tennessee, says that Members on this side are not objecting to retroactive tax credits or tax reductions on the ground that they violate the Constitution. Of course not. A simple reading of the fifth amendment to the Constitution of the United States, which I will share with the Senator from Tennessee—it says, "No persons shall be deprived of property without due process of law."

A tax cut deprives no one of property. It may be wise or unwise, but it is certainly not a constitutional violation.

Here the claim, the serious claim, is that people are being deprived of property without due process of law. My friend, the Senator from Arkansas, seems to say it is OK because only 1 percent of the people of the United States are being deprived of due process. That would be like reading the eighth amendment prohibition against cruel and unusual punishment to be inapplicable if we only subjected 1 percent of our people to the rack and the thumb screw.

Overall, however, all of the arguments of the Senators from Tennessee, New York, and Arkansas go to a point we have not made. They go to the point that, under some circumstances—under many circumstances—retroactive taxation, though perhaps unfair and unwise, is not unconstitutional.

This point of order is that it does become unconstitutional and it becomes harsh and oppressive; that it becomes harsh and oppressive when it is imposed without notice, that is to say when it is imposed retroactively beyond the date in which the Congress and the President have given notice that they intend to pass a tax.

In this case, for the first time that I have been able to discover in our history, and it certainly is not in any of the statutes cited here, this tax goes back beyond the date on which the President of the United States, who is imposing the tax, even took office or, for that matter, this Congress itself took office.

It is for that reason that this tax is harsh and oppressive, and it is because it is harsh and oppressive, as applied to income earned before April 8 of this year, that it is clearly unconstitutional and should so be found by this body.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. How much time remains?

The PRESIDING OFFICER. The Senator from Arizona has 37 seconds.

Mr. MCCAIN. Mr. President, I will use the remaining 37 seconds before the Republican leader, or if the Senator from Tennessee chooses to go.

Mr. SASSER. I will go after.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. Mr. President, as has been stated by the Members on this side, this is an issue of fairness; this is an issue of what the American people think are their constitutional rights and that is, to keep their worldly goods and not have them taxed in a retroactive fashion.

My friend from the State of Washington has made a strong constitutional argument. Other constitutional experts have made these same arguments. Mr. President, the American people are interested in fairness, and they believe that this is a patently unfair treatment of them, their families, and their futures.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Tennessee is recognized.

Mr. SASSER. Mr. President, my friend from Washington alluded to me a moment ago. I do not like to personalize these debates, and I do not intend to do that with my good friend from Washington, but if tax increases retroactively are unconstitutional, then why did so many of our friends on the other side of the aisle vote for them time after time in the decade of the 1980's?

My friend from Washington, Senator GORTON, on the so-called TEFRA bill that passed the Senate on August 18, 1982, voted in favor of that bill which was signed into law sometime in late October, but was retroactive to January 1, 1982.

The TEFRA bill, in real dollars—that is dollars corrected for inflation—was the largest tax increase we have ever had. That tax increase passed this body when the Senate was controlled by Members of the other party and it was passed with almost unanimous votes with our friends from the other side, including the distinguished Senator from Washington and others who are present on the floor today.

They were not concerned about retroactivity in 1982, when they passed the largest tax bill in real terms to be passed in this country, and I do not blame them for not being concerned about retroactivity. That question was not even raised on the floor in 1982, because all of us knew that the issue was, in fact, well-settled law, that it was not unconstitutional to have these increases retroactive.

We can just go down the list of the retroactive tax changes that have occurred over the last few years. Bear in mind, I do not like a retroactive tax policy. When this bill left this body originally, the tax increases were not retroactive. It has come back in the conference report and now they are retroactive. We can either adopt the whole bill or reject it. But just looking at this list: The Tax Reform Act of 1986, signed into law by President Reagan on October 22, 1986, effective back to January 1, 1986; TEFRA, Tax Equity and Fiscal Responsibility Act of 1982, signed into law on September 3, 1982, effective back to January 1, 1982; Deficit Reduction Act of 1984, signed into law by President Reagan on July 18, 1984, effective back to January 1, 1984. And the list goes on and on.

Here are tax increases almost as far back as the original—income tax bill that passed this Congress in 1913. The first retroactive increase was passed on October 3, 1917, and applied to the entire year of 1917.

So it is clear what we have before us now. It is not a constitutional issue; it is a political issue. This point of order is being raised at this late hour in an effort to bring the whole bill down and do away with the whole process of deficit reduction that we have been engaged in so diligently for the past few months.

So I will just say to my friends on the other side that they cannot have it both ways. You cannot vote for tax increases and support them retroactively a number of times during the 1980's, and particularly under the administration of President Reagan, and then come in under the administration of a Democratic President and cry foul and say it is unconstitutional.

The Constitution endures and it does not change with each administration. Thank goodness. The Constitution is one thing that is permanent and has been the governing document of this country for over 200 years. I think we have done pretty well with it.

Mr. President, may I inquire how much time I have remaining?

The PRESIDING OFFICER. The Senator has 42 seconds remaining.

Mr. SASSER. I see the distinguished minority leader on the floor. He has been waiting patiently, and I thank him for that.

The PRESIDING OFFICER. The minority leader.

Mr. DOLE. Mr. President, was leader time reserved?

The PRESIDING OFFICER. Leader time was reserved.

Mr. DOLE. I would like to use 3 minutes of my leader time.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, the Senator from Washington put his finger on one point, and that is notice; when did people know about the tax increase? In many cases, in the Finance Committee, the two chairmen will issue a joint letter saying it is going to be effective on a certain date. That may not be the date of enactment, but it is notice. Other times, we close loopholes, we make those retroactive because some body is making an egregious profit or windfall from some tax provision that ought to be changed. So retroactivity is not always bad.

But look at that chart. There is not one example, not one example on that chart where anybody made retroactive tax rate increases. That is the point: Tax rate increases. In this bill, they are raising the rates and being retroactive to January. We are also raising the rates on the dead. The estate tax is going up, and they are retroactive to January. That is not the case.

I notice the White House in one of their efforts—"Oh, Senator DOLE voted for a surtax back in 1968, 25 years ago." That was during the Vietnam war. There was not any question about that because we were told we had to finance the war, and in the returns that year, there was even a separate line for a surtax. It was not a rate increase, it was a surtax.

That is the point we are trying to make. This is a rate increase, and it is made retroactive. That is the point we want to make. It is not fair. We are talking about $10 billion being taken away from business and from individuals and from families who have lost loved ones since today and, say, last January. They are going to have to cough up over $10 billion because of this retroactive provision; $10 billion, that is what this debate is all about. It is not about 1 percent. It is not about the heirs of people who passed away since January 1. This is about a tax rate increase that is retroactive. There is not a single tax rate increase on that chart. That is a phony chart. It does not tell you anything. And neither does the White House operation grinding out all these fabrications.

Most of these taxes were wartime surtaxes. The 1917 tax was a wartime tax. We had to finance World War I.

We had to finance World War I, and most of those other taxes were surtaxes in World War I, World War II, the Korean war, and the Vietnam war. I think people had plenty of notice. I know in 1968 President Johnson said very clearly he had to have a surtax so we could fund the war in Vietnam.

So I just suggest that we could have charts and they can blow smoke and keep the fog machine running in the White House, but this is an unfair retroactive tax rate increase—tax rate increase—on the living and on the dead.

I reserve the remainder of my time.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Will the manager yield to me what time remains on this side?

Mr. SASSER. I will be pleased to yield to the distinguished majority leader what time remains. I think we have just a matter of seconds.

Mr. MITCHELL. Then, Mr. President, I will use my leader time for the remainder of the time I use.

The PRESIDING OFFICER. The majority leader has that right.

Mr. PRYOR. Mr. President, may we have order.

Mr. MITCHELL. Mr. President, the question before the Senate is whether or not it violates the American Constitution to change the tax laws retroactively.

Every single Senator, everyone, without exception knows that it is not a violation of the Constitution—every single one. In fact, several Senators in this Chamber at this moment have voted in the past to make tax law changes retroactively.

Did those Senators knowingly and willfully vote for something they believed violated the Constitution? When each of us stood right here by the Presiding Officer's chair and took the oath of office, we swore to uphold the Constitution. Did those Senators who have now voted for retroactive tax changes do so knowingly and willfully, voting for something that they believed to violate the Constitution?

I do not believe that, Mr. President. I do not believe that for a second. I do not think there is a single Member of this Senate who would knowingly vote for something he believed violated the Constitution.

So what is the only possible option? It is that those same Senators do not believe in this amendment. They do not believe in the point of order that they themselves have raised. And so they are going to march up here now and vote to say that a change in tax rates which is retroactive, violates the Constitution, when they know that not to be true, when they themselves have voted in the past to make tax changes retroactive.

For what? Why would anyone do that? For short-term, purely partisan political gain, to score a political point, Members of this Senate will walk up and cast their vote for what they know not to be the case.

It has been settled law in America for more than three-quarters of a century that retroactive changes in tax law are constitutional. There is not a single legal basis, there is not a single constitutional basis that supports the contention of this point of order. Nothing has been offered except a political statement.

It is true that it is politically unattractive, and that is the reason the points are being made. But think of that, members of the Senate being asked to come forward and vote for a proposition which they know not to be true, for which there is not a single shred of legal or constitutional or rational basis to believe is true. And they are going to do it to make the political point. That is a sad day for the United States Senate.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the minority leader.

Mr. DOLE. I ask if I might use 1 more minute, to be notified, of my leader's time.

I want to make a distinction. The majority leader talks about tax law change. That is pretty broad. That is everything. I am talking about tax rate increases—tax rate increase. That is what we are talking about today. That is the unfairness. That is the $10 billion. No notice, as pointed out by the Senator from Washington. Nobody knew about this, until April 22 or thereabouts, precisely what President Clinton had in mind.

We were told by the chairman of the Finance Committee in one of the talk shows it was not going to be retroactive; nobody liked retroactivity.

So I think it is a question of fairness. And we would be happy to furnish information about all these different surtaxes and other changes that were made retroactive, sometimes for good reasons. But there is a case on appeal right now on estate taxes, on appeal, I think, in the ninth circuit, because it is a rate increase, tax rate increase in

estates where those who died had no choice, no notice, their heirs had no notice; they could not make any changes in their estate planning. They have to pay the higher rates. They cannot get out of it.

So the living and dead in this country are going to feel the impact.

In Russia, in their draft Constitution, in article 57, it says that taxes shall not be retroactive. So let us listen to Boris Yeltsin on this one.

Several Senators addressed the Chair.

Mr. MITCHELL. Mr. President, much has been made by my friend and colleague about the lack of notice, and repeatedly in recent weeks my colleagues have taken to quoting my words. The Republican leader has quoted my past words several times. In fact, once he described it as the "Mitchell doctrine." I told him that I was flattered because no words I ever previously uttered in my life had been elevated to the status of doctrine.

I think it is appropriate to quote a few words by our colleagues. In 1982, the Senate Finance Committee considered a major tax bill which a lot of us voted on, and 5.3 million Americans were affected by that provision. It was not part of any well-publicized program. The provision increased the amount of tax on people who received unemployment benefits—the poorest, least well off of Americans, nearly 5½ million of them—by reducing the threshold that was subject to tax, a tax increase on the poorest of Americans.

It was not contained in the House bill. It was not contained in the Senate bill. It was added in the conference, according to then chairman, "Near the end of the conference."

Five and a half million Americans did not have any notice the—5½ million of the poorest Americans did not have any notice then.

By contrast, this change was well publicized by the President early this year. Nobody is surprised by it. The only people affected by it are those persons whose incomes—the income tax rate change affects only those whose taxable income exceeds, for couples filing jointly, $140,000 a year. That is on average gross income of $180,000 a year. So all of this hue and cry by our colleagues is to protect the 1 percent of Americans whose gross incomes exceed $180,000 a year. But when it was 5½ million Americans receiving unemployment benefits, there was not any notice of that and there was no concern about them expressed then.

Mr. DOLE. Mr. President, I ask to have 1 more minute.

The VICE PRESIDENT. The Republican leader.

Mr. DOLE. One more minute.

Again, that was not rate increase. That was a threshold change. There were hearings on that. There was plenty of notice on that, even though it was added in the conference.

So again, we can blow the fog and obfuscate this all we want. This is $10 billion. It is only a $427 billion deficit reduction package or less, and there is not much in cuts the first year—$30 billion in new taxes and no cuts in this package. So $10 billion more in taxes, wherever they come from, is $10 billion.

This is a change in the tax rate, and it is retroactive and that has not happened.

Mr. MCCAIN. Mr. President, I ask that the Chair state the point of order.

Mr. COATS. Mr. President, I rise in support of Senator MCCAIN'S constitutional point of order against retroactive taxation. There must be no mistake about the degree that this bill hurts the American taxpayer. In total, the package contains some $255 billion in net new taxes and user fees—the biggest tax increase in the history of our Nation.

But what is most disturbing about this package is the fact that Americans will be taxed retroactive to January 1—20 days before the President took office and 20 days before the Congress that is voting on this package even convened. Even the dead are not spared from this retroactive tax—families who had loved ones die since January will face an additional estate tax bill from Uncle Sam.

Article I, section 9, clause 3 of the Constitution States that "No * * * ex post facto law shall be passed." In drafting the Constitution, the Founders intended to ensure that laws are general and prospective, not specific and retroactive. I urge my colleagues to support the MCCAIN point of order.

Mr. BRYAN. Mr. President, it is with great reluctance that I will vote against the constitutional point of order raised against the retroactive income tax provisions of this budget reconciliation bill.

Later today, I will vote against this legislation. One of the reasons I will vote against this bill is the retroactive tax increases. I oppose these tax increases, and if we were to have an up or down vote on retroactivity, there would be no question on what my vote would be.

Unfortunately, however, the vote today will not be on the merits of the retroactive tax increases. Instead, the vote will be on whether or not retroactive tax increases are constitutional.

A constitutional point of order is not a frivolous matter, and should not be taken lightly. As United States Senators, we have all taken an oath to uphold the Constitution.

I have reviewed the law and the opinions of constitutional scholars, and have come to the conclusion that no matter how inappropriate, unfair, or unwise retroactive income tax increases may be, they are not, under these circumstances, unconstitutional.

With regret, therefore, I will vote against this constitutional point of order.

Mr. LIEBERMAN. Mr. President, I will oppose this point of order. At the same time, I am also opposed to the retroactive income taxes contained in this bill. However, as a former IRS Commissioner under President Ford was quoted this morning as saying, "Unwise is one thing: unconstitutional is another."

I will vote against this point of order because I do not agree with the unconstitutionality argument. But I am troubled enough by the retroactivity of these income taxes to believe we should take constructive steps to eliminate it. For this reason I am proposing, and I encourage my colleagues to join me in supporting, a proposal to use the $10 billion we are in the process of cutting from the various fiscal year 1994 appropriations bills to offset a repeal of the retroactive tax increase. While I understand that this cannot be done in the context of this bill, I encourage my colleagues to join me in pressing for this action when we return to this Chamber in September.

Mr. President, this deficit reduction program is a difficult but important step toward long-term economic recovery and job creation. This point of order would effectively put an end to this package. For that reason, I encourage my colleagues to join me in voting against the point of order and in working to eliminate the unfair retroactivity in a more constructive way.

The VICE PRESIDENT. Has all time expired?

Mr. MITCHELL addressed the Chair.

The VICE PRESIDENT. The majority leader.

Mr. MITCHELL. When an American pays higher taxes, that is a tax increase. You can call it what you want, but when an American pays higher taxes, that is a tax increase.

Mr. MCCAIN addressed the Chair.

The VICE PRESIDENT. The Senator from Arizona.

Mr. MCCAIN. I request that the Chair state the constitutional point of order.

The VICE PRESIDENT. The question before the Senate is, Is the point of order well taken? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 44, nays 56, as follows:

[Rollcall Vote No. 244 Leg.]

YEAS—44

| | | |
|---|---|---|
| Bennett | Faircloth | McCain |
| Bond | Gorton | McConnell |
| Brown | Gramm | Murkowski |
| Burns | Grassley | Nickles |
| Chafee | Gregg | Pressler |
| Coats | Hatch | Roth |
| Cochran | Hatfield | Shelby |
| Cohen | Helms | Simpson |
| Coverdell | Hutchison | Smith |
| Craig | Jeffords | Specter |
| D'Amato | Kassebaum | Stevens |
| Danforth | Kempthorne | Thurmond |
| Dole | Lott | Wallop |
| Domenici | Lugar | Warner |
| Durenberger | Mack | |

NAYS—56

| | | |
|---|---|---|
| Akaka | Feinstein | Mikulski |
| Baucus | Ford | Mitchell |
| Biden | Glenn | Moseley-Braun |
| Bingaman | Graham | Moynihan |
| Boren | Harkin | Murray |
| Boxer | Heflin | Nunn |
| Bradley | Hollings | Packwood |
| Breaux | Inouye | Pell |
| Bryan | Johnston | Pryor |
| Bumpers | Kennedy | Reid |
| Byrd | Kerrey | Riegle |
| Campbell | Kerry | Robb |
| Conrad | Kohl | Rockefeller |
| Daschle | Lautenberg | Sarbanes |
| DeConcini | Leahy | Sasser |
| Dodd | Levin | Simon |
| Dorgan | Lieberman | Wellstone |
| Exon | Mathews | Wofford |
| Feingold | Metzenbaum | |

The VICE PRESIDENT. On this vote, the yeas are 44, the nays are 56. The point of order is not sustained.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The VICE PRESIDENT. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, if I might inquire of the chairman, as I told him, we had another point of order and there may be one other before the day is out.

I was thinking of now proceeding, in a couple of minutes, and let Senator DANFORTH make a point of order. We will try to use less than the allotted time under the statute so we will have more time for Senators.

Mr. SASSER. I thank the Senator for that.

As the Senator from New Mexico knows, there are many Senators on both sides of the aisle who want to speak on this particular measure and our time is limited.

So if we could squeeze down the time on the points of order, it would allow our colleagues to express their views on the bill in general.

Mr. DOMENICI. Mr. President, I wonder if I might speak to Senators, for just a moment, on our side of the aisle.

Could we have order, please, Mr. President?

The VICE PRESIDENT. The Senator's point is well taken.

Those Senators wishing to engage in conversation will please retire to the cloakroom. Senators will please take their seats.

The Senator from New Mexico.

Mr. DOMENICI. I thank you for getting order, Mr. President.

Let me indicate to Republican Senators that I am trying to accommodate anybody who has come down here and asked for time. I now have 20 Senators on our side who have asked for some time. If more come and want time, I may have to cut back on the time of everyone a minute or so to see if I could accommodate as many as possible. I hope everybody understands that. I will do the best I can.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Mr. President, I want to yield 1 minute to the distinguished Senator from Vermont.

But before doing so, I am advised that we have 26 Senators on our side of the aisle who have expressed a desire to speak. We are presently compiling a list. We are going to try to accommodate as many or all Senators if at all possible.

So, if there are others, other than the 26 on the list who wish to speak, I would ask them to come forward and make themselves known so that we can make a determination of what to do with the time.

Mr. DOMENICI. Could we have order, Mr. President?

The VICE PRESIDENT. The Senate will please be in order. Senators will please take their seats. Those wishing to engage in conversation, please retire to the Cloakroom.

The Senator from Tennessee.

Mr. SASSER. I thank the Chair.

I think the point has been made, Mr. President.

I yield 1 minute off the bill to the distinguished Senator from Vermont.

The VICE PRESIDENT. The Senator from Vermont.

Mr. LEAHY. Mr. President, on this last vote I voted "no." I was the last person in the Chamber to vote. I realize that my vote either way would not have made a difference.

I did this with great reluctance. I am strongly opposed to the idea of retroactive taxes of any sort. I think it is a great mistake. I think it is unfair. But I am convinced from reading the law that it is not unconstitutional. That is a different situation.

As I interpreted this, my vote means I do not feel that the retroactivity is unconstitutional. But I do think it is not the way to go. I think that it is a mistake and a mistake of policy for the Congress of the United States to institute retroactive tax hikes of any sort.

I thank the distinguished chairman of the Budget Committee for yielding a minute to me.

I yield back to the distinguished Senator from Tennessee.

The PRESIDING OFFICER (Mr. KOHL). Who yields time?

The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, if I might ask the distinguished chairman a question, we wanted to proceed with Senator DANFORTH, who has a point of order under the Byrd rule with reference to the State option provisions regarding immunization.

I am wondering if we cannot, on that, agree to 15 minutes on a side instead of a half hour as provided.

Mr. SASSER. Mr. President, I do not believe there is any time for debate allocated under the rules on a point of order.

Mr. DOMENICI. On the appeal, I mean.

The PRESIDING OFFICER. Appeals are debatable for 1 hour.

Mr. SASSER. I think the suggestion made by the distinguished ranking Member is a good one, and 15 minutes would be fine.

Mr. DOMENICI. I make that request and so ask unanimous consent.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. If there is an appeal, I ask unanimous consent there be 15 minutes on each side.

Mr. SASSER. Mr. President, reserving the right to object.

Mr. DOMENICI. Mr. President, I do not want to put the unanimous consent request and waste the Senate's time. We will take it up as it comes, and maybe the chairman and I can discuss that aspect.

Mr. SASSER. That is fine. I think that is a good suggestion.

I think we are going to be in position to agree to the request of the distinguished ranking Member. I was simply being distracted here and did not give full attention and did not quite understand what is being proposed. And I want to do that.

Mr. DOMENICI. I want 1 minute at this point, if the chairman does not mind.

Mr. SASSER. I am pleased to do that.

The distinguished Senator from Alabama, who was here a moment ago, also wanted 1 minute.

I yield to the distinguished Senator.

Mr. DOMENICI. I yield 1 minute off the bill, not off the Danforth proposal.

Mr. President, the time ran out on the debate with reference to constitutionality of retroactive tax increases. I have just spoken briefly with the majority leader as he stood there during the vote. I want to talk about an issue just very, very briefly that was raised.

I believe it was suggested that every one on this side and everyone in the Senate, so I imagine that includes this Senator, all knew that this retroactive tax was constitutional. I just want to state for myself that I am very, very doubtful that it is constitutional, and I use as my authority a recent court case dealing with retroactive tax provisions, a fact pattern that is very close to the law which is in this reconciliation bill. The Ninth Circuit Court of Appeals ruled in the case of Carlton versus United States, 1992, that a retroactive estate tax provision is unconstitutional.

The decision has been appealed to the Supreme Court. But the Ninth Circuit interpreted the Supreme Court rulings to indicate that a retroactive death tax, estate tax, was indeed unconstitutional.

Courts must consider the nature and circumstances in which it is laid before it can be said that its retroactive application is so harsh and oppressive as to transgress the constitutional limit.

So I voted the way I did because I believe this case is right and will be sustained by the Supreme Court. I have no such belief that I voted on political grounds or the like. I think it very well may be that the courts declare it unconstitutional.

The Senate could have saved the courts the trouble, because it is our prerogative under the Constitution to make fair laws and we could have voted today to at least make the income and estate taxes prospective.

With that, I yield the floor.

Perhaps the chairman has somebody on his side who wishes to speak.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Mr. President, I see the distinguished Senator from California on the floor. She has been waiting patiently to speak for some time.

I yield 10 minutes to the distinguished Senator from California.

The PRESIDING OFFICER. The Chair recognizes the Senator from California [Mrs. FEINSTEIN].

Mrs. FEINSTEIN. Thank you, very much, Mr. President. And I thank the Senator from Tennessee for this opportunity.

For decades, America—and my State of California—have been the golden land where dreams come true. Endless economic opportunity. A good job. And the hope that our sons and daughters will have even better lives than ours.

Today, however, the American dream is in jeopardy of being shattered—by the lingering recession, higher unemployment, corporate downsizing, and defense downsizing. In fact, in California, there are 1.4 million people out of work

The growing Federal deficit and the interest on the debt has a major impact on the American economy.

Not to act and not to address the deficit will, I believe, penalize our children, our grandchildren, and, yes, our great grandchildren.

Our economy is on the wrong track. The budget deficit is too high, the national debt too large, and our savings and investment rates are too low.

The time for strong leadership is now. It is now time to step forward—with a package that creates job and reduces this massive debt. And the time has come to put America back on the right track.

The tragedy is that none of this can happen until we get a handle on our debt. This bill is the first step—it attacks and reduces the growth of the deficit by nearly $500 billion.

This is not a perfect bill, far from it. This is a bill that will move this country forward. It will help us reduce the deficit by $496 billion—by cutting spending by $225 billion and raising revenues by $241 billion.

A lot of people think that they are going to be hit with a large tax increase. That just isn't true. Let me correct a major misunderstanding about this bill: Families that earn less than $140,000 will not see their income taxes increase 1 cent from this bill. There is no increase in income taxes for the middle class.

Let me, Mr. President, tell you how the personal income tax provisions of this bill impact Californians.

I come from the largest State in the Union with 31 million people and let me tell you who is impacted by the tax provisions of this bill.

In California, there are 13 million Federal income tax payers out of the entire population of 31 million people. Fifty thousand were single taxpayers who earned over $115,000 adjusted gross income or $140,000 of total income. Two hundred and fifty thousand were families who earned over $140,000 adjusted gross income or $180,000 in total income. These are the only taxpayers in the State who will have their income taxes go up as a product of this bill; 300,000 out of 13 million Federal income taxpayers.

Meanwhile, 2 million taxpayers will have their taxes go down as a consequence of this bill. Of course, this bill would ask everyone to contribute through a modest increase in the gas tax—and will ask 13 percent of the Social Security recipients, those with the highest incomes, to contribute. The important point to note, however, is that over 12 million people in California will see their income taxes remain the same or go down.

There are two charts which tell a story that have not been told in these discussions. They tell the story of the interest on the debt.

I remember when I paid my home mortgage and every month I would get that home mortgage tab from the bank. One line would be interest and the other would be payment on principal of 30-year fixed rate loan. So, during the first years, I noticed I was paying almost all interest. And then suddenly, the interest began to decline and suddenly I was paying more principal and was building equity in my home. And, it was a great thrill. I could replace a refrigerator. If the roof leaked I could replace it. If all of a sudden, I walked downstairs and a pipe had burst—which happened—I could replace it. The interest on my loan continued to decline and as the equity grew, it could finance repairs and improvements.

The problem with the Federal Government is that the interest on the debt is not declining. The interest on the debt is increasing. And, consequently, it is pushing all other things aside and we're not able to take care of our education, our agriculture, our crime needs, or anything else. Because, the largest single escalating part of the budget, next to entitlements, is interest on the debt.

Let me show you for a moment what that means. In 1968, net interest comprised 6.2 percent of the budget. The military was 46 percent of our budget. Entitlements were 25.2 percent. And all other spending comprised 22.6 percent.

Things are very different today—and it is shocking. Entitlements are almost half of our entire Federal outlay—48.5 percent. The military is down to about 20 percent. Net interest is up to 13.7 percent—$201 billion.

Mr. President, the interest on the debt today is higher than the entire budget in 1968.

I am someone who until Wednesday was undecided about how to vote on this package. I also wanted to look at alternatives. But the one alternative—the Republican plan—has none there. No additional spending cuts not one more than the $255 billion offered by this plan. And it would cut the deficit by $359 billion—$13 billion less than the measure before us.

Now, I must say that I do not like retroactivity one bit. I agree and I will support an additional cut of 3 percent across-the-board cut in discretionary spending this year to eliminate the retroactivity of this bill. This would generate about $13 billion. The retroactivity generates $10 billion.

The plan before us today—the only real plan—involves pain for all of us. But deficit reduction cannot be achieved without some pain because our situation is so critical. If all so-called discretionary spending was eliminated, that would still not eliminate the deficit. At the very least, if a bill has to inflict pain, it should be on those most able to handle the pain.

Let's look what will happen if we don't pass this today and instead stay with our current policies. In 10 years:

Our deficit will more than double to $653 billion.

Our national debt will more than double to $7.5 trillion.

The money spent on just the interest on the debt will increase to $437 billion—from $200 billion today.

If we fail to get a hold of the deficit, America's economic roof will cave in. In short, we will be bankrupt. Today, 42 cents of every individual's taxpayer dollar goes only to pay interest on the debt. So, all the tax dollars collected from people west of the Mississippi pays interest only. These taxes don't go to defense, or education, or agriculture, or health care. They only go to interest.

And if that isn't bad enough, this debt is increasingly owned by foreign interests. Today, foreign interests own nearly 20 percent of our debt. We are dependent on other countries to purchase debt instruments just to keep the largest democracy in the world alive. That, I believe, is one of the reasons America is often a paper tiger when it comes to trade.

Rising interest costs and the budget deficit have another major impact on the health of our economy—our savings

rate. Money saved in a bank does not just sit in the bank.

It is used by the bank to make loans to small businesses, to build and finance homes, and to invest in the creation of new jobs. Savings is the engine that drives our economy. As our savings rate drops, so does our investment in our economy.

In less than a generation, our national savings rate as a percent of our national product has fallen by half. The United States now saves less than any other major industrialized country in the world.

Between 1969 and 1989, the United States saved at an average of 7.2 percent. During that same period the Japanese saved at nearly three times that rate—20.7 percent—and the Germans at nearly double our rate—14 percent. No wonder banks aren't lending. Between 1980 and 1990, the U.S. savings rate fell to about 3 percent. In one decade, savings dropped 50 percent of gross domestic product.

It is time for change. It is time to change our economic policies. And this, Mr. President, is the first step.

And now let me say what one economist—Charles Schultze—a former Chairman of the President's Council of Economic Advisers—wrote to me:

The retroactivity feature will take some modest additional income from high income taxpayers and from corporations next spring. While the program would have been better without this feature, the economic consequences, in a $6 trillion economy, will be minimal. But failure of the bill itself would be a truly major blow to the American economy. Both in itself, and in terms of what it implies for future budget discipline, failure to enact the bill would be a serious setback to the prospects for long term economic growth. And it would also pose some major threats to short term economic recovery. The government in Washington would be sending a signal to financial markets, to American consumers, and to the rest of the world that the nation had lost the political will and capacity to control a key element of its own economic destiny—its fiscal policy.

Interest rates would most likely jump substantially. I would be worried that consumer confidence would be badly affected: why would the average citizen not draw the reasonable conclusions that America was simply drifting economically, with no hand on the tiller and no plan for economic improvement in place? And American economic leadership—in a world that is economically fragile anyway—would be eroded in a major way.

I am normally not a Cassandra. Usually the nation is strong enough to withstand a lot of bad economic management; we somehow muddle through successfully. But now, with the Democratic Party in control of both branches of government, after an initially promising start and then months of negotiation, if it turns out that the system simply cannot pull itself together to accomplish the first steps of essential budget discipline, then I do fear the consequences.

If there is anything I can do to help, now or in the future, please let me know.

This is signed by Charles L. Schultze, senior fellow, the Brookings Institution.

A top business leader from Wall Street, Henry Kaufman, wrote to me:

HENRY KAUFMAN & CO., INC.,
*New York, NY, July 29, 1993.*

Hon. DIANNE FEINSTEIN,
*Senate Hart Office Building,*
*Washington, DC.*

DEAR SENATOR FEINSTEIN: I want to urge you to make a strong effort to help prevent an impasse in the budgetary proceedings. This is because a budgetary stalemate would have serious negative implications for our financial markets and thus, for the economic recovery. Such a stalemate would end market expectations of stable and certainly further declines in interest rates. Indeed, it would set the stage for interest rate increases from a series of market developments that are likely to become visible in the coming months.

There are at least four factors that will encourage higher interest rates. First, market participants would conclude that rising budget deficits are in the offing. Instead of declining U.S. borrowings, the markets would have to contend with enlarged credit demands from the Government just at a time when private credit demands would be rising, a typical event during a business recovery.

Second, the Federal Reserve will most likely view the absence of budgetary progress as a signal that will encourage it further to tighten monetary policy. As you know, the Fed has already adopted an asymmetrical approach in favor of a tighter policy should conditions warrant it.

Third, a budgetary stalemate raises serious questions concerning the U.S. Treasury's capacity to put into place its recently announced modified quarterly financing procedure in which it eliminated the offering of new seven year notes and reduced the offering of new 30-year bonds to a semi-annual instead of a quarterly basis. I believe this decision has already contributed to strengthening the long term bond market. Market participants, however, will quickly conclude that the U.S. Treasury will have to go back to the former enlarged financing pattern in the absence of a satisfactory budgetary resolution.

Fourth, foreign private sector purchases, which have been an important source of funds to both U.S. bond and stock markets, would slow appreciably as foreigners would question anew our resolve to put in place an effective fiscal policy.

A reversal in declining interest rates, would, of course, end the ability of households to refinance existing debt such as mortgage borrowings at substantial cost savings and hamper what up to now is already a below cyclical recovery in new residential home activity. For business, the reduction in interest rates has facilitated substantial balance sheet restructuring, reduced financing costs and a huge volume of new equity flotation. In contrast, a rise in interest rates now would not only terminate the financial rehabilitation of businesses and households, but the accompanying likely drop in stock prices would reduce household wealth appreciably. This is because households have been huge buyers of stock and bond mutual funds by liquidating short term liquid assets, mainly deposits. As a result, falling stock and bond prices would have a greater negative impact on consumer spending than in the past when these markets were under pressure.

If you wish to discuss these conclusions or any other related matter with me, I would be pleased to do so.

Sincerely,

HENRY KAUFMAN.

My conclusion is that this bill is the first step to reduce the deficit. It is not a perfect plan. But it is critical that we make the choice now.

I represent a State in the depths of the recession. Nearly 1.4 million people in the State of California are out of work—more than the total population of 13 other States.

I was disappointed by this bill when it was before the Senate a few weeks ago because it did not contain enough incentives to crate jobs. And I'm talking about good jobs with good salaries for working men and women. And I have raised these concerns on this floor, with the President, and the congressional leadership.

Today this bill is very different in that it will now provide several billion dollars in economic investment incentives. Among them

Targeted capital gains tax break.—Any incentive to start a small or midsized business was entirely wiped out of the bill previously approved by the Senate. The conference committee report puts this important incentive back in the package—and includes a capital gains exclusion of 50 percent for investment in small businesses that are held for at least 5 years.

This will provide patient capital for the startup and expansion of small and midsized businesses. Increasingly, as large businesses downsize, the jobs of the future will come from new businesses—and they will be small and midsized businesses. This targeted capital gains reduction can help create jobs.

Extension of the research and development tax credit.—Entrepreneurial companies need this incentive to invest and expand. I was deeply concerned that the Senate bill only extended the tax credit for 1 year—and in addition let the credit lapse for a year. So I began pushing. And today the conference committee report extends the tax credit back a year and forward 2 years. So, the tax credit is in place for a total of 3 years—a major change.

With this longer credit, a major business leader in California told me his company would hire 100 new scientists with this credit and estimated that it would create 10,000 new jobs in California alone.

Elimination of the surtax on capital gains.—The previous Senate bill placed a 10-percent surtax on capital gains. The conference report eliminated this proposed surtax. The goal is to see capital pumped back into the economy to increase jobs. If the Federal Government is going to tax high income earners, it should not discourage them from investing in our Nation's economy.

A Federal enterprise zone program.—Without real tax incentives, enterprise zone programs don't work. And rather than make the changes in the program needed, the earlier Senate bill did not include an enterprise zone program at

all. I believe these programs can be critical in regions such as east Los Angeles, south central Los Angeles and Oakland to attract businesses to invest. The conference report includes a $3.5 billion program to promote job creation.

In addition, the bill includes other investment incentives, such as expensing provisions, the passive loss rule changes for real estate and low-income housing credits. This will create thousands of good jobs in California and the expansion of small businesses which can stimulate economic recovery.

Just these provisions offer a possible stimulus for the California economy of $2 billion.

As I said, this is an important first step. I will vote for the bill. But unless we control entitlement spending—particularly health care costs—we will not truly control our Federal budget. that is the next step. But we cannot get there until we control the growth of interest on the debt and that is what this bill will do.

With that done, this economy can grow and create jobs. That is what this is all about—creating new jobs and good jobs. And that is the essence of the American dream—a good job, a solid home, and a hope for a better future for our children.

I urge my colleagues to vote for the conference report and to take the first step to improve the economic health of this country.

Mr. SASSER. Mr. President, I thank the Senator from California. I have been discussing with the distinguished ranking member ways and means with which we could allow all of our colleagues to speak, or as many as possible in the limited time that is available to us. I shall propound a unanimous consent request at this time.

Mr. President, I ask unanimous consent that the following be the order of speakers and that all speakers be limited to no more than 7 minutes each, or such lesser amount as their respective manager might yield; provided that such time may not exceed the time currently available for either side. And the speakers who have indicated they wish to speak on the minority side are: Senators ROTH, MURKOWSKI, PRESSLER, HUTCHISON, BENNETT, MCCAIN, LOTT, D'AMATO, NICKLES, COVERDELL, WARNER, BROWN, DANFORTH, HATCH, HELMS, SPECTER, COATS, NUNN, BURNS, COCHRAN, GRASSLEY, DOMENICI, and the distinguished minority leader, Senator DOLE.

On the majority side the speakers who have indicated a wish to speak are Senators GLENN, BOXER, WOFFORD, DORGAN, BRADLEY, DECONCINI, RIEGLE, REID, GRAHAM, AKAKA, KERRY of Massachusetts, ROBB, FORD, MURRAY, LEVIN, BAUCUS, HOLLINGS, BREAUX, METZENBAUM, WELLSTONE, MOSELEY-BRAUN, KENNEDY, SIMON, SARBANES, PELL, HARKIN, SASSER, and the distinguished majority leader of the Senate, Senator MITCHELL.

There should be alternating between sides of the respective speakers, beginning with Senator ROTH on the minority side; provided further, that if a Senator is not present when that Senator's time arrives, the manager may substitute another Senator on that side and place the absent Senator later in the order; provided further, that if time remains on either side after the speakers named, that the manager on that side shall control such time as remains; provided further, that each manager shall control 30 minutes out of the time currently available that he may yield at any time; provided further, that points of order may be raised at any time.

Mr. DOMENICI. And the appeal would follow.

Mr. SASSER. And the appeal will follow and shall be limited to 15 minutes evenly divided.

Mr. DOMENICI. Fifteen minutes on a side.

Mr. SASSER. Thirty minutes evenly divided.

Mr. DANFORTH. Mr. President, reserving the right to object. My hope had been to make a point of order at this time, however, to precede that point of order with two parliamentary inquiries. I wonder if those two parliamentary inquiries preceding the point of order could be accommodated and, if so, you can strike me from the rest of the list.

Mr. DOMENICI. I am willing to add that as a part of the consent.

Mr. SASSER. Yes, I have no objection.

Mr. President, and further amending the unanimous-consent request, I ask that Senator EXON be added to the list following Senator HARKIN.

Mr. DOMENICI. And, Mr. President, I would like to, at the suggestion of the Senator, Senator COVERDELL does not desire to speak any further; Senators CRAIG, BOND, CHAFEE and SMITH on our side.

Mr. SASSER. That pretty well includes, Mr. President, every Senator in the body, I think, on both sides of the aisle.

Mr. RIEGLE. Mr. President, is there a unanimous-consent request pending?

Mr. SASSER. There is a unanimous consent request pending.

Mr. RIEGLE. May I reserve the right to object to ask a question with respect to the issue the Senator from Missouri is going to raise?

As I understand it, there was a request for 30 minutes of time equally divided on that issue. I am not sure we are going to need that much time. I am wondering, in light of the pressure on time and the fact that so many Members want to speak anyway, if we could not reduce that amount of time. I am prepared to do so if the Senator is.

Mr. DANFORTH. Mr. President, I just as soon keep it at 30 minutes, but I have no intention of taking any more time than absolutely necessary. So I will attempt to economize the time.

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

Mr. SASSER. Mr. President, I ask unanimous consent to amend the unanimous consent agreement to add Senator BUMPERS following Senator EXON.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I wonder if the Senator from Tennessee might engage me with just a quick colloquy. Even though there may be more Senators from one side of the aisle or the other that are on the list—and I assume it is more on the other side —the intention of this is that the amount of time we have and the amount of time the other side has will be governed on the proposition that we each have an equal amount of time; I will divide up mine among our side and the Senator from Tennessee will divide his among his Members.

Mr. SASSER. Such time as we have remaining to us will be equally divided, as it is now.

Mr. DOMENICI. I yield the floor now to Senator DANFORTH.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

PRIVILEGE OF THE FLOOR

Mr. SASSER. Mr. President, before yielding to the distinguished Senator from Missouri, I ask unanimous consent that Ed Grossman of the House Legislative Counsel's office be granted the privilege of the floor during consideration of this reconciliation conference report.

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

The Chair recognizes the Senator from Missouri.

POINT OF ORDER

Mr. DANFORTH. Mr. President, I am concerned about the state of the Byrd rule, which is a rule that I think is extremely important in the Senate, and concerned that budgetary effects which are incapable of estimation have been used to justify what I would think to be extraneous provisions in this bill, I would like now to make two inquiries of the Chair.

First, is a provision of the budget reconciliation bill extraneous under section 313(b)(1)(A) of the Budget Act, the Byrd rule, if it produces no changes in outlays or revenues that can be estimated?

The PRESIDING OFFICER. Such a provision would not necessarily be out of order.

Mr. DANFORTH. Would not necessarily be out of order.

The second question is: If the impact on outlays or revenues cannot be estimated, are they merely incidental to a

nonbudgetary component under section 313(b)(1)(D) of the Byrd rule?

The PRESIDING OFFICER. Once again, that would not necessarily be the case.

Mr. DANFORTH. Mr. President, I now wish to raise a point of order, and do raise a point of order under sections 313(b)(1)(A) and 313(b)(1)(D) of the Budget Act, known as the Byrd rule; that title XIX, section 1928(d)(4)(B) in the conference agreement, section 13631(b) is extraneous to the reconciliation bill because it produces no change in the outlays or revenues or produces changes in outlays or revenues which are merely incidental to the nonbudgetary components of the provision.

The PRESIDING OFFICER. The point of order is not well taken.

Mr. DANFORTH. Mr. President, I appeal the ruling of the Chair.

The PRESIDING OFFICER. Under the previous order, there is a half-hour equally divided on the appeal.

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

The PRESIDING OFFICER. Is this a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DANFORTH. Mr. President, as I stated earlier, my concern is about the efficacy of the Byrd rule which I think is very important in keeping extraneous matters from reconciliation bills. This particular provision on which the point of order has been raised is a provision on which there is precedent in the Senate; that is, the comparable provision that was in the Senate reconciliation bill was a provision on which a point of order was made and that point of order was ruled on by the Chair. The point of order and the ruling can be found in the CONGRESSIONAL RECORD of June 24, 1993, at pages 14110 and 14114.

So there is a precedent contrary to the just-announced ruling of the Chair that is in the precedents of the Senate.

The Congressional Budget Office was asked by me for the budgetary effects of this particular provision which has to do with the so-called State option provision of the immunization portion of the bill. The relevant part of the answer of Mr. Reischauer was as follows:

> The paragraph referenced in your letter would allow States to purchase additional quantities of vaccines at the CDC price and would, therefore, affect the prices the Federal Government would pay. While the paragraph cited was a consideration in developing our estimate of section 13631, we do not have the ability to estimate its budgetary effects separately.

So, in other words, the quantity of vaccine purchased would affect price, but CBO is unable to make that estimation.

What has happened in this particular provision of the bill is that there is a major substantive change in the law, a major substantive provision appears in the bill and CBO is unable to estimate what the consequences of that provision would be. It is the position of this Senator that if CBO cannot make that estimate, then clearly at the very least the revenue consequences or the budgetary consequences are merely incidental and that that provision should not be allowed to stand.

There are other provisions in the bill in which the budgetary consequences are so thin as to raise the question as to whether they are incidental. I am not going to raise them on one point after another, but I simply make that point to the Senate, that we have embarked on what I think is a very dangerous course by using puny, if any, budgetary consequences to justify very significant changes in the substance of the law.

I have already debated before the Senate on another occasion the so-called BST provision in the legislation which creates a moratorium for 90 days on the sale of bovine somatotropin. I think that is a terrible precedent as far as both trade policy and science policy is concerned, but that is justified by the fact that it is linked to a $4 million increase in outlays. In other words, we have shoehorned into this legislation $4 million of additional spending in order to rationalize a major change in U.S. science policy.

Similarly, with respect to the auction of spectrums, a very significant substantive change in the law, changing the way in which mobile telephones are regulated is in the legislation, despite the fact that the Congressional Budget Office has said: By itself, excluding the provisions you have identified, would not cause CBO to change its estimate of receipts, although the probability that the Federal government would receive the amount that they have estimated would decrease."

So my point is very simply this, Mr. President. If CBO is unable to estimate the amount, then the budgetary consequences are so minimal and so tangential to the bill that they do not justify substantive changes in the law. And therefore, if the Byrd rule has any real meaning, if it is truly a rule, then these provisions should be stricken.

Mr. CHAFEE. I wonder if the Senator will yield to a question, Mr. President?

Mr. DANFORTH. Of course.

Mr. CHAFEE. I ask the distinguished Senator from Missouri, are we not on a course here that really makes a complete joke out of the Byrd rule? All one has to do is to take a provision that makes a major change in the law, that has nothing to do with finances, either revenue or expenditures, for the Federal Government, and then dream up some conjectural figure that affects the spending of the Government in some way, tack that in there and say we have now complied with the Byrd rule.

For example, I suppose somebody could stick into a reconciliation measure statehood for the District of Columbia and say, oh, it is going to affect expenditures, and so thus we have opened the way for reconciliation to include all forms of massive changes in the law for the U.S. Government and actually everything goes through in an expedited fashion, limited debate, no filibuster. We are duplicative of the House of Representatives. Am I correct in that?

Mr. DANFORTH. That is exactly my concern. The author of the Byrd rule is on the floor. I hope he speaks to this issue. But I would simply point out that when the Byrd rule was adopted in the debate, Senator BYRD said, and this is a quote, "Because policy matters that do not have clear and direct budgetary consequences are supposed to remain outside its scope."

That is precisely the point of the Byrd rule, which I think is an excellent rule, and I am really concerned that with extremely thin pretexts, the Byrd rule is being circumvented and that the effect is to include in this legislation major matters of substance.

Mr. CHAFEE. Could I ask one more question of the Senator?

Am I correct in that we are not discussing the merits of the proposal, whether it is good or bad; what we are discussing is the procedural situation here, where we can just make major changes in laws of the United States under the guise of reconciliation, which is to deal with the Federal budget and expenditures, and instead we are changing laws of the country?

Mr. DANFORTH. That is correct. And it is exactly the point. The two managers of the bill have just set forth a time agreement where everybody gets to speak for 7 minutes. If you get to speak for 7 minutes on changing the way that the mobile phone industry is regulated, for example, that is precious little time, and that is exactly the reason why that kind of matter of substance should not be part of a reconciliation bill.

Mr. CHAFEE. I thank the Senator.

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

The PRESIDING OFFICER (Mr. DODD). Who yields time?

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, how much time has been consumed by the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri has consumed 8 minutes and 17 seconds.

Mr. RIEGLE. I thank the Chair.

Let me make several points. First of all, I think the last colloquy between the Senator from Missouri and the Senator from Rhode Island establishes that they are not challenging this provision on its merits. They are challenging a technical budget procedure here but not the substance of this provision.

I think I am stating that correctly. And the Senator from Missouri is nodding in the affirmative.

So, this is not a substantive difference on the merits of this provision. It is a very good provision because it has to do with immunizing uninsured children in this country. And we want them immunized against diseases for their safety and also because it costs us a lot more, frankly, if they get sick and have to be treated than it does to pay a much smaller price to see that they are properly immunized and protected against diseases.

Now, just in terms of the consequence of what has happened here, the point of order has been ruled invalid by the Chair. The Parliamentarian ruled that the way this is drafted is proper. It does meet the Byrd rule, and so therefore a point of order does not lie.

Now, the Senator is pressing beyond that and has asked for a vote. We will have a vote. I raised my hand as well for him to have a vote. But let me just make a point with respect to what the practical consequences would be if this point of order, which the Chair has ruled is incorrect, and which I am asserting is incorrect, were to prevail.

In that unfortunate instance, my understanding is that that would delete this provision from the bill. This would make our bill then different from the House bill, and we would be in a situation where the entire conference report would be rendered in effect null and void.

So this is really a killer vote, whether so intended or not, and it should be understood that it would have that consequence if it were to be adopted. So not only does it fall on the merits, and it falls on the substance, which I am going to get to in a second, but it also in a third instance is a killer proposition in terms of, in a sense, bringing down the entire package, not just this one item but in effect the entire package.

Now, with respect to the substance of the issue itself, the Senator from Missouri quoted from a letter from the Congressional Budget Office but he did not quote the most important part of that letter, which in effect answers and refutes the assertion that he is making.

I am going to ask unanimous consent that that letter be printed in the RECORD at the end of my remarks.

(See exhibit 1.)

But in the final paragraph of that letter, the director of the Congressional Budget Office, Dr. Reischauer says: "The paragraph referenced in your letter would allow States to purchase additional quantities of vaccines at the CDC price" and here is the critical language "and would therefore affect the prices the Federal Government would pay."

That is the whole issue here. States come in and combine their purchasing with the Secretary in terms of the national purchasing effort of vaccines. That will have an effect on the price, and therefore the total cost of this effort.

So the Budget Office has clearly established the relationship that makes it proper within this bill and means that, of course, it does conform to the Byrd rule.

So it is important that that be noted because that in a sense is the proof, if anybody needed an independent proof, that in fact that is the case.

Finally, the issue here is that if States should decide that they want to blend their buying requirements together with the Federal Government so that the Secretary of Health and Human Services can go out and negotiate a package purchase and a package price, that is obviously beneficial to the States and clearly is going to be beneficial to the Federal Government and does have an obvious and direct budgetary impact.

Underneath this, we are trying to get kids out there protected against preventable diseases. This is a solid immunization program. It has been worked out on all sides.

The Senator from Missouri and the Senator from Rhode Island have said they are not challenging it on its merit. I appreciate the fact that they have made that stipulation. It is very important that it be in here. It is entirely within the rules, as the Parliamentarian has now ruled. It is very important that it be retained; and, in fact, if it were to be knocked out, improperly so at this point, it would jeopardize the entire package.

I reserve the remainder of my time.

Mr. DANFORTH. Mr. President, just three short points. The first is that I did read the part of the letter that Senator RIEGLE read. I read the entire paragraph in question. I am not trying to hide——

Mr. RIEGLE. Let me beg the pardon of the Senator from Missouri. If he did, I did not hear that. I do not want to make an assertion.

Mr. DANFORTH. I did read it. What the letter does say is that the quantity of vaccine that is purchased has some effect on the price. But it says that the CBO cannot estimate what the effect is. That is exactly the nature of the question, two questions that I put to the Chair.

If budgetary impacts cannot be estimated, if no number can be put on them, then it is the position of this Senator that they are so ethereal, so lacking in form as not to constitute the kind of clear and direct budgetary consequences that Senator BYRD spoke of in the debate when the Byrd rule was first created.

So that really is the point.

The second point I would make is that in connection with the Senator from Michigan's point about bringing down the entire bill, that is exactly the situation we are in now. I mean, that is the position that we have been put in by virtue of this whole legislation. Senators are able to leverage their vote into whatever they want to put in the legislation. That is what happened with the BST issue, where a moratorium on bringing to market a new scientific product was accomplished because a Senator took the position that that was absolutely essential to him.

So I think that that is exactly the point. I mean, if a Senator feels strongly about a position, if a Senator really believes in some particular change in the law, then that Senator can say, well, the best way to get this done is the budget reconciliation.

So I am going to insist that my substantive change be put in the law and then the Parliamentarian is under tremendous pressure. How do I justify the situation? How do I come up with some rationale for it under the Byrd rule? And the result is a convoluted process of reasoning which ends up with some theory of pricing despite, I might say, the fact that there is an overall cap in this legislation on the price that can be charged.

So, maybe anything goes. Maybe any change that is theoretically possible in the budget justifies the most gigantic substantive change in the law. Maybe, as Senator CHAFEE pointed out, the fact that if the District of Columbia were to become a State, it might have budgetary consequences, would justify inserting that in this legislation.

But the point of the Senator from Missouri is if the Byrd rule is really a rule—if it is more than something that is just applied on a whimsical basis—if it is really a rule, then we have to say that unless there is a real number placed on the budgetary consequence, the budgetary consequence is not sufficient to justify the extraneous matter in the legislation.

Mr. CHAFEE. addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Will the Senator yield for another question?

Mr. DANFORTH. Of course.

Mr. CHAFEE. I would like to ask the Senator from Missouri, this has unlimited possibilities and legally can turn this place upside down.

Let us take another example. A major issue that is going to be debated presumably on the floor of this Senate is going to be whether you should permanently ban replacement workers for strikers. That is a big substantive issue. There are strong feelings on both sides of the aisle.

Is there anything that would prevent that being put in reconciliation, going through under a time limit with 8 minutes to debate it, by an individual Senator?

Mr. DANFORTH. Nothing at all. I believe that unless the Chair is overruled

by the Senate, unless the Chair is overruled, there is nothing to prevent major health care reform from being put into the reconciliation bill.

Mr. CHAFEE. Clearly, that is going to affect the Federal budget. You can put a 1,200-page health care reform bill into reconciliation without any trouble. The Byrd rule in effect means nothing as far as I can tell.

Mr. DANFORTH. That is my concern. My concern is that the effect of this ruling, if it is allowed to stand, means that the Byrd rule has been gutted.

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. How much time is left on both sides, Mr. President?

The PRESIDING OFFICER. There is 1 minute, 24 seconds on the side of the Senator from Missouri; and 9 minutes, 32 seconds on the side controlled by the Senator from Michigan.

Mr. RIEGLE. I thank the Chair.

Mr. President, let me just respond to the points that have just been made. First of all, going back to the CBO letter, we will have the whole letter printed in the RECORD as a point of reference for those who will be reading this.

In fact, the CBO letter, to my reading, sustains the argument that I am making, that there is a relationship between quantity of vaccines being negotiated for and purchased and therefore the price and therefore the cost. Depending upon where that works out, it has a direct budgetary impact. That is the clear message of the letter from the Director of the Congressional Budget Office.

It obviously means that this does meet the Byrd rule. It is germane in every sense, and proper. That is what the Parliamentarian has ruled.

So I think that letter makes that very clear.

Second, the Senator from Missouri concedes the point that if his challenge, which I think and if asserted is properly grounded, if his challenge were to carry on this vote that is upcoming, it will bring down the entire bill. He acknowledges that point. That would be the effect, whether that is what he intends or not.

I think that is a very powerful reason in and of itself to reject his contention. But I think a careful reading of the facts here and what the Parliamentarian has ruled provides the proper grounds for doing so.

Finally, again, I think it is important to emphasize that the Senate from Missouri and the Senator from Rhode Island, who has joined him in a colloquy, are not objecting to the substance of this provision, the merit of this provision, which has to do with making sure that poor children in this country who do not have insurance are able to be immunized against dreaded diseases, diseases that can kill them.

And so this has been very carefully worked out. It conforms with the Byrd rule, and it does have a budgetary impact. But it has a very important human impact. This is something in this bill that makes a positive difference for our country, and it will save us money over the long run, and a lot of heartache as well.

There are a lot of things people might want to knock out of this bill. This is one thing nobody should want to knock out of this bill, and they, in a sense, say that themselves, that they are conceding the merit of this provision.

This provision is absolutely germane. It fits the Byrd rule. That has been the ruling. If it were to be taken out at this point, it brings down the entire bill, and that would be a disservice by any measure. I hope the Senate will so vote and reject the contention of the Senator from Missouri.

I reserve the remainder of my time.

Mr. DANFORTH. Mr. President, I yield the remainder of my time to the manager.

The PRESIDING OFFICER. The Senator from New Mexico has 1½ minutes.

Mr. DOMENICI. Mr. President, let me first compliment the Senator for raising this issue and make a couple of points.

One, if this provision is stricken, the bill does not die. It goes back to the House. Second, we know that this is a bill that some want to get through here so quickly that maybe it is not even thought to be right to talk about the impact of this bill on the future of the Senate. But, frankly, I want to do that for a minute. Somewhere in this 20-pound bill, 2,000 or so pages between bill and report, different committees in the Senate and the House and a myriad of staff members were busy putting new things in here that had nothing to do with the budget.

You see, reconciliation is a measure that is supposed to match up with the budget resolution. So if taxes are raised in the budget resolution, you are supposed to come along in this reconciliation bill and raise taxes.

However, over time, it got very loaded with measures that had nothing to do with the deficit, and the limitations on amending or striking these extraneous items were extensive.

So about 7 or 8 years ago, Senator BYRD proposed a limitation on what you could put in there. And even after a couple of years of experience with the rule, he said—and I want to quote—he said to the Presiding Officer:

"I close by saying, as I began, that human ingenuity can always find a way to circumvent a process, and reconciliation is a process. It has been abused terribly."

Now we put in this Byrd rule so reconciliation would not be abused terribly. I compliment the chairman and the Parliamentarian for taking out about 150 measures from this bill that were part of the concern Senator BYRD had 7 or 8 years ago. However, there are now some newfound potentials for abuse that have not been dreamt up before that are being applied to the Byrd rule itself. One of them is this provision where the Senator attempts to establish that you cannot even prove that this provision adds to the deficit or subtracts from the deficit, and his conclusion is, I assume, rather logically, it is therefore not germane; that it is extraneous to deficit reduction, am I correct?

Mr. DANFORTH. That is correct.

Mr. DOMENICI. In that case the only remedy we have is to make a point of order and appeal. The Senate obviously will not grant that tonight, because the Parliamentarian has ruled, and that is the way the majority party is going to vote.

I thank the Senator for raising that point. It is a very important one. The future of this process may depend on whether in the future we are willing to do something about these kinds of problems or not.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan has 6 minutes, 30 seconds remaining.

Mr. RIEGLE. I do not intend to use all of that time. I want to correct the RECORD—there was an issue on the case of new vaccines coming into the market, whether there will be a cap on the price of those vaccines in terms of this negotiating process with the Secretary, and the answer is there would not be.

These new vaccines would come in in their own right. Whatever price would be negotiated would be negotiated based on them as being new vaccines coming into the market and taking into account research and developmental costs and things of that kind. So there should be no confusion about that. I am told there are some six new vaccines that are in the mill and will be coming on stream at a later time.

Contrary to what the Senator from New Mexico, I think, implied in his comments, if this challenge were to be sustained—and as I say, improperly so in my view, in terms of the parliamentary facts—this would effectively kill this bill. Sending it back to the House to start again through the negotiation process would have the effect of putting us in an impossible situation. I think everybody here knows that. So that will be the effect, whether that is the intent or not.

So this provision is entirely germane. It is carefully written. It does meet the Byrd rule, as the Parliamentarian ruled. It is going to save us money, and it will help the country in important ways in terms of protecting children against things like measles and diphtheria and other things that we can vaccinate them against to protect them.

I very much hope that the Senate will reject this effort to overturn the ruling of the Parliamentarian.

EXHIBIT 1

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, August 5, 1993.*

Senator JOHN DANFORTH,
*U.S. Senate, Washington, DC.*

DEAR SENATOR: Your letter of August 5th requests a cost estimate of a paragraph in section 13631(b) and is title XIX section 1928(d)(4)(B) of the Conference Agreement of the Omnibus Reconciliation Act of 1993.

Section 13631 would establish a Pediatric Immunization Distribution program. The Congressional Budget Office has estimated that this program would result in federal costs of $585 million over the period 1994 through 1998. In order to estimate the costs of this program, we have estimated the prices that the Center for Disease Control (CDC) would be able to negotiate with vaccine manufacturers. These prices would depend in part on the quantities of vaccines to be purchased.

The paragraph referenced in your letter would allow states to purchase additional quantities of vaccines at the CDC price and would, therefore, affect the prices the federal government would pay. While the paragraph cited was a consideration in developing our estimate of Section 13631, we do not have the ability to estimate its budgetary effects separately.

I hope this information is helpful.

Sincerely,

ROBERT D. REISCHAUER.

Mr. SASSER. Mr. President, I yield myself such time as I may consume, and I will be very brief.

Mr. President, first, with regard to the Byrd rule, we worked very hard and very faithfully over a period of well over a week in going over this bill to try to clarify and remove items that might be subject to the Byrd rule.

As the distinguished ranking member indicated, I think over 150 items were removed from the reconciliation instrument here, because it was felt that they would be subject to the Byrd rule. And we furnished our friends on the other side of the aisle, the distinguished staff colleagues on the Senate Budget Committee, copies of the draft language so that we would each know where we were, and there would be no surprises as we worked together to try to expunge the Byrd rule problems from the reconciliation conference report.

Our efforts here were not totally altruistic, because we knew that if there were items left in here that were subject to a valid challenge under the Byrd rule, that would simply, for all practical purposes, kill this reconciliation conference report; that we simply could not reconstitute a conference, come up with another conference report, and we could not send it back to the House of Representatives. So we were very careful and as true as we could be to the letter of the Byrd rule and to the intent of it.

I want to express my profound gratitude and appreciation to the Senate Parliamentarian, Mr. Alan Frumin and his staff, Kevin Kayes, Jim Weber, and Beth Smerko who worked long and hard with us day and night—I might say, Saturday and Sunday included—to try to expunge what could have conceivably been called Byrd rule problems here.

So I hope there is no suggestion here that there was not a conscientious effort to try to adhere as rigidly as possible to the Byrd rule, or adhere to it as rigidly as required by the rules of the Senate to the Byrd rule, because we worked very, very hard to do that.

I might say some of our House colleagues could not understand, and I do not blame them because there were a number of things that were pulled out of this budget reconciliation that had been voted on and passed by large majorities in both houses. But simply because they violated the Byrd rule, we had to go to the chairmen of the appropriate House committees and tell them they had to come out. They simply did not understand it. I think it made them perhaps have a little less high esteem for some of us here in the Senate, and we had to go to them and request they do it. In the final analysis, their leadership had to demand that some of these provisions subject to the Byrd rule come out.

So I think we have all worked very hard and in good faith on both sides of the aisle really to try to be true to the Byrd rule.

I just wanted to make that statement.

Mr. President, I ask unanimous consent that Senator BINGAMAN be added to the list of speakers following Senator BUMPERS.

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

Who yields time?

The Senator from Michigan has 35 seconds remaining.

Mr. RIEGLE. I yield back my time.

The PRESIDING OFFICER. All time has been yielded back.

The question is, is the appeal of the Senator from Missouri well taken? An affirmative vote of three-fifths of the Senators duly chosen and sworn is required for the appeal to be well taken.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

The yeas and nays resulted—yeas 43, nays 57, as follows:

[Rollcall vote No. 245 Leg.]

YEAS—43

| | | |
|---|---|---|
| Bennett | Gorton | McConnell |
| Bond | Gramm | Murkowski |
| Brown | Grassley | Nickles |
| Burns | Gregg | Packwood |
| Chafee | Hatch | Pressler |
| Coats | Hatfield | Roth |
| Cochran | Helms | Simpson |
| Coverdell | Hutchison | Smith |
| Craig | Jeffords | Specter |
| D'Amato | Kassebaum | Stevens |
| Danforth | Kempthorne | Thurmond |
| Dole | Lott | Wallop |
| Domenici | Lugar | Warner |
| Durenberger | Mack | |
| Faircloth | McCain | |

NAYS—57

| | | |
|---|---|---|
| Akaka | Feingold | Metzenbaum |
| Baucus | Feinstein | Mikulski |
| Biden | Ford | Mitchell |
| Bingaman | Glenn | Moseley-Braun |
| Boren | Graham | Moynihan |
| Boxer | Harkin | Murray |
| Bradley | Heflin | Nunn |
| Breaux | Hollings | Pell |
| Bryan | Inouye | Pryor |
| Bumpers | Johnston | Reid |
| Byrd | Kennedy | Riegle |
| Campbell | Kerrey | Robb |
| Cohen | Kerry | Rockefeller |
| Conrad | Kohl | Sarbanes |
| Daschle | Lautenberg | Sasser |
| DeConcini | Leahy | Shelby |
| Dodd | Levin | Simon |
| Dorgan | Lieberman | Wellstone |
| Exon | Mathews | Wofford |

The PRESIDING OFFICER. On this vote the yeas are 43, the nays are 57. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the appeal is rejected.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote.

Mr. GLENN. 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 Tennessee.

Mr. SASSER. Mr. President, pursuant to the unanimous consent agreement which has been entered, may I inquire of the Chair the next Senator to be in line for recognition?

The PRESIDING OFFICER. The Chair would inform the Senator from Tennessee that the next Democrat is the Senator from Ohio [Mr. GLENN]. The next Republican is Senator ROTH, the Senator from Delaware.

Mr. SASSER. If I might have the attention of the distinguished Senator from Ohio, I think we are ready to proceed with his statement at this time.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, last year Americans voted for change, a change in fiscal policies that over the last 12 years caused our national debt to quadruple from $1 trillion to $4 trillion. They wanted a change in the trickle-down policies which flooded the wealthy with benefits, while the middle class received rarely a drop.

When we go through all the reasons we are where we are, there has been a lot of finger-pointing back and forth, and that includes Democrats. We go back to the pre-Reagan years and we had a time there, with a Democratic President, when we had a 21 percent interest rate and we had a 17 percent inflation rate. That was at least a large part of the reason why President Reagan got elected. Then we got into supply-side economics.

Some of us here argued on the floor at that time that the tax cuts should be reduced to 5-5-5 for 3 years instead of the 5-10-10 that went into effect. We reduced our revenues by one-fourth at that time with the supply-side economic theories that just flat did not work. Ever since that time we have

found ourselves trying to catch up, trying to make changes, and we wind up with $3 trillion in additional debt. So there is enough finger-pointing and blame to go around for everybody.

President Clinton did not create the deficit but to his credit the President has kept his pledge to tackle this runaway problem. I will read the last paragraph out of a Dayton Daily News editorial of yesterday. It says, in commenting on some of these things:

> The big news is that congressional Democrats have kept to the goal of reducing projected deficits by nearly $500 billion, despite the political risks. This kind of acceptance of responsibility has been so rare in American Government in recent years that a lot of people are still having trouble believing that it is happening.

It is happening. These enormous deficits over the last 12 years have created an almost unimaginable debt. Interest payments on this debt constitute a $800 million-a-day tax on our economy. And it is growing every day. The sea of red ink now threatens to sink our economy.

We are getting a lot of phone calls. People are very much concerned. They want something to be done. We cannot go on the way we are going. Cutting programs and raising taxes are tough things to do. It is much easier to sit back and criticize while the deficit spirals out of control. But the President and the House of Representatives last night very rightly recognized that the long-term interests of the country demand we risk doing the politically difficult thing.

The Clinton plan offers $496 billion in real deficit reduction. More than half of its savings come from spending cuts, cuts that are listed one by one. No smoke and no mirrors, they are listed one by one.

Those who say this is a figment of someone's imagination, just take a look at this list. When you eliminate unnecessary nunclear reactor R&D saving $1.099 billion, is that blue smoke and mirrors? No, it is not.

Eliminating some of the CSRS programs, cooperative State research programs, eliminating CSRS's earmarked facilities, eliminating special purpose grants, eliminating some of the SBA earmarked grants, eliminating public housing new construction amendments—billions totaled up here in these cuts that are to be made. This is not blue smoke and mirrors. These cuts are for real. As the people have been saying, something has to be done about the deficit. And it is being done.

I am very glad to have a President willing to do something. Most all of the calls I got from Ohio the last couple of days were from people who really do not believe the cuts in this bill are ever going to take place. I am here to tell the people of Ohio and this country that when I vote tonight for the President's package, I am also committing myself to making sure that these cuts take place and that many more cuts are made so we can once and for all get our deficit crisis under control.

The plan includes taxes. It does. Call them revenues or enhancements or whatever you want. But do not call it a tax increase on the middle class because it is not. Instead, it is a correction of the failed supply-side policies of the past, in which the wealthy over the past 12 years saw their incomes rise by almost 50 percent from 1980 to 1993, while their tax rates were cut by nearly 25 percent.

The President now asks those who reaped the benefits of the eighties to pay their fair share for the deficits that were created. That is not class warfare. It is just plain fair to the American people.

Mr. President, 80 percent of this tax burden will fall on those making more than $200,000 a year. If you are a working family and make less than $180,000 a year you will not face higher income tax rates. Working families would only face a modest new levy for fuel amounting to somewhere around $30. In Ohio, 17½ percent of all Ohio families would actually get a tax reduction due to the expansion of the earned income tax credit—yes, over 17 percent of all Ohio families actually get a tax reduction.

The Wall Street Journal points out that the public has been misled about the effect of the plan on small business. Actually, small business really gains from this bill. They do not lose in this bill. In fact, one of the National Federation of Independent Businesses, top priorities is an increase in the write-off for investments in plant and equipment which will create jobs and increase productivity—and that is included in this bill.

The president of Goodyear is quoted in an article out of the Akron Beacon Journal of yesterday; and I quote:

> Goodyear Chairman Stanley Gault lobbied against the energy tax on behalf of the National Association of Manufacturers. Goodyear on Wednesday said it was glad the energy tax and the tax on foreign royalties failed to show up in the final plan. Goodyear said it accepted Clinton's call to boost the corporate tax rate to 35 percent from 34 percent, as its part to reduce the deficit, but said any higher taxes would risk harming the Nation's competitive position.

So we have people falling into line behind this bill, people who are out there in the business world and have a firsthand view of what is going on.

Do not think this budget is perfection. It is not. There is plenty in it I do not agree with like the retroactive tax changes. That has already been discussed here on the floor. I am against that sort of thing. And I think we can cut more in spending. But I am going to vote for this bill because if we wait around for the perfect alternative that some people would like, I know what we will hear—to quote another national figure—we are going to hear a giant sucking sound all right, and it is going to be our economy going right down the drain. I say to those who pick some little item here they do not particularly like, I say: The pursuit of an unattainable perfection can be the death knell of progress.

That is what is going to happen if this bill goes down.

Mr. President, last April I held economic summits in every corner of my State to hear what Ohioans had to say about the Clinton economic program. And at every stop along the way, leaders from business, labor, and local communities told me that the Btu tax would hurt Ohio jobs.

So I came back to Washington and I told President Clinton and I told Budget Director Panetta that Ohio had real problems with the Btu.

And the replacement that they came up with just happens to be the tax that was suggested by one of Ohio's and one of the Nation's leading businessmen who I mentioned earlier, Mr. Stanley Gualt, the CEO of Goodyear.

At a summit I held in Cleveland, Stan Gault also told me that the biggest threat to the U.S. economy and to U.S. business is the budget deficit.

While the President's plan may not be perfect, it does provide $496 billion in deficit reduction which will strengthen the economy, reduce interest rates and create jobs.

And what are the alternatives? My Republican colleagues offered a plan that reminded me of a variation of that old country and western song—The rich get the gold mine and the middle class get the shaft.

It would have reduced the deficit by $133 billion less than the President's proposal and contained little in the way of specific cuts. But what was clear, is that the middle class and the poor would have borne the entire burden of deficit reduction.

That is no alternative. And doing nothing is not an alternative either. If this plan does not pass, interest rates will go up and cause our interest payments on the debt to increase. The stock market will fall, construction will slack off, and companies won't invest in new plants and equipment that will create jobs.

Maybe that is why I am joined in supporting this bill by some of Ohio's largest companies. Companies like TRW and BP America. In fact, just yesterday, I received a letter from one of the largest employers in my State—Procter and Gamble—reaffirming their support for the President's plan. As the largest newspaper in Ohio—the Cleveland Plain Dealer—said in an editorial the "budget package offers a realistic way for America to start investing and growing again."

They know that passage of this bill is critical for the economy.

And they know there is no turning back.

Last year, the American people voted for change, not the same old song and dance.

Now is the time for courage and leadership, not sound bites and one liners.

Now is the time for action—not attacks.

And now is the time to put the rhetoric aside and to finally face our Nation's fiscal problems head on.

We are lucky to have a President willing to stand up to tough choices. It is time we stood with him.

Mr. President, I yield the floor.

I ask unanimous consent the editorial comments from several Ohio papers be printed in the RECORD together with some letters from business executives, and a list of spending cuts.

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

BP AMERICA,
*Cleveland, OH, July 26, 1993.*

Hon. WILLIAM J. CLINTON,
*President, The White House,*
*Washington, DC.*

DEAR PRESIDENT CLINTON: BP is proud to reiterate its strong support for your economic package. BP firmly believes that reduction of the U.S. federal deficit is key to future global economic growth and prosperity. Your proposal is the best opportunity to achieve this reduction.

As a major energy company, BP believes that the federal deficit is a serious problem which must be faced if the U.S. is to continue to be an engine for world economic growth. The United States can no longer afford a future based on $300 billion annual deficits. Your proposal is a serious attempt to address economic realities in a fair and practical manner.

You can be assured that BP will continue to show its support for your budget deficit reduction initiative to help facilitate its final passage.

Sincerely,

RODNEY F. CHASE.

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*Cleveland, OH, July 22, 1993.*

Hon. DANIEL MOYNIHAN,
*U.S. Senate,*
*Washington, DC.*

DEAR MR. CHAIRMAN: As you begin your deliberations on the 1993 Budget Reconciliation package, I wanted to state my support for working toward the passage of a bill that achieves President Clinton's deficit reduction proposal.

I firmly believe that our nation must pull together and work to reduce the federal deficit. Spending restraint should be the government's chief fiscal objective, and I am hopeful that the Conference Committee will embrace all feasible spending cuts that are within the scope of the reconciliation bill.

I would like to commend specifically the leadership that was demonstrated in the Senate to hold the corporate tax rate at 35%, as well as to adopt an energy tax that has a broader base. As you address issues in conference, I hope that you will also consider the need to create permanent extensions of the Section 861 research and development (R&D) allocation and the R&D credit. These provisions, currently in the House bill, need to be viewed as essential components of a final package to assist industry in maintaining a competitive position on a global basis.

Thanks you for your consideration in these matters and my best wishes for a successful Conference.

Sincerely

JOSEPH T. GORMAN.

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PROCTER & GAMBLE,
*Washington, DC, August 4, 1993.*

Hon. WILLIAM J. CLINTON,
*The President, The White House,*
*Washington, DC.*

DEAR MR. PRESIDENT: We want to be sure you understand Procter & Gamble's support for the reconciliation bill. At 10:00 this morning Edwin L. Artzt, Chairman and Chief Executive, issued the following statement:

"The reconciliation bill is essentially the same as the bill P&G supported in May, and we continue to support it."

We will confirm this support with any media who contact us.

Sincerely,

MARVIN WOMACK,
*Vice President.*

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*$100 million spending cuts—over 100 examples*

| | *Savings in millions, 1994–98* |
|---|---|
| 1. Unpaid Flexible Acres | −1960 |
| 2. Conservative Reserve (CRP) & Wetlands Reserve (WRP) | −469 |
| 3. Dairy Program | −259 |
| 4. Market Promotion Program (MPP) | −235 |
| 5. Peanut Marketing Assessments | −112 |
| 6. Retirement COLAs | −2339 |
| 7. Armed Services Pay Changes | −20,263 |
| 8. Depositor Priority for FDIC & RTC | −750 |
| 9. Reduce FHA Premium Rebates | −416 |
| 10. GNMA REMIC Guarantees | −730 |
| 11. HUD/IRS Income Verification | −1022 |
| 12. Direct Student Loan Program | −4270 |
| 13. States Share FFEL Default Costs | −300 |
| 14. Third Party Medicare/caid Liability | −1247 |
| 15. Medicare—Physician Payments | −8045 |
| 16. Prohibition on Physician Referral | −350 |
| 17. Laboratory Services | −3220 |
| 18. Hospital Outpatient and Ambulatory Surgical Services | −2058 |
| 19. Medicare Secondary Payor Provisions | −5522 |
| 20. Durable Medical Equipment (DME) | −908 |
| 21. Medicare Hospital-Based Home Health Agencies | −1150 |
| 22. Medicare: Purchase Erthropoietin (EPO) | −243 |
| 23. Medicaid: Remove Prohibition on State Use of Drug Formularies | −220 |
| 24. Transfer of Assets/Estate Recovery | −950 |
| 25. Disproportionate Share Hospitals (DSH) | −2250 |
| 26. Medicaid Offsets to Immunization Program | −905 |
| 27. Northern Marianas Islands | −118 |
| 28. Extend 50% Net Receipt Sharing for On-shore Minerals | −201 |
| 29. Civil Service Retirement | −779 |
| 30. Lump-Sum Retirement Option | −8810 |
| 31. Payments by the United States Postal Service | −1041 |
| 32. Additional Personnel Reductions | −1266 |
| 33. Cash Bonus Awards | −3250 |
| 34. Death and Indemnity Compensation (DIC) | −133 |
| 35. Pensions-extends IRS Income Verification for Pensions Eligibility | −136 |
| 36. VA: Permanently Extend Medical Care Cost Recovery | −606 |
| 37. VA: Collect from Health Insurers for Services Connected Care | −368 |
| 38. DVA Housing Programs | −665 |
| 39. Charge Fee for State SSI Administration and Other SSI | −703 |
| 40. Equate Matching Rates for Welfare Programs (AFDC) | −204 |
| 41. Fund Priority Health Professions Curriculum Assistance Grants | −116 |
| 42. HHS Personnel Reductions | −1034 |
| 43. HHS Administrative Savings | −2360 |
| 44. Completion of Wastewater Treatment Grants Authorization (except NAFTA) | −6311 |
| 45. EPA Personnel Reductions | −149 |
| 46. EPA Administrative Savings | −132 |
| 47. Reforms in Light of New Crime Initiative | −1704 |
| 48. Eliminate Unnecessary Nuclear Reactor R&D | −1099 |
| 49. Reduce Rural Electrification Administration 5% Loan Subsidies | −545 |
| 50. Eliminate Cooperative State Research Service (CSRS) Earmarked Research Grants | −144 |
| 51. Eliminate CSRS Earmarked Facilities Construction | −146 |
| 52. Agriculture Administrative Savings | −1092 |
| 53. Termination of NOAA Demonstration Projects | −293 |
| 54. Commerce Personnel Reductions | −925 |
| 55. Commerce Administrative Savings | −308 |
| 56. Reduce Construction Funding for Lower Priority Water Projects | −250 |
| 57. Corp of Engineers Administrative Savings | −209 |
| 58. Eliminate Special Purpose Grants | −853 |
| 59. HUD Personnel Reductions | −104 |
| 60. HUD Administrative Savings | −102 |
| 61. Reduce Construction Funding for Lower Priority Water Projects | −186 |
| 62. Interior Personnel Reduction | −762 |
| 63. Interior Administrative Savings | −659 |
| 64. Labor Personnel Reductions | −210 |
| 65. Labor Administrative Savings | −171 |
| 66. Low Priority Transportation Programs and Projects | −1749 |
| 67. Transportation Personnel Reductions | −579 |
| 68. Transportation Administrative Savings | −482 |
| 69. Eliminate SBA Earmarked Grants | −431 |
| 70. Treasury Administrative Savings | −935 |
| 71. Reduce Enterprise for the Americas Debt Forgiveness | 191 |
| 72. Reduce Development-oriented Foreign Food Aid | −336 |
| 73. Phase Out Below-cost Timber Sales (Forest Service) | −360 |
| 74. Implement One New Farm Service Organization | −1133 |
| 75. Reform Crop Insurance through Area-yield | −647 |
| 76. Reduce Economic Research and Foreign Service Program | −124 |
| 77. Reform Campus-based Aid | −1044 |
| 78. Phase Out Impact Aid "b" | −553 |
| 79. Education Personnel Reductions | −143 |
| 80. Uranium Enrichment Initiative | −1615 |

| | *Savings in millions, 1994–98* |
|---|---|
| 81. Energy Administrative Savings | −2262 |
| 82. Eliminate Public Housing New Construction Amendments | −101 |
| 83. Reforming Low-income Housing Preservation | −195 |
| 84. Consolidate Several HUD Housing Programs into HOME | −652 |
| 85. Reduce Prison Construction | −580 |
| 86. Justice Administrative Savings | −562 |
| 87. Federal Aviation Administration (Operations) | −303 |
| 88. Coast Guard: Pay Adjustment | −336 |
| 89. Improving Management of VA Construction | −434 |
| 90. Improve Management of VA Hospitals | −1500 |
| 91. Veterans Administrative Savings | −229 |
| 92. Increase Private Sector Superfund Financing | −426 |
| 93. Reduce 7(a) Business Loan Subsidies | −476 |
| 94. Consolidate Overseas Broadcasting | −894 |
| 95. Cut WH and Office of Nat'l Drug Control Policy Staff, Abolish Council on Environmental Quality | −99 |
| 96. Re-orient AID Programs and Reduce Spending | −841 |
| 97. Phase Out Defense Acquisition Fund | −472 |
| 98. Reduce International Security Assistance | −2526 |
| 99. Reduce Export-Import Bank Credits | −327 |
| 100. Freeze Other Foreign Assistance Programs | −301 |
| 101. Maintain Current Program Level for Programs in Small Agencies | −266 |
| 102. Freeze Federal Pay in fiscal year 1994; COLA at ECI Minus 1 fiscal year 1995–97; and Revise Locality Pay Beginning fiscal year 1995 | −13,244 |
| 103. Reduce Overhead Rate on University R&D | −1560 |

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[From the Dayton Daily News, Aug. 5, 1993]

CONFERENCE BILL STICKS TO COURSE; SMALL NEWS AND BIG NEWS HERE

What has been true about the Clinton deficit plan all along is true about the deficit plan emerging from Congress;

It's a basically honest effort to reduce the projected deficit substantially and the actual deficit somewhat.

It puts the burden mainly on the wealthy, which is only right, as the wealthy have been the only class that has grown substantially more affluent in recent years.

The burden on the non-wealthy is trivial.

Through the earned income tax credit, the plan moves the country toward the day when every working person can support a family.

The anti-deficit part of the plan might not work.

It's not as aggressive as it should be.

And the plan has to be tried.

The rest is mainly bull.

The Republican insistence that the plan will hurt the economy is a guess that is meant to divert attention from the fact that the Republicans resolutely ignored the deficit for a decade and now, having saddled the Democrats with the problem, are determined to reap the political rewards of that success.

As the plan has moved through Congress, President Clinton's proposed tax on all forms of energy consumption has been replaced by a combination of a smaller tax on gasoline and new cuts in projected payments to doctors and hospitals via Medicare. This is not an improvement. Medical costs should be dealt with through reform of the entire medical system.

But that's small news. The big news is that congressional Democrats have kept to the goal of reducing projected deficits by nearly $500 billion, despite the political risks. This kind of acceptance of responsibility has been so rare in American government in recent years that a lot of people are still having trouble believing that it is happending.

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[From the Plain Dealer, Aug. 5, 1993]

"YES" TO THE NEW BUDGET PLAN

Today, it all comes down to this: The choice is either approving a serious federal deficit-reduction package, or abandoning this year's entire antideficit effort. There is not third choice, and there is no more time for delay.

For Ohio's representatives in Congress, the right vote is "Yes" on the first Clinton-era budget package. As the budget reconciliation measure nears its final showdown today in the House of Representatives and tomorrow in the Senate, Ohioans should support the five-year outline for restraining the deficit, promoting investment and restoring tax-code fairness.

The mammoth, five-year budget outline is certainly not perfect. Congress indulged in many disappointing compromises that protected special interests—especially agriculture and military programs—rather than cooperating with President Bill Clinton in slaughtering more of Washington's sacred cows. But this package, on balance, offers an acceptable combination of spending restraints and tax increases.

This package is designed to squeeze the deficit by $496 billion over the next five years, with $255 billion in spending restraints and $241 billion in higher taxes. Despite the doubts of cynics who claim that this package would not attack the deficit, this plan would reduce the projected deficit of about $300 billion in 1993 to an estimated $243 billion in 1994 and $198 billion in 1997. That's still not good enought—yet this plan would begin to substantially constrain the deficit.

Middle-income taxpayers have little to fear from this package. About 80% of the new revenue will be raised from families earning more than $200,000—the wealthiest 2% of Americans, in the income bracket that gained most of the benefits from the excessive tax cuts of the 1980s. The middle class would be hit only with a 4.3-cent-a-gallon gasoline-tax hike, requiring the average motorist to pay an extra $29.90 a year.

The plan requires a "hard freeze" for five years, with no adjustment for inflation, on all domestic discretionary programs. But the package also includes cost-effective new aid for those who need help most. About 18 million families with annual incomes under $30,000 would receive a tax break, thanks to the expansion of the Earned Income Tax Credit. Distressed inner cities would be helped by the creation of enterprise zones. About 25 million of the lowest-income families would get a modest increase in food stamps. An expanded child-inoculation program would provide early medical treatment to families in poverty.

Business could benefit, too. By encouraging interest rates to stay low, the budget plan could make it easier for businesses to invest and thus create jobs. A reduction in the capital-gains tax would promote long-term investment in start-up industries. And 90% of small business would be eligible for a tax break on new expenses.

Deficit reduction requires still more efforts to reduce spending—and that will require an overhaul of the nation's health-care system, which is by far the taxpayer's biggest budget-buster. But this first Clinton-era budget package offers a realistic way for America to start investing and growing again. This plan merits support.

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

Mr. ROTH. Mr. President, here we go again.

I finally understand that when supporters of President Clinton said he was a revolutionary leader they were comparing him to King George. As if taxation without representation was bad enough, the old colonists ought to take a look at this Clinton plan and see how bad taxation is with representation.

I am concerned about what this plan will do to our economy. I am concerned about what it will do to jobs. I am concerned about what it will do to our families, our communities and to our children's future.

History has proven that the economic policy driving this plan is seriously flawed. We cannot tax America into prosperity. No government can long endure that so willfully and wantonly strips the private sector of the resources it needs for job creation.

The redistribution of wealth, which is exactly what this Clinton economic program amounts to, was the very foundation for failure that brought down the governments of Central and Eastern Europe.

These nations have learned that governments do not create wealth. People working in the private sector—they create the wealth. The way to bring the deficit down is to help small businesses and the private sector improve the economy. The more money that's made, the more taxes are paid—just like we saw in the 1980's when revenues into the Federal Treasury more than doubled. That is how simple it is. Kemp-Roth proved it in the 1980's; President Kennedy proved it in the 1960's: Any government is better off taxing a booming economy at 20 percent than a busted economy at 100 percent.

Even the strongest advocates of this tax-and-spend package are warning that it will be contractionary—that it will flatten the economy. They are trying to persuade Alan Greenspan to loosen the money supply—just what the Government did under Jimmy Carter. And we all remember the results of those failed policies—that era of malaise. When the most strident supporters of this tax-and-spend program are warning that it will hurt the economy how can we, in all seriousness, be expected to pass it and place it directly on the backs of hard-working Americans?

America is built on risk-taking, independence, investment, and reward. Take those qualities away with tax increases and you alter not only America's character, but her destiny. In the last few years we saw this happen—we saw Congress levy higher taxes on risk-taking, investment and reward. We saw it with the luxury tax, a tax that destroyed thousands of jobs; threw families into economic chaos; and depressed important industries. In 1990 we saw tax increases deepen and lengthen economic recession.

Remember the 1990 increase was supposed to cut the deficit to $29 billion by 1995; real spending caps were promised to the American people; government was supposed to be getting serious about deficit reduction. Well, we all know what happened: the spending—as always—continued to grow. The taxes went up, the economy slowed down, and today the deficit stands near $300 billion. And that, Mr. President happened with legislation that was supposed to cut spending $2 for every $1 it raised in taxes. This legislation before us today does the exact opposite: it contains $2 in tax increases for every $1 in spending cuts.

Mr. President, I stood firm against those taxes in 1990. And today, I stand firm against this one. My constituents in Delaware have told me loud and clear that our job must be to cut spending first. Americans want a government that lives within its means. Is not $1.2 trillion enough? I think it is, the American people think it is, and that is what the Republican alternative offered. This plan does not.

Not only does this recordsetting tax increase create broad disincentives for economic growth, business expansion, private investment and even family security, but it does all this in a grossly inequitable way. At a time when we should be concerned about creating jobs, encouraging economic security for American families—helping them build stronger, safer, sounder communities—this tax is the wrong medicine; some might even call it poison.

In the interest of time—and borrowing liberally from David Letterman—I would like to outline just how bad this tax program is. Here, as I see it, are the top 10 reasons to vote "no" on the Clinton plan:

Reason No. 10: This plan is filled with gaps, holes, and gimmickry. The CBO has consistently disagreed with the Democrats scoring of this budget bill. The fact is, the liberals have double counted some $44 billion in savings that is already part of the law from the 1990 5-year budget agreement. A large number of other gimmicks and distortions have been used for no other reason than politics.

Reason No. 9: History proves that the revenues the supporters of this bill believe will be realized from the rich never will be; the revenues will fail to materialize. Prominent Harvard economist, Dr. Martin Feldstein, has completed a detailed analysis using realistic assumptions, to show that the Clinton tax increases will not raise expected revenue. In fact, small changes in behavior by these wealthy taxpayers to reduce their taxable income by as little as 10 percent will wipe away almost all of the tax revenue that the Treasury Department thinks it will be scooping up from the rich.

Reason No. 8: This bill is not fair. It hits the small business man and woman in a most unfair way. As a consequence, it will cut into employment—cost jobs—jobs that belong to hard-working middle class Americans. The fact is, small businesses will be hit by an increase of 37 percent in their overall tax burden, while the largest corporations in the world will have only a 3-percent overall increase in their taxes. What a way to say thank you to the real engine of economic growth and future prosperity.

Reason No. 7: Middle-income taxpayers are going to suffer tax increases—tax increases that range from gasoline taxes, to the denial of moving expenses, to lower pension benefits, to the denial of meal and entertainment costs, to higher taxes at death—or what I call taxation without respiration—to higher social security taxes and unemployment premiums. All told, these tax increases total almost $80 billion—$80 billion of the $240 billion tax increase. And again, almost all of the rest of this tax increase—the remaining $160 billion—falls directly on the backs of America's employers—which again, for middle income Americans, means fewer jobs, less security, and lower incomes.

Reason No. 6: This is not a deficit reduction package. Overall spending actually increases by more than $300 billion during the period covered by this bill. This $313 billion increase—to be exact—represents a 4-percent growth rate more than current inflation.

Reason No. 5: Almost 80 percent of the supposed budget cuts in this plan are not scheduled to take effect until fiscal year 1997—after the next Presidential election.

Reason No. 4: The bill is one of the most anti-business—anti-jobs—pieces of legislation in U.S. history.

Reason No. 3: The bill raises taxes retroactively. What more can be said about this that already has not? There are not only questions concerning the constitutionality of retroactively raising income taxes, but there are practical concerns as well. If we can go back to January 1—days before President Clinton was even sworn into office—why can we not go back to 1984 or 1963? Talk about the Boston Tea Party, just imagine if the British Parliament had tried to raise taxes on the tea the colonists had already consumed.

Reason No. 2: History has proven that just like the 1990 budget bill—the one that promised to reduce the deficit to $29 billion—this one will not reduce the deficit either.

And finally, the top reason why this bill should not be supported. Reason No. 1: This bill is the largest tax increase in the history of the world. And everyone knows we cannot tax American into prosperity.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. LIEBERMAN). Who yields time?

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska [Mr. MURKOWSKI].

Mr. MURKOWSKI. I thank the Chair.

The PRESIDING OFFICER. If the Senator will withhold.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. If the Senator will withhold, the Chair is advised that under the previous order, which the current occupant of the chair was not aware of, the Senator from California was to be recognized at this point.

Mr. MURKOWSKI. I apologize.

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

Mrs. BOXER. I thank the Senators and the Chair.

Mr. President, first, I have to say this is not the largest tax increase in the history of the world. That was Ronald Reagan's tax increase of 1982, $45 billion more. So that is the kind of example of distortions we have seen in this debate.

Mr. President, I wish to speak today about political courage. Political courage is doing what you think is right for this country from the alternatives that you have before you.

Political courage is taking on the status quo. Political courage is looking the rich and the powerful right in their eyes and saying we need you to pay your fair share.

That is what this plan does. It asks the rich and the powerful to pay their fair share. And political courage is standing up to the naysayers and the gloom and doomers and the darlings of delay that we see here in this Chamber every day who would lead us to paralysis.

Political courage is standing up to the distortions that we hear. I just pointed one out to you. We hear them coming minute after minute from the Republican side of the aisle. We hear them from a party that brought us the outrageous deficits we have today by giving tax breaks to the Boeskys and the Helmsleys and the Trumps while they increased military spending by more than 100 percent and never even paid for it.

I will say this. The Republicans never forget who brought them to the dance. These Republican voices have no problems washing their hands of the policies of the last 12 years that led us to this day.

Let us look at the Republican record under George Bush. Compared to all other Presidents since World War II, President Bush produced the smallest growth in jobs. He created only a million private sector jobs during his 4 years. And do you know what, Mr. President? In the 6 months since President Clinton has been in office, we have seen 940,000 jobs—almost 1 million jobs—in 6 months compared to 1 million jobs in 4 years. Pretty good for a start.

Three-year Treasury bonds are now at 3.1 percent compared to 7.76 percent under Reagan and Bush. And, during the Reagan-Bush era 1,215 savings and loans failed—1,000 plus.

That is their record. And still my Republican colleagues want America to believe that their economic theories are good for us. I say they have had their chance. And, California has suffered from these policies.

This economic plan means 2 million jobs for my State of California. This plan includes extension of the research and development tax credit, crucial to our high tech industries. It includes a targeted capital gains cut for our small businesses and our startup companies. And, again a distortion we hear day after day on this Senate floor: that this is bad for small business. Ninety percent of small businesses will be eligible for tax breaks under this plan and only 4 percent will get tax hikes.

This bill includes the earned-income tax credit for working families with children. Now, let me point out in California, that means tax breaks for 2.1 million people. Yes, 300,000 people, the wealthy, will pay more, but 2.1 million will pay less. And, nationally the numbers are 10 million people will get a tax break from that earned-income tax credit and 1.4 million of the wealthiest will pay more.

This bill is good for California. This bill means relief for the real estate industry. It means empowerment zones and enterprise communities for our cities. It means the targeted jobs tax credit, a private activity cap exemption for high-speed rail bonds, permanent extension of mortgage revenue bonds program and low-income housing tax credits to give housing construction in California a boost. And, it means tax relief for victims of natural disasters such as the Oakland fire.

All of these things are crucial to California. The golden State, the State that represents, Mr. President, 14 percent of the gross domestic product of this country. A State which would be the eighth largest country. If California does not get out of the doldrums, Mr. President, the Nation will not get out of the doldrums. This bill is good for California and good for this Nation.

The Republican party is not the party of answers, not answers for California, not answers for America.

I serve on the Budget Committee, Mr. President, and what did they offer us. A ghost budget plan, full of ghost cuts. They claim they have cuts, but they will not specify them. And now, today, and yesterday, they offer us a great promise. After battling us day after day, after throwing distortions at us day after day, they say, vote this down and we will come and sit with you. We will talk to you, and we will put something together.

I say that is a prescription for failure. Why? Because they are committed to protecting the wealthiest in this country. They are committed to not raising taxes on the wealthiest. They want to continue with a Tax Code that says if you earn $53,500, you pay the same rate as a millionaire, or a billionaire for that matter. That is not good for this country. Maybe it is Republican fairness, but it is not American fairness.

So, my friends, the hours are ticking away, and this is the vote to change course for America. Political courage is doing what is right. It is right to vote for this plan.

I yield the remainder of my time to the Senator from Maryland.

Mr. SARBANES. Mr. President, we reserve the time. We are prepared to proceed in the usual order. How much time do we retrieve?

The PRESIDING OFFICER. The Senator from California used 7 minutes.

Mr. SARBANES. The Senator used all our time.

I thank the Chair.

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the Senator from Alaska [Mr. MURKOWSKI].

Mr. MURKOWSKI. I thank the Chair.

Mr. President, the biggest news in the country today is the result of the House vote last night on the Democratic tax bill, and we have heard that interpreted by our President as a mandate—a mandate, Mr. President, of two votes.

I think it is interesting to reflect as well on the fact that our President asked the American people to respond to this budget reconciliation package by calling those of us in Washington.

Mr. President, the American people did respond. They responded by saying no. In my State of Alaska, the calls came in 6 to 1 against the President's reconciliation package.

Now, supporters of the tax bill say it is the solution to the Federal deficit. Well, make no mistake about it, all Americans want deficit control. But, Mr. President, this bill will not control the deficit. It will simply raise taxes and it will cost jobs. It does not cut spending.

Mr. President, it is interesting to reflect that the President of the United States asked Americans to sacrifice. The interesting thing, however, is Government is playing no role in this sacrifice. The sacrifice is from the American people.

Another thing that I find very interesting, Mr. President, is from the beginning Republicans in this body to a member were excluded from the negotiations. Now we see a situation where not a single Republican in either body is supporting the package.

That is important, Mr. President, because there is no mandate here. In fact, many of our Democratic colleagues are opposed to this legislation in private but feel they have to support the President because of the alternatives associated with a failed Presidency.

Nobody wants to see a President fail. But the fact is that we have a bad bill before us. This bill raises taxes from 31 to 39 percent on small businesses. That is a 9 percent tax increase on the same people who provide 56 percent of the jobs in this country.

And it is a retroactive tax increase. You know, the old saying used to be, you cannot escape taxes or death. Well, with this bill you get both. Those that have passed away between January and this week will have the same tax liability as those of us who still walk the planet.

Further, Mr. President, and this is the most significant point; American history shows that every time taxes go up, Government spending goes up.

Let us make no mistake about it. Taxes go up in 1960, 1970, 1980, and 1990. And what does spending do? Does spending stop? Does spending go down? No. Spending increases. This is history. This is a fact.

Democrats would have you believe that this time things are going to be different. This time when we raise taxes, spending is going to come down. History teaches us a different lesson.

The Government is simply going to take more of the revenue of the American taxpayer in taxes, and Government is going to spend more. They always have, and they always will. This will not be an exception, regardless of what those on the other side of the aisle are saying.

Mr. President, you cannot argue with facts. You cannot argue with history. Nobody can deny the validity of history. It is simply a fact that when taxes go up, the Government spends more.

I would like my colleagues to reflect on this because there is no way that you can refute facts. You cannot tax your way out of a deficit, Mr. President. And the plan, this plan, does not cut spending enough.

What do we have: $2.13 in new taxes for every $1 in cuts, and over 80 percent of the cuts do not occur until 1997 and 1998. Are we going to have the selfdiscipline in this body to make those cuts then? History again teaches otherwise.

The message from our colleagues is tax now, cut later, and later is after the 1996 Presidential election.

This plan also does nothing, unfortunately, to control entitlements. We

talk about political courage in this body. Each one of us knows that we are going to face the realities of the growth in entitlement spending. We will say it to each other. But, Mr. President, will we say it to the American people?

Clearly, we will not with this bill but the day will come when we will have to. You can talk about political courage; let us defeat this package now and get on with the reality that we should throw this thing out. It should be defeated. The Republicans or Democrats should get together with some real cuts. That is political courage, because we are going to have to face the entitlements.

Because this plan fails to control entitlements, by 1998 the deficit is going to be $218 billion, and it will be increasing again. By 1998, this plan will have added more than another $1 trillion to the national debt, increasing it from about 4.2 trillion dollars to 5.3 trillion dollars.

So where is the White House getting its support for this bill? They are desperate, Mr. President. They are cutting deals all over the place to pick up votes. We saw it in the House last night. It has been evident in this body for some time.

We are going to come back from our recess and what are we going to see? We are going to see a health care bill. It is much needed. What is it going to cost? It is going to cost over $100 billion. How are we going to pay for that?

This budget reconciliation package should be voted down now. We should get together and work, with the support of both parties, to make the real cuts and control the entitlements.

Mr. President, this is a bad plan. If it passes Americans are going to be left with a plan that will raise taxes that will slow job growth, and that will fail to control either Federal spending or the growth of the national debt.

One more time, Mr. President, here are the facts. Here is the history. Here is the reality. Each time you increase taxes, Government spending goes up. The American people believe this. They know it. And that is why they are so opposed to this package and have expressed it to each one of us.

I think it is fair to say those of us on this side are prepared to see the thing buried, start again, and come up with something that really will cut spending.

I thank the Chair.

I thank the floor manager for the time.

Mr. SARBANES. Mr. President, we have some calculations here. There is really not enough time to handle all of the Senators if we stick with the 7-minute allocation that is within the unanimous consent request. In fact, I understood that under the consent the manager can yield less time. I really would like to start doing that.

I wonder—Senator DORGAN is next—if I yield the Senator 6 minutes, whether that would be sufficient?

Mr. President, I yield 6 minutes to the Senator from North Dakota.

Mr. DOMENICI. Mr. President, would the Senator yield 30 seconds on my time for a similar announcement?

Mr. DORGAN. Yes.

Mr. DOMENICI. Mr. President, let me say to the Republican Senators who are waiting to speak that perhaps we are all assuming that since the unanimous consent is up to 7 minutes, that everybody can have 7 minutes. We cannot do that. Let me just say that Senator PRESSLER is going to have 4; Senator BENNETT, 4; and then we are going to start reducing; Senator LOTT, 5; NICKLES, 5.

So I wish you would check with me if you are preparing or planning because it will be somewhat less than we originally thought.

Also, the Senator from Texas still has 6 minutes.

Mr. DORGAN. I ask the Chair, does the Senator from North Dakota still have 6 minutes?

The PRESIDING OFFICER. The Senator is correct.

Mr. DORGAN. Thank you very much.

Mr. President, I bow to no one in this Chamber on the subject of independence. A couple of years ago Congressman OBEY and I took on the Speaker of the House of Representatives and the majority leader during another budget debate. We defeated it the first time through the House because I did not think it was a good deal. A couple of months from now I will probably take on this President on NAFTA. I am not going to support NAFTA. I will fight it aggressively. So I bow to no one on the subject of independence.

The last 2 years I have worked on a task force on Government waste, and we identified about $80 billion in Government waste that we could save in a year. We are saving some of it in this budget agreement. This Government spends too much, it wastes too much. We need to change our ways. I bow to no one when it comes to cutting waste. But this is not about being independent, this vote. Nor is it about wasteful spending, although we will cut some. It is about whether you are willing to step up and make tough choices or whether, when the time for tougher choices comes, you are absent.

Everybody understands this debate, because it is very simple. The central question for all of us is how do we get this country moving again? How do we get this economy off its back and moving toward a future of opportunity and hope?

I have seen people in this town crusade forever about the issue of Federal deficits; when it comes time to vote they are nowhere around. They have taken a hike. They have taken the easy way out.

This is not a perfect document. In some respects, it is awful. I can give you a half dozen areas that I do not support, and that I do not like in this package. I expect everyone can.

The fact is, we are going to decide today whether we do something about this crippling deficit or whether we continue to do nothing. The American people these days, if you watch polls, believe the worst about all of us—all of you on that side of the aisle, and all of us. We are all in the same boat. It is only one boat. It is headed in the same direction.

That is because people believe something fundamental about us. They believe virtually everyone in this Chamber will make every single decision based on one factor alone: "What is good for your personal political future. What is good for you? All you care about is reelection. You don't care about anything else." That is what most people believe.

But if that were true, there would not be one vote for this package. There is no upside, no plus to vote yes. Does anybody here really want to cut spending? Does anybody really want to raise taxes? Those are tough votes.

This issue, in my judgment, ought not ever be about popularity. If it were, there would be no votes for this package. My popularity as a politician is a whole lot less important to me than the future of my children. We are going to decide today whether we are going to set things right in this country.

Does this bill set them right? Not entirely. But it is a step in the right direction. The alternative is to decide to take the easy way out and vote no, or decide to take the political way out and to vote "no", and say, "I am going to save my hide. I am going to vote 'no'." It is not the right thing for the country, Mr. President.

I grew up in a small town. When I went to school every day, we were the biggest, the best, the strongest, the most, and that is the way this country was. And it is not anymore. We are on the wrong track, but we can be that way again in the future if we begin to exhibit just a smidgen of courage and do what is right.

When I was a Member of the House of Representatives, Mr. Reagan said, "If not us, who? If not now, when?" And every time it is important, the answer comes back: "Not us, and not now."

Well, if we do not one day, all of us, decide our careers are worth tough choices and doing the right thing for this country, then there will never be a "now". We must, when we go down to the well tonight and vote, decide that this bill will advance the cause of reducing the crippling deficit that has mortgaged our country's future. We must muster enough votes to pass this legislation.

President Clinton stepped forward and said, "I am for economic change. I

do not like what is going on. I am willing to risk some of my political capital to change it."

Finally, some leadership. Do you know what? Leadership is not very popular. This President has gotten clobbered because he stepped forward and said he is willing to do something. The easiest thing in the world for the President would have been to say, "I will do what we have been doing, what other Presidents have done. I am not going to tackle these issues, I am not going to confront these issues, and I am not going to accept the risk of unpopularity in order to do what is right for this country." That what President Clinton could have said.

Thomas Wolfe once talked about "a boundless optimism, a quenchless hope, and an indestructible belief." Those are the words I use when I think of what we can do if we rise up as public officials with the interest of this country at heart and decide we are going to do the right thing to set America back on track. There is no reason we cannot win, and no reason we cannot succeed, and no reason our future cannot be better if we get the Federal deficit off our backs. That will allow this country to grow again.

This debate is not about charts or arcane statistics. It is about whether we will fix what is fundamentally wrong in our country. We are spending money we don't have on things we don't need. We must stop it. We must stop it in a way that offers the American people hope, hope that their future and their kids' future will be bright.

I hope in a couple of hours we will pass this important conference report.

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the Senator from Texas, Mrs. HUTCHISON.

Mrs. HUTCHISON. Thank you Mr. President.

Several weeks ago, in a town hall meeting, a gentleman asked President Clinton the question: Name one nation that ever taxed itself into prosperity? The President had no answer, because there are none.

We are in the midst of a fragile, nervous economic recovery. Taking $250 billion out of this economy will turn a fragile recovery into a solid recession.

The other night after his address to the Nation, President Clinton asked Americans to call their Senators and Representatives. They did, and the message, Mr. President, is loud and clear: We cannot afford any new taxes. The President asked for advice from Americans. They gave some. Now let us take it.

The small business owners, the workers, and the retired people can see through all of the debate, all of the charts, and all of the rhetoric. In fact, Mr. President, this budget bill will give Americans a bigger headache than the one Robin Ventura woke up with this week after his encounter with Nolan Ryan.

Here are a few letters I have received from the people in my home State:

DEAR SENATOR HUTCHISON: This bill will cause inflation and dry up our investment money. And as the private sector lays off employees and dries up that income tax, what will government do then? Come back for more taxes? We have not had a raise in four years, yet every time we turn around there are more taxes, more taxes, more taxes.

From Jim and Marian Burkhardt, Corpus Christi, TX.

This is from Jerry's Ace Hardware, in North Richland Hills:

I am a struggling small business person. I employ eight people in my hardware store. My wife works outside the store. I have a military retirement income for 21 years of service to my country. Because of our outside income, any profit made from the store is taxed at 43.5 percent. We are not wealthy. Most of my employees take more home in wages from the store than I do.

. . . If the president's budget package is passed, it will increase my tax rate to a point that I will have to close my store. Eight tax paying citizens will be out of work.

Mr. President, here is what those taxpayers see:

First, President Clinton says his plan taxes only the rich, but it taxes every tax-paying, working American. This plan is devastating for small business, the sector of our economy which creates jobs. President Clinton's tax hike means that Jerry's Ace Hardware Store will pay higher tax rates than General Motors. I ask you: Is that fair?

Second, this retroactive tax crushes the dreams and the hopes for Americans who have thought ahead and planned for their retirement. This bill calls for an unprecedented retroactive balloon tax payment that could result in an effective fourth quarter tax rate of up to 75 percent because it goes back to January 1.

Third, Social Security recipients earning $34,000 a year are not wealthy. This tax will take from 218,000 retired Texans an additional $196 million next year.

Fourth, the gasoline tax not only penalizes those who drive to work or school, but it increases the cost of everything we buy, from a tube of toothpaste to a gallon of milk. If this bill is passed, the citizens of my State will pay over 38 cents per gallon in Federal and State taxes on a gallon of gasoline—more than one-third of the total cost of a gallon of gas.

Last, but not least, the spending cuts just are not there. Eighty percent of the spending reductions in this bill do not take place until 1996, and even then they will have to be approved by Congress, and 68 percent of this package is tax and fee increases.

Like so many times before, Mr. President, Congress and the President of the United States are asking Americans to swallow a tax increase now for possible spending cuts down the road. Americans will not be fooled again. This plan will not help our economy because people will do what they always do when they have a greater tax burden imposed on them—they will try to ease that tax burden by making investments that will not raise their taxes.

Mr. President, let us take the example of California. In 1991, they raised $7 billion in taxes to balance their budget. That tax hike resulted in loss of employment, stagnant personal income growth, weak retail sales, and the worst recession in that State since the Great Depression. The poor economy did not give them $7 billion of increased revenue; it left them $4 billion short of their estimates.

The red flag is up. We can learn from the mistakes of the past, or we can repeat them.

Mr. President, I urge my colleagues to listen to America. The taxpayers of this Nation are speaking, and the small business people and the senior citizens cannot handle a $250 billion tax increase in the next 5 years.

Let us support the working people. Let us support the retired people. Let us take taxes off the table. Let us start again. Let us defeat this tax bill.

Mr. President, I ask unanimous consent that the letters I quoted from be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

JERRY'S ACE HARDWARE,
*North Richland Hills, TX, July 20, 1993.*

Senator KAY BAILEY HUTCHISON,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR HUTCHISON: I am a struggling small business person. I employ eight people in my hardware store. My wife works outside the store. I have a military retirement income for 21 years of service to my country. Because of our outside income, any profit made from the store is taxed at 43.5%. We are not wealthy. Most of my employees take more in wages from the store than I do.

I have little enough incentive to continue operation of this store. If the president's budget package is passed, it will increase my tax rate to a point that I will have to close my store. Eight tax paying citizens will be out of work.

I very strongly urge you to VOTE NO to the budget package.

Sincerely,

JERRY K. LUCAS,
*Owner.*

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CORPUS CHRISTI, TX, *July 29, 1993.*

Senator KAY BAILEY HUTCHISON,
*Washington, DC.*

DEAR SENATOR GRAMM: We feel sure that you are voting against the "deficit reduction bill" that is coming out of conference. Of course it is not deficit reduction, it is a tax increase bill. If it looks like a duck, quacks like a duck, and waddles like a duck, then it must be a duck. This bill looks like a tax increase, sounds like a tax increase, and is a tax increase.

This bill will cause inflation and dry up our investment money. And as the private sector lays off employees and drys up that

income tax, what will the government do then? Come back for more taxes? We have not had a raise in four years, yet everytime we turn around there are more taxes, More Taxes, MORE TAXES.

We ask that you vote against this tax bill.

Very truly yours,

JIM AND MARIAN BURKHARDT.

Mrs. HUTCHISON. I yield to my colleague.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I yield 5 minutes to the distinguished Senator from the State of Washington.

The PRESIDING OFFICER. The Senator from Washington [Mrs. MURRAY].

Mrs. MURRAY. Mr. President, I am here to talk about America's renaissance, a beginning of a new era in American history, a time when Government starts being responsible, living within its means, and ending the borrow-and-spend policies of the reckless 1980's.

In the eighties, I was a preschool teacher in Shoreline, WA. Let me tell you, Mr. President, that job was just as challenging as this one. My family is not wealthy, and my husband and I were working hard to raise our kids and care for our parents. I kept looking to Washington and asking: What is wrong with our National Government? They told us that we are not going to have to pay anything and life would be wonderful.

What they did not tell us was that they mortgaged our future and left us with a $3 trillion debt.

This budget is a first step to correcting that. It is not as courageous nor as bold as the step President Clinton challenged the Congress to take in his State of the Union Address, but it is progress.

And this budget does represent change—the tax burden has been shifted from working families to those with the largest incomes in the Nation. And, finally, average American working families like mine will get hope, investment, and a future in return for their tax dollars. For the first time in a long time, a President is willing to be responsible and brave enough to tell us there is no such thing as a free lunch.

This is new era—a turning point, a time when Americans cast off the notion that Government is bad. The farmers of the Midwest understand the positive effects of Government spending. The victims of Hurricanes Andrew and Bob and Iniki know the positive effects of Government. Residents of the State of Washington know it, too—look at the specifics of the budget.

The plan provides relief for distressed timber communities by ensuring long-term stability for counties with large national forests. It steers more logs into the domestic timber supply. This is vital for diversifying our State's economy.

The plan gives hope to 210,000 Washington families who are counting on the earned income tax credit. It helps small businesses, like Steve Elliott's company in Seattle, with targeted capital gains breaks and SBA loans.

It helps our future-oriented companies like Microsoft and small startup biotech companies by making the research and development tax credit retroactive to January 1, and extending it to 1995.

It exempts our troubled airline industry from the fuel tax for 2 years.

As the daughter of a disabled veteran, I believe the United States has a special responsibility to provide the highest quality health care to our Nation's veterans. I am really pleased that benefits to veterans will continue unaffected by this plan.

This country was founded by people banding together with a vision for the future—of a life and a Government better than the one they left. They would not have made it without cooperation. They would not have made it without hard choices. That's what makes America great.

All of us—Democrats and Republicans alike—have a vested interest, an American interest, in seeing this plan succeed. And, that is why I was sent here—to make Government work for the people. But an entire segment of the Congress has opted out of the process. The Republicans have said hands off, just say "no."

Mr. President, we cannot say "no" to this country. We cannot say "no" to the American people. We cannot say "no" to deficit reduction. We cannot say, "No, this is not my problem." We have to get back to the point where everyone in this country takes responsibility for our economic future.

Of course, I appreciate loyal opposition. I served in the Washington State senate, and I was in the minority party. I have always kept an open mind to ideas and legislation which originate on the other side of the aisle. There are some Senators who, out of philosophic difference, will not vote for this budget. I honor their commitment to their cause. But others seem to be making political points in trying to cause this process to fail.

Participating in this process is why I was sent here. It has been a fascinating and a frustrating experience. I wish that every citizen in the country had the opportunity to serve on the Budget Committee and go over the numbers in this plan, as I have.

President Clinton last January warned us that every special interest would be here, yapping at our heels, picking and begging for more and more and more spending. And he was right. I just wish my friends and neighbors at home in Washington could see what it is like. Guys in gray suits and red ties and women in expensive shoes, clogging the corridors of the Capitol Building, screaming in public, "Call your Senator, tell them to cut spending first," but in private they plead: "Don't touch mine." They try to protect their tax breaks. And they try to convince us—and the American people—that change is bad and dangerous.

But change has happened everywhere. Today, the Senate will show that it can change, too. And what is the alternative? The status quo? Watching levees break and roads crumble beneath our feet? Settling for low-skill, low-wage jobs? Abandoning our timber-dependent communities? Burdening students with unimaginable debt with no future for employment? Sitting by while our children go without immunizations? Watching the AIDS epidemic run rampant through our society? Balancing the budget on the backs of our senior citizens? Ignoring our veterans? Leaving an entire generation with no hope for the future?

Mr. President, I will vote for this budget, but I am not so naive to think that it will solve all of America's problems. The 93 men and 7 women in the U.S. Senate cannot solve every problem with our country's economy. In fact, many issues are best addressed in the local context.

We cannot legislate social harmony. We cannot mandate every American a stake in society. But we can set a tone and foster an economic climate that gives them that stake, and gives them hope for the future.

But this budget is just a first step. We must continue to cut spending. Health care costs must be reined in. The welfare system must stop being a way of life. We have to take a serious look at America's entitlement programs—and I am talking about structural reform, not just recommendations of across-the-board cuts.

When I graduated from college, I knew that if I worked hard, I could achieve whatever goals I set. Today, my children don't have that same faith, because they're facing a situation where jobs are scarce. Mr. President, when I stand in this body as a Senator, I do not forget my responsibility as a mother. I refuse to vote for anything that would not give America's children hope in our economy and confidence in our system.

In order to live up to this, we must legislate with responsibility and with maturity. We must stretch the boundaries of creativity in governing. We must take a first step in shifting priorities. We must pass this budget.

The PRESIDING OFFICER. The time yielded to the Senator has expired.

Mr. SARBANES. Mr. President, I yield 5 minutes to the distinguished Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona [Mr. DECONCINI] is recognized.

Mr. DECONCINI. Mr. President, I rise today to give my support to the reconciliation agreement because I believe it stands alone as the single best opportunity this Nation has ever had at real

deficit reduction. This plan will reduce the deficit by $496 billion. The President's Executive order creating a deficit reduction trust will insure that these reductions are achieved. The bill contains more spending cuts than tax increases. Those income tax increases will fall only on the top 1 percent of the wealthiest Americans. The plan will get this economy moving again. In Arizona alone, it is projected to create over 320,000 new jobs over the next 4 years—one of the largest projected job increases in the Nation—1,600 percent more jobs than were created over the last 4 years under the last administration. While it is not a perfect plan, it is the only one on the table. I am convinced it is in the best interest of the country to move forward with it.

As everyone in this body is well aware, my vote on this issue remained in doubt until Wednesday. In wrestling with this issue, I was confronted with the undeniable fact that this debate is not just about the economic future of this Nation. At its most basic level, it is also about the way this Congress conducts its business.

This body, once regarded as the greatest deliberative body in all the world, is in danger of becoming little more than a monument to inaction, gridlock, and partisan bickering. It is little wonder that the public's faith in this body, in all of us regardless of party, has fallen so dramatically. This debate, perhaps more vividly than any other in recent memory, underscores why the American people are so fed up with the U.S. Congress. In the face of some of the most difficult choices of this half century, we have engaged in bickering and self-interested theatrics which threaten the credibility of this body's ability to govern. The gridlock must end if we are ever to restore the people's faith in Government. That is what the public wants and they should expect no less. I hope the Senate will meet the challenge by passing the economic package before us. Voting for this package may not be the easy choice, but I am convinced it is the right thing to do.

Clearly, I would rather not face senior citizens in my State and tell them that some will see increased taxes on their Social Security benefits. I would rather not tell people whose lives rely on Government programs that those programs will be scaled-back, if not terminated. I would rather not tell a mother of two, who has to shuttle her children to baseball games and doctor visits and who must hold down a full-time job at the same time, that she must pay an additional gas tax. And I certainly don't relish telling the almost 16,000 Arizona taxpayers who will see increased income taxes that they are retroactive. The easy thing to do, the politically expedient thing to do, is to vote against change, to vote against this bill, to continue to engage in deficit spending as if the bill for such action will never come due. The status quo is comfortable, familiar, and easy. It takes no courage to follow the path of least resistance, as this body has proven again and again over the last 12 years.

But I submit that none of us was sent here to do the easy thing. What each of us is sent here to do is to govern, to lead, and especially when the choices are tough and so much hangs in the balance, to do what is right for this country. The people of this Nation spoke loud and clear last November when they called for a mandate for change. They told us it is time to replace apathy with action. The campaign is over; it is time to govern.

This President has made a legitimate attempt to reduce this Nation's deficit, despite the fact that doing so requires some unpopular and difficult choices. This plan—the only plan on the table—will bring our deficit down from $319 billion today to $206 billion in fiscal year 1998. The Republican plan would have left the deficit at least $114 billion higher at the end of 5 years than the one before us today.

There are opponents of this reconciliation bill who have launched a vast disinformation campaign about what is actually in this package. It is a vindictive campaign and it calls to mind what Walter Cronkite once said about "the political lie": It "has become a way of life. It has been called by the more genteel name of 'news management.' I say here and now, let's call it what it is: lying."

I want to second Mr. Cronkite and say on this floor that elected officials and members of the media have a responsibility and an obligation to inform the public of the truth. To those who want to oppose this package, I welcome your arguments. That is what informed debate is all about. But let us argue on the facts.

The opponents of this bill have asserted that this is "the largest tax increase in world history." Not true. according to the New York Times, history's largest tax hike came during the Reagan administration. The 1982 tax bill, authored principally by Senator DOLE and signed into law by President Reagan, raised taxes by $215 billion over 5 years. This amounts to $286 billion in 1993 dollars, considerably more than the figure in the bill before us today—$241 billion.

The opponents of this reconciliation bill claim that is it a tax-and-spend bill with few real spending cuts. The fact is this bill contains over 100 specific spending cuts. While Medicare will be cut by $56 billion, there will be no increases in beneficiary premiums. Spending on agriculture programs will be reduced by $3.1 billion over 5 years. Student loan reform will result in savings of $4.3 billion. Cuts in the administrative costs of welfare will save us another $1 billion. the list goes on—real, quantifiable cuts, not illusions or promises.

This bill is only a first step in cutting spending. I intend to work with the administration and with congressional leaders this fall to produce a package of additional cuts in discretionary and mandatory spending beyond the $255 billion in spending reductions proposed in this economic package. I intend to be an active participant in this effort to further cut government spending.

Crucial to my support of the bill was the establishment of a deficit buy-down fund which I proposed to protect any savings generated by the bill from being used for more Government spending. Many have wrongfully dismissed this fund as a gimmick. Nothing could be farther from the truth. The fund, established by Executive order on Wednesday, is a new and historic idea whose time has come. Unlike other trusts funds, to which this one has been wrongfully and irresponsibly compared, this fund allows increased revenues and savings from spending cuts to be used for one purpose and one purpose only, to reduce the deficit. This fund cannot be looted, or eroded for any purpose other than fulfilling the goal of deficit reduction, period. This mechanism does by Executive order that which Members of Congress have been unable to do for themselves: Ensure fiscal self-restraint.

This bill does raise taxes and no one disputes that. However, opponents of the bill have intentionally misrepresented who will bear the increased tax burden. It is not the middle class, as opponents have claimed, but the wealthy. Only people making over $180,000 a year will see any income tax increase. This means that only 1 percent of the richest taxpayers will have their income taxes raised. In Arizona, it will affect less than 16,000 taxpayers. The typical middle-class family, on the other hand, will see absolutely no increase in their Federal income tax—none. The only tax which will affect the middle class will be the 4.3-cent gas tax, which because of the buy-down fund will be applied to deficit reduction. The 4.3 cents of verified deficit reduction per gallon of gas is a small price to pay to ensure the economic security of future generations, especially given the costly alternatives of a Btu tax or a 50-cent-per-gallon tax. The average driver in Arizona will have to pay approximately $31 a year in increased gas taxes—or around 8 cents a day.

I have previously voiced concern about the effect of this bill upon the country's senior citizens. Many are concerned about their hard-earned benefits, and rightfully so. while I would have preferred no increase in taxation of Social Security benefits, and while I offered an amendment to lessen the impact of those taxes, my amendment

was unsuccessful. It was opposed by virtually every Republican. nevertheless, I continued to pressure the President on this issue with the result that the threshold at which these taxes kick in was finally raised in the package before us today. As a result, this compromise will save roughly 1 million middle-income seniors nationwide from any additional taxation of their Social Security benefits. The tax liability of another 1 million middle-income seniors will be reduced by roughly 50 percent. In my own State of Arizona, 20,000 seniors will be relieved of any additional tax burden, and the majority of another 40,000 affected by the change will see their additional tax burden reduced by at least 50 percent. The average reduction is $320. While I did not achieve all I wanted, resolution of this difficult problem was a fair one which I can support. it is certainly a better resolution than walking away from the table.

In the past weeks, I have been reminded all too often of the possible political implications of my decision to support this package. The easy decision would have been to oppose the bill. But I will sacrifice political popularity for national prosperity any day of the week. I came to the Senate to do what I thought was best for the State of Arizona and this Nation. For 12 long years we have deferred the tough choices to another day—and we are paying the consequences. This bill speaks directly to the economic security of our children and our children's children. That is why I will support the legislation before us today.

Mr. SARBANES. Mr. President, I yield 4 minutes to the distinguished Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii [Mr. AKAKA] is recognized for up to 4 minutes.

Mr. AKAKA. Mr. President, after months of debate, countless amendments, and a vigorous period of negotiation, we are about to cast a final vote on the Clinton economic plan.

Every time we vote on the floor of the Senate, the outcome has some measurable impact on the American public. On a few occasions, the votes we cast may influence the lives of many Americans. And on rare occasions, a vote will profoundly affect all Americans because it charts a new direction for Government.

This deficit reduction bill represents one of those rare moments. With this legislation we have the opportunity to abandon the old ways of doing business and chart a new direction for Government. This is a landmark bill. It will reduce the deficit more than any other measure considered by Congress. In the annals of deficit reduction, this is a defining moment.

One month after taking office, President Clinton announced his comprehensive plan to reduce the deficit and reorder the priorities of Government. The President was responding to the American public who, in record numbers, voted for change last November.

If you ask Americans what they mean by change, you get a variety of answers. But two issues that surface time and time again are the need to reduce the deficit and the need to get our economy rolling again. Without question, the deficit and the economy are the issues that concern Americans most.

The bill before us tackles these tough issues with nearly $500 billion in deficit reduction and investment incentives designed to promote long-term growth and capital formation, and stimulate our align economy. The savings generated by this bill will be locked away in a deficit reduction trust fund to ensure that every penny is used to lower the deficit and none is diverted to spending program.

This legislation cuts $255 billion from more than 100 Federal programs. It contains some tax increases, but the wealthy, not the middle class or the poor, will bear the brunt of these increases. This legislation is a serious effort at getting our fiscal house in order.

If you examine the details of this budget package, everyone will find something they do not like. Personally, I wanted to maintain the meals and entertainment deduction for Hawaii's visitor industry. I wish Medicare and Medicaid could have been spared. And, I worry that the gas tax will be an added burden on top of Hawaii's already high energy prices.

But we must look beyond the details of this bill and consider the big picture. The best way to end our current economic slump and return America to prosperity is to pass a budget bill, and go forward with serious deficit reduction. We cannot reach our deficit goal unless we begin the process by enacting this bill. Our budget problems make this deficit measure a painful, but necessary, first step.

But this bill will not be the last step we take down the deficit reduction path. This fall we will consider legislation to cut an additional $5 to $10 billion from the 1994 budget. We will also vote on balanced budget legislation and Vice President GORE's National Performance Review, designed to reinvent and streamline Government. This is the beginning, not the end, of the process. The quest for deficit reduction will continue.

The bill before us offers hope of an improved economy in the months and years ahead. That is welcome news, because most Americans faced income stagnation over the past 20 years. Since 1971, the average annual increase in median family income has been only one-half of 1 percent. Of course this dismal economic statistic is nothing new to working families that face rising prices every time they shop at the grocery store or buy clothing for their children.

No one expects this deficit bill to be a magic wand, capable of making our economic troubles disappear. Yet the financial markets have already begun to respond to the likelihood of this bill becoming law. On Tuesday, August 3, 30-year Treasury bonds dropped to 6.5 percent, the lowest yield since the Treasury began auctioning these bonds on a regular basis. The Wall Street Journal attributed this decline to hopeful expectations within financial markets that the Clinton budget bill will pass Congress. The financiers on Wall Street have endorsed this bill, and that is good news for our economy.

The bill also is pro-small business. It contains a targeted small business capital gains tax cut and a more generous small business expense deduction. It will extend the small business deduction for health insurance premiums and increase tax credits for research and experimentation by nearly $5 billion.

In Hawaii, 95 percent of our companies are small businesses, and as we all know, small businesses are the driving force behind job creation. This legislation will help stimulate our stalled economy and promote job growth. That's why CEO's from more than 100 corporations, as well as 8 small business groups, have endorsed its passage.

This bill will boost housing opportunity in Hawaii. It extends the mortgage revenue bond program, known in Hawaii as the Hula Mae Program. Hula Mae mortgages provide below-market financing to first-time home buyers. More than 6,000 families has successfully purchased homes since this program began in 1989. The average price of such home is nearly 30 percent less than the price of a home purchased with conventional financing. That is real, tangible savings for families who otherwise would have a tough time affording a home.

The budget agreement also permanently extends low-income housing tax credits for the construction of rental housing. During my first year in the Senate, I introduced legislation to make this program permanent, so I am especially pleased that this change will finally become law.

But the greatest boost to our housing market will come from a sustained period of low interest rates. Millions of Americans are refinancing their mortgages, and millions more are finally able to own a home because declining interest rates have brought the dream of home ownership within reach.

The bill also promotes tax fairness. Working families making less than $180,000 a year will not experience any increase in income taxes. The only new tax that affects the middle class is the gasoline tax, but the increases will average less than $3 a month.

But above all else, this measure is a deficit reduction bill. The Federal deficit is public enemy No. 1, because mounting debt drives up interest rates and strangles economic growth. The deficit subjects financial markets to constant pressure, draining sorely-needed capital from businesses and depressing our economy.

The way I see it, our Nation is at a watershed, a turning point. Will we stay on our current course of escalating deficits and a stagnant econony? Or will we take bold and decisive action that offers hope of a better future for ourselves and our children? The choice is in our hands.

I have decided to vote for this bill, to vote for deficit reduction and the hope of a brighter future, and I urge my colleagues to do likewise.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, shortly I will yield to Senator PRESSLER. I think we are back in order here.

However, after Senator PRESSLER is finished and the matter returns to our side, Senator BROWN, from Colorado, is going to offer a point of order regarding tobacco provisions in the bill.

I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from New Mexico has up to 1 minute.

Mr. DOMENICI. Mr. President, my friend, the Senator from Arizona, used this much, much-used phrase "gridlock."

I just want to tell those who are observing our deliberations here, there are no gridlock potentials in this bill. There is no filibuster allowed. The whole budget process is one of rigid time constraints. That is why we are doing that here today. So nobody is engaged in any gridlock with reference to this package.

Second, the notion of a trust fund, which was alluded to, to preserve the integrity of all of these tax increases so they will all go to the deficit, along with the cuts, frankly, that is not in this bill. Everybody should know there are plenty of things in it, but that is not, because the Senate refused to adopt it.

The President promised that he would do this by Executive order, even though the President, last year, called trust funds of this type, particularly for the deficit, turkeys. The chairman of the committee here has said it would not work. The deputy OMB Director, Alice Rivlin, has called it an accounting gimmick or accounting display.

So I would not want anyone to think that we will be missing something that is really going to work here, nor should they believe that it is going to have any more effect in the natural raising of taxes and trying to put them on a debt when you are spending more and more on the other side.

I yield to Senator PRESSLER.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I shall be fairly brief.

I want to summarize the reasons behind my decision to vote against the Clinton budget plan. I call it the deficit-increase plan.

First of all, 80 percent of the cuts in this package will not occur until after the next election. Thus, the bill is fraudulent in its presentation. People are being told there are cuts, but 80 percent of them do not occur until after the next Presidential election. That is misleading the public.

The President has made a valiant effort to sell his plan. He has barnstormed the country. We have been bedazzled with colorful charts and graphs. TV commercials attempt to appeal to our sense of patriotism. Scores of young people are outside this Chamber handing out stickers that say "Pass the Plan" or "Vote 4 our Future."

Yet, after 6 months of populist pleas and Madison Avenue campaigns, most Americans oppose the President's plan. Hundreds of my fellow South Dakotans have called me this week. In fact, in the last 2 days, nearly 90 percent of them have told me they want Congress to reject the President's plan.

Why are South Dakotans so adamantly opposed to the President's plan? Are they unwilling to sacrifice? Hardly. South Dakotans always have answered the call to duty. Whether it is a world war or a cold war, an economic crisis or an energy crisis, South Dakotans are willing to do their fair share.

I believe South Dakotans are willing to do their part to reduce the Federal deficit. They recognize that eliminating our deficit is the key to long-term economic prosperity. So why the objection to the President's plan? The answer is obvious: The President's plan is misleading, unfair, unbalanced, and would do little to control our Federal debt.

Even if we use the administration's numbers, our national debt would increase by another $1 trillion under the President's plan. Is that deficit reduction? No. Even if we use the administration's numbers, Federal spending would increase under his plan from $1.5 trillion this year to $1.8 trillion in 1998. Is that cutting Federal spending? Again, no.

Under the President's plan, the Democrats count $18 billion in new user fees as spending cuts. They count $44 billion in cuts that were required already by the 1990 budget agreement. Does the President's plan really cut spending by $255 billion? For the third time, no.

Will the President's plan help the economy? Obviously not. Also, let me say that the increased taxes on small business and the increased gas taxes will fall unusually hard on South Dakota, a State of small cities and rural areas.

In fact, one of the main reasons I oppose this plan is because of the devastating impact it will have on South Dakota small business. As ranking member of the Senate Small Business Committee, I feel compelled to outline some of the other troubling examples of how this plan will harm the most productive sector of our economy.

Before I do so, however, I would like to highlight one bright spot. When the plan first came before the Senate, it contained a provision known as the service industry noncompliance initiative [SINC]. Current law requires businesses to report any payments made for services to an unincorporated individual if the payments exceed $600 per year. The President's plan would have expanded this requirement by forcing all businesses to file a report with the IRS anytime they purchased more than $600 from an incorporated business. This one provision would have cost businesses millions if not billions of dollars in compliance costs. Yet, the Joint Tax Committee estimated it would have brought in only about $80 million per year in new revenue. Further, the IRS itself admitted it could not use the information for at least 6 years.

During the Senate's initial consideration of the President's plan last July, I offered an amendment to strike the SINC proposal. My amendment was accepted unanimously after a motion to table the amendment failed 0 to 98. I worked hard to keep the provision out of the conference report and was very gratified when the conferees emerged from negotiations having accepted the Senate position. Given the variety of other ways in which the bill hammers small business, my amendment's survival is a small but significant consolation.

Now, the bad news. The President's proposed increase in income tax rates will be imposed on many small business women and men. Under this package, most major corporations—many of which are cutting jobs—will pay a 35-percent corporate tax rate. On the other hand, many small businesses—companies that are creating jobs—will see their effective tax rates climb to near 45 percent. It's not surprising why people are opposed to this plan. The Democrats are placing the greatest burden of their plan on those businesses responsible for creating most of our new jobs.

Let us just look at this chart of what the taxation of small business income under the Clinton tax plan will do to the marginal rate of taxation on small businesses.

We are told that this plan increases taxes on the rich. However, most small businesses in my State pay taxes at the individual rate. Under this bill, many

of the 4 percent of those small businesses that create the most jobs will see their tax rate go up to 44.5 percent, when you include the self-employment tax, the so-called millionaires' surtax, and the new top marginal rate.

In other words. This plan does not just tax the rich. It raises taxes on many of the small businesses in South Dakota that create most of our new jobs.

Meanwhile, the top corporate rate will be at 35 percent. Thus, the reality is that small businesses—the firms that are creating new jobs and causing our State to be one of the leaders in new job development—will be paying 44.5 percent of taxation, while General Motors will pay over 35 percent.

Not only that, Mr. President, it punishes these firms retroactively. The plan makes all tax increases retroactive to January 1, 1993—20 days before the President even took office. This means 7 months of business decisions have been made by unsuspecting business owners who now find the rules governing those decisions have changed and there is nothing they can do about it. This is reprehensible. Perhaps it has occurred in previous tax bills. I do not care. I am still opposed to such a policy.

It also is one of the most misguided policy precedents I have seen in all my years in Congress. It makes tax planning impossible. In addition, how can U.S. businesses ever again be expected to compete internationally when their Government may step in at any moment and change tax laws not just for the future, but for the past as well?

In defense of their plan, Democrats are quick to point to the numerous incentives for small businesses included in the bill. They point to their plan to provide targeted capital gains tax relief for small businesses. It's targeted, alright. In order to qualify for the new rate, a business must be incorporated. Eight out of ten small businesses are not. this incentive is useless to at least 80 percent of small businesses.

Mr. President, I could go on. However, in the interest of time, I ask simply that a joint statement on the impact this measure would have on small business that I have prepared with Representative JAN MEYERS, ranking member of the House Small Business Committee, be included in the RECORD immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. PRESSLER. We know the President's plan would be ineffective in reducing the deficit. We know the President's plan would have a detrimental impact on small business, our Nation's economic growth engine. Just as important, even if it was effective, the President's plan is unfair, particularly in my home State of South Dakota.

Very quickly, I want to look at one other chart here. This shows who will bear the burden of a gas tax—those least able.

In my home State of South Dakota, the impact of the gas tax is much higher than it is, let us say, in the State of Connecticut, a State much richer than ours, where the per-capita income is much higher. This is because in States like South Dakota per-capita income is lower than the national average, but per-capita use of gasoline is much higher.

The proposed 4.3-cent-gasoline tax is estimated to cost South Dakotans $90.8 million over the next 5 years. With incomes lower than the national average and the need to drive great distances, citizens in rural, small city States like the Dakotas and Wyoming would be hardest hit by the gas tax. Is this fair?

Many of our people drive trucks for a living. For instance, lumbermen, who are both small businessmen and drive trucks, and people who drive a tractor or a truck or drive great distances will be hit hard by this plan. So we are rewarding our most productive entrepreneurs with higher taxes.

The President's plan taxes small businesses, farmers, truckers, and seniors yesterday, today, and tomorrow in return for the promise of cuts way off in the future. Is this fair?

Most of the real cuts proposed in the plan are in Medicare spending increases totaling $56 billion. The administration contends these cuts would come from the pockets of doctors and hospitals. However, medical providers simply will shift this loss of Federal revenue to the private sector and senior citizens. The cost of entitlement programs must be reduced. However, this cut is disproportionate. Nearly 108,000 South Dakotans are enrolled in the Medicare Program. Last year Medicare reimbursements in South Dakota totaled more than $300 million. Spending reductions of the size would severely hurt health care providers in rural areas. Is this fair?

For these reasons, Mr. President, I think this is a bad package. I think it is extremely misleading to the public.

Fairness and effectiveness, Mr. President. That's the bottom line. We have before us a plan that requires Americans to sacrifice yesterday and today in return for a promise of future Federal Government sacrifices. Even if the Federal Government fulfills its promise, the plan is weighted heavily toward tax increases. That's not fair to the American taxpayer, the small businessperson, the farmer, the rancher, and the senior citizen. That's why the American people are opposed to this plan.

Despite all the rhetoric, the pie charts, graphs, and studies, this plan would not reduce our annual deficit below $200 billion, and would add $1 trillion to the Federal debt. That's not real deficit reduction. That's why the American people are opposed to this plan.

The Democrats claim it's their plan, or no plan. Don't be fooled. Republicans have offered serious proposals to reduce our enormous deficit without raising taxes, and we stand ready to work with the President to achieve real deficit reduction without sacrificing fairness and economic growth.

The Republicans do have an alternative. Senator DOLE is prepared, if this fails, to move to reconsider and to immediately call for a budget summit to develop a plan that will contain cuts that go into effect immediately.

This bill represents little more than the Clinton Democrats' Treasury cooking the books. I think it is time the American people find out the truth.

One Member of Congress stated that it takes courage to vote for the President's plan. Yes, it does take courage to vote for a plan that is misleading, taxes more than it cuts, and in the end, will achieve little, if any, deficit reduction. But it takes even greater courage to make real cuts in the size of Government. It takes greater courage to come up with a deficit reduction plan that will mean real reductions in deficit spending. It takes even greater courage to reject this current plan, stay here during the August recess, and come up with a strong bipartisan plan that cuts spending now rather than later.

I urge my colleagues to exercise that courage. Let's not settle for second best. Let's reject this plan. Let's get back to the drawing board. Let's reduce and eliminate deficit spending once and for all.

I yield back to my friend from New Mexico. I thank him very much.

EXHIBIT 1

SENATOR PRESSLER AND REPRESENTATIVE MEYERS OFFER SOME SPECIFIC THOUGHTS AND FACTS ON SMALL BUSINESS AND RECONCILIATION

Small business is widely recognized as our Nation's top job producer and innovator.

Small business and the rest of the business community are this country's tax collectors and our government's major data gatherer. They receive no compensation for these duties; and, in fact, small businesses are often penalized and then charged interest when they attempt to comply with our voluminous and complex tax code.

Never before in our political history have so many individuals in government uttered the words "small business." Unfortunately, by the looks of the reconciliation package, that's about all they did—talk about small business. Why? keep reading!

The Treasury Department admits that at least four percent of all small businesses will be paying more taxes under this package. While we believe their figures may be low, we will accept them. Four percent of all small businesses in this nation translates into 800,000 employers. Many of these employers are fast-growing firms which are hiring workers at above the average rate. So we reward them with higher taxes, which will be retroactive from January 1, 1993?

Much has been made of the various tax credits which will be extended under this package. First, all these credits are already in current law. Why aren't they permanent?

As for the self-employed health insurance deduction, it doesn't even make economic sense. Why can incorporated businesses deduct 100 percent of health insurance premiums yet the self-employed may only deduct 25 percent (and only a few years ago it was 0 percent?)

Lowering the meal and entertainment deduction to 50 percent will have a devastating impact on restaurants, hotels, other entertainment ventures, and some tourism businesses. These industries are a major growing part of our economy. Why would we choose to harm them and not help them? In addition, we should not overlook the fact that many new business owners use this deduction to great benefit. Many start-up firms must rely on business meals as the only affordable means of meeting potential customers in the hopes of selling their products and services and building their client base.

We are going to raise the fuel tax 4.3 cents a gallon. We've heard all the arguments why this is supposed to be good. Here is what you have not heard. There is an often stated axiom, "If you've got it, a truck brought it." A great portion of consumer goods in this Nation are moved by truck. Obviously, this movement of goods affects small business in several ways. As of today, our Nation's trucking companies and the tens of thousands of independent owner-operator truckers already pay a six cent per gallon gas tax differential. In other words they now pay 20.1 cents in Federal tax on each gallon of diesel fuel they purchase. We are now going to add 4.3 cents per gallon. That is a 21 percent increase. In addition, effective October 1 of this year, the Clean Air Act mandates that all commercial highway vehicles must switch to a low sulfur diesel fuel. There is a $2,500 fine per violation for failure to meet this mandate. The Nation's refiners have stated that this will add 3 to 7 cents per gallon in cost. Taking the middle ground of a five cent increase and adding it to the new tax, truckers' fuel costs will now increase almost a dime per gallon with no certainty that overall fuel prices will remain constant. Most truckers average 5 to 7 miles per gallon of fuel. You figure it out. Isn't this going to have a dramatic impact on our economy?

One of the hallmarks of small business throughout our history has been the family-owned business. Many entrepreneurial dreams have been passed down to children, grandchildren, and even beyond. Reinstating the top estate tax of 55 percent and making it retroactive from January 1, 1993 will pose yet another hardship for many small business owners. What should people do? Spend the estate off? Try to devise a way to pass-off the portions of the estate to others? Set up some sort of trust? In this legalistic society some individuals will be able to figure a way around the tax, but what of the many truly small enterprises and family farms who won't or can't do this? Is this our government's thanks to them and their families—an onerous and confiscatory tax?

The Service Industry Noncompliance Proposal (SINC) dreamed up in the House, without benefit of hearings, would increase recordkeeping and paperwork by small business beyond anyone's imagination. Senator PRESSLER's amendment thoroughly discredited this in the Senate by a vote of 98–0. Yet the proposal lived on until the final minutes of the reconciliation conference. Rumors are that it will reemerge under the administrative authority of the Internal Revenue Service. This is an ill-conceived proposal for which no one has shown a need and is a pure example of the Federal bureaucracy run amok, in concert with some friends in Congress. Let us remember it is the IRS who already creates half of small business' paperwork burden.

We have heard much about the reconciliation package's expensing proposal as the be-all and end-all of small business development. One should note that increasing expensing is a positive, but its benefits are limited. The vast majority of small businesses are labor intensive, not capital intensive. That doesn't mean we should not help the small business that can use this deduction. However, we highlight the negotiations on this issue because they truly portray the way small business regularly is treated as a second class citizen in the budget negotiation process. The current expensing limit is $10,000. The House bill proposed $25,000. The Senate bill proposed $20,500. The final compromise was $17,500—this must be an example of what they call the new mathematics.

A capital gains exclusion for an investment in small business is an excellent idea. However, this provision, which reduces capital gains by half on investments in small business held over five years, has some serious limitations. The investment must be held five years, it must be invested in a firm that is incorporated, and the firm must engage in a specific type of production. By the time you exclude 16 million unincorporated small businesses from the benefit, leave out countless forms of production activities, and eliminate investors unwilling to tie up capital for five years, this proposal probably won't produce the results its proponents champion.

Many federal lobbying efforts will be eliminated with the proposal, as will the business deduction for club dues. It is easy for someone to get up and rail against the powerful lobbies that allegedly control Washington. Small business is not one of them. To blindly eliminate lobbying expenses across-the-board will not stifle or quiet the powerful interests that work their will in Washington day-in and day-out. What it will do is further erode the limited strength, and silence the voices, of the small interests who, in fact, need lobbyists to speak on their behalf. The nation's small businessmen and women go to work early in the morning and don't turn out the lights until late at night. They don't have time to continually lobby government at all levels. To further restrict the limited access they have will only put our nation in greater jeopardy. One needs only to read through this reconciliation package to see this quite vividly.

Mr. DOMENICI. I say to Senator PRESSLER, I am so pleased he came down and showed what happens with rural States with this gasoline tax as compared to others. Mine is even worse than that. I appreciate the Senator presenting that to the Senate today.

I yield to Senator BROWN of Colorado who I think will make a point of order. We hope he can keep it to a minimal time so others will be able to speak during the remaining time.

Mr. BROWN. I thank my friend from New Mexico.

Mr. President, I raise a point of order that section 1106(a) is extraneous and violates section 313(b)(1)(D) of the Congressional Budget Act of 1974.

It violates it because it produces changes in the revenues that are clearly only incidental to the nonbudgetary components of the provision. The reality is this imposes the first domestic content provision that applies to exports. It is a tiny fraction of revenue—actually not even reducing the deficit—but only one-fourth of 1 percent of the tobacco——

The PRESIDING OFFICER. If the Senator will withhold, the Chair wishes to advise the Senator the point of order is not debatable. So if the Senator is setting a predicate for offering a point of order, that is acceptable. If he is debating a point of order already offered, it is not.

Mr. BROWN. I do raise that point of order and ask the Chair to rule on section 1106(a).

The PRESIDING OFFICER. The Chair will not sustain the point of order. The point of order is not sustainable.

Mr. BROWN. Mr. President, I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The vote will be taken by the yeas and nays.

Mr. FORD. Mr. President, as I understand it we have 30 minutes? Was that the gentleman's agreement? Or what is the time agreement?

The PRESIDING OFFICER. The Chair advises the Senate the time available for debate will be 1 hour unless changed by unanimous consent.

Mr. FORD. I have no problem with reducing that.

Mr. SARBANES. I suggest 5 minutes each?

Mr. DOMENICI. Can the Senator make his explanation in 5 minutes?

Mr. BROWN. I can and will make my explanation within 5 minutes.

Mr. DOMENICI. Five minutes on a side.

Mr. SARBANES. Mr. President, we ask unanimous consent the time on the appeal be limited to 10 minutes equally divided, 5 to a side.

The PRESIDING OFFICER. Hearing no objection, that will be the order.

PRIVILEGE OF THE FLOOR—H.R. 2264

Mr. FORD. Mr. President, I ask unanimous consent that Kenny Gill and Rob Mangas of my staff be allowed the privilege of the floor during this debate.

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

Who yields time? The Senator from Colorado [Mr. BROWN].

Mr. BROWN. I yield myself 4 minutes.

Mr. President, occasionally a provision reaches a bill like this without having public hearings. This particular measure, I believe, is one of the most dramatic examples of special interest legislation that I have seen in over 12 years in the U.S. Congress.

It will have an enormous impact on our country and an enormous impact

on our trade policies. It has special penalties for those who have chosen to manufacture products in the United States and enormous rewards for those who have chosen to manufacture products outside the United States.

The provision is one that requires the domestic content for the manufacture of tobacco products in the United States. That domestic content provision not only applies to products sold in the United States, but manufactured in the United States and then exported. It is an incredible provision that would place manufacturers of products at an enormous disadvantage if they choose to manufacture in America versus manufacturing overseas.

Currently because of our tobacco program, U.S. tobacco sells at roughly twice the price of imported tobacco. And because they are having difficulty in maintaining that artificially high price, this measure, I believe, came to the floor.

But what it does do is price U.S. manufacturers that export out of their own markets. It has an enormous beneficial impact to one company, Philip Morris, that has chosen to locate roughly three-fourths of its facilities that manufacture cigarettes overseas—that is facilities that export outside the United States.

Their annual report indicates roughly only 26 percent of their sales volume that was sold outside the United States ends up being manufactured by their facilities inside the United States.

The simple fact is this, Mr. President. This is special interest legislation. It has an enormously bad effect with regard to our trade policies. It clearly violates, in my opinion, the GATT rules.

Mr. President, I draw to the attention of the Members, several items with regard to the GATT. First of all the comments by the U.S. Department of Agriculture talking about this issue. In a recent publication they say:

An important limit on tobacco is probably in violation of the General Agreement on Tariffs and Trade.

I would also refer the Members to a recent communication from a series of Ambassadors of countries that we have been negotiating with on trade matters, urging them to do away with protectionist legislation. Here is what those Ambassadors said.

For years, U.S. representatives in the GATT, Uruguay Round of negotiations and elsewhere have been consistently fighting against this kind of provision.

That is this tobacco provision.

In the name of free trade and for the benefit of both consumers and efficient producers, at this time, when a large number of countries in the developing world have undertaken, on a unilateral basis, far-reaching trade liberalization programs, the consideration and eventual approval of this type of discriminatory measure would severely disrupt those efforts and would clearly violate one of the most basic principles of the General Agreement on Tariffs and Trade.

Further, the implementation of such provision would undermine the United States negotiating position in the Uruguay rounds.

These are the people we have been trying to persuade to open up their markets and here we violate exactly what we have been advocating. This sort of thing undercuts our ability to negotiate, not only the GATT agreements but our agreements in the European common market.

Once again:

The import limit could give the European Economic Community sufficient grounds to use the import limit against the U.S. in trade negotiations.

It is also clear this will have a penalty under the GATT rules, at least in my view. We ought to vote against this special tobacco provision because what it does is disadvantage people who have chosen to manufacture in the United States and advantage those who have taken their business outside of America. I retain the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Kentucky [Mr. FORD].

Mr. FORD. Mr. President, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator is recognized for up to 4 minutes.

Mr. FORD. Mr. President, the Byrd rule under which my colleague from Colorado has made his appeal is very important. The individual's name who is carried on this Byrd rule does it because it is important to this institution.

Mr. President, let me explain to my colleagues, while I believe the Parliamentarian after careful review—and I underscore careful—has advised the Chair that this provision does not violate that Byrd rule.

This provision raises some $29 million over a 5-year period for deficit reduction.

The CBO estimate for this provision analyzed each part of the provision and concluded that each had a budgetary impact on the $29 million in savings achieved by this provision. That is the Byrd rule question, not the underlying argument.

If you want to get into an underlying argument, let us talk about what effect it might have. My colleagues may not be aware, but tobacco farmers today are helping to finance our deficit by paying a budget deficit assessment. Remember that. Our farmers are paying a budget deficit assessment on domestically-grown leaf.

The budget deficit assessment does not go to help the tobacco farmer. It goes to reduce the spending on other agricultural programs under the Commodity Credit Corporation, to the tune of $24 million, in fiscal year 1993 alone.

To meet its reconciliation instructions the agricultural title of the House-passed bill, H.R. 2264, increased this budget deficit assessment on U.S. tobacco farmers by 10 percent, generating $10 million additional in budget savings over 5 years.

The provision in question today is a Senate alternative to that provision and raises not $10 million but $29 million over the same 5-year period. But the important difference is that the Senate provision levels the playing field for our U.S. farmers by extending the same budget deficit assessment in current law to imported leaf.

Mr. President, it is only fair that before we ask our farm families to pay more out of their pockets to finance our deficit that we ask the imported leaf, which directly competes with American leaf, to shoulder the same responsibilities.

The Senate provision is equitable. It is fair. It raises $29 million to help reduce the deficit, and it clearly does not violate the Byrd rule.

So, Mr. President, I urge my colleagues to uphold the ruling of the Chair, and if this is not done, then this bill is defeated because this amendment then will cause it to go back to the House, and we all understand what will happen there. This is the reason, and the main reason, that this point is being made because they know, and everyone knows, that we meticulously factored this amendment so it would comply with the Byrd rule.

Let me reiterate what my colleague, Senator SASSER, the distinguished chairman of the Budget Committee, said earlier today. The Budget Committee, in conjunction with the individual committees of jurisdiction over the various titles in the bill, worked overtime with the Parliamentarian to ensure that the provisions contained in this conference report did not violate the Byrd rule.

I can assure my colleagues from my own experience, that the Parliamentarian, and his most able assistants, carried out their responsibility with the utmost integrity and concern for the rules and precedents of the Senate. And their decision on this provision is that it does not violate the Byrd rule.

This provision should not be new to my colleagues. It is the Senate provision that was before this body when we debated S. 1134, the budget reconciliation bill, in June. No point of order was raised at that time. Now, however, my colleague chooses to raise the point of order, and although the Chair has ruled that this provision does not violate the Byrd rule, he would have this body overturn the ruling of the Chair, which will effectively kill this conference report.

My colleague knows that is the result of his appeal—if the ruling of the Chair is overturned, the conference report is dead. So if there are not enough votes to kill it outright, it appears some will use parliamentary moves to do so.

But it will not work. Those of us committed to turning our economy

around, restoring fiscal integrity to our budget, expanding our job base, and putting an end to the deficit financing that is mortgaging the future of our children and grandchildren, are standing firm behind this package.

I urge my colleagues to uphold the ruling of the Chair.

I think the Parliamentarian has advised the Chair correctly.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Colorado has 48 seconds remaining.

Mr. BROWN. Mr. President, adoption of my proposal or elimination of this amendment will not defeat the bill. What it will do is the House will go along with eliminating this onerous provision. More than anything, this is unfair. U.S. tobacco is double the price of imports. If you say that you are going to force the use of that in exported product, all it means is this: Those who have manufacturing plants overseas that want to sell to Japan will manufacture the exports to Japan overseas. Why? Because they can buy the raw material for half the price.

What you will say to the person who invested in plant and equipment in the United States is you have to pay double the price for the raw material. What this does is penalize those who invested in jobs and opportunity in America and exports those jobs overseas. It ultimately will not help the farmer and ultimately what it will do is destroy jobs and opportunities by the thousands in America.

It does one other thing, Mr. President.

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

Mr. DOMENICI. I yield another minute to the Senator.

The PRESIDING OFFICER. The Senator has another minute.

Mr. BROWN. Mr. President, just one other thing. If you are making a decision of where you produce cigarettes or tobacco products that you import into the United States, you have two factors to consider: Your cost of producing them and the cost of the raw materials and the tariffs that come into play.

With this amendment, what you will do is urge people to move all their manufacturing facilities overseas because their raw materials will be half price and they can then pay the tariff to bring it into the United States and it will still be much lower in cost than if you processed in the United States.

This is a bad amendment. The Washington Post has editorialized against it. More than anything, it is special interest on fair legislation. What it does is reward those who have moved their plants offshore and now come to this Chamber to get protection and enhancement in what is going to be a multimillion dollar windfall for having not provided the jobs in the United States.

The PRESIDING OFFICER. The Senator from Kentucky has 1 minute 9 seconds remaining.

Mr. FORD. Mr. President, CBO concluded that the savings scored for section 1106 includes budgetary impacts of subsections (A), (B), (C), and (D). So the provisions do not violate the Byrd rule.

I ask unanimous consent to print in the RECORD the CBO estimate.

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

CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, August 4, 1993.*

Hon. PATRICK J. LEAHY,
*Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the conference agreement on title I of H.R. 2264, the Omnibus Budget Reconciliation Act of 1993. This title contains provisions regarding agricultural price supports, conservation activities, rural electrification, crop insurance, and Forest Service activities. CBO's estimate reflects the language agreed upon by the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture as of August 3, 1993.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Eileen Manfredi, Ian McCormick, David Hull, Peter Fontaine, Deborah Reis, Patricia Conroy, and Theresa Gullo, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER.

ESTIMATED BUDGET IMPACT OF TITLE I OF H.R. 2264, THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993—CHANGES FROM CBO MARCH 1993 BASELINE

[By fiscal years, in millions of dollars]

| Direct spending | 1994 | 1995 | 1996 | 1997 | 1998 | Total |
|---|---|---|---|---|---|---|
| **Subtitle A—COMMODITY PROGRAMS** | | | | | | |
| Sec. 1101. Change cotton stocks/use ratio to 29.5 percent in 1995 and 1996 and 29 percent in 1997 and 1998 | 0 | −4 | −30 | −84 | −57 | −175 |
| Sec. 1101–1104. Maintain 0/50/92 for prevented planting and alternative crops, but reduce to 0/50/85 otherwise | −24 | −56 | −60 | −67 | −89 | −297 |
| Sec. 1105. Change butter and nonfat dry milk support prices; reduce dairy assessment to $0.10/cwt. after 1995; delay use of bovine growth hormone and reduce assessments | −45 | −62 | −52 | −47 | −48 | −254 |
| Sec. 1106. Impose marketing assessment on imported tobacco[1] | −6 | −6 | −6 | −6 | −6 | −29 |
| Sec. 1107. Increase assessments 10 percent on sugar | 0 | −3 | −3 | −3 | −3 | −12 |
| Sec. 1108. Changes in Oilseeds Program—Include eliminating loan origination fees, reducing the loan rates to $4.92 a bushel for soybeans and $8.70 a cwt for minor oliseeds, and requiring fiscal year loan repayment | 0 | −204 | 20 | 14 | 10 | −159 |
| Sec. 1109. Increase assessments 10 to 20 percent a year on peanuts | [2] | −1 | −1 | −2 | −2 | −6 |
| Sec. 1110. Lower honey loan rate to $.47 by 1998 with payment limit and eliminate marketing assessment from 1994 | −3 | −5 | −6 | −6 | −4 | −24 |
| Sec. 1111. Change Wool and Mohair Programs | 0 | −6 | −10 | −13 | −20 | −48 |
| Total subtitle A—Commodity programs: | | | | | | |
| Budget authority | −79 | −342 | −145 | −209 | −211 | −985 |
| Outlays | −79 | −348 | −148 | −212 | −219 | −1,005 |
| **SUBTITLE B—RESTRUCTURING OF LOAN PROGRAMS** | | | | | | |
| Sec. 1201. Refinancing and prepayment of FFB loans:. | | | | | | |
| Budget authority | [2] | [2] | [2] | [2] | [2] | −1 |
| Outlays | [2] | [2] | [2] | [2] | [2] | −1 |
| **SUBTITLE C—AGRICULTURAL TRADE** | | | | | | |
| Sec. 1301. Eliminate GATT trigger language for corn and wheat | 0 | −227 | −204 | −153 | −2 | −586 |
| Sec. 1302. Reduce Market Promotion Program by $90 million a year | −45 | −90 | −90 | −90 | −90 | −405 |
| Total subtitle C—Agricultural trade: | | | | | | |
| Budget authority | −45 | −317 | −294 | −243 | −92 | −991 |
| Outlays | −45 | −317 | −294 | −243 | −92 | −991 |
| **SUBTITLE D—MISCELLANEOUS** | | | | | | |
| Sec. 1401. Add Forest Service recreation fees: | | | | | | |
| Budget authority | −5 | −8 | −9 | −10 | −10 | −42 |
| Outlays | −6 | −9 | −9 | −10 | −10 | −44 |
| Sec. 1402. Cap CRP at 38 million acres through 1995 and cap WRP at 975,000 acres: | | | | | | |
| Budget authority | −234 | −369 | 81 | 31 | 63 | −428 |
| Outlays | −18 | −145 | −231 | −58 | −17 | −469 |
| Sec. 1403. Change Crop Insurance Program: | | | | | | |
| Budget authority | −41 | −83 | −127 | −173 | −222 | −646 |
| Outlays | −14 | −56 | −98 | −143 | −190 | −501 |
| Total subtitle D—Miscellaneous: | | | | | | |
| Budget authority | −280 | −460 | −55 | −152 | −169 | −1,116 |
| Outlays | −38 | −210 | −338 | −211 | −217 | −1,014 |
| Grand total—Direct spending: | | | | | | |
| Budget authority | −404 | −1,119 | −494 | −604 | −472 | −3,093 |
| Outlays | −162 | −875 | −780 | −666 | −528 | −3,011 |

[1] Includes costs and savings in subsections a, b, c, and d of sec. 1106.
[2] Annual savings of less than $500,000 per year.

Note.—Budget authority for the commodity programs equals outlays for all sections above, except for wool, where budget authority equals the previous year's outlays. Savings for several provisions may change if the fiscal year 1994 agriculture appropriations bill is completed before the reconciliation bill. Provisions increasing Forest Service recreation fees currently appear in title X of this bill as well as in title I. The estimated savings from the fee increases authorized in title X duplicate the savings shown in this table. Savings for several provisions may change if the fiscal year 1994 agriculture appropriations bill is completed before the reconciliation bill.

Mr. FORD. Mr. President, we talked about the editorial in the Washington Post. I wonder which tobacco company wrote that editorial because if you look at the top of the paper, or the editorial put on our desk, it names a company. It is a fight between big companies.

What the Senator is trying to do is damage my little farm families in Kentucky and throughout the tobacco belt. We are not asking for anything. We are not asking for protection, just equal treatment and the ability to save the small farm family.

Almost 30 percent of the farm income in my State comes from tobacco, and as we stand here today, over $600 million of foreign tobacco, not paying anything, has come into this country through May. That is two-thirds already this year of the income to my farm families in my State. Imported tobacco is being asked to contribute just like our farmers.

Talk about fighting for big. The Senator from Colorado fights for big. I fight for the farmer.

I hope my colleagues will sustain the Chair.

The PRESIDING OFFICER (Mr. ROBB). All time has expired. The question is, Is the appeal of the Senator from Colorado well taken? An affirmative vote of three-fifths of the Senators duly chosen and sworn is required to overturn the decision of the Chair.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the role.

The assistant legislative clerk called the roll.

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

The yeas and nays resulted—yeas 43, nays 57, as follows:

[Rollcall Vote No. 246 Leg.]

YEAS—43

| | | |
|---|---|---|
| Bennett | Durenberger | McCain |
| Bond | Feinstein | Murkowski |
| Boxer | Gorton | Nickles |
| Bradley | Gramm | Nunn |
| Brown | Grassley | Packwood |
| Chafee | Gregg | Pressler |
| Coats | Hatch | Roth |
| Cochran | Hatfield | Shelby |
| Cohen | Hutchison | Simpson |
| Coverdell | Jeffords | Smith |
| Craig | Kassebaum | Specter |
| D'Amato | Kempthorne | Stevens |
| Danforth | Lott | Wallop |
| Dole | Lugar | |
| Domenici | Mack | |

NAYS—57

| | | |
|---|---|---|
| Akaka | Boren | Burns |
| Baucus | Breaux | Byrd |
| Biden | Bryan | Campbell |
| Bingaman | Bumpers | Conrad |
| Daschle | Johnston | Moynihan |
| DeConcini | Kennedy | Murray |
| Dodd | Kerrey | Pell |
| Dorgan | Kerry | Pryor |
| Exon | Kohl | Reid |
| Faircloth | Lautenberg | Riegle |
| Feingold | Leahy | Robb |
| Ford | Levin | Rockefeller |
| Glenn | Lieberman | Sarbanes |
| Graham | Mathews | Sasser |
| Harkin | McConnell | Simon |
| Heflin | Metzenbaum | Thurmond |
| Helms | Mikulski | Warner |
| Hollings | Mitchell | Wellstone |
| Inouye | Moseley-Braun | Wofford |

The PRESIDING OFFICER. If there are no other Senators desiring to vote, on this vote the yeas are 43, the nays are 57. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the appeal is rejected.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the appeal was rejected.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, Senator HATCH has requested the opportunity to address the Senate on a matter of personal privilege unrelated to the pending bill.

I therefore ask unanimous consent that Senator HATCH be recognized to address the Senate for 20 minutes and that the time he uses not be counted against the bill.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Without objection, it is so ordered.

## NBC DATELINE SHOULD GET ITS FACTS STRAIGHT

Mr. HATCH. Mr. President, I thank the majority leader for this time.

Mr. President, it is important that we have the facts straight as we debate the President's tax plan. It is important that we have the facts straight on every issue of public policy that we address. And it is important that the media get the facts straight when they report what happens here to the people of America.

On a point of personal privilege, I would like to address a recent episode of tabloid journalism that got none of the facts straight.

Last Tuesday, August 3, 1993, NBC News broadcast an episode of its "Dateline" program—a program not noted for its adherence to professional standards of journalism. In one segment of this episode, "NBC Dateline" claimed that I had offered legislation that would have increased the value of an indirect investment that I have in a company called Pharmics, Inc. This charge is false and reckless. Let me tell you the facts, and you will see that in this case NBC stands for "Nothing But Crock."

Before I begin, let me first observe that those of us in public life learn to expect criticism. Sometimes the criticism may be fair. Sometimes it is unfair. But so long as the criticism is honest, we have to learn to live with the criticism, even if we think it is wrong.

There is, however, a world of difference between honest criticism and reckless character assassination. Recent events indicate that NBC News does not seem to understand this difference. Last November, "NBC Dateline" aired an episode that purported to show GM pickup trucks bursting into flames in side-impact collisions. What "NBC Dateline" did not tell the viewing public, and what it did not tell GM, is that NBC had secretly attached incendiary devices to the GM trucks. For nearly 3 months, NBC ignored GM's complaints about the unfairness of the program. Meanwhile, GM conducted its own investigation that proved that NBC had rigged the crash tests. Only then—after GM made the results of this investigation public and sued NBC—did NBC acknowledge its dishonesty and agree to pay GM some 2 million dollars in damages.

Then in January of this year, NBC News aired a segment of the Clearwater National Forest in Idaho on the harm supposedly caused by timber harvesting. NBC purported to show dead fish being removed from the water. In fact, the fish were alive, and had simply been stunned as part of a routine fisheries inventory. As my distinguished colleague, the senior Senator from Idaho, put it, NBC "hoodwinked the Nation."

This week, in another shoddy piece of irresponsible tabloid journalism, NBC News attached its incendiary devices to me and attempted to hoodwink the Nation about me. Unlike GM, I do not have the assets of a major corporation to help me withstand NBC's falsehoods. But because these falsehoods bear directly on legislation introduced on this floor, let me take a few minutes to set the record straight.

I am a limited partner in a limited partnership that owns 2.3045 percent of a company called Pharmics, Inc. My own indirect interest in Pharmics amounts to a whopping 1.1523 percent of the company. I have never had any authority regarding management decisions of Pharmics. Pharmics, I am told, is a company whose primary assets are in real estate. Pharmics is also a wholesale distributor of some prescription and over-the-counter pharmaceuticals. Pharmics is not, and has not been, in the so-called salvaging business.

Beginning in 1990, my office introduced legislation that was designed to address the problem of unsalvaged pharmaceutical shipments being diverted to the street drug market. My office's exposure to this problem arose out of contacts made by one of my constituents, a business called Associated Pharmaceutical Group, or APG. APG was in the salvaging business. I do not own, and have never owned, any shares of APG. According to Pharmics, Pharmics does not own any shares of APG.

Let me detail what my legislation would have done. It would have authorized the Food and Drug Administration to establish a "drug salvager compensation program." Under this program, the FDA would have been authorized to enter into contracts with salvagers of pharmaceutical shipments. The contracts would have required the salvagers "to return [the pharmaceuticals] to the manufacturer or to destroy such products if the manufacturer cannot be determined." The contracts would also have required the FDA to "reimburse" the salvagers only "for any costs incurred" in returning or destroying the pharmaceuticals. In short, no salvager would have received a dime of profit from the FDA under this program.

Let me again emphasize that Pharmics—the company in which I have a small, indirect interest—is not, and has never been, in the salvaging business. Nor is it a manufacturer of pharmaceuticals. There is, in short, no scenario that I can conceive of under which Pharmics could ever have benefited from this legislation, and there is no way that my small, indirect interest in Pharmics would have profited from—much less motivated—this legislation.

Let me add that my staffers tell me that APG—the salvaging company that initially made my staff aware of the pharmaceutical salvaging issue—said it did not like the legislation that I introduced. Perhaps that is why APG's chairman, Kelly Farmer, who attacked me on "NBC Dateline," is mad at me.

Let me turn now to "NBC Dateline's" lies from last Tuesday. The anatomy of a smear is, of course, not as titillating as the smear itself. But as you will see, every allegation made by "NBC Dateline" is false and reckless:

"Dateline" deception No. 1: "NBC Dateline" claims that I was "seeking favors for a small Salt Lake City drug company called Pharmics." In fact, all of "NBC Dateline's" charges relate to APG or salvaging. And I did not do any special favors for APG. My staff simply provided my constituent Kelly Farmer, the chairman of APG, assistance in navigating his way through the Federal bureaucracy. I am pleased to provide all my constituents this assistance, and I am grateful that most of them appreciate my help more than Kelly Farmer apparently did.

"Dateline" deception No. 2: "NBC Dateline" claims that I sent a "letter to the Drug Enforcement Agency asking that [my] business partners be granted a special license to handle lost shipments of prescription drugs." As is clear from the text of the letter, which NBC failed to disclose, this letter was sent on behalf of Kelly Farmer of APG, which was the entity seeking the license. I have never been a business partner of Mr. Farmer.

"Dateline" deception No. 3: "Dateline" claims that "when the license was not granted, Hatch introduced an unusually specific bill that could have given Pharmics part of a $17 million government program to handle [salvaged] drugs." This sentence is full of so many errors that it is difficult to know where to begin. The most important point, as I discussed before, is that Pharmics could not have benefited from the salvaging legislation, for the simple reason that it was not a salvager. Let me add also that there was nothing "unusually specific" about this legislation: any salvager could have sought to take part in it. How NBC cooked up the $17 million figure is beyond me. We did estimate that the wholesale value of salvaged shipments of pharmaceuticals was $17 million per year, but this figure has nothing to do with the costs of the salvaging program, which were limited to reimbursement costs and which were to come out of existing funds.

What does seem clear is that none of the so-called investigative journalists at "NBC Dateline" ever bothered to read the legislation that was the centerpiece of their story. For if they had, they would have understood that Pharmics would not have benefited from this legislation. My office did receive a letter from an NBC producer, Mark Hosenball, this past Monday—the day before the "Dateline" episode aired. In this letter, Mr. Hosenball claimed that "sources have told NBC that the FDA believed that Pharmics was one of the companies which would have been eligible for FDA reimbursement for its inventory of salvaged drugs had the legislation become law."

Instead of relying on double hearsay from so-called sources, perhaps Mr. Hosenball could have read the legislation. But that, of course, would have spoiled his story. As I have discussed, the legislation would have authorized the FDA merely to reimburse contracting salvagers for the costs of returning salvaged pharmaceutical shipments to the manufacturer or of destroying them. It would not have authorized the FDA to purchase any inventory of pharmaceuticals. Also, the legislation would not have applied at all to distributors, like Pharmics, who are not salvagers but who may come into possession of pharmaceuticals from previously salvaged shipments if and when the pharmaceuticals are properly reintroduced into the stream of commerce.

Dateline deception No. 4: According to "Dateline," "what few people knew then was that Hatch himself owns stock in the company." Two points: First, I do not own any stock in APG. Second, my small, indirect ownership of stock in Pharmics—which could not possibly have benefited from the legislation that I introduced—has been a matter of public record for years.

Dateline deception No. 5: "Dateline" claims that if my legislation had become law, "it could have meant a nice profit for the Senator." As I have already discussed, I would not have profited 1 penny from the legislation.

Dateline deception No. 6: "Dateline" showed footage of my refusing to talk with an NBC reporter and walking away from the NBC cameras. This footage was 6 months old and was taken as I was leaving a committee hearing for a lunch meeting. At that time, NBC had not informed me of the ridiculous charges they were pursuing.

I must say that that is an impressive number of deceptions by NBC in a 2-minute story. But I also must say that I am sick and tired of journalists with the morals of jackals. There are a lot of good journalists out there, and I respect them. They have a difficult job.

And they suffer from the taint left by smear artists like the ones responsible for the "NBC Dateline" segments on me and on others.

I demand an apology and a full retraction from NBC News. Its "Dateline" episode was false and reckless. Based on this episode and other incidents, I am convinced that certain persons at NBC News are engaged in a campaign of malice. Rest assured that I will not sit still for character assassination and misrepresentation of the facts by tabloid journalists.

I have taken this opportunity to address my colleagues because I cannot stand by and watch Americans make decisions on how they vote, what they buy, and what policies America should pursue based on the deliberate misinformation that NBC has recently given on this and other matters.

Mr. Chairman, I ask unanimous consent that the salvaging legislation that I referred to be included in the RECORD.

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

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION REORGANIZATION ACT

KENNEDY (AND HATCH) AMENDMENT NO. 1081

Mr. MITCHELL (for Mr. KENNEDY, for himself, and Mr. HATCH) proposed an amendment to the bill (S. 1306) to amend title V of the Public Health Service Act to revise and extend certain programs to restructure the Alcohol, Drug Abuse, and Mental Health Administration, and for other purposes, as follows:

**SEC. 147. DRUG SALVAGER COMPENSATION PROGRAM.**

Chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 et seq.) is amended by adding at the end thereof the following new section:

**"SEC. 710. DRUG SALVAGER COMPENSATION PROGRAM.**

"(a) PURPOSE.—It is the purpose of this section to establish a program to decrease the availability of drugs that are acquired through salvage of shipments of pharmaceuticals and controlled substances through the provision of assistance to salvagers of such products to enable such salvagers to return such product to the manufacturer or to destroy such product.

"(b) ESTABLISHMENT.—The Commissioner, in consultation with the Administrator of the Drug Enforcement Administration, shall establish a drug salvager compensation program (hereinafter referred to in this section as the 'program') to carry out the purpose described in subsection (a).

"(c) CONTRACTS.—

"(1) IN GENERAL.—To carry out the program the Commissioner, in consultation with the Administrator of the Drug Enforcement Administration, shall enter into contracts with private nonprofit or profit making entities that acquire pharmaceuticals and controlled substances through the salvage of shipments of such products.

"(2) REQUIREMENT.—A contract entered into under paragraph (1) shall require the entity that is subject to the contract to return any pharmaceuticals and controlled substances acquired by such entity through salvage to the manufacturer or to destroy such products if the manufacturer cannot be determined.

"(3) COMPENSATION.—In exchange for entering into a contract under paragraph (1), the Commissioner shall reimburse such entity for any costs incurred by such entity in complying with the requirement of paragraph (2).

"(d) DEA NUMBERS.—Entities that are subject to a contract under subsection (c) shall be assigned a Drug Enforcement Administration number and shall be considered as an appropriate recipient of any controlled substances salvaged and disposed of under this section.

"(e) REPORTS.—

"(1) ENTITIES.—Entities that are subject to a contract under subsection (c) shall prepare and submit, to the Commissioner and the Administrator of the Drug Enforcement Administration, quarterly reports concerning their activities under this section.

"(2) CONGRESSIONAL.—Not later than 90 days after the end of each fiscal year, the Secretary, in consultation with the Attorney General, shall prepare and submit, to the Committee on Energy and Commerce and Judiciary of the House of Representatives and the Committee on Labor and Human Resources and Judiciary of the Senate, a report concerning the amount of drugs that have been obtained through salvage and disposed of under this section.".

EXHIBIT 1

DESCRIPTION OF THE COMMITTEE AMENDMENT TO S. 1306

The amendment improves the bill in several respects. In addition to technical and clarifying provisions, the amendment adds new research and service authority and supplements the bill with two important new programs.

*Drug Salvaging*

The amendment adds a new program, proposed by Senator HATCH, concerning the salvaging of seized pharmaceutical drugs.

Under current law, the pharmaceutical distribution system allows a significant amount of drugs to fall into the hands of unauthorized individuals. The Committee is concerned about the potential misuse of these drugs and this new section is intended to address the problem.

The pharmaceutical distribution system is a complicated network of wholesalers, distributors, and transportation companies that channel drugs from the manufacturer to drug retail outlets. Although the distributors and wholesalers are controlled and regulated by the Prescription Drug Marketing Act of 1987 (PDMA), the transportation companies are not. These companies handle enormous volumes of pharmaceuticals and some are invariably lost, damaged, or unclaimed by the transportation companies. These products are referred to as salvage products.

The volume of salvage products is significant—worth approximately $17 million (based on Average Wholesale Price) each year. There is a significant potential for large amounts of prescription and controlled pharmaceuticals to fall into the hands of unauthorized individuals, because there is no authorized procedure for the transportation industry to dispose of or salvage these products.

The Committee amendment establishes a demonstration drug salvager compensation program which provides authority to compensate transportation companies in possession of salvage pharmaceuticals in a manner that does not cause them to fall into the hands of unauthorized individuals. The Commissioner of the Food and Drug Administration, in consultation with the Administrator of the Drug Enforcement Administration, shall enter into contracts with private nonprofit or profit making entities that acquire salvage pharmaceuticals and controlled substances. Those that enter into such contracts must either return the pharmaceuticals recovered to the manufacturer or destroy the pharmaceuticals if the identity of the manufacturer cannot be determined.

Mr. HATCH. Mr. President, I again thank the majority leader for allowing me to take this time. This is important to me. I wanted to do this before we go in recess. I apologize to my colleagues for taking time from this very important debate in which I will take part as well.

Mr. President, this is a matter of great importance to me. I appreciate my colleagues and their courtesy in listening and, of course, in allowing me to make these remarks.

I yield back the remainder of my time.

## OMNIBUS BUDGET RECONCILIATION—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The Senate resumes consideration of the conference report, and the Chair recognizes the Senator from Tennessee [Mr. SASSER].

Mr. SASSER. Mr. President, I yield 5 minutes to the distinguished Senator from Pennsylvania [Mr. WOFFORD].

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. WOFFORD], is recognized for up to 5 minutes.

Mr. WOFFORD. Mr. President, this vote is not about the next election. It is about the next generation. This plan is fair. It is responsible. It is only a first step, but it is a big step and it is a step we must take today.

Maybe because I came here and ran for office for the first time at age 65, maybe because I have been involved in long battles like the civil rights movement that began with the idea of what is right and not with what is popular, maybe because I have seen friends and colleagues jailed, beaten and even murdered trying to change the hearts and minds and the future of the country, maybe for those reasons I reject all hand-wringing about how much Members of Congress are risking by simply voting for an honest budget. I find it even harder to accept the cynicism of opponents who had their chance to balance the budget and never took it. We tried their way, and it failed.

Mr. President, this is not a risk. This is our duty. Let us do it.

Mr. President, an hour and half ago I left my place in line in order to go to the White House to talk with the President about the nearly $65 billion of additional spending cuts that I have been proposing and pressing for and will be proposing and pressing for when we return in September. These deeper spending cuts, I told him, are the next steps we must take.

I talked with the President about the schedule and the strategy for comprehensive health care reform, which we agreed must be the next main order of business, the next big step in controlling government spending and preventing further increases in the deficit.

Mr. President, as I have listened to this debate, I have been remembering the reasons the people of Pennsylvania sent me here. They were sick and tired of a government that always collected their tax dollars on time but just seemed to sit by and waste time when they or their friends lost jobs, lost health insurance, lost their savings, lost hope. They wanted a government that gives some answers, not just excuses.

I know how they feel. For more than a decade as a private citizen and a State official, I also watched past Presidents talk about balanced budgets and never once submit won. Twelve years of dishonest budgets have quadrupled our national debt and undermined our economic strength. Pennsylvanians sent me down here to make the tough choices necessary to change our course and put our economy back on the right track.

Today is the day to do just that.

I hope all Pennsylvanians are listening because I want them to hear the truth about this plan, instead of the distortions and falsehoods they have been getting from the very people who created the problem and now will not lift a finger to help solve it.

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Today, I have been taking calls from constituents and have seen the kind of misinformation swirling around their heads.

I want them to know that a vote for this plan is the right thing to do because it will make their lives better and the lives of their children better.

It will cut nearly half a trillion dollars from the Federal deficit that exploded over the past 12 years. As a result, our current low interest rates—the lowest in two decades—will continue, and capital will be available for business growth and job creation. Low interest rates that allow people to buy and refinance homes and cars and other products. That creates jobs. And jobs are what my State needs; jobs are what the country needs.

Those who say the plan won't cut the deficit are being dishonest. And when they say it means a big new tax increase on working America, they are being outrageous. My constituents could not know it though from listening to the opposition. They could not know that more than half of this plan's deficit reduction, some $255 billion, is achieved through real and very specific spending cuts.

That is not a bad first step. We must go much further. That is what I told President Clinton this afternoon. He agrees that we must go further.

Back in June I proposed nearly $65 billion in deeper spending cuts over the next 5 years. Yesterday, I introduced or cosponsored legislation to make those spending cuts, starting with Congress itself, a reality.

I urged the President to support these deeper cuts when we return in September. And I'll be very interested to see how much support I get from my Republican colleagues on the other side of the aisle when the roll is called.

No body likes taxes. But I also do not like the fact that for the past 12 years the wealthiest Americans have gotten the biggest tax breaks while the national debt quadrupled and everyone else struggled harder just to make ends meet.

You would not know it from listening to the opposition, but the fact is that working families earning less than $180,000 will not have to pay another penny in income taxes. And those families with children earning $30,000 or less will actually get a tax break through the earned income tax credit. The truth is that 80 percent of all the new taxes will be paid by the wealthiest 1 percent of Americans—those earning $200,000 a year or more, the very people who got all the tax breaks in the 1980's.

It's also true that the plan does have the gas tax all of us will pay. I wish we did not need it, but I was especially concerned about what the alternative—a Btu tax—might have meant to jobs and companies in Pennsylvania. And the fact is that we will all have to pay 4.3 cents a gallon more at the pump—about $2 a month for the average Pennsylvanian—50 cents a week.

And in return, the average family will save an estimated $191 a month in lower interest costs on their credit cards, home mortgages and car loans because of deficit reduction.

So those who say this plan will heavily tax the middle class are simply not telling the truth.

And you wouldn't know it from listening to the opposition, but the plan will help, not hurt, most small businesses—which create most of the new jobs in America. More than 90 percent of small businesses will be eligible for a tax cut, through the plan's expensing innovations and targeted capital gains tax cuts. And the bill includes a permanent extension of the mortgage revenue bond program and the low-income housing tax credit that will help the homebuilding industry and stabilize real estate values.

So those who say this plan will hurt small business are not telling the truth.

The plan watches out for our country's older citizens, especially compared to the Republican alternative, which would have cut benefits for more than 34 million Medicare beneficiaries. While the President's plan will reduce payments to Medicare providers, this plan will not cut benefits to any Medicare recipient.

So those who say this plan is designed to hurt seniors aren't telling the truth.

Months or years from now, as the American people learn the facts and discover by their own experience that there is no big new tax on the middle class, the scare tactics heard today will be exposed for what they are: A dishonest and hypocritical effort to block a solution by the very people who created the problem. And just for the record, Ronald Reagan's 1982 tax inrecase was, according to the New York Times, "considerably more than this year's figure," adjusted for inflation.

The plan is not perfect, Mr. President. But it is a first step. As I've said, I wish it had more spending cuts. So for the rest of this year and next year and, if necessary, after that, I intend to push for further steps such as the nearly $65 billion in deeper cuts that I've put on the table.

And let us remember that the most important step we must take to tame the Federal deficit is enact comprehensive health care reform which controls skyrocketing costs. With all the talk about the need to cut entitlements, let us remember that 85 percent of the increase in entitlement spending is in health care costs. Through Medicare and Medicaid, the Federal Government is already the biggest buyer of health care in the Nation.

So the next main order of business before Congress and the country must be health care reform. That's the right way to put caps on entitlements—as part of a strategy that controls cost increases across the whole health care system.

That, of course, is what Pennsylvanians sent me here to do. But what they also sent me here to do was help turn this economy around. Finally, to those who keep saying what a terrible political risk it is to support this plan; to those House Members who sarcastically waved goodbye to their colleagues last night, I say: Doing nothing about this deficit really means waving goodbye to our children's future.

Let us not wave or weave or dodge. Let us stand up and be counted and help this country change course. For with this plan, we can go forward and begin a new journey of recovery, renewal, and reform.

The PRESIDING OFFICER. The time yield to the Senator from Pennsylvania has expired.

Under the alternating procedure established in the unanimous-consent agreement, the Senator from Utah, Senator BENNETT is now recognized.

Mr. BENNETT. I thank the Chair.

I appreciate the opportunity of speaking in this hour. I do not think anybody's mind is going to be changed. We are making statements more or less for the RECORD at this point and I made mine last night.

Mr. DOMENICI. Mr. President, would the Senator yield for a clarification?

Mr. BENNETT. Yes.

Mr. DOMENICI. The Senator has 5 minutes, is that his understanding?

Mr. BENNETT. That is my understanding. I hope I can finish in less time than that.

Mr. DOMENICI. I yield myself 30 seconds.

For those kind of looking at where we are, my understanding is that on this side we have 2 hours and 2 minutes and on the other side they have 1 hour and 28 minutes. So if you added it up you kind of get a judgment as to where things are going to be.

We know of no more votes until final passage.

I thank the Senator.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. BENNETT. Thank you, Mr. President.

In my statement last night, I think I made it clear that there will be people who are earning less than $180,000 a year who will be adversely hurt by this. I would refer those Senators who want to discuss it to that statement.

But, as I say, we have reached a point now where we are merely commenting for the RECORD.

I want to make one point at this point with respect to the argument that we must do something; that it would be irresponsible to do nothing.

I do not know about institutional memory around here. I have not been

here that long, but I do have a memory of these same arguments last February when we were debating the President's then so-called stimulus package. We were told we must do something or we will not have any jobs this summer. The disaster would be to lose this bill.

Well, we took the course of disaster. We lost the bill. And what has happened?

Today, we find that there were 162,000 jobs created last month; that the total gain so far this year is 1.7 million jobs; that unemployment is down to 6.8 percent from 7 percent last month. That is the disaster we got for doing nothing in February.

And, interestingly enough, President Clinton, who accused us of bordering on the edge of disaster, is taking credit for those jobs being created on his watch.

That is why, Mr. President, I am willing to risk disaster one more time and say if disaster and irresponsibility in February brought us this kind of result, I believe that we can run the risk of not passing this bill either the way we did not pass the stimulus package, and see what happens.

I am confident that if we do, we will find the economy will continue to create jobs at this level, because the small business engine that is the source of those jobs will not be stifled by the increased taxes.

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

The PRESIDING OFFICER. Under the previous order, the Senator from New Jersey [Mr. BRADLEY], would be recognized next.

Mr. SASSER. Mr. President, I ask unanimous consent that the Senator from South Carolina, [Mr. HOLLINGS], go next. Through inadvertence, Senator HOLLINGS' name was left off the list and off the unanimous-consent request. He came here early this morning and has been faithful. I ask unanimous consent that he be allowed to address the body for 5 minutes at this time.

The PRESIDING OFFICER. Without objection, the Senator from South Carolina, Senator HOLLINGS, is recognize for 5 minutes.

Mr. HOLLINGS. I thank the chairman, and I thank my colleague from New Jersey.

Mr. President, we are in deep trouble. As we well know, the United States has gone from being the largest creditor to the largest debtor Nation. The national debt has soared, more than quadrupled, to $4.4 trillion, and we have cut deeply into programs that are vital to the well-being of our people.

Out at National Institutes of Health, I was dismayed to learn the other day, 85 percent of the approved grants, those for the young scholars and scientists who compete and get approval, 85 percent of those meritorious projects cannot be funded.

The infrastructure is in shambles, roads, bridges, and everything else of that kind.

And they dare to talk about alleged broken promises by President Clinton.

Our trouble is the broken promise of President Reagan. I remember it well. He said he was going to balance that budget the first year of his term. And when he came in, he said, "Oops, this is the worst I have ever seen. Instead of 1981, the first year, it is going to take me until 1983 to balance the budget."

Let the RECORD show that President Reagan gave us the first $100 billion deficit, and the first $200 billion deficit. President Bush gave us the first $300 billion deficit, and the first $400 billion deficit.

And do not give me this nonsense about Democratic Congresses being responsible. President Bush's name is on every red cent that is being spent right now.

President Bill Clinton has not had a chance to spend any money. He just took office in January. We are on automatic pilot of deficit spending, locked in by Presidents Reagan and Bush. And we are locked into the automatic pilot of interest payments on their debt—interest payments of $1 billion a day, all of which we must borrow.

And Republicans come now and, instead of meeting up to the problem as President Clinton is trying to do with cuts and freezes and taxes, they resort to this monkeyshine game of sloganeering, engaging in political palaver about this being the largest tax increase in history, when they know that the largest tax increase is the one they instituted in 1982, when Republicans controlled the White House and Senate.

We cannot match the over $300 billion in interest taxes in just 1 year, each year, courtesy of the Reagan-Bush deficits. Yet they feign shock at Clinton's $241 billion in taxes over 5 years.

Yet every day the Republicans are increasing deficit taxes. The interest cost on the debt is automatically going up $1 billion each day, over $300 billion a year.

They ask mockingly whether tax increases have ever led to prosperity. Yes, it has. I raised taxes as a Governor, and as a result won the first AAA credit rating of any Southern States and created prosperity for my State.

President Lyndon Johnson raised taxes, a 10-percent surtax, and as a result produced a budget surplus—the last balanced budget in the history of this Government. And we had prosperity at that time.

They play other games. They say, "Well, the cuts are delayed."

I have never seen such hypocrisy. You look at the Dole-Domenici Republican alternative, you see that some 75 percent of its cuts come in the last 2 years. Dole-Domenici delays the cuts for 3 years, when their entitlement cap would finally kick in.

Then they say, "Well, the cuts will never happen. They will never happen."

Yet when Senator SASSER proposed a provision of enforcement to lock in the entitlement cuts, the distinguished Senator from Texas, Senator GRAMM, raised a point of order and a 100-percent vote against enforcement. Hypocrisy, if I have ever seen it in my life.

Social Security, we gave them a chance. Senator MOYNIHAN and I, the year before last, said, "All right, let us quit increasing the Social Security tax."

Yet when Senator MOYNIHAN and I brought to a vote our plan to roll back the Social Security tax increase, 79 percent of Republicans voted against it.

The PRESIDING OFFICER. The time allocated to the Senator from South Carolina has expired.

Mr. SASSER. Mr. President, I yield an additional 2 minutes to the Senator.

The PRESIDING OFFICER. The Senator from Tennessee yields 2 additional minutes to the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, on the morning of March 24, at 11:17, they voted for the McCain amendment. Senator MCCAIN said you cannot cut military and civilian pay levels, which President Clinton had the fortitude to recommend and put in this budget. So at 11:17, 95 percent of the Republicans who said they were so cooperative and wanted to help with the amendments voted against the military and civilian pay cuts. Yet that same afternoon, at 4:47, they voted for a 5-year freeze of military and civilian pay.

Likewise, Senator DOMENICI rails against tax increasing and new spending. Yet just last year Senator DOMENICI and Senator NUNN, under the aegis of the Center for Strategic and International Studies, proposed an ambitious program of tax increases and new spending, including "$160 billion on children, education, R&D, and technology." They did not say anything about "cut spending first" back then.

The Nunn-Domenici plan also called for "$100 billion for highways, airports, and physical infrastructure." That's a total of $260 billion in new spending initiatives proposed by Senator DOMENICI just last year.

Likewise, Ross Perot said last year "Let's increase social security taxes; let's raise by 50 cents the tax on a gallon of gas; let's increase the income tax." Yet now he faults Clinton's plan for raising taxes—oh, come on. They have the gall to vote as a solid bloc against this plan, the only credible plan on the table.

It is a disgrace. It is really a disgrace.

The PRESIDING OFFICER. The time allocated to the Senator from South Carolina has expired. Under the order, the next Senator present to be recognized would be the Senator from Mississippi [Mr. LOTT].

Mr. DOMENICI. Will the Senator yield?

Mr. LOTT. I will be glad to yield.

Mr. DOMENICI. I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 2 minutes.

Mr. DOMENICI. Mr. President, I came perilously close a minute ago to asking the Senate to consider its rule XIX, with reference to my good friend and his personal accusations and allegations against a number of Senators on this side; but I chose not to.

I think a review of the voting record of the distinguished Senator from South Carolina during the 1980s on budget resolutions that make the policy of the land and on reconciliation bills that made the law of the land will show that about half the time he has voted for this legislation.

We are saying do not cut the military pay. At least, we will want to get the budget under control. Of course we do. We do not want to mistreat the military and civilian people when nobody else is getting cut.

So we are hearing a part of the story, as the Senator from South Carolina takes the floor and acts as if he has to talk so loud, as if the louder you talk the more you are understood. I guess I am trying to compete with him, but that is sort of impossible.

But it does not make what he is saying any more the truth, no matter how loud the bellows come forth.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Mississippi is recognized for up to 5 minutes.

Mr. LOTT. Mr. President, I had intended to bellow some, but I think I will take a little calmer approach.

First of all, I want to correct some things that have been said here on the floor this afternoon, some charges that have been made here, and some in the news media, about who is doing what on this budget resolution.

I want to remind my colleagues that the vote in the House of Representatives last night was 218 to 216. Yes, every Republican voted against this package, but also 41 Democrats had the courage to stand up under intense pressure from their own President and vote against this package.

The bipartisan vote in the House of Representatives was against the package. The partisan vote was for it.

When the Senate voted on this issue earlier this year, every Republican voted against it, but so did six Democrats who had the courage to stand up and say: This is not in the best interests of my State; this is not in the best interests of the country. And they voted against it.

The bipartisan vote was against the package. The partisan vote was for it.

So when you stand up and say the Republicans have not been involved, let me assure you, we should have been involved. We would have liked to have been involved. But we would like to concentrate on spending cuts at first. And then we can talk about other things, like economic growth incentives, that we would like to see considered in this process.

So if there is any partisanship, it is on the Democratic side. It is not on this side. Because we have been bipartisan in our votes against this package.

Let me tell my colleagues, after listening to that speech I just heard a moment ago—yes, more taxes. Always. Let us address the deficit with more taxes, tax increases. Do you know what is in this package in the first year? There is $32 billion in tax increases. Do you know what is in it in terms of spending cuts? Almost nothing. Yes, the tax increases in this package are locked in. We are going to get the tax increases. But the spending cuts—oh, they are down the road, third, fourth, fifth year. But there is something even worse in this package.

Even the Washington Post—even the Washington Post that endorses this travesty every morning—has said in their reporting of the news: "Lawmakers scramble behind closed doors to make special budget deals."

This is a pork alert: Pork alert. This bill is 1,800 pages. We will not know until next April 15, probably, all the stuff that has been slid in here. Are we talking about, oh, just a little bit of money? A few million here and there? No; we are talking about big sums.

I could not even find out exactly what the amount is, but I understand there is a special Medicaid grant for Puerto Rico in this conference report in this porker bill, there is more spending. There have been some little things slipped in here.

For instance, there is a $100 million increase in the check-off for the Presidential campaign fund. They are not getting enough money to pay for Presidential campaigns out of the General Treasury so we are going to raise the check-off from $1 to $3; for single filers and from $2 to $6 for joint filers. This $100 million item just happened to slide in there in the conference.

There is $10 million for bonuses for Federal employees learning a foreign language—$10 million for bonuses for Federal employees to learn a foreign language. Great. We are going to give them special training and then we are going to give them a bonus, $10 million. A lot of my constituents would like that.

And $215 million in new spending for a downpayment on the spotted owl agreement, $215 million. Lord help me: Snail darter; spotted owls; the sandhill cranes in Mississippi cost us millions of dollars. Just another little item slipped in. Also included are $215 million and $221 million to waive Federal pension laws and for other Medicaid payments.

It is laced with this sort of thing. We do not even know how many, but I just thought I would cite some of the pork alert you would find in this bill.

In my very limited time, I want to also say I have looked at what it is going to do to my own State of Mississippi. I am convinced this package is bad for the economy of Mississippi and therefore will be bad for the people of my State. The $250 billion-plus in tax hikes contained in the plan would cost Mississippi taxpayers an additional $1.7 billion over the next 5 years, or $1,831 per household.

Mississippi taxpayers currently send Uncle Sam only $7.1 billion a year. So we are going to have added on top of that over this 5-year period, $1.7 billion. And in a poor State, that is very tough. The proposed 4.3-cents-per-gallon tax increase on gasoline and other transportation fuels alone could cost Mississippi consumers $300.2 million over the next 5 years. Mississippi consumers already pay 18.2 cents per gallon for State gas taxes.

The Federal fuel tax increase also would reduce the State tax revenues by an estimated $33 million, putting increased pressure on our State's budget. I am convinced it is not in the best interests of America or my State.

I urge my colleagues: Vote against this package.

The PRESIDING OFFICER. The 5 minutes allocated to the Senator from Mississippi has expired. Under the rotation agreement established earlier in the unanimous consent agreement, the Chair now recognizes the Senator from New Jersey [Mr. BRADLEY].

Mr. BRADLEY. Mr. President, last year, voters in this country voted overwhelmingly for change. They were fed up with economic hardship and fear for the future.

This demand for basic change swept Bill Clinton into the White House and brought this package before us today. Most of the provisions in this bill the President advocated in the campaign, and the people elected him. With this bill, we begin dealing with one of our primary national problems—the staggering deficit and astronomical debt.

The President deserves credit for acknowledging deficit spending as a problem. Last January, I hoped that he would boldly move on the debt and put on each legislator's desk by spring the vote of that legislator's lifetime—a vote that would challenge special interests ask all Americans to give up a little now so they can have more in the future and deal a death blow to the exploding debt that like acid eats away at our future prospects. This package is not that vote of a lifetime, but it is an important first step, the biggest of the last decade, to reduce the increase in the deficit. Remember, that is all this package does. It is a sad but true comment on our predicament and the disastrous economic stewardship of the last 12 years. If we do nothing, the debt will go from $4 trillion to $5.4 trillion in 5 years.

With this package, it will go from $4 trillion to $4.9 trillion.

It is sobering to think just 12 years ago, the debt was $900 billion, not $4 trillion or $4.9 trillion or $5.4 trillion. Because I believe we need more spending cuts and deeper deficit reduction, I know there must be a second step, but we will never reach the second step without taking the first today.

The first step is $500 billion in real deficit reduction. That is what the vote is today. If you are for deficit reduction, you will vote for this bill. The time for making excuses and passing the buck is over. If you vote against this package, you must either lay out a specific alternative plan to cut the deficit by $500 billion, or be revealed as someone who does not care about the burden we are loading on our children's backs. Without a specific alternative with equivalent deficit reduction, opponents of this package are simply playing the old politician's game, which is to deliver exclusively good news, never to level with constituents and, above all, to appear to be all things to all people.

There will never again be a $500 billion deficit reduction package that asks less of the middle class than this package does today. Eighty percent of all taxes come from people who make more than $180,000 a year. Only 15 percent of senior citizens in America will pay higher taxes on their Social Security benefits. Only 1.2 percent of all taxpayers will pay higher income tax rates. Lower middle-class families earning under $27,000 in income actually will get a tax cut. Small businesses will get a targeted capital gains. Big businesses end up paying only a 35-percent rate. Some loopholes are eliminated.

Spending cuts in the budget will be $255 billion, and tax increases $241 billion. It is a fair package, but more important, it is a choice between excuses or deficit reduction. I choose deficit reduction.

But there is something missing. I do not mean another penny on the gas tax or another one-tenth of 1 percent reduction in Medicare or another loophole to entice one more vote. What I mean is change. How much will we really achieve with this package? Not enough. At its core, this package is disappointing because it is only a change from something and not a change to something. We have, with this package, finally broken the pattern of irresponsibility and indifference that governed the past 12 years. It is the biggest deficit reduction package in history. We have cut some spending, raised some taxes, and pared some tax loopholes.

We have changed from the pattern of the Reagan-Bush years, when it was thought nothing could be done for our country except to loosen a regulation, to provide a tax break for somebody who was already well off, and to quadruple our national debt. We are changing from that policy, but I believe that is only half of what the American people demanded in November. They also insisted that the Government change to something: To a responsive, vigorous Government that would rise above special interests and lead on the basis of an honestly articulated vision.

What Americans want, even many of those who did not vote for President Clinton, is bold action informed by principle. They want us to move powerfully against our problems, guided by principles that would explain our decisions. Judged against this standard, today's choice is somewhat disappointing.

There are fundamental, systemic problems with the way our Government taxes our constituents and spends their money. Our deficit quite literally defines our economy and limits our possibilities. There is no better proof of that fact than a 1992 GAO study which says that all of our incomes—all of them—will be 40 percent lower than they otherwise would be in the year 2020 if we do nothing about our deficit. This package is not bold, for even as it reduces the deficit by $500 billion, it increases the federal debt by $900 billion. It does not establish a new course and does not fulfill the sweeping desire for overhaul the public is seeking.

I lament an opportunity lost to redefine the Government's contract with the taxpayers by reforming the system through entitlement reform that reduces the budget's single largest expenditures; a line-item veto that allows a President to cut out the pork and protect the general interest against the special interest sunset legislation that eliminates Government programs that have outlived their usefulness; a larger energy tax that helps to reduce pollution and lower our dependence on insecure sources of foreign oil; and an elimination of costly tax loopholes that increase the deficit and leave the rest of us paying higher taxes.

But boldness is only the 1st part of the equation. In order to have meaning for Americans, to provide them with a sense of purpose, dramatic action must be informed by the principle. It must be a principle from which every action follows and to which every decision is steered. A principle—any principle—provides guidance and assures consistency. It counts for something, and it leads.

This package is not sculpted by such a defining principle. It asks for more from those who have earned more, but it gives a lot back in tax breaks. It raises the gas tax, but not in a way that would reduce consumption. It cuts Medicare, but offers no systemic approach on other entitlements. And so on.

To a certain degree, this package is a bit like a thick stew, where the cook picks and chooses among an array of vegetables and meats. The collected pickings are put in a pot, stirred up, and then poured out as the deficit reduction stew-of-the-day.

If today we were presented with the vote of our lifetimes, we would not be arguing over half pennies on a gas tax. The country is not overcome by a fear of 3 percent higher prices at the pump. Last August in New Jersey, unleaded regular gas cost on average $1.31 per gallon. This August it's $1.11—some places even less. With the 4.3-cent tax in this bill, New Jerseyans will still be paying 15 cents less for a gallon than they were 1 year ago.

But when we make our battles on the margins, fear and anger express themselves on the margins. If we are going to shave and whittle, people will seek to emerge unscathed. But if our battles are for fundamental change, not just against business as usual, people will respect our goal and, where they do not support it, debate differences in belief, not sub-sections of committee provisions or fractions of a cent.

What New Jerseyans and Americans are afraid of is losing their jobs and with them a sense of economic security. If we don't reduce the deficit, more people will lose their jobs. More people will lose health coverage and pension benefits. And life chances for our children will decrease. Their possibility of having a higher standard of living than we do will drift further and further away from them.

There will be an act II to the deficit reduction drama. We will be back here soon—next year, the year after. Our purpose then will not just be to reduce the deficit further, although much needs to be done. Our purpose will be to understand how more deficit reduction, greater personal security for those who work including health, pension security, and lifetime education, and enhanced productivity can make us more competitive in world markets and assure more higher paying jobs both now and for our children.

But that is tomorrow. Today we must not run away from the problem of the debt. We must face it and make progress. Parts of this package I do not support—especially retroactivity—but it is real deficit reduction and deserves the vote of all in this Chamber. It has mine.

The PRESIDING OFFICER (Mrs. BOXER). The Senator's time has expired.

Under the previous order of the Senate, the Senator from New York [Mr. D'AMATO] is recognized for up to 5 minutes.

Mr. D'AMATO. Madam President, we have seen this before. Smoke and mirrors. And here we are once again: "Step right up, ladies and gentleman, because Magical Bill and his band of liberal magicians have a bag of tricks for you. Here we are, we take $292 billion and we just tuck 'em away, tuck 'em away,

away, away and it's gone—presto—$292 billion, gone. Oh, yes, we have smoke and mirrors and we have things for you. Abracadabra, alakazaam, presto."

Let me tell you what this budget is going to do: $32.5 billion. That is what it is going to take out of my State. That is going to be 650,000 jobs in the next 5 years. Abracadabra, alakazaam, presto—gone. Chefs, waiters, cooks, bartenders, and what about the construction industry? Electricians, carpenters, plumbers—abracadabra, alakazaam, presto—gone; smoke and mirrors—gone; $240 billion from New York.

Let me tell you about senior citizens. Senior citizens in New York are going to pay $359 million more. That is going to come from 375,000 seniors who are retired. They are going to pay in terms of their increase on Social Security an average of $957 more. And by the way, 60 percent of that comes from families that have an income of between $40,000 and $75,000. They are not rich. They are not the super wealthy. They are working people.

Is there any reason why the American people are going to be fooled? No. Once again, they see us playing our tricks.

Now let us look at this chart. We all bring charts in here.

This is the most illuminating chart, ladies and gentleman, of all. Step up here and watch it because what does it have in deficit cuts for the first year? You see it. Nothing. Nothing. And what does it have in deficit cuts for the second year? Take a look at it. Nothing. We do not cut spending in the first year. We do not cut spending in the second year. But abracadabra, alakazaam, presto. After the next Presidential election, I promise you, my friends, there will be a cut. It is a stealth cut. It is a stealth deficit spending plan that we are voting on, and we have been here before and we play the same game again.

It is sad—it is sad—that we have turned into a shoddy circus of magicians. I have to tell you, the American people know, and when we get the outfall of the loss of jobs, when we see seniors who are hit and have to move out of high-income areas like New York, New Jersey, Connecticut—and they will—and a further erosion of the job base, why, then we can remember the trick that we played on ourselves and our people.

Let us send this back in a bipartisan way and see to it that we do not have to depend on abracadabra, alakazaam, and presto. If we are going to wait 4 years from now to see if there is a cut, I am afraid that that is not going to be a very entertaining show.

I yield the floor.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Madam President, I yield myself 30 seconds.

I want to congratulate the distinguished Senator from New York. He has put on a superb performance this morning. And if he ever becomes weary of the Senate, I think he would do very well on the carnival circuit as a barker for the side shows or Mandrake the Musician in one of the tents.

But the facts are that his facts are incorrect. They were amusing but incorrect, I say to my friend from New York.

In 1994, there will be $21 billion in spending cuts under this proposal as opposed to $26 billion in revenue increases. In 1995, there will be $32 billion in spending cuts. In 1996, $47 billion; 1997, $67 billion; 1998, $89 billion, for a total of $255 billion.

I yield myself an additional 30 seconds.

So those are the facts, Madam President: $21 billion in cuts in 1994; $32 billion in 1995; $46 billion in 1996, all taking place before the next Presidential election.

Now, I have heard a lot of talk here this evening about how taxes are going to go up in certain areas. My friend from Mississippi talked about how taxes were going to go up on the folks in his State, on the average I think of $1,200 per household over 5 years. What are the facts? Six thousand one hundred—another 30 seconds—6,100 households in Mississippi will see their taxes go up; 408,000 households in Mississippi will see their taxes go down. Those are the people who make under $30,000 a year.

In my own native State of Tennessee, 20,000 households will see their taxes go up; over 500,000 households will see their taxes go down under this proposal.

An additional 30 seconds.

Those households that will see their taxes go up are those that have a gross income of about a minimum of $180,000. Those who will see their taxes go down are those who have income of less than $30,000. So there is the fairness, and there is the equity, and there are the spending cuts, Madam President.

The PRESIDING OFFICER. The Senator's time has expired.

Under the previous order, the Senator from Michigan is recognized for 5 minutes.

Mr. DOMENICI addressed the Chair.

Mr. RIEGLE. I thank the Chair.

Let me start by saying that there are no easy answers or any easy way forward after 12 years of the wrong direction and voodoo economics, as George Bush called it, way back in 1980.

We are in a situation now where we have massive Federal deficits. We have a lot of economic unfairness in the country. We are not getting the job creation we need, and we do have to change direction.

I just want to refer to one chart tonight. That is a chart which shows the Federal budget deficit since 1981 rising year-by-year, getting up to $100 billion a year, $200 billion, $300 billion, over $400 billion a year if you actually count it accurately. And now that we are up here to a $450 billion deficit; to bring ourselves down from that requires very difficult actions and decisions. And so there is no easy way to do this. There is no painless way to do it.

I think the package we have has some good features in it. It has some features in it that I do not like and that I wish were not there. But I am convinced that under the circumstances, and with our friends on the other side of the aisle unwilling to have any part in fixing this problem, although they had a lot to do with building it up, I think the best we can accomplish under the situation we face right now is in this package.

If we do not pass this package, let me tell you what I think is going to happen. I think we will face a growing paralysis in Government. I think we will face even higher Federal budget deficits. I think we will face higher interest rates and more damage to the economy and more job loss.

We succeeded in this package in killing the Btu tax. I think that was important. I thought the Btu tax was a mistake. That is out of here.

We have blocked any income tax increases on families that earn less than $180,000 a year. So we have held most of the families in the country absolutely harmless from any possible income tax increase.

It does not solve our whole problem, but it changes our direction, and it gives us the chance to start afresh and to move on from there to do the other things we need to do.

The next big thing we are going to have to do, if we can pass this package today, is move on to health care reform. We need to do it, both to protect our people and to make it affordable, but also to start to bring the costs down under control. One way to solve our Federal budget deficit problem is to deal with reforming the health care system.

The PRESIDING OFFICER. The Senator will suspend for a moment. The Senator does have more than 3 minutes remaining but I would like to see order in the Chamber, if we might.

The Senator may continue.

Mr. RIEGLE. I thank the Chair.

So there is no easy way out of this situation. I want to make sure that people across the country understand that.

We make major cuts in the deficit in this package. We are bringing this deficit down from what it otherwise would be, nearly $500 billion over the next 5 years. We make many cuts in spending. We are going to have to make a lot more cuts in spending.

In this bill, we are only able to reach certain items in the budget, but we are going to have to move on beyond that,

to reduce the size of the Federal bureaucracy and reduce other Federal programs, and it is going to be painful and nobody is going to like it. Everybody knows we have to pass a package and this is the only pakcage we have.

Frankly, the reason it is going to pass on a tie vote with the Vice President deciding it, is there are a lot of people who know it needs to pass, but they would just as soon not have to vote for it and not have the weight of voting for it fall on them and let somebody else vote for it. That is the way it often works here.

We will probably have a tie vote. If that is the way it is, so be it. We have to get it done in a sense of breaking gridlock, to start getting these deficits down, to reintroduce some fairness in the tax system and get some job lift back into the economy.

I said there is some good in here and some bad in here. I do not like the retroactive tax feature. I think it is wrong. I do not think it ought to be here. I do not think we ought to have any increase in taxes on Social Security recipients. I prefer not to see the gas tax, although we have pushed it down as low as we are able to get it, given the lay of the land around here. And we need other cuts in Government spending. We cannot reach them within the confines of this bill. We are going to have to move on and do those in the months ahead. I am determined to do that; we must have deficit reduction that is substantial.

We have an immunization program we talked about earlier that lets kids without insurance get the vaccinations they need to get protection against diseases. We do get enterprise zones to help in the inner cities. We have a lot of job creating initiatives. We have a targeted job tax credit, industrial development bonds. We have the earned income tax credit so people can get off welfare and into the work system and pay their bills and support their kids and support themselves. We make the mortgage revenue bond program permanent into the future to help families with modest incomes buy homes. We help with small business capital recovery by increasing the expensing amounts, and in other ways we generally provide job lift to the economy.

But this is not a cure-all, and nobody should be under that illusion. But if we do not act now to change the direction, the problems are going to get worse and everybody in the country will be worse off as a result.

So let us take the best step we can at this time with the good parts and the parts we may not like, and then let us move on to health care reform and the other cuts that need to be made in Federal spending and in the Federal bureaucracy and let the American people know we are willing finally to face up to this, and we are going to cap these deficits off and start to bring them down in a way that is fair to people and in a way that will create jobs in America.

I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired.

Under the previous order, by unanimous consent, the Senator from Oklahoma is recognized for up to 5 minutes.

Mr. NICKLES. Madam President, thank you very much.

I compliment my friend, Senator DOMENICI, for doing an outstanding job of managing this bill. I attribute to him a lot of our success. I think we are making some headway in educating the people. I would like to comment on the statement of my colleague from Michigan that we are bringing the deficit down. If you look at the President's own numbers, the deficit comes down somewhat and goes back up fairly substantially.

Madam President, I would like to allude to a comment President Clinton made when the House Ways and Means Committee passed the tax bill. On May 14, he said: "I think it will help the economy bring in more revenues and permit us to spend more."

That is exactly what we are talking about. We are talking about a massive tax increase so Congress can have more money to spend. I will predict tonight that this bill will pass by probably a tie vote and the Vice President will break the tie. He did that once before. I also predict within an hour of that we will be passing the National Service Program, a brandnew spending program, a brand new multi-billion-dollar spending program. People need to be aware of it.

Yes, we are raising taxes. We are raising gasoline taxes, taxes on some individuals, Social Security income. We are raising corporate taxes, small business taxes, and also before the day is over, we are going to end up spending—we are going to pass a brandnew spending program that is going to cost billions of dollar.

Madam President, the bill before us increases food stamps spending $12.7 billion. It increases earned income tax credits $19.1 billion. Some people want to get people off welfare. This bill expands the EITC, a tax credit where the Government writes checks to low-income individuals.

I just happen to have four kids, three of whom are working, some of whom are in that low-income status. I do not know why the Federal Government is going to be writing them a check for 40 percent of their salary, but it will.

And I cannot help but think some employer is going to factor that into their wage base, which is ridiculous.

In this bill, we are going to spend $215 million on the spotted owl. I look at the savings and I think, well, wait a minute. What are we going to do? We are going to cut spending because we do not want to increase the deficit. What about these spending increases?

Mr. DOMENICI. Will the Senator yield on my time for a question?

Mr. NICKLES. I will be happy to yield.

Mr. DOMENICI. I just wanted to share with the Senator, he started listing some of the new expenditures in a bill that is supposed to be cutting the deficit.

I wish to share with the Senator, because the Senator covered many of them, there are 25.3 billion dollars' worth, and I would like to make that list a part of the RECORD so that everyone will know, while we are raising taxes, we are spending $25 billion in new programs and new expenditures at the same time.

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

NEW SPENDING IN RECONCILIATION CONFERENCE

[Deficit impact in billions of dollars]

| Provision | 1994 | 1995 | 1996 | 1997 | 1998 | 1994–98 |
|---|---|---|---|---|---|---|
| Direct Spending: | | | | | | |
| Forest Service/BLM timber sales receipts to States and counties (spotted owl) | 0.043 | 0.053 | 0.049 | 0.040 | 0.030 | 0.215 |
| Food stamps | .056 | .274 | .452 | .838 | .044 | 2.664 |
| FCC operating costs | .002 | .002 | .002 | .002 | .002 | .010 |
| Medicare expansions | .041 | .056 | .074 | .102 | .119 | .392 |
| Medicaid: TB services | .020 | .035 | .045 | .050 | .055 | .205 |
| Medicaid: Puerto Rico | .041 | .049 | .058 | .067 | .078 | .293 |
| Medicaid: Immunizations | .006 | .227 | .124 | .114 | .114 | .585 |
| Medicaid: Other | .038 | .022 | .007 | .005 | .005 | .077 |
| Child welfare | .160 | .133 | .202 | .247 | .255 | .997 |
| SSI | .004 | .004 | .005 | .005 | .005 | .023 |
| Social service block grant (title XX) | .040 | .440 | .455 | .035 | ..... | .970 |
| FSLIC double dip | .136 | .014 | .029 | .095 | .109 | .355 |
| EITC expansion | .209 | 2.000 | 4.397 | 6.122 | 6.378 | 19.106 |
| Presidential campaign $3 checkoff | ..... | ..... | .081 | ..... | ..... | .081 |
| Customs officers' foreign language proficiency | .002 | .002 | .002 | .002 | .002 | .010 |
| Student loans | .188 | .445 | .540 | .565 | .595 | 2.333 |
| National vaccine injury compensation program amendments | .001 | .001 | .001 | .001 | .001 | .001 |
| Total new spending | .888 | 3.402 | 6.022 | 7.412 | 7.718 | 25.438 |

Source: CBO/JCT cost estimates.

Mr. NICKLES. I appreciate the Senator inserting that into the RECORD.

Madam President, I thank my colleague from New Mexico.

Madam President, it bothers me—I think it bothers most Americans when they find out that 80 percent of the spending cuts occur in 1997 and 1998. It is my guess that Bill Clinton will no longer be President at that time. That means that those spending cuts do not really happen. Actually, there are no spending cuts in 1994. If we consider the fact that we have already passed the urgent supplemental for flood relief, that means we are going to end up with no spending cuts in 1994 and 1995.

So there are no spending cuts in either 1994 or 1995. We have already taken care of that today. We have already spent all of the savings in the first 2 years of this budget package. We are saying that 80 percent of the spending cuts are going to happen after the

next Presidential election year. That is phony. That is hogwash.

I wonder if my colleagues and if the American public are aware of the fact that we are increasing the debt $530 billion in this package. We are increasing the debt limit from $4.37 trillion to $4.9 trillion in this so-called reconciliation package. We are going to increase our debt limit by $530 billion.

Madam President, I cannot help but think of the promises that candidate Bill Clinton made during the campaign. He said he was against a gasoline tax increase. This bill has a gasoline tax increase. During the campaign he said he wanted to give a tax cut to seniors. This bill has a heavy tax increase for senior citizens that are dependent on Social Security if they have income above $34,000 as individuals or $44,000 as couples. I know I have heard people on the floor say no one has an income tax increase if they have incomes less than $180,000. That is not the case. Because if they happen to have Social Security income and they are individuals above $34,000, they have a heavy hit to the tune of over $100 a month in many cases. So I again think we need to tell the facts.

I really believe that if candidate Bill Clinton had campaigned on this tax package that he would still be in Arkansas. He would not have won.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NICKLES. I will conclude.

The PRESIDING OFFICER. The Senator's time has expired.

Does anyone yield time to the Senator?

Mr. WARNER. I yield time out of my time.

Mr. DOMENICI. I yield 2 minutes off the bill.

Mr. NICKLES. I thank my friend and colleague, and also my friend and colleague from Virginia for his generosity.

If candidate Clinton had campaigned on this program, he would still be in Arkansas. There is no question.

This tax bill is a repudiation of what he said as a candidate. Frankly, it will not get the deficit down. What it will do is it will give him a lot of new money to spend. We will pass a National Service Program tonight. It is going to cost billions of dollars. We will watch that program grow substantially. We will spend more money for food stamps; billions more in earned income tax credits, even though they increased last year by 55 percent. Entitlements will continue to explode. There is no deficit reduction in this bill.

Madam President, I urge my colleagues to defeat this unfair tax bill.

I thank my friend and colleagues.

Mr. WARNER addressed the Chair.

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

Mr. SASSER. Madam President, may I inquire how much time we have left on our side?

The PRESIDING OFFICER. The majority has 1 hour and 2 minutes.

Mr. SASSER. How much time does the minority have?

The PRESIDING OFFICER. 1 hour 40 minutes.

Mr. SASSER. Madam President, I would suggest that we in order to even up the time move to another speaker on the minority side. I have discussed this with Senator DOMENICI and the distinguished ranking member. He has no objection. I would also suggest that speakers on our side be limited to 3 minutes. We have 22 speakers left. By that calculation, I do not think we can get them all in in 3 minutes. But under the previous order, I will have to limit all future speakers on the majority side to 3 minutes.

Mr. DOMENICI. Madam President, might I ask unanimous consent that Senator KASSEBAUM be substituted for Senator HELMS, and that she be allowed 3 minutes in his stead.

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

The Senator from Virginia is recognized for 5 minutes.

Mr. WARNER. Madam President, I thank the Chair. I thank the managers of the bill.

Madam President, I want to take but a few minutes because the message I have tonight is relatively short but it is one that is terribly important to me and I would hope it would be terribly important to all Members of this Chamber.

I have had the privilege of serving in the Senate for some 14 years. I think I am going to do something I have never done before. I do not need the podium. Madam President, I am going to use the bill. That is the conference report. That will serve as my podium, 1,800 pages provided to the Members of this body barely 48 hours ago.

I want to go back and read a decision of the Supreme Court in 1910. It embraces a maxim of law that has been followed in this country since the very inception of our great Republic. It emanates from the common law of England. It is tried and tested. And it reads: "Ignorance of the law will not be an excuse."

I say to my colleagues that none of us have had the opportunity to go through these 1,800 pages, nor have our staffs which are provided for by the taxpayers to assist us. We are going to be asked to vote on this package in a bare few hours. I daresay not one of us have had the opportunity to go through and study it in that detail that we are committed to in our oath of office, in our campaign promises, when we promised to our constituents to listen to them.

How many have listened to these millions of telephone calls that have come to this body and the other body? As of this morning, 2.3 million calls, the vast majority of which indicate "Do not adopt this bill."

I add to the many good reasons given tonight by my distinguished colleagues on this side for their reasons not to vote. I add that reason that ignorance of the law will not be an excuse when you are confronted by your constituents and asked questions why did you vote for this. You cannot say I did not have time to go through it. You cannot say I am ignorant of it. To me this is a violation of a fundamental duty, a violation of the law of the land of the United States since the very inception of our Republic.

I yield the floor.

The PRESIDING OFFICER. Under a previous order, the Senator from Nevada [Mr. REID], is recognized for up to 5 minutes.

Mr. REID. I reserve my time.

Mr. SASSER. Madam President, the distinguished ranking member, the Senator from Kansas, wishes to take her time at this time.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 3 minutes.

Mrs. KASSEBAUM. Madam President, the Senator from Virginia just pointed out this 1,800 page bill which he used as a podium. It has many facets, many parts of it which we do not really know. I would like to speak to one small part, however, which I know well. As ranking member of the Labor and Human Resources Committee, I was involved in the reconciliation process.

The provision that I was involved in was a direct lending provision on student loans. Frankly, Madam President, it is a situation that disturbs me gravely, not only from the standpoint of procedure but the standpoint of substance.

The Labor and Human Resources Committee was given a budget that required it to come up with over $4 billion in savings. This allocation had the effect of forcing the committee to adopt a direct lending approach on student loans that was favored by the President but untested in the real world. For the CBO, Congressional Budget Office, scoring purposes, the President's direct lending proposal did not assume the full administrative costs. It is as if the program would magically administer itself. In reality, the administrative costs of the direct lending program, I believe, will be phenomenal. As a result, Madam President, the massive new program will likely cost taxpayers instead of saving taxpayers any dollars.

More importantly, the program will do little to reduce educational costs for students. That, I think, is one thing that has been very misleading about the debate on direct lending for student loans. This experience with the charade of the reconciliation process has reconfirmed my belief that Congress must reform the budget process to provide for more accountability and

for greater understanding on the part of not only the public, but the Congress, in the process.

In the wake of reconciliation, I hope the Joint Committee on the Reorganization of Congress will make substantive proposals for improving the budget process. Personally, I would like to see a 2-year budget cycle. We never, ever really realize savings that are usually in the fourth or fifth year. I would like to see it more streamlined and more understandable. I think this would lead to a more realistic means of addressing our spending and our revenues, and it would instill discipline and restore public confidence that Congress indeed knows what it is doing and can be held accountable for what we do.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, a Member of the majority will be recognized at this time, unless there is another speaker.

Mr. SASSER. I suggest, Madam President, that we return to the Senator from Indiana [Mr. COATS].

The PRESIDING OFFICER. The Senator from Indiana is recognized up to 5 minutes.

Mr. COATS. Madam President, we have discussed a lot of numbers and details. I imagine that the American public, if they are watching, is pretty numbered out at this particular point, with the size of the deficit, the amount of deficit reduction, and the amount of taxes and spending cuts and when they go into effect, the growth of the deficit, et cetera.

I thought it would be important to try to understand, in practical terms, what the impact of this would be on an individual business or on a particular individual. So I called a friend of mine who operates a small business in Indiana. It is a profitable business. They employ 200 people. They earned, last year, a net profit of $7 million. It is a substantial operation. Yet, with 200 employees, they would certainly not be considered big business. They are a small business, but they are a growing business and a successful business.

I said, "What is going to be the impact of this budget plan with the increase in taxes on your business?" He said, "Well, I do not know. I have not run the numbers."

So I was able, then, when the budget deal was finalized, to send him the numbers, and they had their accountants run it through the computers, and they calculated it all out, and he called me back just recently. He said, "Well, I have your answer." He said, "This tax increase is going to cost our business an additional $1 million over last year's earnings."

When he found out it was retroactive, he realized he had to pay the million dollars this year. He was counting on it going into effect July 1 or January 1 of next year. He said,

> This year, it will cost our business an additional $1 million in taxes, because you are raising the rate very substantially. We are a subchapter S corporation, and the money will flow through to the individuals, and we therefore will have to pay those kinds of rates. They are not subject to just the 1 percent increase from 34 to 35 percent; they are going to their tax rate well into the 40 percent range.

I said, "Well, in practical effect, what does that mean?"

He said,

> What that means is that we will have $1 million less to invest in the business. Bottom line, we will not be hiring any new workers. In fact, we probably will be laying off some people, because that is a pretty big hit.

I think you can multiply that story by hundreds of thousands, if not millions, of examples across this country. The whole idea behind this economic recovery plan—or budget deficit reduction plan, or reconciliation, or whatever you want to call it—is to improve the economic performance of the United States. It is to provide, as the President has said, more jobs. It is to provide more job opportunities for Americans.

Yet, in this one instance which I think represents what is going to happen across this country, we are not going to see an increase in jobs; we are going to see a decrease. We are going to see businessmen and women in this country making decisions like my friend, saying, I have less money to invest, less money to put back into the business, less money to increase my productivity; and it is going to result in our hiring fewer, rather than more workers.

We all agree here on the floor as to what the problem is. The disease is the deficit. What we cannot agree on is the cause of the disease and the solution.

The cause, according to those on the Democrat side, is that we do not have enough revenues. The Republicans are saying the cause is we are spending too much, and the Government has not used restraint in terms of the way it provides growth for Government functions. You cannot get revenues generated fast enough to chase the growth in spending. Until you reconcile that basic difference, you cannot resolve the problem that exists in this body.

On the one hand, we have a bill that provides more revenues to Government. On the other hand, you have Members on the Republican side saying, We think the problem is spending, and until you restrain spending, we are not going to solve the problem. It has been said over and over that until we get a handle on spending, we are not going to resolve the problem.

This bill does not do that. It raises taxes, defers spending, and for that reason, I do not support it, and I urge my colleagues to vote "no".

The PRESIDING OFFICER. Under the previous order, the majority has time for speakers.

Mr. SASSER. The distinguished Senator from Nevada is not here at the moment. He will be next. The distinguished Senator from Florida, Senator GRAHAM, is here and will speak.

The PRESIDING OFFICER. Under the request, are we using 3 minutes?

Mr. SASSER. Yes.

The PRESIDING OFFICER. The Senator from Florida is recognized for 3 minutes.

Mr. GRAHAM. Madam President, I am supporting the President's plan tonight, because it is the only alternative that we have. It is the only alternative that we have any expectation of having in the foreseeable future.

For too long, we have taken the easy way out. We have mortgaged our future. We have lived off of our children and our grandchildren's credit cards.

My grandfather was born in Sanilac County, MI, in 1856. In 1856, the total national debt of the United States of America was $32 million. The per capita debt was $1.30 per American citizen.

When my second grandchild was born, four generations later, in January 1991, the national debt had just exceeded $4 trillion. Today it is $4½ trillion, and my granddaughter and all the other children of her generation began their life as an American with an average debt of $15,700.

Madam President, we cannot continue to live off of our grandchildren. I believe this plan, as difficult as it is and with as many specific features that each of us would like to see written differently, meets three basic tests.

One, it does seriously attack the Federal deficit. We currently are running at a deficit line, Madam President, which by the end of this century will have us at annual deficits of over $500 billion a year. This plan gives us the opportunity to arrest that spiral of Federal budget deficits. This plan reduces spending by $255 billion while it increases revenue by $241 billion.

Second, this plan is fair. It asks those Americans who are most able to pay to pay more. It attempts to shelter those who are least able to pay and to give encouragement to the poorest of Americans.

Third, this plan has the opportunity of stimulating new job creation and a stronger economy for the future by giving us the prospect of recent historically low long-term interest rates and the benefits that they will have for sustained economic development.

Madam President, this action tonight is not the end. This is an important but not the final chapter of our fight against deficits and to provide a strong economy.

Looking ahead, there are other things we must do. We must control health care costs if we are going to avoid a run to higher levels of deficits. We must continue to look for ways to reduce spending.

I believe we must pass a line-item veto and a balanced budget amendment in order to give us the legal tools.

Finally, I would suggest that we must look for ways in which we can work together. We cannot attack a problem as systemic as the national debt that has gone from $900 billion to $4½ trillion with Democratic votes alone. It is going to require a bipartisan commitment and effort.

I hope after this breech tonight there begin an evening of reconciliation and we can move together to build for our grandchildren, all of our grandchildren, a better future.

The PRESIDING OFFICER. The Senator's time has expired.

Under the previous order, the Senator from New Hampshire is recognized for up to 5 minutes.

Mr. SMITH. Madam President, the American people elected a Democratic President, a democratically controlled House, and a Senate controlled by the same Democratic Party. In essence, the voters told the Democratic Party to govern the Nation. This tax package is the result.

The President crowed about a great victory last night in the House. It was a victory for Democrats—some Democrats—but a defeat for the taxpayers.

It is going to increase taxes and user fees by $255.3 billion over the next 5 years.

More than 80 percent of the spending cuts will occur in 1997 and 1998, after conveniently after the next Presidential election, and the ratio of tax increases to spending cuts is about 2 to 1.

So, either way, under this plan, the national debt will rise by more than $1 trillion over the next 5 years, and deficits will begin to rise in 1998.

If that is the bottom line, what have we gained?

Madam President, in addition, this is retroactive. The tax increase is retroactive on the American people, as if taxpayers did not have enough trouble trying to pay the taxes that are due tomorrow let alone the ones that are due in January.

This is the Clinton plan in all its glory. It is not subject to any partisan gridlock. Do not believe that. This legislation, which makes sweeping changes in our tax and spending laws, requires a simple majority of Senators to become law. That is all it takes—51. The last time I checked, there were 56 Democratic Senators. All they have to do is say "aye" and it is a done deal. So do not blame us for gridlock.

I want my Democratic colleagues to know, with all respect, I wish them best of luck; I hope their predictions are right. I hope this package slashes the deficit, not only for their sake, but for America's sake. More importantly, I hope it creates jobs and reduces interest rates.

If it does, the American people will see the wisdom of what you have done and reward you at the polls by millions of votes. If you are right, I will be the first Senator to stand up and put President Clinton's bust on Mount Rushmore.

I do not think Lincoln, Jefferson, Teddy Roosevelt, and Washington will have to worry. I think the stone cutter will relax because it is not going to happen.

We have done this before. If this worked, George Bush would still be President. I have news for my colleagues. We tried it once, and it did not work.

I feel as if I am in some kind of time machine here. I need a new calendar. This cannot be 1993. It must be 1990. I must be wrong. We have been through all this before, have not we?

This budget bill is the failed 1990 budget agreement dressed in 1993 clothing—more promises, more taxes, more spending, more deficits, and more debt.

I have heard it all before in 1990 with my President and my party.

Madam President, as an American I hope and pray that the economic predictions of my Democratic colleagues somehow become reality.

But as a student and a teacher of history, I know better.

In 1990, the budget agreement raised the tax rates on upper income Americans. In 1993, the Clinton budget raises taxes on upper income Americans.

In 1990, the budget agreement raised taxes on gasoline. In 1993, the Clinton budget raises taxes on gasoline.

In 1990, the American people were promised $500 billion in deficit reduction. In 1993, it is the same thing under the Clinton plan.

Madam President, a reasonable person is likely to wonder exactly what the differences are between these two bills, and a reasonable person might ask why a bill that failed to reduce deficits before is suddenly going to reduce deficits now.

When asked how he was going to meet the $500 billion deficit reduction target, Senator MOYNIHAN, one of our colleagues, used the word "magic."

This Senator does not believe in magic. I believe in history and lessons, and unfortunately the Senate is doomed to repeat history.

In December 1962 one of our own, a great American, President Kennedy, said:

> * * * an economy hampered by restrictive tax rates will never produce revenues to balance our budget just as it will never produce enough jobs or profits.

How true. How true, Madam President.

I yield the remainder of my time.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The Senator from Tennessee.

Mr. SASSER. Madam President, I believe the Senator from Massachusetts is next on the list.

The PRESIDING OFFICER. Under the previous order, the Senator from Massachusetts [Mr. KERRY] is recognized for 3 minutes.

Mr. KERRY. Madam President, we know that nobody is about to change a vote out here this afternoon. So it is not a debate in the traditional sense. We are sharing with colleagues and with the American people the sense of what is at stake in this issue.

I would like to observe that I think a more complete and honest response to the fiscal predicament of our country would take a far greater seriousness of purpose and frankly far more courage than has been summoned here in these past months.

I do think that President Clinton has made a substantial shift from the shoddy budgeting of the Reagan-Bush years when we had phony prices on all the numbers.

Indeed the reason the Senator from New York puts on such a good magic show is he had a lot of practice these past 12 years.

The fact is for the first time we have real numbers and we are dealing with real deficit reduction.

I also want to observe I feel very strongly that more could have and should have been done to deal with the national crisis we face.

While I will vote for this bill, I want to make it very clear before this vote that I would have preferred a different approach. My own personal view is we have not cut enough where we could have and should have cut more. We have cut too much in many places where we should not be cutting where, in fact, we should add, and we have not adequately met the needs of this Nation for investment either in infrastructure or research and particularly in our cities, in our children, and in our schools.

Finally, and most important, I believe we have missed an extraordinary opportunity to shift this country to a sounder economic footing by changing the very fundamentals of our tax structure all together. If we had boldly changed that tax structure in our country, we could have embarked on a journey as legislators that might have done far more to create jobs and make us more competitive. We should have moved to a system that encourages savings and discourages consumption, and that is a debate for another time though it should have been the debate for now.

Some might ask, if you consider this bill insufficiently bold, why then would you vote for a bill that may be politically unpopular?

First, the bill has some important provisions to stimulate investment, especially for small business. It extends the research and development tax credit, establishes a targeted capital gains incentive for investment in small business for which I have fought, and creates enterprise zones in low-income urban areas. These are important initiatives. Moreover, only 1.1 percent of the people in my State will see their

income tax rate increase. That's the 1.1 percent of our people who are most well off, and in the best position to do more to contribute to the national need.

But there is another, more fundamental point.

This is the only real deficit reduction plan available. This bill will cut the annual Federal budget deficit in half as a percentage of GDP. It will increase job creating investment. The Republican plan would do neither one, because there is no Republican plan.

As President Reagan's budget director, David Stockman, last month told Sidney Blumenthal of the New Yorker, President Clinton is, and I quote, "getting a fast education in how decadent this whole fiscal process has become." Stockman said of the Clinton deficit cutting plan we are voting on today:

He's addressing it an honest way, putting tough measures on the table. * * * It's a phony debate that the Republicans and some of the Democrats have put up. It's a pretty cowardly display—not only cowardly, but intellectually ragged. * * * Rather than look at what is needed, the response is: How do we posture?

Stockman continued with the following assessment of the performance of what used to be his side of the aisle:

The Republicans, Stockman said are "totally irresponsible."

So, let us tell the truth about what the other side of the aisle is offering the American people in the way of reform. Groucho Marx summed up their approach 50 years ago in the movie "Duck Soup," when he portrayed a politician whose political rallying cry was "whatever it is—I'm against it!"

This abdication of responsibility by the Republicans, dismaying as it is, gone on a long time, and was largely responsible for creating our present predicament in the first place.

The Republicans want Americans to forget just what they did in 1981, when the national debt was under $1 trillion—less than one-quarter of the amount it reached by the end of the Bush years.

The Republicans want Americans to forget about the magic asterisks, rosy scenarios, and advantageous baselines they used to make appearances seem more favorable than reality, when they pretended to balance the budget during President Reagan's first term, but in fact, created the most massive budget deficits in our nation's history through a combination of increased military spending and tax cuts for the rich.

As David Stockman later confessed, the Republicans knew throughout the process they weren't going to balance the budget—that they were creating historically large deficits through the tax breaks for the rich. Their real intention was to create the deficits, and through creating the deficits, use those deficits as a Trojan Horse, to force the Federal Government to shrink.

And in fact, they were successful. The domestic discretionary portion of the Federal budget has shrunk as a portion of our gross domestic product by about 24 percent—while interest payments on the federal debt have increased by 70 percent. The Federal government has shrunk in terms of its ability to deliver services to the nation. And as a result of the adoption of this legislation, which calls for an additional 5-year freeze in discretionary spending, it looks like the shrinkage in the delivery of services by the Federal Government is going to continue for the forseeable future.

That will be painful. But it will also be worth the pain, because the bill will cut $500 billion from the deficit over 5 years. If it becomes law, the deficit should be lower next year than it is this year, and lower the year after that. By the year 1998, the deficit will be one-half the percentage of GDP that it is today. It is the largest deficit cutting package proposed by any American president in history.

As my colleague Senator HOLLINGS has said so well, the interest that Americans currently pay on the debt—$1 billion every day—is a tax. It is the tax the middle class must pay for the profligacy of the 1980's. It is a tax that eats away at our ability to finance programs to help our most needy, to combat crime on our streets, to invest in technology, and to improve our roads and bridges. It is a tax that grows as our debt grows—every day that we have a budget deficit. The net interest on the debt is now about 14 percent of our budget. If we do not adopt the Omnibus Budget Reconciliation Act and do nothing to address the deficit; if we continue to pretend that deficit reduction does not entail painful decisions; if we prefer to play politics than to shoulder our responsibilities to the voters who put us here; then the interest on the debt will grow to almost 18 percent of the budget by the year 2003.

This reconciliation bill addresses this devastating tax by reducing the deficit. And, unlike proposals which the opposition has offered, the President's plan does not rely on gimmicks which require that we made cuts at a later date without specifying what those cuts will be. Instead it makes real spending cuts and achieves real deficit reduction. Over half of the $500 billion in deficit reduction derives from 200 very tough, very specific spending cuts.

In short, President Clinton is trying responsibly to clean up the mess that President Reagan, with the collusion of a number of people on the other side of the aisle who are still here, created, in legislation like Kemp-Roth and Gramm-Latta.

The very people loudest in blaming President Clinton for this bill are among those most responsible for the current situation.

Some of them are among the very people who say, "cut, cut, cut, cut," but when you try to cut, they go to the floor to defend their favorite programs. Multi-billion-dollar boondoggles like the super collider in Texas. Ridiculous Federal subsidy programs like the special payments we make to mohair goat ranchers.

Recently, Senators BRYAN, REID, and I attempted to cut some Federal spending by offering an amendment to the Senate version of the reconciliation bill and then again to the agriculture appropriations bill to eliminate the wool and mohair price support program.

Given the rhetoric in Congress about the need to cut more, given the fact that the subsidy's stated purpose is to maintain a supply of wool and mohair for strategic purposes which no longer exist, given the fact that mohair is now used only for the decorative braids on military uniforms, given the fact that elimination of this subsidy would save the American taxpayer over $700 million program, and given the fact that the program been ridiculed in the New York Times, the Washington Post, and other editorial pages across the Nation—I would have thought it would be easy to kill the wool and mohair subsidy.

Yet, goat ranchers will continue to receive subsidies.

This experience has come to symbolize for me the grip that parochial concerns and the politics of cynicism have on Washington. Many of the most vociferous critics of President Clinton's plan—who claim he has not cut enough—are the ones who worked behind the scenes to ensure that sheep, goats, and some ranchers will not have to sacrifice as much as others to bring down our mammoth deficit. It is clear that these critics are hiding behind the rhetoric of tough choices in order to avoid actually doing anything that might offend their parochial interests.

For years, they have perpetuated budgetary myths that they still haul out every time we try to do something to change the status quo left us by the Reagan-Bush years. We've heard their claims a thousand times.

They say that tax cuts will pay for themselves. We tried it. They did not. Those tax cuts to the rich caused massive bleeding to the Federal Government and created these deficits we are now trying to respond to.

They say that we will grow our way of the Federal budget deficit. Remember that one? The result of the Reagan-Bush economic policies has been painfully slow growth, slower growth than we have had or recession, even as we have literally allowed our Nation's physical infrastructure to collapse, our children to be less-well housed, less-well educated, and our workers to be less-well trained. While all that has taken place, the deficit skyrocketed. Because supply-side economics was not merely an economic failure—it was an

economic joke—a cruel joke—an economic trick played upon an entire nation.

We have a consensus today about what this Nation needs. On the one hand, we need to reduce our deficit. On the other, we need to improve our productivity and competitiveness. The latter requires substantial increases in investment. We need to modernize our capital stock. We need to invest in education. We need to train our workers. We need to rebuild our infrastructure.

These are somewhat contradictory goals. It is not easy to simultaneously reduce a Federal budget deficit and increase spending in the areas where the Nation needs the investment. The President tried to balance those needs in his original bill. Since then, to my regret, some of the investment and capital formation mechanisms were removed. But the basic thrust of the package—which demands that the wealthiest 1-percent of our people pay a fair share toward cutting the deficit—has been retained. The rest of us will pay in the vicinity of ten pennies a day for deficit reduction. That is hardly an unfair way to place the burden.

The Republicans have gone on and on about how unfair the tax provisions are in this bill. In fact, the bill reduces taxes for many businesses, including small businesses.

While you would not know it from the rhetoric from the other side of the aisle, there are a number of important tax cuts in this bill. We are extending the research and development tax credit. We are cutting capital gains taxes for long-term investments in small business, a provision I have fought for over many years. We are increasing tax deductions for small business equipment purchases, and modifying passive loss rules applicable to real estate. These and other provisions will actually lower taxes for a substantial number of Americans.

The plan also contains provisions designed to increase investment in families, in infrastructure, and in job creation. The bill provides funding for the earned income tax credit—the first step towards welfare reform and making work pay—the childhood immunization program, and enterprise zones to increase economic development in low-income communities. It makes permanent the low-income housing tax credit and it expands the mortgage revenue bond program.

The job creation provisions include the Bumpers-Kerry targeted capital gains tax incentive for investment in small businesses, extension of the R&D tax credit—though unfortunately not a permanent extension—and increased expensing for small businesses. It repeals some of the passive loss rules to provide some relief to the Nation's ailing real estate industry. And, it ends finally the so-called luxury tax on boats which has compounded the devastation of the boat industry brought about by our sick economy.

These modest investment proposals are a crucial component of the package. In addition to a budget deficit, our Nation faces an investment deficit. We must address both if we are again to create high-wage jobs that can support a family. We must begin to invest again as we did after World War II when we sent returning soldiers to school on the GI bill, built an interstate highway system and invested in the technology that led to the creation of the microelectronics industry among others.

As for my constituents, out of the 2,691,817 taxpayers in Massachusetts, there are 43,500 tax filers whose incomes are over $200,000. That's about 1.6 percent of all the tax filers in my State. The 1.6 percent of taxpayers who are doing the best financially.

On average, this group will pay 7.2 percent more in taxes than they currently pay. Not 50 percent more—not 30 percent more—not 20 percent, not percent, but 7.2 percent more. By contrast, 246,000 of the State's least wealthy taxpayers will receive a tax cut.

In recent weeks, as most Democrats in the Senate have readied themselves to vote for President Clinton's $500 billion deficit reduction package, many of us have privately expressed our wish that the political process had permitted us to do even more to cut Federal spending. We know even better than the public does that if every Federal program was placed one by one before us on the Senate floor in a line-item vote, some number of them would see their funding wither under the public spotlight.

It is not a criticism of the President's deficit reduction package that some programs which should have been cut, have not been cut. His budget was conceived in February. It necessarily includes only those program reductions identified by the administration in its first days in office and not eliminated during the byzantine wheeling and dealing that takes place through the congressional budget process. His deficit package is crucially important, but only a first step on the road to a balanced budget.

Earlier this week, 20 Democratic Senators recommended to the President a simple process, sanctioned by current law, for circumventing the politics that plague efforts to cut wasteful spending. We suggested that the President announce his intention to package and send to the Congress once each month for the next 15 months—until the next election—a collection of requests for rescission, or cuts, of no-longer-compelling appropriations.

We advised the President that the rescissions should be accompanied with expedited procedure requests to eliminate unjustifiable tax expenditures and entitlement benefits. We suggested that Congress commit to this process too, placing all of us in the position of either saying "yes" to the President's cuts, or of continuing the spending.

Month by month rescissions could do a lot to force out who is posturing in this institution, and who is serious about change.

I hope the President will take advantage of this opportunity to send us rescissions and expedited procedures for tax expenditures and cuts starting in September, so we can continue the process that he has started with this bill.

The PRESIDING OFFICER. The Chair is going to proceed down the list.

The next on the Republican list is the Senator from Georgia, to be recognized for 5 minutes of time.

Mr. NUNN. I thank the Chair.

Madam President, because I recognize the dilemma that President Clinton faces in drafting a budget plan that is both effective and capable of being enacted, I have carefully reviewed the provisions of the budget conference report. I give the President high marks for recognizing the magnitude of the deficit and its impact on our country's future. He has worked effectively to focus the Nation's attention on this critical problem. On balance, however, I believe that the reconciliation conference report does not sufficiently address the fundamental elements of deficit reduction that are required. Therefore, I will vote against this legislation. I made my position clear as to this vote to both the White House and to the Senate leadership on Wednesday of this week.

Our Nation's challenge is to reverse our pattern of high deficits and low national savings, which result in low investment, slow economic growth, and a very difficult job market for so many of our people.

Investment can only come from savings. We have talked an awful lot about investment, but we do not talk very much about savings, and that is the focus that we have to have in the future in this country.

Any meaningful deficit reduction effort must also cut projected spending. In particular, it must restrain runaway entitlement growth. It must raise projected revenues.

I am not one of those who believes that we can get by without additional revenues, but it is very important how those revenues are raised.

Most importantly, it must meet these goals in a manner that promotes healthy economic growth and good jobs for our people.

This reconciliation bill falls short of this standard in that it does not provide for meaningful entitlement restraint. Most of the cuts in this bill—not all, but most—are defense cuts, and those cuts were already underway though now at an accelerated rate.

Second, the bill fails to provide meaningful incentives for savings and, therefore, for investment and, therefore, for the kinds of jobs that we need in this country.

Without controlling future growth of entitlement programs, revenue increases cannot possibly keep up with increases in entitlement spending.

Over the next 5 years—this conference agreement would provide for projected spending of $400 billion more for Medicare and $300 billion more for Medicaid in the next 5 years than was spent in the last 5 years, and there are no effective provisions for limiting this growth even to the high levels in this bill.

I am hopeful that health care reform will make great strides. And I know President Clinton and Mrs. Clinton are working very hard on that. I hope they will make great strides in reducing health care cost growth. But I must say, I remain very fearful that without firm and enforceable caps on health care spending by the Federal Government, health care reform, even though well intentioned, will not bring this deficit down or under control.

Madam President, while defense cuts must contribute—and they are contributing—to any meaningful deficit reduction package, this reconciliation bill has no wall between defense spending and discretionary spending on the domestic side, even though a majority of the Senate has voted twice for such a wall this year already. The absence of this wall virtually guarantees that Congress will slash defense far below the President's recommendation, and the President's defense budget recommendation is already coming down.

And it also virtually guarantees that these funds will be shifted to other spending programs rather than, if we are going to cut defense more, to the deficit itself. This invitation to cut and transfer defense funds will cause serious defense problems without contributing to our deficit reduction effort.

Madam President, I regret to say that Washington continues to play the old game we grew up playing as children called "Let's pretend." Many but not all Republicans pretend that we can achieve fiscal soundness with no new taxes. Many but not all Democrats pretend that we can achieve fiscal soundness while doing nothing about runaway growth in entitlement programs.

Both parties pretend that we can get our fiscal house back in order with little or no sacrifice by the vast middle class, even though we all know that most revenues come from the middle class and most expenditures of our Federal Government go to the middle class.

We do not like to say that, but we are not doing a favor to the middle class if we do not tell the American people the facts.

Madam President, realists in both political parties recognize that we must cut the growth rate of entitlements and other expenditures. We must raise taxes in a fair way that takes into account our present weak economy—may I have 1 more minute?

Mr. DOMENICI. I yield 2 more minutes to the Senator from Georgia.

Mr. NUNN. Madam President, we must raise taxes in a way that takes into account the present weak economy we have, and that means the effective date is very important on those taxes. And we must also provide incentives for savings and for investment. All of these steps are needed to restore fiscal responsibility and to promote long-term economic growth and good jobs; not simply one of those steps, but all of them. All of these steps must be taken together. A piecemeal approach will not deliver the results.

Madam President, the President of the United States cannot be expected to cure all of these problems without a lot of help from Congress, both Democrats and Republicans.

If Republicans continue to sit on the sidelines, they shift the political pendulum to the left and help ensure the very results they denounce. Until the President and the realists in Congress come together across party lines, the game of "Let's pretend" will continue, the huge deficits will continue, and our economic problems will continue.

The losers will continue to be the American people, particularly the middle class that Washington spends so much time talking about protecting.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Montana is next on the list.

Does the Senator wish to defer to Senator DURENBERGER?

Mr. BURNS. Yes.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. DOMENICI. Will the Senator yield to me, please?

Mr. DURENBERGER. Yes.

Mr. DOMENICI. Madam President, I say to Senator NUNN before he leaves the floor, I congratulate him on that statement. I think it is kind of known around here that Senator NUNN and I worked for about 18 months, if we count current times, on a 10-year approach to salvaging the American economy and making it strong again.

I think Senator NUNN has articulated most of the principles that are part of that endeavor. Obviously, there are some found in this package, but certainly the philosophy of it is considerably different.

I truly recognize how difficult this has been for Senator NUNN because of what he sees in his vision versus what is before us.

I want to congratulate him for his strength and his courage. I pledge to him, and to whomever is listening, that I will not be one who is sitting on the sidelines in the event this package were to fail. I can assure you, the principles that have been discussed here could be repeated in every detail by this Senator at another time. And I may indeed do that because I stand ready to solve the problem by going after those things that really contribute to it, and frankly that is the entitlements and mandatory programs of our country.

I thank the Senator.

Mr. NUNN. I thank my friend from New Mexico.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. DURENBERGER. Madam President, I am pleased to follow my colleague from Georgia and my colleague from New Mexico because it is their leadership that brought us really close over the last couple of years to real bipartisan reconciliation. I regret we have not achieved it tonight.

I think I gave most of my remarks on generational equity and taxing and spending on the flood damage bill and I am not going to repeat a lot of them tonight. But I must say I am going to oppose this bill simply because I am convinced it is a monumental breach of faith with the decision of the American people in the election of last November.

When I am home I sort of, at least to smile, say to people about 95 percent of the people in this country voted for change last year. Certainly the 43 percent that voted for Bill Clinton, and the, whatever it is, 27 percent or something like that who voted for Ross Perot, and even a lot of us Republicans who voted for George Bush voted for change.

The American people wanted a fundamental change in the role of Government, and the bill before us as we have heard all day long from Republicans and Democrats, simply does not do it.

The $496 billion deficit reduction goal may be met. It will certainly be met on paper. But as my distinguished colleague from New York, Senator MOYNIHAN, has said so often: "It is magic." That is the way we do it around here. But I must say where I come from people do not believe in it anymore. They want real deficit cuts.

This bill will increase our national debt by another $1.1 trillion in the next 5 years; it will increase interest payments on the debt from $199 billion a year today to $270 billion in 1998, just that year.

That year, every man, woman, and child in the State of Minnesota will be paying $3 a day or $1,000 a year for interest payments alone.

If interest rates went up from, say 6 percent today to 7 percent next year and stayed there, just at 7 percent for the next 4 years, it would be $200 billion a year in interest payments higher

and the folks in Minnesota would each of them man, woman, and child be paying $1,167 a year just for payments of interest.

And a family of four will be paying nearly $5,000.

I ask my colleagues to admit all of these facts, not because I expected President Clinton to present us with a balanced budget, but merely to outline the true seriousness of the debt crisis—to demonstrate why we have to abandon business as usual.

No one believes that there is $496 billion in deficit reduction in this bill. No one believes that this bill is going to fix the growing hole in Congress' fiscal dike. Far from it.

Even now, instead of fixing that dike, Congress is opening up more and more cracks in it. Flood relief. Aid to Russia. The timber agreement for the Northwest. Base closing. Aid to cities. All these new priorities have cost us $13.5 billion in just the last 2 months. All this money is going out—and it is not being paid for.

The reforms we need are fundamental—because our problems are fundamental. It has taken us many decades to create them, and it will take many more decades to solve them.

But to solve them, we will have to take steps. Steps in the right direction. The opposite direction from this bill.

We have to begin with the understanding that raising taxes will not—I repeat, not—reduce the deficit in any lasting way.

The problem is spending. Over the last 30 years, Washington has spent more and more money on non-means-tested income transfers—transferring money without regard for the actual need of the recipients. This year alone, these social insurance benefits account for direct spending of $441 billion—paid for by $427 billion in payroll taxes and other revenues.

This policy has taken a heavy toll on job creation—and it has added significantly to the budget deficit.

Washington's tax policies have forced communities—cities, workplaces, and families—to change their behavior in major ways. When you add the tax increases in this bill to increases in the Social Security payroll tax, increases in the cost of health insurance, and the cost of Federal workplace mandates—the clear and unavoidable result is that companies are going to reduce their pay increases for employees.

And State and local governments are going to raise taxes. In the last 10 years, Federal mandates on State and local government have grown even faster than projected. These people at the local level—both employers and governments—have been placed in an extremely tight fiscal position.

Either way, real people are going to lose real money. And we will not have solved the basic problem—the Federal Government is still spending too much, and it is still forcing others to spend too much.

Congress is trapping America in a vicious circle. As far as the Federal budget is concerned, we won't be on the right track until this vicious circle is broken.

This is not a problem that has been freshly discovered. As far back as 1976, the movie "Network" tapped into a rich vein of public discontent: People were madder than hell because their Government cost too much and produced too little.

In 1977, proposition 13 surfaced in California. In 1978, demands for wholesale change in Government prompted the election of two Republicans to the Senate from Minnesota—me and my friend Rudy Boschwitz. By 1980, it was clear that the Democrats were out of ideas—and the American people gave Republicans a chance to govern.

As a result of this demand for change, in 1981, Ronald Reagan proposed his solution: Cut off Government's unlimited allowance, and it will change—for the better—the way it operates.

So—clearly—this is not a new problem. But it is a problem still in search of solutions.

Because the fact is, in the 1980's we did not change the role of Government.

We did not use Government spending in a way that provided better value for less money.

And we did not change the attitude that believes every problem is capable of a Federal solution.

The tax cuts of 1981 helped the economy. We cut inflation. We cut interest rates. We reduced the marginal rate of income taxation. And we created over 20 million new jobs.

But Government spending kept accelerating on the very same track it was on in 1977.

The American people know all this. They decided last November that the Republicans were out of gas on this issue. What they really wanted was a third choice—none of the above. They looked at Ross Perot, and decided he might not be reliable. So they settled for letting the Democrats try again.

As I look back on the first 200 days of the Clinton administration, especially as reflected in this bill, I do not think they will find much cause for reassurance. Because what they are demanding is that we change the way the Government spends money. This bill will increase yearly spending by over $300 billion—from today's total of $1.44 trillion to a projected $1.76 trillion in 1998. And we are spending that money the same old way.

In other words, business as usual. The same story Congress has been writing for the last three decades. And it just will not work.

The distinguished majority leader has told us that—in his observation—those who talk the loudest about spending cuts are usually very slow to actually vote for spending cuts.

Mr. President, I can speak only for myself on this. But I am very proud of the past votes that I have cast to bring Federal spending under control in a fundamental way.

Those were votes. But they were necessary. And America is a lot worse off today because Congress didn't bite the bullet and enact those reforms.

Today, we are considering a much weaker budget—a budget that does not even begin to confront our real fiscal problems. And what this budget does do, it does badly.

This budget would provide a new top tax rate of 43.2 percent on individuals and small businesses. When you add Minnesota taxes to that, the total marginal tax on Minnesota's job creators will rise to 48.3 percent.

An extremely short-sighted policy—for little or no long-term benefit.

And this budget is similarly irresponsible in its clumsy attempts to cut spending. Clearly, we need to bring Medicare costs under control—and I am fighting to do that as part of the health care reform package. But this bill's approach to Medicare will only make the problem worse.

This bill does not address the fundamental problem of Medicare—that premiums are assessed without regard to the ability to pay.

What this bill does instead is take a meat-ax to the payments made by Medicare to doctors and hospitals. What will happen, of course, is that the doctors and hospitals will increase the amount of service they provide so they can get more fee-for-service payments. They will not get the money from taxpayers through Medicare, so they will bill the taxpayers for it directly through increased charges to non-Medicare patients.

Medicaid in Minnesota pays 42 cents for every dollar billed. Minnesotans and their employers pick up the rest. This bill is going to cut that 42 cents even further.

Instead of playing this shell game to come up with some illusory revenue gains, wouldn't it be better to reform how the program works?

But if intelligent reform is what you are looking for, you will not find it in this piece of legislation. I can think of only one exception, one provision that we can really be proud of—the reform of college student loans. Our direct lending provision moves to broaden access to higher education—and it saves taxpayers $4.5 billion.

That is reinventing government. That is a more efficient way to deliver more services at lower cost. But in this bill, it is a lonely provision.

On Medicare, we'll just have to tackle it when the health reform package comes up some time in the next few months. And as for all the other needed reforms, it looks like we'll have to wait even longer than that.

The central failing of this reconciliation bill is that it rests on a pretty basic misunderstanding of what America demands. The American people are not demanding that we raise taxes on the rich, and leave the average American free of tax increases.

What they are demanding is something much more basic—that we cut their taxes because we are not giving them their money's worth in spending. Put simply: America believes that a dollar sent to Congress is a dollar wasted.

That is what we need to change.

The American people are willing to sacrifice if we guarantee them real deficit reduction—and real changes in the role of Government.

No more smoke and mirrors. No more gimmicks. No more business as usual. And—especially this week, as we debate this bill—no more absurd charges of gridlock.

How on Earth can there be gridlock in an undivided Government?

The Democratic Party has controlled the House of Representatives for 43 of the last 45 years. They have controlled the Senate for all but 8 of those 45 years. They have controlled all three political organs—White House, House, and Senate—for 17 of those years.

Considering this recent history, the Democratic Party ought to be prepared to govern. This budget, therefore, is a major disappointment.

A disappointment to everyone who pulled the lever for Bill Clinton in the hope that a Democratic administration would change Congress' disastrous budget policies.

A disappointment to everyone who believes in reinventing Government.

A disappointment to everyone who knows it is wrong to pile trillions of dollars of debt onto the backs of our grandchildren for no good purpose.

Mr. President, back to the drawing board for this budget. The majority has been criticizing Republicans all along for not offering alternatives—but that criticism is not working. On Wednesday night, Jay Leno got an ovation from his audience when he said that if the choice is really between the Clinton plan and no plan—he would like to look at the no plan.

But I, for one, stand ready to help design a comprehensive plan to balance the budget.

We must all remember that America does not want just deficit reduction. America wants deficit elimination.

I stand ready to accept this challenge.

I stand ready to make the hard choices that Congress has avoided in past decades—allowing the deficit to tighten its stranglehold on our future.

I am particularly impressed by the responsible approach presented by our former colleagues, Paul Tsongas and Warren Rudman, and their Concord Coalition.

Let me highlight, in this regard, the truly selfless efforts of one of my constituents. Darren Chase, the former State coordinator of the Concord Coalition, challenged me to develop a bipartisan plan to balance the budget. Despite important financial and family obligations in Minnesota, he moved to Washington to help me develop such a comprehensive plan.

We could learn a lot from Darren Chase's observations of how Congress operates. He has become convinced that each of us separately knows what must be done to balance the budget. But we lack the courage and the bipartisanship—collectively—to do it.

On an issue of this importance, we can no longer afford to stand apart—as Democrats and Republicans. We have to sit down together—as Americans—and solve the problem.

Later this year, the Concord Coalition will present a long-term plan for balancing the budget. While we have not seen the specifics of the Concord Coalition plan, I fully endorse the process under which it was developed. It was created in a spirit of bipartisan cooperation—the only kind of approach that will really solve the problem of the deficit.

It's an approach that puts the national interest above the special interests—and it is the only approach that will answer the public's demand that we balance the budget.

It will force us to face facts that partisanship too often allows us to ignore.

It would force Democrats to realize that the Federal Government cannot afford to be all things to all people. That some good programs must be delayed until we can afford them. That we should not spend money we do not have in the bank. That not every problem has a Federal solution. And that the solution is not always to throw more money at it.

It would force Republicans to recognize that the impact of the spending cuts that would be required to balance the budget—if we relied on spending cuts alone—would be too drastic. That it would be too draconian for the people who depend on those programs.

And most importantly, it would force Republicans to recognize that while tax increases do hurt the economy, and tax increases do result very often in reduced revenues to the Federal Treasury, and intelligently designed tax reform—including tax increases—will nonetheless be needed in order to balance the budget.

Our bipartisan approach should begin with agreement on broad principles on how we are going to eliminate the deficit in a permanent way. After agreeing on those general principles, we could work together on the specifics—devising more creative, innovative, and efficient ways to deliver Government services.

Along the way, we would have to abandon our sacred cows—because in a task of this importance, nothing is off the table.

This is the kind of bold approach the American people are demanding—and it is far more likely than the Clinton plan to result in a permanent solution to the fiscal crisis that has already left America $4 trillion in debt.

The American people want—demand—and deserve real change.

We can do better than the Clinton plan. And we have to do better than no plan. Working together, in a truly bipartisan way, we can—and must—make major changes in how the Federal Government spends our money. This bill does not do it—and that is why I intend to vote no on reconciliation.

But I must point out, Mr. President, that I am very encouraged by the leadership that is being exercised by my good friends, Congressman TIM PENNY of Minnesota and Senator BOB KERREY of Nebraska.

The fact that TIM PENNY chose this occasion to announce his retirement from Congress says a whole lot about why young Americans—and young American leaders—are getting turned off by the political process.

But TIM PENNY and BOB KERREY believe—as I do—that the kind of serious, nonpartisan approach I have just discussed is our last, best hope for dealing with the deficit and creating a solid economic future for this country.

They are using their considerable political leverage to help change the role of Government. To put real limits on spending. And to put us on the road to a sensible—and sustainable—Federal budget policy.

The future of America—thankfully—does not hinge on the passage of the bad bill that is before us today. What it does hinge on is our willingness to get serious—after this bad bill is passed—and create the change the American people demand. I will do my utmost over the coming months to make sure that these bipartisan efforts succeed, and create a lasting reform of our Federal Government.

After the last echoes of this partisan debate have faded from the Chamber, we can come back and tackle the problem. And tackle it for real.

This bill increases yearly spending by $300 billion and you have heard about taxes all day today. So, Madam President, the bill is business as usual.

It is the same story Congress has been writing for the last three decades and it just will not work. We have to do better than that and I cannot recommend any better 5-, 6-minute comment to you on that subject than just delivered by the senior Senator from Georgia.

So I for one stand here as I did on April 1 of 1985, and again last year on Nunn-Domenici, and a few months ago on a vote that got 45 votes.

I stand ready to help design a comprehensive plan to change the way this

Government works, to balance the Federal budget. America does not want just deficit reduction, it wants deficit elimination. This fall I want to join in a truly bipartisan approach to deficit reduction. I am pleased with everything I heard today from various Democratic colleagues about the need for health care reform; about restoring a credible Social Security trust fund; about enforcing discretionary spending caps; about target spending levels for Federal health expenditures; about enforceable caps for other entitlements; about tax restructuring. I think I have heard as much about these sort of things from some of our Democratic colleagues as I have heard on our side.

Last night a young man from Minnesota led an effort to try to do that on this bill, the Congressman from our First District, happens to be a Democrat. This morning he stood in the well of the House for 1 minute and said, "I have done my best. I am leaving."

Here is a young man about 39-, 40-years-of-age, who came here to change the way this system works on behalf of his kids and his grandchildren, all over this country. And one very emotional minute this morning he said it all.

He said,

I voted for that reconciliation bill last night because I was afraid if it did not pass, things would get worse instead of better. But now I am not so sure whether they are going to get better at all and I am going to go home and take my kids home with me and do something different.

To me it is the loss of people like that in this body and in the other body. It is the loss of that kind of young leadership in this country that I regret more than anything else, when I see the kind of bill that I have to vote on.

I have a young man who has been working with me for the last 3 or 4 weeks. He came from the Concord Coalition, in the State of Minnesota where he was running the Concord Coalition, Darren Chase. He put together a comprehensive plan to balance the budget called "Hard Choices Versus Wishful Thinking." This is a young man, former Navy lieutenant, came out, sort of starry-eyed and all the rest of that sort of thing. He has been fighting Members on the House side and the Senate side to get them to pay attention to this. He has the charts and everything that goes with it.

Maybe he will replace TIM PENNY. I do not know whether he is Democrat or Republican. But I hope he does and I hope as soon as we get through with this, if this bill should pass, that we do find a way to bring Democrats and Republicans together for the future of America.

Madam President, I ask unanimous consent that "A Comprehensive Plan To Balance the Budget," by Darren Chase, be printed in the RECORD.

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

A COMPREHENSIVE PLAN TO BALANCE THE BUDGET—HARD CHOICES VERSUS WISHFUL THINKING

Balance the budget by the year 2000.

Based on guiding principles developed by bipartisan coalition.

Establishes an enforceable discretionary spending cap.

Cuts spending 5% per year for 2 years then 3 year freeze.

Cuts $500 billion over 7 years.

Addresses entitlements in 3 separate categories:

Social Security;

Federal Health (Medicare & Medicaid); and

Other Entitlements.

Works toward restoring a credible Social Security Trust Fund.

Taxes a larger portion of benefits.

Credits proceeds to the trust fund.

Does not use Social Security cuts for federal spending.

Establishes target spending levels for federal health expenditures.

Generates short term savings through Medicare cuts and reform.

Comprehensive health reform to generate long term savings.

Establishes fiscal constraints for health care debate.

Limits annual growth to 9%.

Cuts $327 billion over 7 years.

Establishes an enforceable cap for other entitlements.

Spending reduced through:

Comprehensive means testing

Limited cost of living adjustments

Increased user fees.

cuts $209 billion over 7 years.

Entitlement reform encouraged through nonpartisan external commission.

Treats entitlement reform like military base closure.

Adds new taxes as necessary to achieve deficit reduction targets.

Five year taxes are $10 billion less than Reconciliation; 78% of new taxes are levied after 1996.

Encourages economic growth through tax and investment reform.

Incremental capital gains tax cuts.

Business investment incentives.

Ratio of cuts to taxes is over 4 to 1 in 1994; 7 year ratio is 2 to 1.

Program reflects the priorities of grassroots Americans.

Contact: Darren Chase (224-3244)

Mr. DOMENICI. I ask unanimous consent Senator BURNS be next for the time allotted under the unanimous consent agreement.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Montana is recognized for 5 minutes.

Mr. BURNS. Mr. President, I think I heard this morning, the statement made that since the first of the year, 172,000 new jobs had been created a month since the first of the year; new confidence in an economy. And we have not changed a policy around here as far as economics in this country since the last administration.

I would say the rebuttal to that was, there is a new air here. There is a new expectation. Let me tell you about the most successful people in the world. In the world of business, anyway, and commerce and success, and the business of buying and selling and making things happen there is an underlying philosophy to successful people. They buy on fact. They sell on rumor.

I am not buying tonight. I am a freshman here in this body. But I remember what happened in 1990. I remember the rhetoric. And those who choose to forget history are destined to repeat it. The same rhetoric, $500 billion, deficit reduction, 5 years. With the spending cuts coming late.

What has happened? Madam President, we cannot make these assumptions of tax collections because we are not going to have anybody wanting to be rich to be taxed. We have not seen anybody go after the $7.5 trillion that, if you cut capital gains half—in two—that would come on the commercial market and would create some economic activities and collect taxes from that. We have not heard anybody talk about that.

I voted against the 1990 bill. I voted against my President. I understand that pressure. But it was wrong then and it is wrong now. Because we are going down the same path. We were supposed to have about 2.5 cents gas tax that sundowns in 1995. That is going to be extended out plus we are going to put 4.3 on top of it. Some of that was suppose to go in the highway trust fund where it was supposed to be to build roads and infrastructure. That is not going to happen. Most goes down to the Treasury for deficit reduction. Remember folks, we will still have a deficit.

When we deficit-spend we create debt. We are still going to have at the end of the period $1.4 trillion of new debt—brand new debt.

So, this package will do one thing even according to the President's own people. They say this package will cost 1.5 million jobs over the 5 years, by his own assumptions. And they have made up their minds, this Government, that they can spend your money better than you can spend it. They have made that determination.

As the Senator from Oklahoma pointed out on May 14, on the front page of the Washington Post, it was already admitted by the President. This will bring in more revenues, so we can spend more. So nothing has changed. Gridlock—nothing has changed; gas tax is unfair to those in the West, we drive further. Any energy tax, we drive further, our winters are longer and colder. So it sort of leaves us out but we are only 800,000 people in 148,000 square miles.

Taxes are increased by $32 billion and $46 billion in the next 2 years with no cuts at all in spending. In fact the Government's budget will continue to increase.

So, basically what we argue about here is priorities. We offered a 4 percent solution here about 2½ years ago—said OK, we will allow all parts of Government to grow 4 percent based on

previous year's expenditures and in 5 years we would have balanced that budget and started working on this debt. That was not acceptable because it does not allow those folks who love Government and like to see it grow, to continue.

So we are still going to pile up some more debt, but most of all, we are going to cost jobs in this country. And when we cost jobs, we cannot make assumptions.

I ask my colleagues to vote this down and go back to the drawing board and come up with a plan that is progrowth.

I thank the Chair, I thank my leader, and I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Madam President, next in line on our side is Senator LEVIN, from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 3 minutes.

Mr. LEVIN. When Harry Truman wrote his autobiography, he called it "Plain Speaking."

So, let me ask some plain questions and give some plain answers.

First, "Does this budget proposal before us hit a home run for deficit reduction?" No, it does not, but through a combination of spending cuts and revenue increases, it is a solid base hit that puts this country in the position to score against the deficit. The public debt will still increase if this plan is approved, but by about $500 billion less over 5 years than if we just did nothing. Just standing at home plate with the bat on our shoulders won't do the job, regardless of how much Senators pretend they are Babe Ruths pointing to the fences and saying that's where they would like to hit the ball.

But, in honestly recognizing that this budget plan is not everything, we should also acknowledge that deficit reduction of the size we are talking about in this bill will help keep interest rates low and hopefully drive them even lower. That means more investment by businesses, more jobs created, more affordable homes, more car sales and more money in people's pockets after they have refinanced their mortgages. A middle-income family, refinancing their mortgage at a lower rate can save them about $100 to $200 a month. This is far more than the few dollars a month that a middle-income family would pay in extra gasoline taxes under this bill.

Second, "Does this deficit reduction package contain real spending cuts?" Not as much as I would like, but more than the opponents of this legislation would try to make people believe. Spending cuts are not painless. People like to talk about cuts but when it comes to voting for them, they balk.

This bill has some real cuts and I know it is not easy to vote for them. Under this bill, Federal retiree entitlements are cut by almost $12 billion over 5 years and agricultural programs are cut by $3 billion over the same time period. Medicare and Medicaid spending is restrained by more than $60 billion over 5 years. Discretionary spending is frozen for 5 years. That doesn't sound like a cut, but it means real reductions in services because there is no allowance for inflation.

Third, "Is this deficit reduction bill unfair and does it raise most of its revenue from middle income folks?" The $250 billion in spending cuts is about matched with the $250 billion in tax increases, 80 percent of which are on the top 1 percent of the taxpayers. I have listened with interest to those who complain that this bill is unfair because the increase in the income tax rates for the top 1 percent of the taxpayers is said to be retroactive. Well, at least these income tax increases apply to this year's income only. They do not apply to an earlier tax year. I, too, prefer to apply the increase in the income tax rates only to the last half of the current tax year, as the Senate passed bill did, instead of back to January 1. But compare what this final bill does to the wealthiest 1 percent of the taxpayers to what the 1986 Tax Reform Act—which by the way was strongly supported by many of those now complaining about retroactivity—did to tens of millions middle-income taxpayers who had taken out car, education, and other loans not months, but even years before. The 1986 Tax Reform Act took away some of the deductibility of the interest on these loans although the loans were taken out years before by middle-income people.

Or, let us look at the 1982 tax bill, which, again, was supported by some of the currently most vocal opponents of retroactivity. This 1982 bill increased taxes on unemployment benefits that had already been received. Now, some of those complaining about retroactivity now say that there is a difference. They say that the bill before us retroactively raises tax rates and that the tax increase on over 5 million unemployed folks in 1982 was not really a tax increase because it did not carry the label of "tax rate increase." But, these are some of the same people who are saying on the floor today that folks should not be confused with labels—a user fee is a tax increase, they say. Well, I say, you cannot have it both ways. The taxes on those unemployed were raised retroactively in 1982. Period.

And many of those folks were suffering real deprivation in my State of Michigan in 1982 during the depth of the recession and literally had to sell their blood to put food on the table. I agree that retroactivity is not the preferred route, but let us do a reality check and put things in some kind of historical and moral perspective. The 1.2 percent of the wealthiest in this country who will be paying a higher income tax rate for this entire tax year instead of just the last half of this year are surely in a better position to do so than were the unemployed in 1982.

And others argue against this bill because, they say, we should follow the majority of phone calls coming into our offices. Of course, we have to take into account public opinion as we make up our minds as to what is the best public policy. But measuring public opinion is not easy or certain. For example, the CBS/New York Times poll taken after the President's speech indicated that 40 percent of the people supported the plan and 35 percent opposed.

But, my question when it comes to public opinion is where were the opponents of this legislation for the past 3 or 4 years when poll after poll consistently showed that 70 to 80 percent of the public favored increasing taxes on the wealthiest taxpayers? I did not see them supporting legislation to raise the top marginal rate because that is what the public was demanding.

So, we should not be distracted by arguments against this budget plan that flutter up like a knuckleball with little regard for consistency and designed to have the American people swing at the air in frustration and anger.

The plain fact is that nearly 80 percent of the tax burden in this bill, including the changes in the gasoline and income taxes, will be carried by taxpayers with incomes over $200,000. The opponents of this legislation have seized upon the argument that small businesses will be affected by these increased rates. But, the plain fact is that 4 percent of the small businesses will have a high enough taxable income to be affected by the increase in the personal income tax rates contained in this budget package. That's it. It is certainly not painless to the 4 percent of small businesses affected. But that is 4 percent and not 14 or 40 percent of the small businesses, regardless of what impression the opponents of this legislation seek to create. The opponents of this legislation also ignore the benefits for the vast majority of mall businesses in this bill ranging from almost a doubling of the amount of investments that can be written off entirely in the first year to the capital gains tax reduction for investments in small businesses.

There is a 4.3-cent gasoline tax increase in this bill that will affect middle-income folks. But people should not distort the facts and make middle-income folks think that it is larger than it is. I believe it is necessary to include this provision in the budget package if it is to meet the goal of substantial deficit reduction. I do not think that this is too much to ask for middle income folks in exchange for a substantial investment in our economic future. The stakes are high. The consequences

of failing to pass this legislation will be an increase in interest rates, which would be bad news for anyone who wants to buy a house, or car, or finance an education, or who has to buy on credit, which is most of us.

Perhaps more fundamentally, it is important to pass this legislation because failure to pass it would show that we are still in gridlock's deadly grip. Some hope that a new budget summit would produce a better economic plan. I am afraid it is more likely that it would produce months of haggling and uncertainty and result in a minimalist, least common denominator approach. Instead of inspiring confidence among the public that we are finally going to act to try to get our economic house in order, we would be sending out the unmistakable signal that the "open" sign is up for the business-as-usual drift.

If we pass this bill, we will finally defy the tendency to talk and talk and talk about hard choices while doing nothing about them. We will put change over gridlock and the American people and the American economy will be better for it.

Modest progress on the deficit is surely better than none. Failure to act in hope that failure will free us to do better is a cop-out and a rationalization—it is playing Russian roulette with an economy that is soft and with a nation that is sick of drift and deadlock.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Madam President, the chairman of our conference, Senator COCHRAN, of Mississippi, is next with 5 minutes as agreed to.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 5 minutes.

Mr. COCHRAN. Madam President, this bill raises taxes that virtually all Americans will have to pay and it only promises to cut Government spending later.

Higher taxes will slow economic growth, cost us jobs, reduce our competitiveness in the international marketplace, and make it harder for working people to make ends meet.

Here are some specifics:

First, this proposal will increase the national debt by $1 trillion over the next 5 years.

Second, it will raise $240 billion in new taxes and $15 billion in new user fees.

Third, based on a White House office estimate that the economy will produce 9.4 million new jobs if it is left alone by the Government—compared with its projection of 8 million new jobs if this plan is enacted, there will be a loss of 1.4 million jobs in the United States as a result of the enactment of this bill.

Fourth, this bill will cost the people in my State of Mississippi alone $300 million over the next 5 years because of the new gasoline tax.

Madam President, we can achieve real deficit reduction, not by increasing taxes, but only by cutting spending.

A vote for this bill is a vote for a bigger Federal Government and a smaller economy.

We should vote against it.

During the past week, one editorial in The Christian Science Monitor entitled "Higher Taxes Jeopardize New Jobs," another in the August 4 The Clarion-Ledger of Jackson, MS, entitled "Deficit Reduction Not Worth Taxes," and still another in an AP wire story carried in yesterday's Commercial Appeal of Memphis, TN, entitled "Economists Dampen Job Claims In Budget."—all agreed that this plan represents a bad deal for the American people. It is a bad bill. It is not a good bargain. Consider what it says. If you send more money to Washington, we will cut spending a few years from now, but in the meantime, your taxes will go up and the deficit will not come down.

That is a bad deal, and this bill should be defeated.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Madam President, I yield 3 minutes to the distinguished Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 3 minutes.

Ms. MOSELEY-BRAUN. Madam President, as all of my colleagues know, our economy has been in real tough shape in recent years. We have had a triple-dip recession; economic growth for the first quarter of this year was only nine-tenths of 1 percent; and it looks like overall economic growth for the year will be 2 percent, or less.

When I talk to families from Illinois, I find that most of them feel under real economic pressure. Their incomes have stagnated, or even eroded, even though more and more families became two-income families in order to try to continue making their mortgage payments, their car payments, their school payments, and all the rest of their basic living expenses. And yet, the sad fact is that, many, many Illinoisans are no better off with two wage earners in the family than they used to be with just one.

And that is because the good jobs—the kind of jobs that enable families to buy a home and educate their children—seem to be disappearing. Daily, we see the reports in the newspapers: One Fortune 500 company after another announcing massive layoffs. We see one industry after another downsizing—steel, textiles, automobiles. And we see one industry after another asking their employees to give back wages and benefits, even though top management's compensation had risen rapidly and by large amounts.

And all too many Illinoisans do not have jobs at all—or are forced into working in one or more part-time jobs with few or no benefits in an attempt to keep going. Unemployment in my State was 7.2 percent in July, still over the national average.

Illinois' over 600,000 small businesses seem equally apprehensive. They are uncertain of whether to make new investments, and whether to create new jobs, because the economic future is so clouded, and because many of them are not financially strong enough to take the risks involved.

It is with that background, Mr. President, that I have to consider the budget plan now before us—a State with high unemployment, and a sour economy; a State with people that are very apprehensive, even fearful about their future, and the future of our economy.

The question, Madam President, is what do we do about these problems; how do we deal with our economic problems? What can we do to help create an environment that maximizes job creation and economic growth?

The first thing we have—the only way to confront fear is with the truth. But not the truth as told by the last two Presidents—because what they called truth is actually a series of myths.

The myth is that the Reagan-Bush administrations were against big Government, and for shrinking Federal spending. The reality is that they presided over the largest spending increase in our history. When then-candidate Ronald Reagan won the election in 1980, the Federal Government was spending less than $600 million per year; by the time President George Bush left office, the Federal Government was spending almost $1½ trillion per year.

The myth is that Republican President's were not responsible for that spending increase—that it was all the fault of Congress. The reality is that Congress appropriated less than the Republican Presidents' requested every single year. And the reality is that the Republican Party controlled this U.S. Senate for 6 of those years.

The myth is that the Reagan-Bush administrations' hated Federal deficits and were fiscally prudent. The reality is that, in their 12 years, they produced 10 of the largest Federal deficits in history.

The myth is that the Reagan-Bush administration and its allies in Congress would hold down our nation debt. The reality is that it increased almost fivefold to $3.3 trillion while they were in office.

The myth is that the Reagan-Bush administrations had no power to cut the deficit, that without the line-item veto or the balanced budget constitutional amendment they simply could not restrain spending. The reality is

President Ronald Reagan was only overridden on 8 of 68 vetoes, but that, over his 8 years in office, he never used the veto in a concerted effort to reduce Federal deficits. The reality is that President George Bush did not have a single veto overridden, but he never acted to restrain the growth of Federal spending and deficits.

The myth is that the Democratic Party is somehow the party of big Government, while the Republicans are the party of the ordinary guy. But Ronald Reagan's own 1980 campaign line demonstrates what the reality really is. In 1980, he asked, "Are you better off now than you were 4 years ago?" This year, after 12 years of Republican rule, does anyone honestly believe that ordinary Americans are better off than they were 12 years ago?

The myth is that Republicans are good for economic growth. The reality is that the Reagan-Bush administrations gave us our first triple-dip recession. The reality is that they created a budgetary and economic mess that will take years to clean up. The reality is that they mortgaged our economic future because they could not bring themselves to face the truth.

What we have before us now is a bill that attempts to begin the process of facing our problems, a bill grounded in reality, and not in mythology.

That makes this an ugly bill, Madam President, and an unpopular bill. But we need to keep in mind just why its an ugly bill.

It is not because this is a tax-and-spend bill, because this bill reduces the deficit by $496 billion over the next 5 years, and because it actually shrinks the Government as a percentage of our economy.

It is not because this bill kills the middle class, because families with incomes below $30,000 actually get a tax cut. Only households with incomes of $180,000 and more will pay higher income tax rates; and only about 18 percent of the revenue burden—or less than 10 percent of the overall deficit reduction amount—comes from revenues raised from the middle class.

In my State of Illinois, over 5.3 million Federal tax returns were filed in 1991. Of those only about 178,000 returns showed income above $100,000. What that means therefore, is that the income tax provisions of this legislation will likely affect less than 3 percent of the residents of my State who file Federal tax returns.

It is not because the 4.3-cent gas tax will pick the middle-class taxpayers pocket. Gasoline prices are currently at almost record low levels, and for the average family, that tax amounts to about $3 to $5 per month.

It is not even because this bill confiscates the incomes of the wealthiest Americans. Even though their income rose by over 50 percent in the 1980's, while their tax rate fell by almost 25 percent, their tax increase under this bill is a little over 7 percent of income.

It is not because the bill devastates small business. Over 90 percent of small businesses would either see no tax increase or actually get a tax cut under this bill. Even the Wall Street Journal called that the argument that the bill burdens small business is specious. And a study cited by the National Federation of Independent Businesses made the point that the bill would hardly touch the fastest growing small businesses that are creating most of the jobs.

In my State of Illinois, it means that probably less than 24,000 of Illinois' 600,000 small businesses could face a tax increase; the rest of them would see either to increase or a tax cut.

And it is not because the bill does not cut spending. It does—to the tune of $255 billion. In fact, excluding interest on the national debt, under this bill, Federal revenues will actually exceed Federal spending on programs by about $127 billion. During the Reagan/Bush years, on the other hand, spending on programs exceeded Federal revenues by over $716 billion.

What makes this an ugly bill is the ugly problems we face. There just is not an account in the Federal Treasury labeled waste, fraud, and abuse that can be cut to $0.00, and thereby balance the budget painlessly without affecting any American.

There simply is no pain-free, easy way to cut Federal deficits. We saw the clearest demonstration of that in the lack of any credible alternative proposal offered by the nattering nabobs of negativism scaring people with catch phrases offering no hope.

Having said that, I must also say, however, that there are a number of features of this bill that trouble me. The retroactivity feature of the income tax provision, for example, is a major problem. I agree with the President that our Tax Code must be made more fair, and I think he is to be commended for producing a proposal where over 80 percent of the new revenues comes from the wealthiest Americans.

And what about the issue most on the minds of the citizens of my State—spending cuts? Should we not have more spending cuts? In candor, I have to say that I am not at all satisfied with the bill in this area, either. It is absolutely critical to have more cuts. While the cuts in this bill are real—and not smoke and mirrors—we must terminate some Federal programs.

We had an explosion of Federal spending in the last decade, Madam President. But that explosion didn't help poor people or communities that need economic development. The fastest growing Federal programs are interest expense, and medical programs, but that spending hasn't helped create economic opportunity and new jobs in neighborhoods like Lawndale in Chicago, or in cites like Decatur.

I am pleased, therefore, that the President and the Senate leadership both see the bill now before us as just the beginning of the fight to cut spending. The President told me that he is absolutely committed to taking further tough steps.

I share that interest and that commitment. I think that is what the people of my State want to see; indeed, it is what they have to see.

Comprehensive health care reform, to be unveiled in just a few short weeks, will provide another major step toward cutting spending.

There should be a specific structure, with a specific mandate and a specific timetable, to help guide the next steps we need to take to reform Government, to ensure that Government resources are concentrated where they are needed, and that old programs that are no longer a priority are terminated or consolidated, to see that our tax structure makes sense for the increasingly interdependent world we live in, to recommend the kind of coordinated Federal policies that are the most conducive to creating economic growth and opportunity, and good, private sector jobs, and to consider changes in our procedures and decisionmaking processes that will maximize the opportunity to see that the substantive goals are realized.

I want to conclude, Madam President, by making two very simple, related, points. First, we cannot take all the steps at once. We cannot balance the budget in one bill. It took a long time to create the mess we are now in; it is going to take some time, and a number of steps, to get us out of it.

Second, we cannot take any steps without taking the first step. This bill is that first step. There is a lot not to like about this bill: Retroactivity, not enough cuts, and programs that should have been ended.

The alternative, however, to do nothing, to continue the drift, to continue adding to the deficits at the pace of the last 12 years, is simply unthinkable. We coined a token in Chicago with our football team "winning ugly." This bill may be ugly but our country, our people win with it.

The step this legislation represents is both significant and credible. Based in no small part on the expectation that this legislation will be enacted, financial markets have brought long-term interest rates down to their lowest levels in decades. The savings these interest rates are producing will more than offset the contractionary pressure on the economy this bill creates.

The Federal Reserve believes deficit reduction is essential, and if we act, we will finally be in a position to have monetary policy and fiscal policy working together to restore a climate for strong economic growth, and real job creation.

No one can be sure that this bill, or any single legislative act will cure our

ailing economy, Madam President, and so I understand the apprehension about the future and about this legislation that I am hearing from my State. But we simply must act. We have to begin the process of changing the course of this country, and that means we have to pass this bill. When the question is put on the conference report, therefore, this Senator will vote aye.

Mr. SASSER. Madam President, did the distinguished Senator conclude her remarks?.

Ms. MOSELEY-BRAUN. I thank the Senator very much. I did conclude my remarks. I used the 3 minutes.

Mr. SASSER. I thank the Senator.

Mr. DOMENICI. Madam President, we have agreed on our side, and I ask unanimous consent, that Senator CRAIG precede Senator GRASSLEY, and that the order remain consistent thereafter.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 5 minutes under the previous order.

Mr. CRAIG. Madam President and Members of the Senate, this morning my service on the Joint Economic Committee took me to that committee to listen to the Bureau of Labor Statistics representative speak of the economic activities in this Nation for the month of July. And when all of their facts and figures were laid out, I asked the question: Are you telling me statistically that the economy as it relates to jobs and job growth did not grow in July? And the gentleman from the Bureau of Labor Statistics said, "Senator, you are absolutely right. There was, for statistical purposes, no growth in the month of July." In other words, our economy was stagnant.

Now, you have just heard the Senator from Mississippi say that by this administration's own admission, we will lose 1.4 million jobs during the effective period of this new budget program. Those are the facts, and yet tonight we see an administration and a party push us toward an economic program that by their own definition sends this country into a flat or declining economy.

Why? They have angered the American people, frustrated them, and now those people are fearful of what to do with their futures, with retroactivity in taxes, saying we are going to take it away from you even though we promised you we would not. Seniors in this country on fixed income are going to take another hit.

But most importantly, the engine that has driven this economy for well over a decade in the generation of jobs unprecedented in the free world, the small business community, is going to take an effective tax rate hit of from a 35 to 45 percent increase, the largest increase that we have ever seen.

And what are you telling them? Madam President, you are telling them do not risk it anymore. Do not live lean if you own your own business and pour that money into new investment and job creation and a new physical plant and new machinery. Back off. Do not risk it. Your Government is getting bigger, and it is not only going to tax you even more, it is going to be even more punitive in rule and regulation.

That is the clarion call coming from this administration, and that is the challenge of this Senate. The House did not meet the challenge last night. They faded and broke away into the smoke filled rooms with their basket of goodies promised to them in another interesting and unique way that defies logic on the part of the American people. We do not do ourselves proud when we say to the American people we know better; we are going to grow larger and, in the process of growing larger, we are going to tax you more; we are going to regulate you more and, most importantly, we are not going to reduce the deficit that piles up a debt everendingly, demanding over $200 billion a year in interest, that denies young people a future in this country, at least a future equal to or greater than the one we had when we were at their age.

That has always been the American challenge, and it will remain the challenge. Americans will grow wary of a government that progressively taxes them, takes away their flexibility, takes away the unique freedoms that we have had that have made us the greatest economy in the world.

This budget does not address those problems. It multiplies those problems. How can we be talking about a positive economy when the figures that this administration puts out are negative?

So we take away from small business. We take away from our seniors. In the West, as my colleague from Montana said, we tax the movement of commerce at an ever higher rate through fuel taxes.

Those are the realities with which we are dealing.

Now, I will vote "no," and I will withstand the pressures at hand. Why? Because it is positive to vote negative, to say to this administration, come back to the drawing board; we will work with you. Sure, we will. But we will not work with you if you do not bring true deficit reduction and if you do not propose an economic engine for this country that is job creating and expansionary of its very nature.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. DOMENICI. I believe the other side would like to go with another. Senator GRASSLEY is next on our list.

The PRESIDING OFFICER. The Senator from Iowa.

The Senator from Iowa has 5 minutes.

Mr. GRASSLEY. I thank the Chair.

Mr. President, the Federal budget is the fundamental statement of policy of our Government. It puts its money where its mouth is. In that sense, this tax bill helps define the difference between Democrats and Republicans.

There were two budget alternatives this year. The Republican one reflected the mood of the country—to cut spending first. It did not raise taxes; yet it reduced the deficit by $460 billion over 5 years. It was real deficit reduction. Even in the out-years.

The other budget is a classic tax-and-spend budget. A mirror-image of the 1990 budget agreement. Two dollars in taxes now and yesterday, for every dollar cut mañana. The opposite of what the country is demanding.

In supporting this bill, the Democrats are still the party of big government. There is no new Democrat in the White House. They are the party of government growth. The party of tax and spend. They never met a tax they wouldn't hike. The party of broken promises. Of class warfare. And doublespeak.

Most important, they are the party that breached the trust of the American people. This bill does not reflect what was promised to the people; nor does it reflect what is good for the country, or what the people are asking for as our phones are ringing off the hook.

In opposing this bill, and in offering 29 amendments to cut spending first, Republicans are clearly the party of responsible government. And of responsive government. The party that will not raise taxes first. The party that listens to the American people; to small business men and women; to the overburdened middle class.

I have spoken on this floor in recent days in support of the administration's reinventing government initiative. It is a critical ingredient in changing the way we do business in Washington.

But this budget is a barrier to reinvention—because we have to spend all this money. How can we get efficiency and better performance out of our bureaucracies when the budget is so fat? We have not cut domestic spending. It is growing just as resolutely as ever under this budget.

We have not terminated any programs, either. This budget promotes business-as-usual. It is jam-packed with programs and it is bursting at the seams.

Back on the farm where I come from, we have a word for that. It is called a blivet. A blivet is 5 pounds of manure in a 4-pound sack. It is all bursting out at the seams—just like this budget.

The point is, if you vote for this budget, you are voting for deep doo doo.

Mr. President, Washington tends to orbit the real world rather than live in it. The Democrats, who control Washington right now, are in denial over the fact that this bill is a jobs-killer.

Every once in a while you need to splash a little reality around town. You need to remind Washington about what is going on out there beyond the beltway. You need to show Washington the consequences of the legislation we pass.

That is what I did last night, as I read to my colleagues from letters I have received from businesses in Iowa. They said that this tax bill either will cost jobs to their companies or already have cost jobs.

This is proof positive that this bill is costing jobs—even before it is passed. And I urge my colleagues to read these letters in today's RECORD lest they remain in denial.

Mr. President, I really do not think it takes a rocket scientist to know this bill will cost jobs. By the President's own admission, it will cost 1.4 million jobs nationwide.

This is undoubtedly why there is bipartisan opposition to this bill. It is why an all-Democrat government can only pass this bill by one vote.

If we voted by secret ballot, it would go down in flames. So, the issue is not what is good for the country—it is what is good for the President's prestige and political well-being. They are playing politics with the country's future.

Phone calls from citizens around this country are pouring in and registering their opposition to this tax bill. In my office, now, it is running 7 to 1. Overwhelmingly they are saying: "Don't tax us first. Cut spending first." And what are they getting? They are getting $32 billion of taxes this year, retroactive to January, and no spending cuts; $10.66 of tax increases the second year for each spending cut. Eighty percent of the cuts come mañana.

Given that the people want spending cuts first, and given that the President solicited this hemorrhaging of phone calls in opposition, he has a moral obligation to pull down this bill.

Instead, he has the temerity, after it passed by one vote in the House to say "The mandate is clear."

Mr. President, that is the height of cheek.

Not only do we get taxed today and get spending cuts mañana; we are getting taxed yesterday as well. This tax bill sets a dangerous precedent by taxing us 8 months before this bill would pass—and 20 days before this President even took office.

As the Republican leader said the other day, even the Russians have outlawed retroactive taxes—article 57 of their draft Constitution. So while the Russians are making progress on democracy and perestroika, the so-called party of change is regressing.

Meanwhile, to ensure passive of this blivet, we are buying off votes. We studded a little more manure in there for California. Then, New York. Then, we stuffed another pound in there for a few Senators to get their votes. Finally, we gave it a display device, AKA the deficit reduction trust fund. The display device is the customary figleaf so that this blivet does not look like such a mess of manure, oozing out at the seams.

The best estimate, now, is that we are up to about 6 pounds of manure in this 4-pound sack.

The other side is trying desperately to sell it to the American people. But they are not buying it. To them, if it looks like a blivet and it smells like a blivet—it is a blivet.

What else stinks about this bill? The smoke and mirrors, for one thing.

The norm around here is that when a conference or a summit begins, the No. 1 casualty is always the deficit. To get everyone on board, you have got to stuff the blivet a little more. And then they give it a little display device so it looks better. The deficit gets larger, but smoke and mirrors cover it up.

The Democrats have done this with their budget. All their deal-making during the conference cost them $7.3 billion. So the task-orders went out to the staff to come up with 7.4 billion dollars' worth of smoke and mirrors. No problem, they said. We will just raise the price on the spectrum asset sale from $7.2 billion to $10.2 billion. We will just double-count the pay-as-you-go savings to date and get another $4.3 billion.

Smoke and mirrors has done it again. A big deficit that looks smaller.

There is nothing unusual about this. It happens every year. The problem is, this is the party that was going to bring change.

For 12 years, I joined with my colleagues on the other side to expose smoke and mirrors used by Presidents in my own party. No longer do they have the moral authority to condemn smoke and mirrors. And no longer can they claim the mantle of change.

Finally, Mr. President, is the issue of taxing the middle class. Middle America is going to get socked with this tax. The gas tax; the tax on small businesses that file on personal schedules; the corporate tax hike which, as I demonstrated last night, will indirectly cost jobs to small business; and the Social Security tax, which taxes middle-income people who prudently saved their money over the years for retirement.

This is not a small tax burden, Mr. President. This is burden after burden after burden.

Finally, Mr. President, we have just received a report from the joint economic committee. It represents a mid-session review of the deficit, which the administration has yet to provide. It shows that the deficits between 1994 and 1998 will grow anywhere from $61 billion to $274 billion. This is mainly due to a revision in the projected performance of the economy.

This new trend means that the entire tax increase meant for deficit reduction could be wiped out. A slower growing economy calls for fewer taxes, not more taxes.

Mr. President, it is time we went back to the drawing board. We need to cut spending first and hold the line on taxes. We need to get the outyear deficits down, rather than up as we would get under this bill.

For those of my colleagues who are inclined to support this package, I would just say: Listen to the people you represent. Do not walk the plank for a budget that makes no sense. Reject this plan, and let us go back to the drawing board and do the job right.

Mr. SASSER. Madam President, I yield 3 minutes to the distinguished Senator from Nebraska [Mr. EXON].

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 3 minutes.

Mr. EXON. Madam President, I would like to take a few minutes to express some of my views on the budget reconciliation bill and reiterate some of my concerns that I have been voicing throughout this entire budget process.

Madam President, we are now in a very important debate on a most critical issue—whether or not we can face in this Nation the changes that must be taken to get our financial house in order. Can we or can we not?

This talk and utterances on the Senate floor today and tonight is not likely to change one vote. The die is cast. Sometime tonight the Senate will either tie on a 50–50 vote and the Vice President will cast a tie-breaking vote in favor of the $496 billion deficit reduction measure, or it will fail on a, 51–49 vote. We are therefore talking past each other on the floor of the U.S. Senate, and addressing ourselves to the public. There is nothing wrong with that. In fact, under the circumstances, it might be well and good.

Keeping my word that I would support the conference report if it basically followed the tenets of the version of the measure that was earlier passed by the Senate, I will do so. To say that this is a perfect bill is an understatement. To say that it is safe to vote no is absolutely accurate.

Using President John Kennedy's "Profiles in Courage" analogy, the Senate all too often shirks from that worthy posture.

It may be somewhat trite. It may sound self-serving. But my vote, Madam President, tonight will be in favor of the reconciliation measure primarily because I am convinced that it is the right vote for my grandchildren, and all grandchildren of America similarly situated.

We have been selling them into economic slavery. There is only one thing worse than tax and tax. That is borrow and borrow and spend.

With this reconciliation bill, we will not guarantee an end to all of this; all

of this bloodletting for future Americans. No. It will not do that. But it is the only vehicle available to us at least to begin. More cuts must be made and the actions of the Senate and the House leadership yesterday clearly promises that that should come to pass in some form.

During the last several days, I have heard from hundreds of Nebraskans who have expressed their disagreement with many aspects of this legislation. I listen to my constituents and have taken a very close look at this legislation considering the many objections that have been voiced against it. They have heard many conflicting reports about this bill, and I can understand their fears.

On a measure of this magnitude and importance, I expect partisanship to be great and the attacks on the bill to be loud and persistent. That is what our democratic process is all about. However, the residents of my State have been bombarded with so many misleading and outright false claims that politics in Nebraska has reached a new low. Opponents of this bill have spent tens of thousands of dollars, generated outside my State, to distort and hide the truth about this bill.

As recently as but a few days ago, residents of my State were being bombarded with claims that the proposed Btu tax was still alive. That was not true then and it is not true now. The Btu tax is not part of this bill and as a practical matter has not been since before the Senate's initial consideration of this matter.

Nebraskans have been told that this bill includes a major tax increase on our middle class. Again, that is simply false. The only income tax rate changes in this bill affect those taxpayers filing joint returns of families with taxable incomes of over $140,000. If a working family does not have adjusted gross income of approximately $180,000 or more, they will not have to pay additional income taxes under this bill. Likewise, individual working tax filers with taxable incomes under $115,000, after taking deductions for things like home mortgage interest, will not have to pay more income taxes.

In the entire State of Nebraska, only about 5,500 working taxpayers will pay additional income taxes as a result of this increase, less than 1 percent of all Nebraska tax filers. Those are the facts, Nebraskans and their families making less than these amounts will not pay a penny more in income taxes.

This bill does indeed raise some taxes but it holds true to the principle that their impact on lower- and middle-income Americans should be minimal. Nearly 90 percent of all of the taxes in this bill, including the gasoline tax, fall on those families with incomes of over $100,000. There is no basis or justification for the scare tactics now being used by some opponents of this bill.

The impact of this bill on an average middle income American family will be about $1 per week, due to a 4.3-cent-per-gallon increase in the tax on gasoline and other transportation fuels. Families that have less than $30,000 income may receive a tax break through this bill's expansion of the earned income tax credit. In Nebraska, we have about five times more families that will qualify for a tax break than we have families that will be hit by the new top tax bracket.

Nebraskans have been told that this bill will devastate small businesses and that all small businesses will be subjected to increased tax rates. As a former small businessman, I understand the importance of small businesses to our economy. I have been very concerned over the allegations that this bill will unnecessarily impact our small businesses and will retard job growth as a result. Were that true, I would not hesitate to oppose this measure. But, it is not.

This bill, by increasing the expending allowance to $17,500, will actually help our small businesses grow and create new jobs. In addition, it includes a capital gains tax break for certain investments in small businesses. Over 90 percent of our small businesses will be eligible for a tax cut, as compared to less than 4 percent of business owners who will be required to pay higher rates as a result of the new top tax bracket for those with taxable incomes over $115,000 for individuals and $140,000 for couples. Business owners pay taxes only on their profits, after taking allowable deductions for expenses.

Opponents of this bill also fail to mention that it extends certain tax breaks that are very beneficial to our Nation's small businesses. The 25 percent self-employed health deduction is perhaps the most important but many businesses also take advantage of the targeted jobs tax credit and the deduction for employer provided education assistance.

Seeing through the partisan smoke to get a clear picture of this bill has been very difficult. But, I have done my best to analyze this measure closely with the overall question of whether this bill is best for our country and my State uppermost in my thoughts. On that score, there answer is clear. After 12 years of borrow-and-spend policies, this bill changes the way we do things and begins us down the long and difficult road toward fiscal sanity.

While some of the criticisms of this bill have been, at best, misleading, this bill surely has its faults and weaknesses. We need to do more than what has been done in this bill to get Government spending under control. While I am encouraged by the progress that has been made regarding Government spending, I am not satisfied with what we have achieved.

I have joined with my colleague from Nebraska in pushing for special action by Congress where we will solely consider budget cuts. In my view, everything should be on the table—discretionary programs, entitlement programs, as well as Government spending through special interest tax breaks.

President Clinton has been receptive to this idea and so has our leadership. But, this effort must be bipartisan to succeed and I am anxious to hear the specific spending cuts proposed by both parties. I am hopeful that with the passage of this bill we can put our partisan differences aside and work together to streamline our Government and make it more efficient.

From the beginning of this process, I have expressed my concern that we are only addressing our annual deficit spending. Our national debt, well over $4 trillion, will continue to grow. By allowing our national debt to quadruple since 1980, we have created two problems, not one. Balancing our budget is less than half the battle. We must then worry about our huge debt and the ever increasing interest payments that are required to service that debt. Almost $300 billion per year, about one-fifth of our total Federal budget, goes right down a rat hole simply to pay for our past fiscal excesses. I believe we must continue to seek spending cuts over and over again.

I most certainly considered the alternative plan offered by Senator DOLE on behalf of his Republican colleagues. That plan fell $100 billion short of reaching even the modest goals of President Clinton's budget plan. There is little explanation, other than crass partisanship, for criticism from that side of the aisle that our plan does too little when theirs did even less.

This bill contains $496 billion in deficit reduction over the next 5 years. In other words, if we do not pass it, we will pile another $496 billion onto our national debt and onto the backs of our children and grandchildren.

In considering this important measure, I have never lost sight of what in my view must be our overriding goal. We simply must begin taking the necessary steps to get our Federal budget under control. In that regard, this bill is indeed a step in the right direction.

By imposing discretionary spending caps, we are in effect freezing spending for a large part of our Government. Counting for inflation, discretionary spending will be cut by nearly 13 percent over the next 5 years. Our discretionary spending caps are already causing our Federal Government to keep appropriations under control and this new freeze will surely result in more difficult and tough choices being made.

This bill calls for tough cuts in our entitlement programs. Our Medicare Program is cut by $56 billion, Medicaid by over $7 billion. In all, our entitlement cuts over the next 5 years total about $88 billion.

Spending cuts in this bill, including interest, total $255 billion. We have achieved a ratio of more than 1 to 1 in comparison with the tax increases, mostly on upper income Americans, in this bill. These cuts are binding now. No future act of Congress is necessary to make them happen. we are biting the bullet today, not promising to bite it later.

I have heard from many Nebraskans that the only solution to our budget problem is to cut spending to match revenues. While I agree that we need to concentrate on that side of the equation, I do not agree that we should take tax increases off of the table. Any real effort to balance our budget will include efforts on both sides as this one does. The problem is simply too big to limit our options in that way.

I share the concern I have often heard that tax increases may have a negative impact upon our economy. But, we need to keep in mind that spending cuts have a major impact as well. One of our major concerns in the Armed Services Committee has been how to avoid the devastating impact defense spending cuts can have on regional and local economies.

While most of the attention has been given to the revenue increases in this bill, it is important to note that this bill extends some needed tax breaks. I have long supported, as has a clear majority of the Senate, our mortgage revenue bond program and the targeted jobs tax credit, both of which are given new life with this bill.

This bill is indeed the result of much negotiation and many compromises. But, unlike its detractors, I do not see that as a fault but believe most of the changes that have been made to President Clinton's original plan have improved the bill. I actively sought many of those changes.

The Btu tax has been dropped and replaced with the increase in the fuels tax which is more fair to residents of my State. This bill scales back President Clinton's proposed investment spending and, in doing so, further holds the line on Government spending.

Agriculture will be required to do its fair share in the deficit reduction effort. Yet, we have beaten back proposals to which would have crippled our agriculture sector. In addition to killing the Btu tax, the irrigation surcharge has been dropped and the increased barge tax is dead. Off-road vehicle use is exempted from the transportation fuels increase. There is now no increased energy tax on agriculture.

I was particularly concerned with our President's proposal to increase the amount of Social Security benefits that are subject to taxation. My proposal to raise the threshold for the increase in taxation to $40,000 of income for a retired couple has been increased further to $44,000. With the higher threshold, only about 10 percent of the highest income Social Security beneficiaries in Nebraska will pay any additional tax.

In sum, this is a tough plan and, in that regard, is more credible than the Budget Summit Agreement of 1990. I did not support that agreement which was based upon unrealistic assumptions and predictions. It replaced tough decisions with blue smoke and mirrors. This plan is based upon realistic, perhaps even pessimistic, economic assumptions.

This plan makes some tough choices. This bill includes real spending cuts. While it asks the wealthiest to sacrifice the most, it also asks for sacrifice from millions of Americans. Yet, I am convinced that the sacrifice will be fairly distributed and that Americans are willing to take some risks to get the job done. We simply must change course if we are going to assure a sound and secure economic future for coming generations of Americans.

Mr. President, the time has come to drive a stake through the heart of the borrow-and-spend policies of the past 12 years. As most of us predicted, it could not go on forever without harming our economy. It is long past time to start down the road to fiscal responsibility.

As I indicated earlier, this bill is but a step down that road but it is an important step and one that must be taken. The journey is not going to be easy and will constantly be threatened by those who will not even now, in the face of a national debt of over $4.2 trillion, admit that we had been heading in the wrong direction. Balancing our budget is not going to be easy nor will it be accomplished overnight.

It is time to start. I intend to vote for this bill and urge my colleagues to do so as well.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 5 minutes.

Mr. BOND. Madam President, I thank the Chair. I thank my distinguished colleague from New Mexico.

There are many things we could address in this bill but because I have been interested in and committed for a long time to adopting the procedural reforms that will bring deficit spending under control, I wanted to speak to one particular part of this bill. I favor the line-item veto action. As Governor I used it. I know it can keep spending under control. I also believe we have to impose caps on the entitlement growth to get this body to make difficult choices, but before us today in this bill is something called the deficit reduction trust fund.

The President when he was campaigning in San Antonio said a deficit reduction trust fund is a turkey. I think he is dead right. This bill includes that turkey.

Let me go through a little brief mathematics for my colleagues to show why a deficit reduction trust fund does not mean anything.

Taking round figures, let us say we are spending $1.45 trillion. We take in $1.15 trillion. That leaves us with a $300 billion deficit. And $1.45 trillion less $1.15 trillion—that is $300 billion. If we have a deficit reduction trust fund, and we are still spending $1.45 trillion, and we take in $1.15 trillion, but we put $100 billion in a deficit reduction trust fund, that means we have only $1.05 trillion, and our deficit is $400 billion, and we have $100 billion in a deficit reduction trust fund.

If you tried that with your credit card, you would probably wind up going to jail. If you told the credit card company, when you had say a $1,400 bill and you had to pay them $1,100 on it, and you only offered to pay them $1,000, and you said, "Don't worry, Mr. Credit Card Issuer, I am going to put a hundred dollars in a credit card deficit reduction trust fund," your credit would not last very long. They would revoke your credit card. Frankly, if we are relying on a deficit reduction trust fund to get the deficit down, the people of America ought to have the right to revoke our card to vote.

Alice Rivlin, the very distinguished and able Deputy Director of the Budget, says this is a display device. Boy, it is a device. It is a device to comfort legislators, amuse the accounting profession, amaze the media, and confuse the voters. What does this package actually do?

Well, let us take a look at it. Here is the spending cut program of the Clinton plan. It starts off here in fiscal year 1994 at right about $1.5 trillion, and by fiscal year 1998, goes to $1.8 trillion. Show me where the spending cuts click in on that one.

Here is where the debt goes from $4.5 trillion to over $6 trillion in fiscal year 1998. This is supposed to be a package to benefit the economy by bringing the deficit down.

So what are we doing for the economy? Well, even under the administration's optimistic projections, economic growth goes from over 3 percent down to a flat 2.5 percent, and all the while it is doing that, look what Federal spending does. It goes from about 3.7 percent up and down, and goes up at an increased rate of about 4.7 percent.

This is a plan to grow the Federal Government budget, not to grow the economy.

The debt is going up nearly twice as fast, at over 7 percent a year; spending is going up at an annual rate of 4 percent a year.

How do we hear that this is evenly balanced between tax increases and spending cuts? Well, it claims $44 billion in spending cuts that we paid for the 1990 budget agreement.

I am from Missouri. Show me the real cuts before we vote on another budget that promises future spending cuts.

The PRESIDING OFFICER (Mr. WELLSTONE). Who yields time?

Mr. DOMENICI. Mr. President, I think we have agreed that the next speaker would, once again, be on our side. We have more time.

I yield to Senator CHAFEE for 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. CHAFEE. Madam President, I strongly believe that this legislation is bad for our country. We, in our Nation, are in what we might call a fragile recovery. Unemployment, nationally, is at 7 percent, and in my State it is over 8 percent.

Many of our Nation's largest employers are not adding employees but indeed are cutting employment: IBM, 35,000 people to go; Procter & Gamble, 13,000 people to go; Westinghouse, 7,500 people being cut. We are just not creating enough new jobs in our country. This is a tremendous tragedy for millions of our citizens. What they want is jobs for themselves and jobs for their families. This bill before us this evening, regrettably, is a jobs killer.

When times are bad, it is not the occasion to impose stiff new taxes on our economy. It is all well and good for the administration to pour out a torrent of information saying this bill will only tax the rich, but that glosses over the fact that unincorporated businesses, larger sole proprietorships, subchapter S corporations, which are the job-creating engines in our society, will see their taxes leap from 31 percent to as high as 44 percent. You might say that from 31 percent to 44 percent is a 13 percent increase. Not at all. That is a 42 percent increase. Furthermore, it is retroactive to January 1 of this year. Obviously, the last thing that these businesses are going to be doing is to plan on hiring more people.

Much has been made of the cuts in spending in this bill, but nearly all of these cuts come in 1997 and 1998—4 and 5 years from now. Nearly all of these cuts are from Medicare providers—on the doctors, $23 billion; on the hospitals, $23 billion. These may represent savings to the U.S. Government, but what will the hospitals do to make up for the lost income from the Medicare fund? Hospitals are not wallowing in wealth. Certainly in my State they are not. They cannot make deep cuts in the wages of their employees. So what will they do? They will increase the charges to the other patients, those whose insurance is paid for by individuals or by their employers. This is what we call cost shifting.

Thus, the insurance costs for these businesses will rise inevitably, leaving less money for the businesses to modernize their plants, to become more competitive and to hire more people. The best thing that could happen, Mr. President, tonight is for this measure to be defeated, and we start all over again, with Republicans being invited to the table. The extremes of both parties would not be totally happy, but the result would be a measure with some new or additional taxes, but not of the magnitude of this bill. The cuts and savings would be considerably greater than we now have before us, and the difficult decisions that neither party can make alone would be jointly made. And our Nation would be the winner. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. I yield 3 minutes to the distinguished Senator from Montana.

Mr. BAUCUS. Mr. President, I rise today in very strong support of the conference agreement. Today in this body, we can send the President the largest deficit reduction package in the history of this Nation. Today in this body, we can give our children an economic future. Today in this body, we can serve our country.

Less than a month after the inauguration, President Clinton unveiled a comprehensive economic plan. He asked us for the courage to change. He asked the country to share work and sacrifice today for the sake of tomorrow. Today we will do it.

DEFICIT REDUCTION

For the past 12 years, Republican administrations mismanaged the country. They got us to the place we stand today. Their policy of borrow and spend blew up the Federal debt like a dead horse in the sun.

Our debt grew from under $1 trillion in 1980 to about $4.5 trillion today, and because of those 12 Republican years, it is still growing at a rate of almost $1 billion per day.

Simply put, President Clinton inherited a mess. We spend more than we take in each year. That means we have to borrow to keep the Government afloat. The more we borrow, the more we transfer our wealth and purchasing power to other nations. Admittedly, $496 billion of deficit reduction over 5 years is not sufficient to significantly improve our international economic standing, or to reduce our spiraling Federal debt.

However, as the Chairman of the Federal Reserve, Alan Greenspan has emphasized repeatedly in the past few months:

> Reducing the deficit is crucial. Postponing action would only extend the pattern of sluggish growth * * * and ultimately make it even more difficult to engage in the programmatic actions that are necessary.

Passing this plan will stabilize our economy during its fragile recovery from recession. It will bolster the confidence of the financial markets, keeping long-term interest rates at historic low levels.

The international impact of a serious deficit reduction effort is shown by our success at the G–7 summit last June. President Clinton came to the summit after the House and Senate passed deficit reduction plans. He came there with credibility. The result was action on GATT, and action on growth.

The domestic impact you all know. Deficit reduction; lower interest rates; responsibility and fairness. This bill is what our country needs. It is what our children need. It is the right thing to do.

BALANCE

The package reduces the deficit: $496 billion in 5 years. It is also balanced; it provides investment incentives to small business, relief to lower income taxpayers and support for cities suffering from urban blight.

It is a balanced mix of spending cuts and tax increases. Specifically, $256 billion in spending cuts and $240 billion in taxes. For every $10 in deficit reduction, $5 comes from cuts in spending, $4 from tax increases on those earning over $100,000 per year, and only $1 from tax increases on those earning under $100,000 per year.

FAIRNESS

And it is fair. It asks all Americans to sacrifice to get our economy back on the right track.

It is fair to working families. It combines an expanded earned income tax credit with an increase in income tax rates on corporations and the wealthiest Americans. That makes this reconciliation bill the most progressive proposal in recent history.

It is fair to middle-class Americans and senior citizens. A Montana middle class family will pay $31 a year extra. That is about 12 cents every working day—a fourth of the price for the Billings Gazette—and not a penny on weekends and holidays.

And it fair to the West. We held the line at the Senate Finance Committee's 4.3-cent gas tax. Even that is tough. But westerners are born tough. A 4.3-cent-per-gallon tax is an acceptable compromise in light of the economic benefits this plan will bring, but it is a permanent compromise. And I will strenuously oppose any future efforts to raise the gas tax, whatever the reason, whenever the time, whoever the sponsor.

LOG EXPORTS

There is one other important provision that I would like to highlight. This bill contains an amendment that I sponsored to eliminate irresponsible tax breaks which encourage the export of raw logs at the expense of the environment and American sawmill workers.

These breaks have existed for many years and have contributed to the timber supply crisis afflicting Oregon, Washington, Idaho, Montana, and northern California. By encouraging the export of raw logs, they have put pressure upon environmentally critical old-growth forests.

This bill includes a provision which eliminates those tax breaks and puts the money into payments and tax incentives for workers in timber dependent communities throughout the

northwest. It is a win for the environment and a win for sawmill workers.

I ask unanimous consent that a letter from the administration describing their plans for dispersing these funds in Montana and Idaho be printed in the RECORD at this point.

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
*Washington, DC, August 5, 1993.*

Hon. MAX BAUCUS,
*The U.S. Senate,*
*Washington, DC.*

DEAR SENATOR BAUCUS: Thank you for discussing your proposal to encourage economic development and investment in timber dependent communities of Montana and Northern Idaho.

You make a convincing case. The unemployment figures alone prove the severity of the economic dislocation in these communities. While the crisis may have occurred more precipitously in the Pacific Northwest, the sources of economic dislocation are the same in both regions: mill automation and modernization; liquidation of private timber inventories; and curtailments in public timber harvest due to requirements of federal environmental laws.

President Clinton recognizes the need to encourage economic development in these timber dependent communities. As specified in the Reconciliation Conference Agreement, three of the 9 authorized Empowerment Zones and 30 of 95 Enterprise Communities would be designated in non-urban areas that meet the Act's eligibility criteria. Communities in Montana and Northern Idaho that submit a strategic plan for coordinated economic, human, community, and physical development and are selected will receive a range of tax benefits and grants for social services. In addition, the Administration agrees with your proposal to target appropriate economic development programs such as those in the Rural Development Administration and the Economic Development Administration towards timber dependent communities in Montana and Northern Idaho. We agree to commit as much as $120 million to this effort, depending on final action on Reconciliation and appropriations measures. We will take whatever administrative and legislative action that may be required to accomplish these goals.

Again, thank you for bringing this proposal to my attention. Please let me know if you have any additional views on this issue.

Sincerely,

LEON PANETTA,
*Director.*

Mr. BAUCUS. But on the larger bill, let us set the record straight on some key points.

COUNTERING THE RHETORIC

Spending cuts: The fact is, more than half of the $496 billion in deficit reduction in this package is legitimate spending cuts. We will eliminate about $100 billion in discretionary spending, $100 billion in entitlements, and $50 billion in interest payments.

Specific cuts include: $56 billion in Medicare, $7.5 billion in Medicaid, a 5-year freeze in discretionary spending, $10 billion from reduction of the Federal work force, and elimination of special purpose HUD grants.

Small business: 4 percent of small business owners make over $180,000. They will be affected by the increase in the maximum tax rates. Nobody else.

In fact, over 90 percent of all small businesses will benefit from a tax cut. They get tax incentives as an increase in the expensing level from $10,000 per year to $17,500 per year. Smaller businesses get a 50-percent capital gains break for certain small business owners, and will benefit from extension of the research and development tax credit.

The middle class and the elderly: 99 percent of all Americans will have no change in their income tax. I've looked at the data on Montana taxpayers. Only 1 percent of the Montana Federal tax returns filed in 1990 showed taxable income between $100,000 and $200,000. One percent. The remaining 99 percent will have no change in their income taxes.

Finally, there is the question of a Republican alternative.

For the past 12 years, Republican administrations have taken a walk on the deficit. This year, the Republicans in Congress strolled off down the same daisy path. The do not want to do a thing about the deficit. They simply want to talk about it.

I want to point out the bill offered as an alternative by the Republicans adopted all the specific spending cuts included in this bill, and a host of unspecific unrealistic ghost cuts. Furthermore, they have openly admitted that their projected deficit reduction was over $100 billion less than the plan we will pass today.

This plan is real. It has real deficit reduction. It has real cuts. It is fair. There is no alternative.

Mr. President, our generation is a lucky one. Our parents weathered the Depression and won the war. They left us a strong and prosperous country. Will we fail our children now? Will we leave them less than our parents left us?

The time has come for us to make the hard choice we have talked about for so long. Simply, that means casting a vote in favor of this package. A difficult vote. A tough one. The right vote.

Vote for this bill. We are the people and this is the time. Vote for this bill.

Mr. President, this is one of those historic moments in the Senate where we are about to make a decision which will be fairly significant for the future of our country. These decisions come up once in a while. They do not come up probably as often as many of us in the Senate would like them to. But this is one.

It is historic essentially because we are in a time when we are faced with the question of whether to cut the budget deficit by $500 billion, a time where if we make that decision we will be nudging our country in a slightly different direction.

It is also historic because it is not easy. This is not a unanimous decision. There are Senators on both sides who feel that this is too difficult, that it is difficult to cut spending. Therefore, it is not something they want to do. It is difficult to raise income taxes. That is something you do not want to do. But we all know that in life, certainly if we are going to serve responsibly, we sometimes have to make difficult decisions that in our judgment are for the good of the country. I believe this is one of those decisions. It is not easy. It is not easy to cut the debt. It is not easy to cut spending. It is not easy to increase income. But it is something that we have to do.

We have to do it because the accumulated deficits from President George Washington up through President Jimmy Carter totaled—national debt—about $1 trillion. Since then, since President Carter, our country's national debt has increased over fourfold to $4.5 trillion.

We cannot keep going on like this. That is why President Clinton campaigned on the promise of change and to bring our country back together again. And it is why this Democratic Senate and Democratic House have attempted to find a solution which reduces that budget deficit. It does so by about $500 billion. Is it perfect? No, it is not perfect. Each individual Senator would do it differently. Each individual House Member would do it differently.

We are a democracy. We are a collection of a wide variety of Senators, House Members, different ages, different parts of the country. We are people like everybody else, attempting to represent our people back home. This is fair because it is done with more spending cuts than revenue rates. Our people want more spending cuts than revenue rates. It is also fair because it corrects a grave injustice that this Congress, this country pursued in the 1980's, namely taxing the middle-income taxpayers of this country, and letting the most wealthy off the hook.

During the 1980's, the most wealthy Americans saw their after-tax income go way, way up, partly because they were making much more money, and also because their taxes were lower. At the same time, middle income saw their incomes basically remain flat and, in some cases, decline and their taxes increase.

This is an attempt to correct that mistake—an attempt to do so fairly. Mr. President, it is also the right thing to do because 99 percent of Americans will experience no income tax increase under this, and 90 percent of small businesses will either receive or be eligible for cuts, not increases.

I strongly urge Senators to recognize that the facts say take the historic step, do what is right, and vote for this program.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I yield 7 minutes to Senator COHEN from Maine.

Mr. COHEN. Mr. President, I think that very little we are going to say this evening will alter anybody's vote, certainly, in this Chamber. Hopefully, the American people who have been watching during the course of today will have a better understanding as to why this has been such a controversial matter.

But before I speak to the issue of the budget itself, I would like to first commend my friend from New Mexico, Senator DOMENICI.

I do not know of another Senator in this Chamber who has dedicated himself more to fiscal responsibility and to responsible budgeting than Senator DOMENICI. I do not know of anyone else certainly on our side who has been more willing to reach across the aisle and grasp the hands of the majority in an effort to work in a bipartisan fashion.

He has been called a moderate, and I daresay that because of his willingness to try to operate on a bipartisan fashion his moderation may very well cost him a leadership position in this party, and I think that is to our great loss.

A couple years ago, he joined with Senator NUNN in an effort to try to get control of the spiraling costs of our entitlement programs and they proposed a deficit reduction plan. They were able to gather only 28 votes for their program.

I regret very much that the President did not seek to work with Senator DOMENICI from the very beginning but rather adopted a strategy of just working with the majority. As a result of just working with the majority, we have seen the debate has broken down virtually on party lines. I regret that was the strategy first adopted.

Mr. President, I think it was an adviser to either Louis XV or XVI who said that the art of all taxation is to pluck the most amount of feathers from the goose with the least amount of hissing.

We are plucking a lot of feathers with this particular reconciliation package. We are plucking about $240 or $250 billion worth of feathers. It is a lot of hissing, and there is a reason for this.

The people, the golden goose that has been laying these eggs that we depend upon for our prosperity, are being plucked again and again, and they know that we have been squandering their feathers. We have been spending them and throwing them away recklessly. And that is what all the hissing is about.

They do not believe us anymore. They do not trust us, that we are going to do what we say we are going to do here, namely, we are going to tax now but cut later. They know we are going to tax now. They do not believe we are going to cut later. They think we are going to continue to pluck and pluck and throw those feathers away.

They can look at our programs. Just this week we had hearings in the Governmental Affairs Committee and we found that we have one agency, one department in our executive branch, that pays millions of dollars to farmers to irrigate their land while a different agency pays those same farmers not to plant crops on those lands. We know that we are spending a good deal of money helping to promote the tobacco industry and spending millions of dollars on cancer research programs as well.

We just heard this week that the Internal Revenue Service has either outdated computer equipment or deficient records, so deficient to the point that we may not be collecting up to about $100 billion, $100 billion going uncollected.

Our Medicare-Medicaid systems are being defrauded by unscrupulous scam artists to the tune of billions of dollars, billions of feathers, if you will, and still the first thing we do is go back and continue to pluck and pluck and pluck that goose once again.

For the last day I have been watching these charts offered by the majority, and they keep saying for the last 12 years you Republicans are the ones who spent this country into the trillions of dollars of deficit. You are the ones who have been bailing out the rich.

The last time I checked it was a leading Democratic Senator, a friend of mine and yours, Senator BRADLEY, who offered a proposal to reduce the number of tax rates in order to stimulate the kind of investment that is necessary to move this country's economy forward.

The last time I checked, the Democratic Party was in the majority over the last 40 or 50 years, for the most part in both Houses, with one 6 year interlude in the Senator. The last time I recall going over to the House Chamber to listen to a Republican President deliver a State of the Union Message the first reaction by the majority was that the President proposes but we will dispose, and that his budget is dead on arrival.

And so yet they get up here tonight and to point those charts and say the Republicans were the ones spending. The last time I checked it was the U.S. Congress, under the Constitution, that has the responsibility for spending all those billions and trillions of dollars.

We are talking about taxing the rich. Once again, we are engaging in classic class warfare.

The last time we did this in 1989 those on that side of the aisle, in particular, said let us tax the rich. Let us get those people who are buying the luxury items, all those cars, furs and jewels and, by the way, boats. You know what we did. We struck at the white collar rich people and we hit the blue collar craftsman. We threw hundreds of people out of work in this country.

Now they are back here in this bill saying we made a mistake; we thought we were taxing the rich. What we were doing is we were putting the middle-class and working poor out in the unemployment lines.

I think that is the danger in the kind of attack that is being launched here today.

Mr. President, a lot of people have written to me saying we are willing to pay more taxes; we are not willing to pay more taxes until you start acting more responsibly. That is the reason for the hissing.

One of the more artful measures that the President has indulged in and he had to make more twists and turns and anatomical contortions than Houdini himself in order to get support from his own party.

He proposed this much talked about deficit trust fund that Alice Rivlin called a display device. It is an artifice. It is empty. It is a false promise.

With all the charts we have seen displayed here tonight, I am asking Senator DOMENICI to construct another display device, that each week or month, if the week is too burdensome, we hold up a display device of the new deficit trust fund and that Senator DOMENICI points out each week or month the amount of money that remains in that deficit trust fund so the American people watching these floor proceedings can then decide whether or not that is being filled or depleted with more spending rather than more savings.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I will use just 30 seconds on my time, and then I am ready for the Democratic side.

I tell the Senator from Maine we will be glad to try that, and if we can do it in a manner that is helpful to the Senate and House, the American people, we will certainly do it and get it up so that we can understand that it is indeed a gimmick. If you do not stop the deficit from growing, the trust fund is rather meaningless. I think we had that explained today. I thank the Senator for again pointing that out and for the kind remarks he expressed in behalf of this Senator.

I yield the floor.

Mr. FORD. Mr. President, on behalf of the floor manager, I yield 3 minutes to the Senator from Louisiana [Mr. BREAUX].

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. BREAUX. Mr. President, I think we might have found our 51st vote on the Democratic side tonight. My former colleague, Russell Long, was visiting with us during this historical event.

Mr. President, this is the toughest legislation that I have ever had an opportunity in my 21 years in this Congress to participate in.

I think privately many of our Republican colleagues are privately, secretly just hoping like heck this thing passes because they do not really want to be dragged kicking and screaming into the process of trying to find some of the tough answers that are going to have to be brought into play in order to solve this problem. They do not really want to be involved in this. They know how difficult it is, and they know how tough it is, and they know it is not easy.

It was easy under President Reagan. He asked us to do two things, essentially. No. 1, he said let us cut taxes. We all said, yes, that is a great idea—cut taxes. That was fun. It was easy. He also asked us to do one other thing, spend more money. Most Members of Congress said, hey, that is a good idea. Let us spend a lot of money.

As a result of cutting taxes like we did and spending like we did, we now have a $4 trillion long-term national debt and a $350 billion deficit every year. We spend $1 billion every 24 hours just paying interest on the national debt.

If anybody thinks we are going to get out of this mess with easy answers, I would suggest if it was that easy we would have done it a long time ago.

Congress, unfortunately, has become very polarized. Conservatives tell us we should solve this problem with cuts, no taxes, just cut programs but, by the way, cut someone else's program and not mine. Liberals say, no, we should not cut anything; we should pass new spending programs, pay for it with new taxes, and let us add more programs.

Mr. President, I would suggest that neither one of those approaches is going to pass. Neither one of those approaches in and of themselves would be able to solve the problem.

Mr. President, I am going to support this plan, not because it is perfect, because it is not, not because I like it, because I do not, but because I am trying as hard as I possibly can to come up with a plan that can pass and that can make a real step toward reducing the deficit.

It is time for action. Giving good speeches will not cut it. Making excuses will not get the job done. I would love to have my plan that I could write on a piece of paper pass, but I am one of 535 Members of Congress.

No Member can get his or her plan passed by himself or by herself. That is why compromise is so important. This bill moves in that direction.

I urge my colleagues: Let us make a tough decision, not a political decision, and let us get the job done.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Mr. President, will the distinguished floor manager yield time to me?

Mr. SASSER. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. The majority has 34 minutes remaining and the minority has 29 minutes remaining.

Mr. SASSER. Mr. President, the distinguished Senator from Virginia [Mr. ROBB] was next on the list. Senator BUMPERS has been waiting for some time.

Mr. ROBB. I yield to the Senator from Arkansas.

Mr. SASSER. Mr. President, I yield 3 minutes to the distinguished Senator from Arkansas.

Mr. BUMPERS. Mr. President, it is hard for me to get a good breath in 3 minutes, but I will try to say what I want to say.

First of all, Ripley has a new statistic—of the 175 Republicans in the House and 44 in the Senate, not one, not one Republican in the House or the Senate, thought reducing the deficit $500 billion was a good idea. Not one voted for the budget resolution.

I listened to the Senator from Maine awhile ago say we are blaming them. Well, I will tell you what the facts are, and they are unassailable.

In 1981, Republicans took over this body and they took over the White House. Ronald Reagan came riding into town out of the West. And in September, from his home in Rancho Mirage, CA, he said, "Now Congress has given me the tools, and I will do the work." The rest is history.

Then the Senators from Maine says that he could not spend a nickel that Congress did not appropriate. And the American people ought to thank us, because we appropriated a lot less than he asked for.

In addition to that, nobody can spend a nickel without his permission. He has to sign off on it.

I will give the Republicans credit for one thing. They have out "public relationed" us.

But I have never heard as much snake oil peddled in this Chamber in my life as I have heard in the last 24 hours.

Mr. President, we talk about all those poor little working people. We are talking about poor little working people that make $180,000 a year.

I promise you 90 percent of those orchestrated phone calls I have been getting are from people who will get a tax cut out of this thing. I promise you 50 percent or more of the people in my State make less than $30,000 a year, and if they are a working family they get a tax cut. They will pay maybe $2.50 a month for gasoline. Is that too much to ask for the future of our children?

I heard Senator HUTCHISON from Texas last night talk about the little hardware dealer. He said, "Don't vote for that." He said, "I work so hard, and most of my employees are making more than what I am. If things don't change, we are going to have to shut my doors."

If he has employees making $180,000, that is one heck of a hardware store.

Mr. President, talk about small business. I am chairman of the Small Business Committee. I yield to nobody in this body in my efforts for small business.

Why, they get a capital gains bill in this thing that is going to be a bonanza for them. They get an expense account, expensing their equipment that they are going to love, and a host of other things.

Poor little small business people. Four percent of those little small business people making over $180,000 a year will be included.

The markets, Wall Street, business in this country has already assumed that this is a done deal. And it is, I am quite sure.

But I am going to tell you something. Do you know what happened today? The unemployment rate went down two-tenths of a point. And the market went up after the House passed it last night.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SASSER. I yield the Senator one additional minute.

Mr. BUMPERS. Mr. President, I think it is only fair to say you have heard all these references today—as I say, I never heard so much erroneous information.

But let me say, in a rather emotional appeal to the American people—we are not changing any votes here—you know, when the people in my State and the people of your State sit around the dinner table in the evening, they do not talk about "I wonder if taxes are going to go up or down." They do not talk about that Mercedes out in the driveway. And they do not talk about that posh office downtown, or the farm out back.

Do you know what they talk about, I say to the Senator? They talk about their children. They talk about their children's future. That is what we all talk about. That is who we love most.

I do not want to vote for this bill. It is not popular. You are not going to win anything.

The Republicans can vote no, pat themselves on the back, and go home with their antitax awards.

The truth of the matter is, we are trying to reverse 12 years of economic lunacy in this country.

Do you know why? To keep faith with those parents who are sitting around the dinner table talking about their children's future. They deserve it. I intend to vote to give it to them.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Mr. President, I yield 3 minutes to the distinguished Senator from Virginia [Mr. ROBB].

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ROBB. Thank you, Mr. President. And I thank the chairman of the committee.

I had planned to speak earlier but, as many of the Members of this body and others who may be watching the debate tonight know, we had a tornado that touched down in Virginia and has caused tragedy in some of the areas. I have been coordinating with some of the State and Federal emergency personnel. I must tell you that, on both scores, I am pleased to report that the emergency response, at least on the basis of the reports that I have received so far, has been very good.

I am going to go down with Senator WARNER and the congressional members to look at the situation tomorrow.

Mr. President, I rise in support of the plan. I have just a couple figures. I know we are not going to change any votes at this hour of the evening. We may be able to educate just a little bit.

I did some checking in may own State to find out how many people would be affected by the tax increase that is in this bill. I found out it was 1.36 percent of the total population of my State. I am fortunate enough to be a member of that 1.36 percent. I will see my taxes go up.

But there are 19 percent of the citizens of my State who will benefit from the earned income tax credit that is in this particular bill. So there is equity. It is $500 billion of deficit reduction we would not get it if we did not pass it.

I have one new chart that I do not believe the Members have seen to date, although it has been available earlier. To me, it is one of the most instructive charts here, because it points out the fallacy of some of the things we have been hearing from our friends from the other side.

Very briefly, if you take out the interest on the national debt—which is what any President inherits from those who preceded him—and look only at the spending, exclusive of interest on the national debt, you see an interesting phenomena. You see that during the last 12 years, less interest on the national debt, the debt increased $716 billion.

And if you look at if we did not have to pay interest on the inherited debt—which went up over $3 trillion during the last 12 years—President Clinton's budget, as submitted, would be providing $127 billion of surplus. We actually would be buying down the national debt.

The only relevance of this chart is it gives some indication of the good faith and the effort that goes into making the kind of tough choices that the President has called for and those who have put this budget together have managed to produce.

The net result is that, instead of having the national debt increase from $4 trillion to $5.5 trillion—it is going to increase, regrettably, and many of us would like to do more about it and will afterward—but it will go up $500 billion less because of the work of the President and the Congress in responding to the challenges this country faces.

With that, Mr. President, I yield the floor.

I thank my colleagues for all the work they have put in on this particular proposal.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Mr. President, according to the list that we entered into the unanimous-consent agreement on, Senator Simon will be next on the list for 3 minutes.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. SIMON. Mr. President, this is not a package that any one of us personally would draft. There is, particularly, a provision on goodwill for corporations that acquire other corporations that I think is not only a revenue loser long term, it is simply bad economic policy. But, on balance, the total package is a good package.

How does it play in Peoria? The Peoria Journal Star, which endorses more Republicans than Democrats, has an editorial. I ask unanimous consent to have it printed in the RECORD.

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

(See exhibit 1.)

Mr. SIMON. "Pass the Plan; Cut the deficit."

The final paragraph says:

> Compared to some of the other issues the country faces, shrinking the deficit is relatively simple. You do it by cutting spending and raising revenue. Congress can get the Nation unstuck by passing Clinton's plan, then preparing to do more.

That just makes eminent good sense. We are finally facing the deficit.

Let me just add, we are doing one other thing that I have not heard discussed on the floor yet, and that is moving toward direct loans, something the Presiding Officer knows something about. It is going to help students in this country. In my State of Illinois alone, we will cut fees for students $100 million in the next 5 years. And we are going to make college available to a great many more people. That is, long term, a major plus for this country.

But primarily it is facing the deficit. My colleague from Arkansas, Senator BUMPERS, hit it right on the head. If I just wanted to do the popular thing it would be easy to vote against this. Cutting spending sounds great in the abstract. I notice our friends on the other side of the aisle kept it abstract. They have not pinpointed where they are going to do it. And raising revenue, obviously is unpopular.

But we had better stop living on a national credit card. We have been doing that. This is the first generation of Americans to live on a national credit card saying, send the bill to our children and our grandchildren. We are finally starting to slow down and I hope we will take additional steps to move away from it.

I am casting my aye vote, not with pleasure—because it is not pleasant to do what we are doing. But I am casting it knowing we are doing the right thing for the future of this country.

EXHIBIT 1

[From the Peoria (IL) Journal Star, Aug. 5, 1993]

PASS THE PLAN; CUT THE DEFICIT

No subject has wrung as much passion out of these pages the last dozen years as the federal budget deficit. "We hate to keep bringing this up," the newspaper apologized in 1986, and then we brought it up anyway, again and again and again.

We are stuck, and so is this nation. Bill Clinton was correct when he said on television Tuesday that if we don't get unstuck, we won't be able to move on to other important issues—the health-care system, welfare reform, trade policy. We won't have the resources to try to revitalize our cities, our infrastructure, our manufacturing engines, our children. Our creditors will get it all.

It is incredible, illogical, and downright scary that we should continue to refuse to resolve what most Americans say is the nation's foremost problem. It is as if we have all come down with malaria and are too busy debating the merits of various cures to go after the cesspools where the mosquitoes breed. The deficit is the national drug, numbing our minds and dulling our ability to reestablish authority over ourselves, even as each day saps from us more of the strength we need to recover.

President Clinton's plan to cut the deficit by $496 billion over five years is no miracle cure, and to his credit, he says as much. The plan suffers from too much compromising, not enough spending cuts, too few controls on entitlement growth. It suffers from the false assumption that we can cut the deficit without cutting benefits to the middle-class. Most of all, it suffers from 12 years of inattention and pretending.

Those in Congress, Republicans and Democrats alike, who fault Bill Clinton for not doing enough about the deficit are for the most part the same folks who threw a 12-year party, then invited the whiz kid from Arkansas to come in and clean up the debris. But he's not doing it right, they say now. He's not doing it fast enough. He's asking too much. He's not asking enough. Someone might get hurt.

Unfortunately, the mess these hypocrites have left us is so bad that it will take more than four years and more than one presidency to fix it. What Clinton offers, as he acknowledges, is a start. That is more than his critics offer.

It is too easy to criticize this president. He promised more than anymore has the capacity to deliver. He blew his February advantage by letting other issues steal the show his message of shared sacrifice required. In order to deliver at all, he's had to do what he said he didn't want to do: Cut deals. Business as usual.

Still, Clinton occupies the higher ground here. His has been one of the few consistent voices, reminding us of where we must go and why it's important to get there, that a few extra pennies on a gallon of gas is really a small down payment on the kids' future,

and how those with greater resources should bear the large share of the burden.

Compared to some of the other issues the country faces, shrinking the deficit is relatively simple. You do it by cutting spending and raising revenue. Congress can get the nation unstuck by passing Clinton's plan, then preparing to do more.

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

Who yields time?

The Senator from Tennessee.

Mr. SASSER. Mr. President, I see the distinguished Senator from Nebraska has arrived in the Chamber. I ask the Senator how much time he will require?

Mr. KERREY. I request 15 minutes?

Mr. SASSER. I yield 15 minutes to the distinguished Senator from Nebraska [Mr. KERREY].

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. KERREY. Mr. President, I have taken too long, I am afraid to reach this decision. My head, I confess, aches with all the thinking. But my heart aches with the conclusion that I will vote "yes" for a bill which challenges America too little, because I do not trust what my colleagues on the other side of the aisle will do if I say no.

Individually, the Republicans in this body are fine and able people, patriots, parents, God-fearing citizens who came here to serve their country as every other Member of this body.

Collectively, however, you have locked yourselves together into the idea of opposition; opposition, not to an idea, but to a man—a man who came to this town green and inexperienced in our ways, and who wants America to do better, to be better, and to continue to believe in the invincibility of ideas, of courage and action.

Oh, you say this plan does not have enough cuts. You say it is too heavy on taxes. One by one, you have approached, however, individuals and groups, to tell them the price of this program is too high. Oh, how I wish this evening I could trust you. But the truth is, in fact, the price of this proposal is too low, it is too little to match the greatness needed from Americans now, at this critical moment in this world's history.

This is not to say we are free from blame on this side of the aisle. When the challenge came from someone who did not want to pay or did not want to accept less from their Government, we unfortunately all too often ran too. We ran when opposition arose to the Btu tax, we ran when some seniors said they did not want to pay any higher taxes, we ran when the program getters, the salary seekers, the pay-raise hunters, COLA receivers, and other solicitors begged us to leave them alone.

So I vote yes, and we pass a bill that seems to follow a perverse interpretation of the Sermon on the Mount: The meek shall inherit the Earth.

President Clinton, if you are watching now, as I suspect you are, I tell you this: I could not and should not cast a vote that brings down your Presidency. You have made mistakes and know it far better than I. But you do not deserve, and America cannot afford, to have you spend the next 60 days quibbling over whether or not we should have this cut or this tax increase. America also cannot afford to have you take the low road of the too easy compromise, or the too early collapse. You have gotten where you are today because you are strong, not because you are weak. Get back on the high road, Mr. President, where you are at your best. On February 17 you told America the deficit reduction was a moral issue and that shared sacrifice was needed to put it behind us.

Mr. President, you were right. But it is not shared sacrifice for us to brag that we are only raising taxes on those who earned over $180,000 a year. It is political revenge. Our fiscal problems do not exist because wealthy Americans are not paying enough taxes. Our fiscal problems exist because of rapid, uncontrolled growth in programs that primarily benefit the middle class.

So what do we achieve by our actions? Unfortunately, it is disdain, distrust, and disillusionment. Shared sacrifice, Mr. President. It is our highest ideal, and the only way we will build the moral consensus needed to end this nightmare of borrowing from our children.

Get back on the high road, Mr. President. On February 17 you told America that our tax system must encourage us to save rather than consume. Saving, Mr. President, is just as difficult as shared sacrifice. To save I must say no to something that I want now because I believe deeply that the dollar I save today will be worth considerably more tomorrow.

You had the right idea, Mr. President, with the Btu tax. And when we came after you with both barrels blazing, threatening to walk if you did not yield, you should have let us walk. You should have said to us that at least we would be exercising something other than our mouths.

Instead, we find ourselves with a bill that asks Americans to pay 4.3 cents a gallon more. If they notice, they will be surprised. And if they complain, I will be ashamed. Instead of collecting $70 billion from consumption, we get it from incomes, personal and corporate. Instead of fairness we get retroactivity and surcharges. Instead of change we get the same old stuff.

I am sympathetic, Mr. President. I know how loud our individual threats can be. But I implore you, Mr. President, say no to us. Get us back on the high ground where we actually prefer to be. This legislation will now become law. As such, it represents a first step. But if it is to be a first step toward regaining the confidence of the American people and their Congress and their Federal Government, then we must tell Americans the truth. And the truth is, Mr. President, to spend less means someone must get less.

And to control costs means someone must accept less. To save means I must spend less. And to grow, we must take the time and make the effort to build.

I began by saying that I do not trust 44 Republicans enough to say no to this bill. I close by saying that I suspect the feeling is mutual. The challenge for us—and too much is at stake for us to even consider the possibility of failing—is for us to end this distrust and to put this too partisan debate behind us. For the sake of our place in history, rise to the high road that the occasion requires.

Mr. President, I yield the floor.

[Applause.]

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Mr. President, parliamentary inquiry. How much time do we have remaining on our side?

The PRESIDING OFFICER. The majority has 14 minutes 51 seconds remaining.

Mr. SASSER. May I inquire how much time the minority has?

The PRESIDING OFFICER. Twenty-nine minutes 42 seconds remaining. Who yields time?

Mr. SASSER. Mr. President, I yield 3 minutes to the distinguished Senator from Rhode Island [Mr. PELL].

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, I must say that I find myself in agreement with the thoughts of Mr. KERREY as I rise to register my support for the budget reconciliation conference report.

The bill is by no means perfect and does not solve our problems for all time. But I believe it has more good than harm. And like all prescriptions for change and sacrifice, it has aroused honest differences of opinion and sharp public debate. This is part of the democratic process and some rancor is to be expected. But as the time to vote has drawn closer, it seems to me that rancor has led to obfuscation.

Special pleading, misinformation, conflicting claims and distortions have enveloped this debate to a far greater degree than most. Missing from the discourse has been any sense of common commitment to positive principles, such as that enunciated by Franklin Roosevelt when he reminded us that "Taxes are the dues that we pay for the privileges of membership in an organized society."

It is no wonder that our constituents are confused and frightened. I sympathize with them and understand their misgivings. I particularly regret that some have been misled by special interests, often on grounds that are just not valid or accurate.

So in an effort to clear up some of the major misconceptions which seem

to be rife, I would like to list for the record a few things this bill does not do:

It does not increase income taxes for all taxpayers, but only for those with taxable incomes of $140,000 per couple and individuals with taxable income of $115,000. In my State of Rhode Island only 2.5 percent of all taxpayers reported incomes in excess of $100,000.

It does not apply retroactively for everyone, but only for those of us paying increased taxes on taxable income over $140,000 per couple.

It does not increase taxes for all Social Security beneficiaries, but only for couples with incomes in excess of $44,000 and individuals with taxable incomes in excess of $34,000.

It does not tax all small businesses, only the 4 percent who make in excess of $180,000 a year. In fact some 90 percent of small business will be eligible for retroactive tax breaks.

It does not impose an unduly burdensome energy tax on working people, considering the fact that the average estimated household burden of the gasoline tax of $33 a year will be more than offset for some by the increased earned income tax credit. I will be frank to say in this regard that I believe the President's original proposal of a Btu tax would have been even fairer.

It does not penalize Medicare beneficiaries, but rather achieves budget cuts by reducing payments to hospitals, physicians, and other medical providers.

It is not the first bill in history to apply retroactively. In fact, it is the 14th since 1917.

And it is not the biggest tax increase in history when earlier efforts are adjusted for inflation. And it must be acknowledged that by that measure it may not even be the biggest deficit reduction plan in history either.

What the bill does do is achieve some $255 billion in real spending cuts, which when combined with revenues 80 percent of which will come from those making over $200,000, will yield total deficit reduction of some $496 billion.

This is laudable, whether or not it is the largest deficit cut in history. It is a very substantial step in the right direction, but we should be under no illusion that it takes us all the way. We have only begun a long fight to redress the fiscal balance, and I would venture to guess that no matter who is President in 1977, this Chamber will be engaged in a similar debate.

Then, as now, I hope the pressure of public debate will not result in a frenzy of budget cutting for its own sake without reference to the objective of deficit reduction. That objective, as I see it, is to reduce pressure on credit markets and ultimately transferring investment capital from the public to the private sector. And the end result of that process is new economic activity and job growth throughout the Nation.

The adjustment of the economy to such massive shifts argues strongly for immediate intervention in terms of stimulus and investment. In this regard, I very much regret the failure of the Senate to pass the stimulus package which was the first stage of the administration's plan. But I am pleased to note that the bill now before us does contain a healthy mix of tax incentives for job creation, research and development and a targeted capital gains tax credit for investment in small business.

I am heartened by the administration's conservative projection that 8.3 million jobs will be created by this budget by 1996, and I am pleased to note that employment in my own small State of Rhode Island is estimated to grow by more than 35,000 jobs. And our situation will be improved in no small measure by the repeal of the luxury tax which has been such a burden on our boat building industry.

The arguments of those who say the same number of jobs would be created by continued deficit spending are clearly specious. If we were to follow that course, the deficit would be that much larger, and the pool of resources available for private sector expansion that much smaller. This plan turns it around and sets us on a course of prudence and recovery.

Given the sorry record of Government in fiscal matters in recent years, I can understand why the public outcry against this bill has become so intense. But I must say that I find such dissent disheartening in view of the high intentions and solid purposes of the legislation. It is in such circumstances that we in public office must make the hard choice and do what seems best for the country.

Two hundred years ago, the English statesman Edmund Burke was confronted with a similar dilemma and explained his position to the electors of Bristol in a statement which bears repeating here:

> Your representative owes you, not his industry only, but his judgement; and he betrays instead of serving you if he sacrifices it to your opinion.

It must be acknowledged that Mr. Burke was, alas, shortly turned out of office, probably—and hopefully—because his cause was far less promising and worthy than the one we vote on today. Indeed, I trust the time will soon be at hand when we can look back on this bill and this vote and say that we began a new era of responsible government.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Mr. President, I yield 3 minutes to the distinguished Senator from New Mexico [Mr. BINGAMAN].

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 3 minutes.

Mr. BINGAMAN. Mr. President, I appreciate the opportunity to express my views on this bill. The real economic issue before us is whether it is possible, given the state of our economy, to begin cutting down on the artificial stimulus of deficit spending; that is the economic equivalent of annual doses of steroid drugs that we have used to force economic growth during the last 12 years.

Let us face facts, Mr. President. This President—President Clinton—inherited a weak economy, an economy that remains weak today in spite of the fact that we are spending today nearly $1 billion, and we are spending nearly, $1 billion each day this year. Over the last 12 years, we have run up larger and larger deficits and, in doing so, we have caused our economy to rely more and more on the artificial stimulus of deficit spending.

The Republicans, as I understand their main argument, are predicting that this bill, the passage of this economic plan, will throw our economy once again into recession. Essentially, the case is being made that the economy is so anemic that we have no alternative but to continue the deficit spending that we have trapped ourselves into.

In their view, the proposed tax increases, of course, are particularly objectionable because they take capital away from those in our society who might otherwise use that capital to create jobs. But presumably even the spending cuts would be a problem because those spending cuts themselves would restrict available funds, reduce consumer demands for goods and services.

The claim that serious deficit reduction can be accomplished in this country by simply cutting spending with no contribution being made from increased revenues, in my view, is pure political posturing. Ronald Reagan did the country a disservice with his "make my day" stance in opposition to taxes. George Bush was irresponsible in making his "read my lips" pledge. And today, the Republican leadership in the Congress is continuing that same tradition of irresponsibility by offering an alternative economic package that does nothing to raise revenues and yet claims to be serious deficit reduction.

The deficit reduction package the President has presented, although far from ideal, is the only credible and serious plan we have before us. We can adopt this plan or we can continue to preach the same old "feel good" political rhetoric that has gotten us into the present predicament.

The responsible course is to adopt the plan and then to work for more progress, both in spending cuts and in deficit reduction in the future. That would be my vote.

I thank my colleagues, and I yield the floor.

The PRESIDING OFFICER (Mr. SIMON). Who yields time?

Mr. DOMENICI. I yield 5 minutes to Senator HATCH.

The PRESIDING OFFICER. The Senator from Utah is recognized for 5 minutes.

Mr. HATCH. Mr. President, I thank my colleague from New Mexico who, I think, deserves a lot of praise, as does the distinguished Senator from Tennessee, for the way they have conducted this debate and throughout this year on the budget.

Mr. President, I rise today to make a final appeal to my colleagues on the other side of the aisle. Let us not make the mistake of enacting President Clinton's tax bill.

It is not too late to reject the incorrect premises on which this bill is based and come together to forge a plan that we and all America can be proud of. But, we first must defeat this bill today.

Americans everywhere have paused to watch the unfolding of this conference agreement—an agreement that says that more taxes are the only choice. And, this has indeed been high drama—sort of a Dallas or Dynasty on the Potomac. There has probably been more dealmaking in the last 24 hours than in all the corporate board rooms of America combined.

Why has the President had to engage in this huge fire sale? If this plan is such a great idea and the only way to reduce the deficit, why is he having such a rough time selling it?

Mr. President, the people of Utah are not stupid. They understand perfectly well the political and economic sleight of hand that is going here. The calls from my constituents are running 10-to-1 against the plan.

And, 41 Democrats who are not willing to follow their President and their leadership off a cliff joined every Republican in the House of Representatives in voting no on the bill last night. It seems to me, Mr. President, that an awful lot of people see the defeat of this plan as the first step toward a better solution.

On national television the other night, the President called the opponents of this plan guardians of gridlock. He appealed to the American people to ask their Representatives to break out from business as usual and do something.

But, Mr. President, we were not sent here to do something if it is the wrong thing. It is time to be the guardians of good sense.

President Clinton told us Tuesday evening that there are five basic principles that form the basis of his plan. Unfortunately, the principles are solid but the plan misses them by miles.

First, the President told us that this plan represents the largest deficit reduction in history.

Where have we heard this one before? Four times in the past 11 years—in 1982, 1984, 1987, and 1990—Congress raised taxes to cut the deficit, and every time the deficit went higher.

Mr. President, taxpayers will adjust to these new taxes by shifting investments into ones that generate fewer taxes by working less and by taking fewer risks. The consequences will punish far more than just the wealthy. Economic growth will slow and fewer jobs will be created.

Moreover, noted economist Martin Feldstein estimates that if taxpayers reduce their taxable incomes by just 10 percent in response to these higher rates, 75 percent of the new revenue projected from these tax increases will not be realized.

Second, the President told us that this plan is based on fairness.

What is fair about a retroactive tax increase? What is fair about marginal Federal tax rates that are 33 percent higher?

What is fair about a regressive gas tax on everyone—rich or poor, working or retired, urban or rural?

What is fair about a new tax on senior citizens?

What is fair about a plan that taxes Americans up front and postpones spending cuts until later?

Third, the President told us this plan protects older Americans.

This is a curious assertion since over 5 million senior citizens will see much of their effort to save for their retirement go directly to the tax collector.

This plan places an unfair burden of tax not on Social Security benefits, but on the fruits of the lifelong labors of those seniors whose initiative led them to work and save for retirement.

And, it is not only senior citizens who should be alarmed about this, Mr. President. Because these higher thresholds for taxation on Social Security recipients are not indexed for inflation, by the time the baby boom generation retires, most every retiree will be hard hit by the higher tax.

Fourth, the President told us that this bill keeps faith with hard working middle-class families.

In reality, Mr. President, this is where the plan disappoints me the most. There is far more to be considered here than just the increase on gas at the pumps.

The blatant regional discrimination inherent in this tax will make Western States pay nearly twice as much per capita than geographically smaller States.

But, in addition, the gas tax will have an insidious inflationary and job killing effect. The price of nearly every product and service in America will increase because of this tax, adding to the inflationary pressures that many economists say may be just around the corner.

The minority staff of the Joint Economic Committee estimated that a 5-cent increase in gasoline taxes would result in over 637,000 lost jobs.

Other provisions in the bill will also lead to layoffs. The reduced threshold for deductibility of meals and entertainment expenses will result in 165,000 lost jobs.

What do I tell an unemployed restaurant worker in Utah, Mr. President? That the tax bill was aimed at the wealthy, but it must have missed?

Finally, we were told that this bill would create jobs.

Frankly, I wonder how.

Even most of those provisions that may actually create jobs are merely extensions of provisions that expired last summer. Reinstating them helps put us back to where were last year, but doesn't necessarily move us ahead.

The increased expensing provision for small businesses is overshadowed by the much higher rates that many of the larger and fastest growing small businesses will pay under this plan.

But, I just do not see how American businesses—particularly small businesses that create three-quarters of all new jobs in our country—can create those new jobs when more of their resources are going to be devoted to satisfying the Federal Government.

Contrary to what the proponents of this plan would have us believe, small businesses will be hit hard by the income tax increases of this bill. The IRS reports that in 1990, 77 percent of all individual Federal tax returns on incomes over $200,000 came from small businesses such as proprietorships, partnerships, and S corporations.

It may be true that this tax rate increase misses most small businesses, Mr. President. But over three-fourths of the so-called wealthy that the tax hike does hit are businesses paying taxes as individuals. Make no mistake, these higher rates will cost jobs.

So now we stand at this crossroad.

We can continue to tax and spend—a road proven to fail. Or, we can join together and pass an effective deficit package. We need a deficit reduction package that will generate new revenues from more jobs and increased economic activity and that will reward hard work, innovation, and risk-taking.

Let us quit trying to sell this economic plan that obviously does not even adhere to its own principles.

I thank my dear colleague.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I understand that the Senator from Texas [Mr. GRAMM] wanted to speak 2 minutes on a very specific issue. I believe he is here. We will yield him that time in just a moment.

Mr. President, I would like to yield Senator GRAMM 2 minutes at this point. I understand he has a specific matter he wishes to discuss with the Senate.

The PRESIDING OFFICER. The Senator from Texas is recognized for 2 minutes.

Mr. GRAMM. Mr. President, I thank our dear colleague for yielding, and I wish to congratulate Senator DOMENICI for the great job he has done tonight. I think it is clear that the American people have received the point about this bill. Telephone calls are running overwhelmingly against it. I do not think it is an accident. I think one of the reasons has been the Senator's great leadership, and I congratulate the Senator.

Mr. President, all night long our colleagues on the left have been saying only rich people are going to pay more income taxes, only people making $115,000 a year of taxable income or more are going to pay more income taxes.

Well, I just would like to direct my colleagues to line 21(a) of the 1040 form. On the 1040 form, line 21 is where you list your Social Security benefits, and then in tax table 18 you look up to see what your tax liability is based on your income.

And so what is clearly going to happen, if this bill becomes law, is that everybody in America who is making over $34,000 a year, who draws Social Security benefits, is going to have a new higher tax number on that line, and they are going to pay more income taxes.

Second, we continue to hear in this debate that there was no viable alternative; that the only alternative was to raise taxes on income, small business, corporations, Social Security benefits, and gasoline taxes, and that had there been any way to cut spending, it would have been adopted.

I simply remind my colleagues that in the first 2 years under this budget—could I have 1 additional minute?

Mr. DOMENICI. Yes.

The PRESIDING OFFICER. The Senator is recognized for 1 additional minute.

Mr. GRAMM. That in the first 2 years under this budget, with the emergency flood relief bill we have adopted, there will not be one penny of cuts. But 13 times on the floor of the Senate, Republican Members of the Senate offered amendments to cut spending, freeze discretionary spending, shear off billions of dollars of add-on spending, cut Government overhead, reduce specific types of programs, and 13 times those amendments were defeated on virtually a straight party-line vote.

So we had an opportunity to cut spending, but the Members of the Senate on a partisan basis rejected those opportunities. I think the American people do not believe that having gotten 255 billion dollars' worth of taxes tonight, we are going to come back in 3 years and deliver on these spending cuts.

Mr. President, I do not believe it either.

The President says he is going to set up a spending cut study. If he were serious, I think we would have already done it.

I thank the Chair.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. DOMENICI. Mr. President, first of all, I have been through many rounds of budget debates and annual ordeals where an effort is made to control the Federal deficit and to do it in a manner that is consistent with economic growth and prosperity.

This one has been a very tough one, even as compared with the arduous and difficult ones of the past 12 to 14 years. This one started on February 17 with the President of the United States delivering his address, and it should be obvious to everyone that the President changed his mind considerably from that speech until this budget that is before us.

It is obviously much different and many things that he said he would do and not do turned out very, very differently over the course of the last 3 or 4 months.

But for this Senator, I start by saying in the many opportunities we have had to discuss this issue of fiscal sanity, where do we really spend our money, what is happening to it, what needs to be brought under control, what are we controlling well, how much should we tax our people, how much is too much, I believe this year thus far has already yielded more by way of informing the public of the United States, and I might say, in no way with anything other than the highest respect, I believe Senators in this body on both sides of the aisle are more informed tonight than they have ever been in the past about what will work and what will not work to get our Government under control.

So in a very real sense tonight, it is the end of a trail, but I really wish the deficit were finished as we end this trail tonight because we are only ending a very lengthy debate, a very lengthy this-year ordeal filled with drama, filled with all kinds of events that one might never have expected would occur.

I only wish I could be standing here telling the American people we have fixed their devil of a deficit. And let me say to my friends who might question whether Republicans are to be trusted, let me just say that if this Senator believed that this package was going to reduce the deficit of the United States in a way that was consistent with the good of our Nation, and that we would not be back asking the American people for more taxes and more taxes while spending remains out of control, you could count on this Senator to vote "aye."

The problem is this debate is over and the deficit, the devil of a deficit, persists. And in about 4 years, it will start getting worse again and the people are entitled then to say, "What happened to our taxes?"

I want to thank Senator SASSER, the chairman, and all the staff on both sides who have worked very hard, and the principal lead committees of Finance and Ways and Means, who worked very hard. We are approaching the end of this trail tonight, and we are going to vote. But I believe this debate maybe, for the first time in the myriad of debates we have had on budget, might truly have underscored a real difference in the approach of the two parties.

First, it seems to me that tonight we are undergoing a true transformation. It is now clear that this side of the aisle wants to control the deficit by taxing first. And frankly, all the discussion about who we are going to tax seems to me to be irrelevant. What we really are going to decide tonight is that we ought to tax first, even though spending is out of control.

I believe this side of the aisle, a majority on this side of the aisle, are saying taxes last; only when you have proven that you finally can get the uncontrollable expenditures of this Government under control.

The Democrats have pieced together a plan, and it is basically based on taxes. It is taxes first, and it is taxes last. Because it is doubtful that we will even impose the claimed spending cuts in this package because they are not even due until after the next Presidential election.

You know the American people understand that, just as they understand that day will follow night; that if you put the taxes on now, and the deficit cuts are going to come, the budget cuts are going to come after the next election. They are wondering and wondering and concluding and concluding. We will pay more taxes, and the deficit will not get cut by reducing spending.

So the American people clearly are going to get stuck with higher taxes: Social Security taxes, corporate taxes, income taxes, and more.

Those taxes go into effect right away. Some are retroactive to January 1, 1993, well before President Clinton even took office. But the spending cuts come later, much later, if at all. More than 80 percent of the cuts that still have to be acted upon by Congress do not take effect until after 1996.

In other words, President Clinton's plan calls for him to raise taxes 21 days before he took office. But 80 percent of the meager spending cuts in this plan will not take effect until the next Presidential election.

So in a sense, it is tax now, and cut later, if ever. Republicans have joined

together, on the other hand, recognizing that this will not work, that we will just tax and never cut, or we will tax and say we cannot cut and recognize that paying taxes only will not reduce the deficit and will not bring about prosperity and jobs.

We know that job one is to cut spending and reform programs that are spending us into bankruptcy. That is why Americans want us to do what we have all said we should do; that is, cut spending first. That is what Government should be doing. It should be getting smaller, and sacrificing. But this plan does not do that. It raises taxes first. And the truth about this plan can no longer be avoided. It is not going to help the economy. If there are new things happening positive in this economy, ask anyone that knows anything about our system whether this plan has anything to do with it.

This plan cannot help the economy in the short term. How can taxes imposed now on the most productive part of the American economy create jobs?

So I ask, where is the middle-class tax cut that was promised? This program is not what was promised, and it is not what the people want. Do not take my word. Pick up the phone. Listen to the American people. They are calling into our offices and they are overwhelmingly opposed to this plan.

Let me conclude with a few remarks, and then I hope our leader on this side will eventually wrap this discussion up tonight.

Democrats in the White House complained that we have not contributed. That is nonsense. We have during the course of this debate offered alternative budgets, a number of them, one that was by all of us; and 60 amendments aimed at cutting spending. There have been Republicans who have repeatedly offered to cooperate in a bipartisan deficit reduction plan. And the answer has been: No help wanted. That is the answer to us: No help wanted.

So I view this as a rare opportunity this year to deal seriously and in a bipartisan fashion to reduce this deficit.

We have failed to take advantage of that. And therefore, the plan will not work.

I think we should kill the bill, but that is not going to happen. If we would, we should go back to the drawing board and put together under the President's leadership a bipartisan plan that fixes the deficit, and puts taxes last.

We are not going to do that, I am sure. We are not going to do that, I am positive.

So as some have said, and I understand that, one of our friends in the U.S. House, a new, new Member from Minnesota, announced he was retiring, and he said this:

I viewed this as an opportune year to deal seriously and in a bipartisan fashion to dramatically reduce this deficit. We have failed to take advantage of that opportunity.

This from a Democrat in the House who voted for the bill, and with the vote, departs the scene because we did not get the job done.

Let me close now by saying I want to congratulate the President. His plan is going to be adopted. I hope it will work. I do not think it will. But I would not hope that America would have ill bestowed upon it under any circumstances.

I hope we can work together. There will be many opportunities to do that. I hope we can prove on our side that if we are given a chance, we will contribute.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Mr. President, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator is recognized for 4 minutes.

Mr. SASSER. Mr. President, the plan before us this evening is indeed a watershed in American fiscal history. It signals a turning away from the fiscal debauchery that occurred over the past 12 years, and is the first strong and brave step forward to bringing this deficit under control and to moving our economy down a path to prosperity.

Many negative statements have been made this evening and all during the day about the plan before us this evening. One that I have heard constantly reiterated is that "spending cuts do not come in this plan until after the election of 1996."

Nothing could be further from the truth.

In 1994, there are $21 billion in spending cuts alone. In 1995, $32 billion, in 1996, $46 billion, for a total of $255 billion in spending cuts laid down against $241 billion in revenue, giving you a ratio of $1.06 in spending cuts for every dollar of revenues.

Let us correct, once again, for the record the misapprehension that the income taxes of the average American are going to be raised. The truth is that there will be no new income taxes on working Americans who filed jointly, who make under about $180,000 a year in gross income. That is simply the facts. There are no new income taxes on working American families who are joint filers, who have a gross income of less than about $180,000 a year.

Indeed, there are tax cuts in this plan for working Americans. Families making less than $30,000 a year will experience a tax cut under this proposal. In my native State of Tennessee, 20,000 families will experience tax increases, income tax increases—those in the upper-income brackets, grossing about $180,000 a year. But over 500,000 families will get a tax decrease—those families making less than $30,000 a year.

Mr. President, this economic plan before us tonight will give this economy some oxygen to breathe and to run on. It is bringing interest rates down. Long-term interest rates tonight are at their lowest level in over 20 years. We have created over 1 million jobs since the first of the year just on the idea that this plan would be adopted. The unemployment rate figures in July indicate that unemployment is at its lowest level in over 2 years.

Mr. President, that is progress, and part of that is built on the confidence that this Government, at long last, has someone in charge who will take control of this deficit and make the economy the No. 1 priority of the White House and the Congress and the American Government.

We are already reaping economic benefits this evening.

Mr. President, how much time do I have remaining?

The VICE PRESIDENT. The Senator has 4 minutes 20 seconds remaining.

Mr. SARBANES. Will the Senator yield for 30 seconds?

Mr. SASSER. Yes.

Mr. SARBANES. I commend the distinguished Senator from Tennessee for the extraordinary leadership he has shown in bringing us to this point. The President met his challenge in facing the economic problems of our country. The House of Representatives last night met its challenge. And tonight it is up to the Senate to meet its challenge and to gain control, once again, of our economic destiny.

That is what is at stake with this vote—getting control of our economic destiny and shaping our own economic future. We must pass this proposal.

The VICE PRESIDENT. Who yields time?

Mr. DOLE. Mr. President, how much time is remaining on this side?

The VICE PRESIDENT. The leader has 8 minutes 11 seconds remaining.

Mr. DOLE. I think I still have leader time, is that correct?

The VICE PRESIDENT. That is correct. Six minutes of leader time is remaining.

Mr. DOLE. Mr. President, it has been a long day, and I will not make it much longer. I do not think there is any surprise. There has not been for a while about how the vote is going to turn out. It is going to be close, and we are pleased the Vice President is here to make certain that it does not fail on a tie.

So in a few minutes all those Americans watching on CNN and C–SPAN, put down your remote control and grab your wallet, because your taxes are about to go up.

In fact, they went up 7 months ago, but some did not find it out. In fact, I watched Washington Week in Review. It was hard to do, but I watch it now and then. I heard Alan Murray say, "Senator Dole has been giving a lot of misinformation about it being retroactive." He said, "There was a retroactive tax change in 1982."

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I was very careful when I made my statement following the President's speech. I talked about tax "rate" increases which are retroactive. I hope he might correct that the next time. we have been consistent.

I thank the American people for their efforts in trying to defeat this terrible bill. Last Tuesday evening, I asked you to call your Congressmen and Senators, and millions and millions of you have done just that. In every office I have checked, your opinion is very loud and clear: You do not like this bill. In fact, somebody asked me on the telephone: "If nobody likes the bill, why is it being passed?" That is a pretty good question. It is a hard question to answer.

But we have heard the message. The President has heard the message. We have heard from supporters of this bill, and you, the American people, are not buying what they are selling. That is why my friends on the other side of the aisle are up in arms. After all, Members of Congress are going home tomorrow, and at least some of us will be able to stand up and say why we voted against this bill. We are going to have to look you in the eye, if you are watching CNN or C–SPAN or somebody else out there worried about the future, and we are going to have to explain our vote on this terrible package. I would guess if all the people who called in feel that way tomorrow and the next week and the next week, it is going to be pretty tough for some to explain their votes.

So I wish my colleagues well when they try to explain why they voted for this package. I notice that some have tried to blame me. In fact, some tried to blame other Republicans, or to blame the radio call-in hosts, or blame somebody. The Democrats have said it is our fault. They have said a lot of things I do not think they meant. We have been referred to as "demagogs" and "hypocrites" and "irresponsible" and "untrustworthy." They say we are feeding the American people a lot of misinformation, and that we are playing with your emotions, and we are getting you all stirred up, because we tell you that this bill is important to your job, to your future, and to your family, and we should not say things like that.

Well, I appreciate the confidence of Senators who think I have the power to convince millions of Americans to do what I want to do.

But what the Democrats have not figured out is that you, the viewers, have them figured out, and you have this bill figured out.

I must say I have listened to all this talk the past several weeks and months about the last 12 years as if Columbus discovered America 12 years ago and all he found was Republican Presidents, did not have any Congress—I guess never heard about the Democratic Congress those 12 years. You would think the Democrats had no role to play in anything that happened in the past 12 years even though they controlled the Senate 6 out of those 12 years; they controlled the House of Representatives for 40 years straight, 40 years straight and, boy, did these Democrats love taxes.

So I asked the American people the other night four questions. I asked the first question: Do you think this bill raises taxes? Boy, does it ever. Does it really raise taxes? What this bill has done is underscore the deference between the Republican Party and the Democratic Party and the philosophies of Democrats and Republicans.

Some have said in the past there is not a dime's worth of difference between the two parties. There is not a dime's worth of difference. There is 290 billion dollars' worth of difference, $269 billion in gross new taxes, $275 billion in gross new taxes and $15 million in user fees. That adds up to $290 billion.

They say we are only after that 1 percent. We are only after the rich. If for some reason that was the reason to celebrate, we are going to go out and punish someone successful in America, someone creating jobs and opportunity for all of us. We are going to get you, nail you, because you are successful.

It is only 4 percent of the 21 million business men and women who are touched by this bill. That is the 4 percent that creates 70 percent of the jobs.

So I guess when the Democrats win they can go out and celebrate—we nailed the rich; we nailed the successful; we nailed the people creating the jobs. We ought to be happy.

But the problem is a lot of people did not know the rich are going to be rich when this bill passed. They are going to get to pay more taxes. I am talking about two-career families. I am talking about the marriage penalty. I noticed last night the Speaker was kind enough to recognize SUSAN MOLINARI and BILL PAXON who I guess were engaged or it was announced on the floor, but he did not tell under this bill they are going to get a marriage penalty tax of about $3,000. Maybe that is why he introduced them. They are going to be a two-career family.

We do not talk about the small businessmen and small businesswomen.

Then, of course, there is the matter of retroactivity which we were told this afternoon we did not have a leg to stand on, but that is not the case. We talked about retroactivity early.

Again, I want to make it very clear we talked about raising tax rates—tax rates in case someone does not understand, not tax changes, tax rates making them retroactive. That is one point the American people are not going to forget.

Whether you are dead or alive, you are going to have retroactive tax rate increases and your estate tax is going to affect the families, the heirs. That is going to affect a lot of people in this country to the tune of $10 billion—$10 billion. That is what retroactivity means even though very prominent Members on the other side of the aisle said they did not like retroactivity and we should not have it.

So, I want to remind some of the freshmen Senators on the other side of the aisle that by voting for this bill, they are voting to raise tax rates on their constituents back to a time even before they became a Senator—not a bad trick.

I wonder what would have happened last November if they announced during the campaign they would not only raise taxes once they took office but they would even raise taxes that would be effective before they took office.

Then Americans ask a second question: Does the President's bill control Government spending?

And the answer is no, not really, not really. Oh, we have seen these baseline numbers and double counting, the $44 billion we save in the so-called budget agreement of 1990, counting it again, counting some of it three times. There is not one dime saved in the first year of this package—$30 billion in taxes and not one dime in spending, as the Senator from New Mexico pointed out, zero. In a $1.5 trillion budget, President Clinton could not find a way to save one dollar in the first year.

In fact, 80 percent of what spending cuts there are in this budget, as have already been said and disputed—but I think we are accurate—are not going to happen until after the next Presidential election.

Let me predict that President Clinton may well go down in history as the only President who increased taxes before he took office and who did not cut spending until after he left office, because these taxes are retroactive and the spending does not occur until after 1996. The taxes are effective before he took office.

And question No. 3 is, does the President's plan help put Americans back to work?

And the answer is no.

The State of California office of planning and research just released a study which shows that the Clinton plan would cost the State of California an average of 351,000 jobs per year, a total 1.75 million jobs over 5 years. And that is in just in California. That is just in California.

And question 4 is the most important question of all: Does the President's plan get the deficit under control?

Even by White House's own admission, the answer is "No."

I always watch when the President shows that nice little deficit chart that shows the deficit going down to about 1997, and that is where it ends because it starts going back up the next year.

We knows what it will be in 1998 and 1999 and the year 2000. Because we have

not dealt with spending, as the Senator from Nebraska just pointed out.

Now, it is not BOB DOLE who has convinced the American people to oppose this bill. It is the answer to those questions. If you answer those questions and you answer those questions honestly and objectively, whether Democrat or Republican, you are going to get the same answer.

Mr. President, this has been a very instructive debate. And I want to especially congratulate my colleague Senator DOMENICI for the way in which he has led our side on this debate.

Few people have more integrity and more authority on budget issues than Senator DOMENICI, and he and his outstanding staff are to be congratulated.

Let me also say I want to respond just a moment to my good friend from Nebraska. Senator KERREY admitted the President's plan is a bad plan. If he wants to vote for it, obviously he will. He has every right to do so.

But my conscience is clear. Like Senator KERREY, I believe this is a bad plan. It raises taxes and it does little to effectively reduce Government spending and control the deficit, and that is why I am voting against it. That is why 43 of my Republican colleagues are voting against it. That is why 6 of Senator KERREY's Democratic colleagues are voting against it. And that is why the vast majority of American people are opposed to it.

When it comes to a matter of trust, I must say I was a bit startled to hear my friend say "you cannot trust Republicans; if I could trust Republicans I might vote 'no.'"

Let me echo the remarks of the Senator from New Mexico. I am willing to put my record of making the tough votes to reduce the deficit up against anyone in this Chamber, and I can go back and recite 1985, and many will of my colleagues are here on the other side who voted right down the line against our package, right down the line. One Democrat who happened to be a Senator from Nebraska, Senator Zorinsky, voted with us. One Democrat voted with us.

So, we know what the tough votes are all about. We did not raise taxes. We cut spending. We did a lot of things that people said were tough.

I told President Clinton soon after his election if he was really ready to tackle the budget and the deficit and to cut spending first he would have a lot of help.

But President Clinton knows, Senator KERREY knows, I know and the American people know that the plan does not tackle the deficit head on, it does not cut spending first, second or third.

So, I would say to my friend from Nebraska that I am worried about trust, too. I am worried about those who gave us retroactive tax rate increases and who promise spending cuts are for some time in the future. And I am worried about the trust that has been broken with the American people. Before he took office, President Clinton said he had heard the American people. He heard their message to cut spending first. If he heard it, it must have been ignored.

Let me add one word. When it comes to trust, the only trust that matters to me and I think should to any of us is the trust that the Kansas voters have, and they trust me to do what is right. And I hope we have done with what is right.

Let me also thank my distinguished colleague from Oregon, Senator PACKWOOD, for his help. Most of this package came from the Finance Committee. Republicans never were part of anything after—well, in fact, I hear a number of colleagues say they did not offer one amendment to cut the budget in the Finance Committee. I asked the chairman of the Finance Committee. I said are all these going to be party-line votes? Are you going to adopt anything? The answer was, no. And we said why offer any amendments?

So, let me just say this: This conference report will pass. It is certainly not a mandate: Two votes in the House; maybe one vote in the Senate.

But, in an effort to continue to work with the President, a number of my colleagues, including this Senator, sent him a letter yesterday that said, if the conference report failed, we are ready to sit down, Mr. President, and work with you on the deficit reduction.

I ask unanimous consent that the text of that letter be printed in the RECORD.

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

U.S. SENATE,
*Washington, DC, August 5, 1993.*

The PRESIDENT,
*The White House, Washington, DC.*

DEAR MR. PRESIDENT: We agree that effective action to reduce the Federal government's projected long-term deficits is critical if America's economy is to grow and create jobs. Our disagreement with the Administration centers on the means employed to achieve that objective.

As you know, we have offered to work with you in a bipartisan effort to reduce the deficit. Should the conference report on the reconciliation bill fail, we stand ready to meet with you and the Democrat leadership in Congress to work in good faith on a bipartisan deficit reduction and growth plan.

Respectfully,

Bob Dole, Al Simpson, Pete V. Domenici, Don Nickles, Bob Packwood, Judd Gregg, Chuck Grassley.

Mr. DOLE. Mr. President, I would just say, finally, to those who may be watching on television, I think many of us have heard the message.

I have heard, "Oh, this is only step No. 1."

Do not kid anybody. Nobody is going to cut spending around here. Spending cuts—when will they come? Do not hold your breath, America. Do not hold your breath waiting for spending cuts. This is $290 billion in taxes. It is well over 2 to 1 in taxes over spending. Do not hold your breath for spending cuts.

So I just suggest to all those who have an interest, we want the economy to work. This bill is not going to make it work. It is going to be a drag on the economy.

But we are going to be around to help. We are going to be around to be constructive, as we think we have been in this debate.

We have a right to give the other side, the other view, and reflect the views of the American people.

So I say to my colleagues on this side who have fought the good fight and those who have joined us, we thank you for your efforts. We think we are on the right side. We believe the American people know precisely who is on the right side. We will continue the fight to cut spending first.

The VICE PRESIDENT. The Republican leader's time has expired.

The majority leader has 3 minutes and 50 seconds remaining on the conference report and, in addition, has 4 minutes of leader time, should he wish to use it.

Mr. MITCHELL. Mr. President, I ask unanimous consent that I be entitled to take such time as I may use for my statement.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, and Members of the Senate, the U.S. Government has a national debt of over $4 trillion. It was less than $1 trillion in 1980. So in 12 years, the national debt has risen by 4 times as much as it rose in the nearly two centuries of previous American history.

Unless we act, the deficit will keep rising, depriving American businesses of the savings they need for investment and expansion, depriving Americans of opportunities for more and better jobs, depriving all of our children of a bright future.

Those are the facts. They are not in dispute. The only question is whether we will do anything about it.

The deficit-reduction plan before us is the largest in our history. It contains $255 billion in spending cuts over the next 5 years. It contains $241 billion in taxes over 5 years. Every dollar of the taxes will go to reduce the deficit. Altogether, this bill will reduce the deficit by $496 billion over 5 years.

Mr. President, there is much criticism that has been made against this bill and I would like to comment briefly on those criticism.

First, it has been argued repeatedly, including here this evening, that the bill is unconstitutional because the income tax rates in the bill take effect on January 1, 1993.

That is obviously untrue. There has been an income tax in effect in this

country for 80 years. Throughout those years, there have been many changes in tax laws which applied retroactively, going all the way back to 1917.

Several Senators—Republicans and Democrats; some sitting in this Chamber at this very moment—have written retroactive changes into law, and many others have voted for them.

A second criticism of this bill is that it does not cut the deficit enough. But the Republican alternative offered in the Senate cut the deficit far less. Their plan would have cut the deficit by $359 billion over 5 years. That is $137 billion less in deficit reduction than is in this bill. How can anyone who proposes to do less fairly criticize the President for not doing more?

A third criticism of this bill is that it does not contain enough specific spending cuts. How often have we heard that? It does not have enough specific spending cuts.

But when our Republican colleagues had a chance to amend the bill, their alternative did not include a single specific spending cut beyond those proposed by the President.

Let me repeat that. For all of the rhetoric by our Republican colleagues, their alternative here in the Senate contained no specific spending cuts beyond those proposed by the President' none, not one.

A fourth criticism of the bill is that the cuts that are in it come too late in the 5-year cycle. But, once again, the critics are inconsistent and their words are contrary to their deeds.

In the Republican alternative offered here in the Senate, more than three-fourths of the cuts would come in the fourth and fifth years, far more than is in the pending bill. What they are saying is that the cuts in this bill come too late, but in their plan more cuts come later than in this bill.

A fifth criticism has been that it includes reductions in interest payments as spending cuts.

Once again, the critics are inconsistent. In every one of the 12 budgets submitted by Presidents Reagan and Bush, reductions in interest payments were counted as spending cuts. And more recently, in the Republican plan offered here in the Senate just a few weeks ago, reductions in interest payments were counted as spending cuts. In other words, they are criticizing President Clinton for doing precisely what they did.

There are many words to describe such conduct and the most charitable one I can think of is that it is inconsistent.

A sixth criticism of the bill is that it will tax small business. That is not true; it is false; it is untrue.

There is no tax increase for small business in this bill. None. The increase relates to the size of income, not the size of business.

And, to the contrary, 90 percent of all small businesses will benefit from the increased expensing allowance and the capital gains incentives that are in this bill.

We all know that millions and millions of dollars have been spent by opponents and special interest groups to spread distortions about this bill. The most common has been that large numbers of middle-income Americans will pay higher income taxes if this bill passes. That is not true.

Senator HEFLIN effectively punctured that distortion last night when he described the circumstances in his State of Alabama.

The situation in my home State of Maine is just as dramatic, and I ask my colleagues to listen to these statistics.

There are about 1,220,000 people in Maine. In 1991, the most recent year for which figures are available, there were about 445,000 tax returns filed by households in Maine. Of that total, only 3,800 of them will have higher income tax rates under this bill.

I repeat, in the entire State of Maine, only 3,800 families have incomes so high that they will have higher income tax rates. And, by contrast, 81,000 families in Maine have incomes so low that they will benefit from the bill. Those 81,000 families with incomes below $27,000 a year will get a tax cut under this bill because of the earned income tax credit.

To sum up, in Maine, 3,800 families have gross incomes of over $180,000 a year and they will be subject to higher income tax rates, while 81,000 families will get a tax cut because their incomes are below $27,000 a year and they are eligible for the earned income tax credit.

If every Senator looks at his or her State, you will find about the same thing.

So those who vote "no" on this bill will be voting to help the few whose gross incomes are over $180,000 a year and not to help the many whose incomes are below $27,000 a year.

Mr. SASSER. Mr. President, later this evening the Senate will vote on passage of the conference report to the budget reconciliation bill.

It has been a long, arduous journey from the State of the Union Message on February 17 to this crucial, defining moment for the Congress and the Nation.

But the measure of this journey is not its length, nor its difficulty. It is what we have achieved—$496 billion in deficit reduction, tax fairness and economic growth.

Passage of the President's deficit reduction plan will begin the process of putting the country back on a sound fiscal foundation. By taking control of the deficit, we take control of our future.

The President's economic plan deserves the Senate's support. It's a good plan. It's a fair plan. More importantly, it's the only credible plan that's been put before this body, and without it, this country's fiscal crisis threatens to undermine the very credibility of our governing structure.

It's fair to our fellow citizens who were cheated by the economic debauchery of the past 12 years. It's in sync with their desire for meaningful change.

And that's what this deficit reduction plan is all about—change. Changing the way the Government has been doing business for the past 12 years. Changing the tax burden from the middle class to the wealthy. Changing our economic priorities toward investment in America.

It's my sincere desire that we can have a civil and sensible discourse on this bill.

It's a clean bill—free of extraneous material—so there should not be any Byrd rule challenges.

It's a bill of many merits and I hope we can discuss those merits rationally.

This is the largest deficit reduction package in history.

The deficit is reduced by $496 billion over 5 years through $225 billion in real spending cuts and $241 billion in new revenues—new revenues which are imposed almost exclusively on the wealthiest 2 percent of Americans.

We made hundreds of specific cuts that get us more than halfway home to the $496 billion in deficit reduction. We made cuts in entitlements. We made cuts in discretionary spending.

Let's look at entitlements, which have attracted a great deal of attention in recent months. This plan cuts mandatory and entitlement programs by $88 billion. It makes 30 specific cuts in Medicare and Medicaid alone that reduce the deficit by $63 billion. And these cuts come from providers—not our seniors.

There are also specific and substantial cuts in Federal and military retirement entitlements, in banking and housing mandatories, in agricultural mandatories, in commerce and communications programs. The cuts are real and credible enough that they were adopted in total, and without exception, in the minority plan.

How about discretionary spending?

The President's deficit reduction plan found 100 domestic programs which were cut by $100 million each. And all of the cuts were specific.

I would again remind my colleagues on the other side of the aisle that their alternative to the Clinton deficit reduction plan did not include a single new cut. It did not include a single specific spending cut beyond the President's deficit reduction plan. Every cut in the Dole-Domenici plan is right here in the original—the President's deficit reduction plan.

Mr. President, as we have seen, spending cuts count for one-half of all

deficit reduction. Once again, there is $1.06 in spending cuts for every $1 raised in new revenues.

Unfortunately, some have tried to twist the ratios to their own gain. But their ratios are widely inaccurate.

They do not count discretionary spending cuts as spending cuts at all—ignoring 125 domestic discretionary cuts.

They do not count interest savings as spending cuts—even though interest is always incorporated in the spending totals that our friends on the other side of the aisle adduce with horror.

And they do not count user fees as spending cuts—even though every administration, Republican and Democrat—has done so. Even though user fees were, once again, incorporated as outlay savings in what was passed off as a Republican alternative. When George Bush offered, say, a fee for those who would use our national parks, it was a spending cut. When Bill Clinton proposes the same thing, it's miraculously transformed into a tax increase.

If we cut through all the rhetorical smoke and take a straightforward approach, where outlays are treated as outlays, revenues are revenues and we measure from CBO's estimate of the administration's baseline, we get $1.06 in spending cuts for every $1 of new revenues.

And even that is only half of the story.

For every $10 in deficit reduction, $5 comes from spending cuts and $4 comes from taxing those whose incomes exceed $100,000.

And let me be clear. No new income taxes for working families whose gross income is under $180,000.

Eighty percent of all the taxes will come from those making over $200,000 a year.

The most distressing aspect of this entire debate has been the almost rabid distortion of the taxes contained in the President's deficit reduction plan.

At the risk of igniting partisan fires, I'd have to observe that the minority has been tricking middle class Americans into believing that their taxes—particularly their income taxes—are going up.

They have minimum wage workers—whom this bill would protect—believing that their take-home pay will be cut.

The minority has laid on the fog so thick that a recent poll shows that one-half of those polled believe that their income taxes are going up. What a terrible tragedy when the truth is only 1.2 percent of Americans will have their taxes raised under this bill.

The minority has also scared to death half of the small business men and women in America. They told them flat out that the President's plan was going to kill America's small businesses.

It's simply not true. The Wall Street Journal—not exactly a friend of Bill Clinton's—said this and I quote: "Foes of Clinton's tax boost proposals misled public and firms on the small business aspects." In fact, over 90 percent of the small businesses in the country will be eligible for a tax cut if the plan passes.

I'm sure that every Senator has received thousands of letters, postcards and phone calls from concerned citizens who have fallen prey to this wildly inaccurate propaganda.

But when you sit down with a constituent, whether in person, over the phone, or an interview program, you can put their fears to rest.

You ask them one simple question: "How much do you make a year?" If their family's gross income is under $180,000, you can tell them with all honestly that their income tax rate is not going up one thin dime.

If fact, all that they will be asked to pay is about one dime a day in a new gasoline tax.

You would be hard pressed to find anything today that costs only a dime. You can't mail a letter, buy a newspaper or a cup of coffee, or make a phone call for a dime.

But for that one dime a day, you can help save this country from fiscal calamity.

I hope that when the minority fog lifts, the American people will see that the legislation before us today is not just a deficit reduction plan.

The President's deficit reduction plan also lays the foundation for a robust and vibrant economy—an economy that includes targeted public investment in education, training, and infrastructure.

This deficit reduction plan will help keep interest rates at historically low levels. The rates on 30-year Treasury bonds keeps tumbling to new lows—6.5 percent at last count. That's a tangible benefit that all middle-class Americans can appreciate. It will make it easier for working men and women to own their own home, buy a new car, finance a college education and pay down their consumer debt.

This is not trickle-down economics, it's money-in-your-pocket economics—money in your pocket right now. For example, if you make $40,000 a year and refinance a $100,000 mortgage down from 10 to 7.5 percent, you will save $175 a month—more than 10 times what you would pay in any new taxes.

These lower interest rates will also fuel higher private investment—investments that will create the high-skill, high-wage jobs that will carry us into the next century.

And we already have proof positive. In the first 5 months of the new administration, 813,000 new jobs have been created, and 90 percent of these jobs have been in the private sector.

With lower interest rates and increased building, construction jobs have increased. The construction sector lost 712,000 jobs during the Bush administration. During the first 5 months of the Clinton administration, we have gained 112,000 construction jobs.

Continued lower interest rates, not new tax breaks for the wealthy, are the engine of economic growth.

And nowhere is this more true than in small business which will be able to take advantage of lower interest rates for growth and expansion.

Mr. President, we have seen this deficit reduction plan smeared as being anti-small business. The President's plan is 100 percent pro-small business. Once again, 90 percent of the small business operators in America are going to see their taxes cut. Only 4.2 percent of small business owners that file individual returns will pay more taxes.

What small tax increases there are, affect only those small business operators whose personal taxable income is above $140,000—that's income after all deductions and expenses are taken.

The President's plan will more than double the $10,000 in investments that small businesses will be able to expense immediately. That threshold will be boosted to $75,000 for small businesses in 10 empowerment zones.

There is a special capital gains tax cut for investment in small and medium sized businesses.

And lost among all of the minority recent attacks on the retroactive upper income tax in this bill is the fact that many of the tax credits are also retroactive. Not only are the well-known low-income housing and targeted jobs income tax credits retroactive to the beginning of the years, but there are two tax credits which will specifically aid small business.

There is a retroactive extension of the 25-percent deduction for health insurance premiums of the self-employed.

There is a retroactive extension of the ability of State and local governments to issue tax-exempt bonds for small businesses.

But the President's deficit reduction plan is not just about spending cuts and tax fairness. It's about reinvesting in America, in its people, in its infrastructure, in training and technology. It's about helping those Americans most in need—not with a Government check, but by providing them the tools they'll need to compete and thrive in the marketplace.

The President's plan rewards work by increasing the earned income tax credit for the working poor. It extends the low-income housing credit. It creates empowerment zones to help meet the problem of distressed urban and rural communities. It helps create jobs through a targeted-jobs tax credit.

And all Americans will benefit, especially the youngest Americans, through childhood immunization, child

hunger prevention, family support and preservation, and education benefits.

Isn't it amazing what just one dime a day will do?

And isn't it amazing that some would tear this bill down?

Over the past 2 weeks, I have heard calls from inside and outside the Senate to defeat this bill or to hold another budget summit. The next thing you know we'll have a commission, then a blue-ribbon panel and the deficit will go up and up as we sit around and jaw and jaw and jaw.

If we spurn this opportunity of a lifetime, and I stress a lifetime, the deficit will rise to $361 billion by 1998.

If we do nothing, interest rates will soar again. Federal Reserve Chairman Alan Greenspan testified before the Banking Committee that long-term interest rates are built upon the expectation that we will have credible deficit reduction.

If we do nothing, the national debt will rise by another $1.6 trillion.

If we do nothing, the dollar will plunge on international markets. We will be a laughing stock in front of our G–7 allies.

If we do nothing, the 1998 Federal debt will equal 61.6 percent of the gross domestic product—all that we make in this country.

If we do nothing, we have failed our children and our children's children.

Mr. President, we don't need a summit. We don't need another plan. We don't need defeatism or retreat. I feel a bit like Capt. Lloyd Williams at the Battle of the Belleau Woods, "Retreat, hell! We just got here."

As a recent Washington Post editorial stated:

> There has been a summit—the kind called for in the Constitution. A newly elected President made a proposal to a newly elected Congress, which worked its will and now must do so a final time. No more backing or filling or dodging: there'll be another chance another year. The choice is yes or no.

We have a President who has not dallied with the deficit. He has not played at cutting spending. He has done it. We don't need a budget summit because there's a more appropriate summit before us: the summit you reach in acting responsibly to solve your country's problems. Let us not falter, nor lose courage as we take these last steps to the top.

THE DEFICIT REDUCTION PLAN

Mr. DORGAN. The Senate votes tonight on President Clinton's deficit reduction plan. I will vote for deficit reduction.

When all is said and done, the issue boils down to this: making a tough choice or taking a walk. The President's plan isn't perfect, but the alternative—to do nothing—is unexcusable.

We simply cannot continue the course we've been on these last 12 years. This country now faces record deficits, mounting debt, diminishing jobs, and a shrinking economy. Family incomes are being squeezed and hopes for prosperity are being dashed. We must act now to tackle this country's massive economic problems.

FAIRNESS FOR RURAL AMERICA

Still, I would be the first to vote against a deficit reduction package I though was unfair to America's family farmers and rural communities. I would vote against any package that included more new taxes than spending cuts. And I would vote against any package that did not provide serious deficit reduction.

But this package does none of that.

Congress has been debating this plan for the last 6 months. We have taken the President's proposal and gotten rid of the Btu tax and the barge tax, reducing the impact on farm families from $2,000 a year to about $100. We now have a 4.3-cent-a-gallon gas tax which, although still not perfect, will cost the average North Dakotan $2.50 per month. We have killed a group of proposed agriculture cuts. We have shielded nearly 9 out of 10 Social Security recipients from new tax payments.

In short, we have made the package fairer to farmers and rural America.

Under the President's plan, only one-half of 1 percent of North Dakotans will pay more income taxes than they do now because of rate inceases: Only couples making over $180,000 and individuals making over $140,000. Just over 1,400 North Dakota resident tax returns meet this threshold. Period.

The rest of North Dakota's families, people who make less than $180,000, will not pay a penny more income tax rate increases. And once the earned income tax credit is in place, if you are like 17.3 percent of North Dakota families, you will receive a tax break.

And, I reiterate, most drivers in North Dakota will pay about $30 per year for the gas tax increase. Some would pay more; but this is not a punishing tax when compared with those in most advanced industrial nations.

FAIRNESS FOR ALL AMERICANS

This budget plan not only meets the fairness test for rural America, it does so for all America. Here are the facts:

Eighty percent of the tax burden for deficit reduction will fall on those earning $200,000 over per year. Only the top 1.2 percent of American taxpayers will experience an income tax increase.

The tax increase in this plan that affects America's working families is the 4.3 cent-a-gallon gas tax. Nationwide, the average worker will pay $3 per month for the gas tax.

Twenty million working families and households will receive a tax cut as a result of an expanded earned income tax credit. This gives fairer tax treatment to the working poor and also offers an incentive to stay on the payroll and off the welfare rolls.

Even with the tax increases in the bill, America will remain one of the lowest taxed nations in the industrialized world. And the new top tax bracket of under 40 percent pales in comparison with the top rate of 90 percent in 1960.

Through substantial spending cuts, tax increases on the richest 1 percent of Americans, and the 4.3-cent-a-gallon gasoline tax increase, this plan will cut almost $500 billion from the deficit. That will mean lower interest rates, more investment, and more economic growth. In fact, lower mortgage payments from lower interest rates will more than offset tax increases for most homeowners.

STRONGER MEDICINE FOR DEFICIT REDUCTION

To ensure that this budget stays on course, President Clinton has signed two Executive orders. One guarantees that all money from new taxes will go to deficit reduction. The second helps control entitlement spending, which accounts for a major share of increased deficits.

It would be nice if there were no tax increases and no budget cuts at all. But we aren't starting from scratch. We are digging out from 12 years of dishonest budgets, in which we borrowed from the Japanese to give tax cuts to the rich while our whole economy sunk deeper into the hole.

We've got to get this country back on solid footing, and we have to do it in a way that's fair. All Americans will share the cost of deficit cuts. But the people who gained the most during the 1980's should be asked to pay a little more now.

That's what this new budget does.

It is easy to criticize. The opponents of the deficit reduction bill have become expert at that. They have sat there and said, "No, no, no." I can understand why they don't want to take any responsibility, make any hard decisions, take any heat. But I can't admire that stance. I don't think it's good for this country.

When we asked them to produce an alternative, what did they bring forth? A big zero.

The alternative floor amendment cut the deficit $130 billion less than President Clinton's plan. And as usual, the other side's floor amendment benefits the very rich on the shoulders of the middle class.

That is just not acceptable, and I will not support that approach.

As the Bismarck Tribune in my home State opined:

> Thanks to Republican intransigence—posturing on hopes of earning future political capital—there is no other program under consideration. (Senator) Dole offers no alternative * * *.

SMALL BUSINESS FAIRS WELL

Instead of a real alternative, the President's critics have produced phony arguments. Over the past weeks, the opponents of this bill have filled the airwaves with dire warnings. They have said the budget will clobber small business, for example.

Nothing could be further from the truth. Even the Wall Street Journal—no champion of liberal causes—acknowledged as much, "All the rhetoric to the contrary," a Journal reporter found, "the vast majority of small businesses * * * wouldn't be touched."

The facts speak for themselves. Under this plan, over 90 percent of small businesses will benefit from a series of tax cuts. Only 4 percent of business owners make over $180,000 and will be affected by higher income tax rates. Most small businesses will benefit from increased expensing provisions in the bill, too.

There are some who don't want to pass a budget. They simply want to make President Clinton look bad. Still others refuse to shoulder their fair share of deficit reduction. But the American people can't wait while politicians here in Washington play their people can't wait while politicians here in Washington play their partisan games or the privileged bleat in a chorus of complaint.

I would have preferred a budget plan with no energy tax. I favored a more robust deficit reduction by cutting another $100 billion in wasteful or low-priority spending. I don't like retroactive tax increases.

But we can't debate this budget forever. It's not perfect, but we have to move on. We have to deal with the people's business.

DOING THE NATION'S BUSINESS

Our medical care system, for example. Every day that we dally on this budget, medical costs go up, hospital costs go up, drug prices go up, people lose their jobs and all their insurance. While we argue over a small gas tax, the American people are being shaken down by a medical system over which they have no control.

We have to change that. We have to pass this bill, strengthen our cities, our farms, our whole economy. We have to cut our deficit and put America back to work. We have to move beyond statistics and get the job done.

The question today is not whether to pass this budget. It's what will happen if we don't.

IMMUNIZATION FOR CHILDREN

Mr. RIEGLE. Mr. President, I am extremely pleased that the conference report includes provisions to improve childhood immunization rates, particularly among preschoolers. These provisions were part of a comprehensive plan to immunize all children in this country that I introduced with Senator KENNEDY earlier this year. I have been working on this issue for many years. Senator KENNEDY and I had been working on a bill since last December based on a bill I first introduced in November 1991.

In April, I introduced S. 733, the Comprehensive Child Immunization Act, which together with S. 732, Senator KENNEDY's bill, represented President Clinton's immunization initiative. S. 733 was referred to the Finance Subcommittee on Health for Families and the Uninsured, which I chair. I worked to move this bill through the committee process as part of the budget deficit plan. Unfortunately, due to a procedural problem, Senator KENNEDY's committee proposal, which provides for outreach, tracking, and the creation of immunization registries was not included in the budget deficit plan.

This country needs a comprehensive plan to improve immunization rates—free vaccines are not enough by themselves. A comprehensive plan includes vaccine purchase, improvements in our infrastructure such as longer clinic hours, more outreach, better parent education, innovative community-based activities, and improved physician fees, and registries to keep track of and monitor immunization status. I remain committed to work with Senator KENNEDY to enact critical components of S. 732 later this year. I want to commend the leadership of Senator KENNEDY on this issue and thank him and his staff for their assistance in helping us move this plan forward.

Mr. President, hearings were held on the original bill, S. 733, and comments were solicited from a wide range of individuals and organizations, many from my own State of Michigan. The product is thus a compromise that was developed by Congressman DINGELL, WAXMAN, and myself and Secretary Shalala after consulting with Senator BUMPERS.

I want to commend Congressmen DINGELL and WAXMAN and Secretary Shalala for their leadership on this issue. In addition, I greatly appreciated the assistance and support of Chairman MOYNIHAN on this important initiative. I want to thank all the staff that has been involved in the process, from many different offices, including the staffs of Congressmen DINGELL and WAXMAN and the Department of Health and Human Services, House and Senate Legislative Counsel, the Congressional Budget Office, the Senate Budget Committee, and the Senate Parliamentarian's Office. Finally, I want to give a special thanks to Jane Horvath and Paul Offner of the Finance Committee.

BACKGROUND ON THE PROBLEM

Mr. President,, 40 to 60 percent of 2-year-olds in this country are not fully immunized. It's a tragedy that countries like Bulgaria, 99 percent, and Yugoslavia, 90 percent, have better immunization rates of their 1-year-olds than the United States, 48 percent. In 1992, only two-thirds of Michigan 2-year-olds received their full state of vaccinations. In urban Detroit, only one-third were fully immunized. In addition, Michigan had a measles outbreak in 1990 with 478 cases and one death.

It is a well-known fact that immunizations are extremely cost-effective. Every $1 spent on vaccinations saves $10 later on in medical costs. In fact, the measles outbreak from 1989 to 1991 resulted in over 55,000 cases, 130 deaths and 11,000 hospitalizations, costing over $150 million in direct medical costs.

IMMUNIZATION PROVISIONS

Mr. President, the statement of the managers that helped to write explains these provisions and the conferees' intentions but I would like to highlight some key provisions and discuss how this proposal will help Michigan in particular.

CENTRAL BULK PURCHASE PROGRAM

The key piece of the conference committee provision is a central bulk purchasing program that provides vaccines to a targeted group of vulnerable children. Over 3 million more children are estimated to be covered under the plan. These children include those who are eligible for Medicaid, those who have no insurance coverage whatsoever, those who are native Americans and those children who are underinsured and who receive vaccinations at community and migrant health centers or rural health clinics. It's important to note that the majority of children who are uninsured live in families with incomes below 200 percent of the Federal poverty level.

This provision is important because the price of vaccines is a significant barrier to immunizing children under our current system. This is particularly true for children in lower income families who go to private doctors. The cost for immunizations through private doctors is about $240 compared to $114 in the public sector. In Michigan, I have heard from many families who have private pediatricians but are uncovered for immunizations, so they are then referred to public clinics. The problem is that for a variety of reasons, many children aren't immunized after being referred. The bottom line is we miss opportunities to immunize children when they are referred. I have held several hearings on this problem.

In Michigan, our public clinics have been overburdened and it is difficult for families to immunize their kids for the reasons described above. This program would give States the option to provide vaccines directly to private providers, which Michigan's Public Health Department wants to do. Under the central bulk purchasing program, when a parent visits his or her child's doctor, the child can be immunized immediately and receive all their care from one place.

COMPETITION AND RESEARCH AND DEVELOPMENT

Under the conference agreement, the Secretary would negotiate a price based on a process similar to the current Centers of Disease Control [CDC] process but with changes intended to stimulate competition and strengthen the Secretary's ability to negotiate a fair and reasonable price. To stimulate

competition, this proposal requires the Secretary to contract with multiple suppliers of a vaccine.

Michigan produces its own DTP vaccine and distributes it free to all providers. The conference agreement allows Michigan to bid for the Federal contracts to produce DTP and other new vaccines under their joint venture with SmithKline Beecham, thus providing additional revenue for the State.

Mr. President, I understand the concerns of some vaccine manufacturers about their research and development costs and about their profit levels and whether they are sufficient to encourage future investment in research and development. I want to emphasize that the conferees were sensitive to this. The negotiated price cannot be higher than the current CDC discounted price, adjusted for inflation for current vaccines. Some of the current vaccine prices have been growing at less than inflation so this may be an increase in the price.

For new vaccines, the negotiation process would be similar to the current CDC process and there is no limit whatsoever. We anticipate that the negotiated price include the costs for research and development and be established at a level to encourage future investment. In fact, one vaccine manufacturer, SmithKline Beecham, supports the compromise developed.

STATE FLEXIBILITY

Mr. President, I want to emphasize that these immunization provisions give States maximum flexibility. Several State organizations support the conference agreement provisions, including the Association of State and Territorial Health Officers and the State Medicaid Directors, Association, States have the option to purchase more vaccine at the negotiated price using their own money. Many states do this now and need to be allowed to continue doing so at the discounted price.

At least 11 States have universal purchase programs of some sort, including Michigan, Maine, New Hampshire, and Rhode Island. Michigan produces and distributes the DTP vaccine free to all providers. There has been an increase in private doctors providing DTP due to this program. Other States want to purchase more vaccines at the discounted price but have been unable to. When South Carolina, Hawaii, and others tried to get more vaccine at the CDC price they were discouraged from doing so by some drug companies. The compromise program was developed to give States the flexibility to make sure children are immunized in a variety of ways, including vaccine purchase.

OTHER IMPROVEMENTS

This legislation would make improvements in Medicaid's Early and Periodic Screening, Diagnosis, and Treatment [EPSDT] Program by requiring State Medicaid programs to cover the entire set of recommended childhood vaccines and to conduct more aggressive outreach.

The National Vaccine Injury Compensation Program, which compensates for injuries resulting from vaccinations, is an essential element in a strengthens the program by extending it to cover additional vaccines recommended for universal use in children and by restoring the excise tax on vaccines to ensure that parents and providers are adequately protected.

MICHIGAN AND NATIONAL SUPPORT

Mr. President, my wife Lori and I have been working to raise public awareness about immunizations. Lori and I have traveled throughout Michigan meeting with health care providers, children's advocates, and parents. We were able to gather a great deal of information about immunization rates communities and about the problems local providers and parents are encountering within the current system. This information was essential in crafting the conference agreement program.

Throughout this process, I have worked with Michigan organizations and individuals, including the Michigan Chapter of the Academy of Pediatrics, the Michigan Council for Maternal and Child Health, and the Michigan Department of Public Health. The Comprehensive Child Health Immunization Act has also received the support of many national children's advocacy groups, including the Children's Defense Fund, American Academy of Pediatrics, the March of Dimes, and many others.

In addition, the conference agreement program is supported by the Association of State and Territorial Health Officers, State Medicaid Directors' Association, and SmithKline Beecham Pharmaceuticals. I want to thank these organizations and will continue to work with them on other important immunization and children's health issues. I ask unanimous consent that several letters of support be included in the RECORD at the end of my remarks.

CONCLUSION

Ideally, Mr. President, children should receive immunization as part of a comprehensive, preventive health care program. Declining immunization rates reflect the larger problem of lack of access to basic health services for many children. Ultimately, we need to guarantee access to comprehensive health care services for all Americans. President Clinton has made national health care reform one of his administration's highest priorities, and I am working with the new administration's highest priorities, and I am working with the new administration to bring affordable health care to all Americans. Improvements in the childhood vaccine delivery system, however, cannot wait until we enact national health care reform.

Mr. President, this proposal is a first step toward a comprehensive proposal to immunized all our Nation's children. I will be working with my colleagues to make sure that other components of the plan we introduced in April are enacted this year.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

MARCH OF DIMES,
BIRTH DEFECTS FOUNDATION,
*Washington, DC, August 5, 1993.*

Hon. DONALD RIEGLE,
*U.S. Senate, Washington, DC.*

DEAR SENATOR RIEGLE: The 103rd Congress has worked February to develop new, effective immunization policies for the Nation. The Budget Reconciliation legislation contains a compromise built with key elements from each of the proposals considered this session—including President Clinton's Immunization Initiative, the proposal of Senate Republican leaders, and the House package. The March of Dimes applauds the result of months of negotiation and strongly supports the immunization provisions in the Reconciliation bill.

As with any good compromise, not all parties are satisfied.

The vaccine industry is crying because price increases for publicly-purchased vaccines will be linked to the CPI. This protest does not seem reasonable. Many other businesses would be pleased to have a guaranteed market of 6–8 million children who each need 17 doses of a product—with a built-in price inflator. Moreover, the vaccine industry retains a private market of equal size.

Advocates pushed to have more children get publicly purchased vaccine. However, because of the budget deficit, Congress made tough choices to limit the number of children to those in greatest need. We accept that.

States are losing some flexibility, but a grandfather clause protects current level of effort. The "optional state purchase" provisions leave the door open to negotiate a discount price for vaccines purchased with state funds. The Secretary would be central to these negotiations to ensure public health and equal treatment of states.

You know how difficult these choices can be. We applaud the efforts by Congress to improve the immunization system this year. It is a part of the Budget Reconciliation package about which one can be proud.

Sincerely,

Dr. JENNIFER L. HOWSE.

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VACCINE COSTS: OPTIONS AND RELIEF FOR STATES

WHAT STATE AND FEDERAL FUNDS NOW PURCHASE VACCINES?

Under the current system, a mix of State and Federal funds are used to purchase vaccines. States have generally made up the difference between need and the Federal appropriation.

Over 60% of the funds appropriated by Congress for the Centers for Disease Control (CDC) immunization program have been used by State and local areas for purchase of vaccines—a total of $158 million in FY 1992.

State legislatures also appropriate millions of dollars to purchase vaccines. States reported spending over $115 million on immunization programs in 1992.

In addition to the millions of appropriated State funds, Medicaid dollars paid for hundreds of thousands of doses of vaccine.

WHAT WOULD CHANGE UNDER THE BUDGET RECONCILIATION PROPOSAL?

A new Federal vaccine purchase program would be created under Medicaid with Federal funds. Vaccines bought through the new program would be used for disadvantaged children.

Children eligible to receive publicly purchased vaccines include: children enrolled in Medicaid, children who have no health insurance, children served in community and rural health centers, and Native American children.

Vaccine prices will be negotiated by the Secretary of HHS at no higher than the current CDC purchase price and the new process will cap vaccine price inflation at the CPI for vaccines now is use. For new vaccines, there is no such limit.

Federal funds would be used to replace state dollars for all children on Medicaid.

At State option, additional vaccine could be purchased at prices negotiated by the Secretary.

No State's expenditure for vaccines will increase under this plan. Virtually every State would have a windfall as their share of vaccine costs is reduced—particularly through reductions in Medicaid expenditures.

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AMERICAN ACADEMY OF PEDIATRICS,
*August 5, 1993.*

Hon. DONALD W. RIEGLE, Jr.,
*U.S. Senate, Dirksen Senate Office Building, Washington, DC.*

DEAR SENATOR RIEGLE: Through the leadership of key House and Senate members, a fair and positive step has been taken to assure that more children in this country will be protected from the ravages of preventable childhood diseases. We applaud their efforts and urge your support of this measure as part of the budget reconciliation package.

The compromise focuses on the poor and the uninsured, giving states the flexibility to vaccinate additional children in the state at the federal contract price. Ideally, it would be wonderful if all states could afford to take advantage of this opportunity. Unfortunately, many state budgets are already stretched to capacity. While Texas, North Carolina and Hawaii have recently passed legislation that would benefit from this option, others are looking to other solutions to improve their poor immunization rates of two-year-old children. For example, New York, Minnesota and Pennsylvania, have worked to mandate insurance coverage of immunizations.

We feel limiting the federal contract prices for vaccines to the CPI is an acceptable approach. In the first place, the federal contract price of most vaccines has been holding relatively steady over the past five years. The price of DTP vaccine actually declined 56% and MMR vaccine decreased by 7%. Secondly, the private market for vaccines, which is not regulated by price controls, is guaranteed in the legislation. Approximately 42% of the nation's children are currently covered by private insurance, and this share will increase over time with reform measures at the state level and should eventually reach 100% under health care reform. The CPI limit will not apply to "new" vaccines in either market. Hence, current research and development dollars are not threatened.

This compromise addresses the financial barrier faced by many families in getting their children immunized. Other barriers remain, including improved access and the development of a tracking/registry system. All these barriers must be addressed to assure our children and society are protected.

We look forward to working with you in this regard.

Sincerely yours,
HOWARD A. PEARSON, M.D.,
*President.*

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SMITHKLINE BEECHAM,
PHARMACEUTICALS,
*August 5, 1993.*

Hon. DONALD W. RIEGLE, Jr.,
*U.S. Senate, Washington, DC.*

DEAR SENATOR RIEGLE: On behalf of SmithKline Beecham, I am writing to congratulate you on your role and all the hard work you put into forging a compromise on the childhood immunization legislation. We feel that the final version of the bill will go a long way in meeting this country's commitment to getting full immunization for all children.

SmithKline Beecham feels that this bill will get more children immunized, and will also foster competition in the U.S. vaccine marketplace. As a new entrant in this market, we want to state our firm belief that this competition will be beneficial to our nation's children. This legislation, and especially the provision that preserves a private market, will encourage companies like ours to continue to research and develop new and better vaccines, and will provide the necessary assurances and incentives to potential manufacturers to develop immunizations against childhood diseases.

You are to be commended for your hard work and commitment to these important goals. Thank you for listening to our views on this issue, and for allowing SmithKline Beecham to participate in this historic debate.

Sincerely,
A. KARABELAS, Ph.D.

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JULY 28, 1993.

Hon. DONALD W. RIEGLE,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR RIEGLE: In your state, 450,426 children are living in poverty. Still more children and their families are struggling to survive on incomes only slightly higher than poverty. And, across our nation, a full 42 percent of all families with children are living on incomes below $30,000. I am writing to share information with you about how four key portions of the House budget reconciliation bill will help children and families in your state.

The attached sheet provides state-specific information about these four initiatives:

THE CHILDHOOD IMMUNIZATION INITIATIVE

These provisions will assure that no child goes unvaccinated because her parents are unable to pay the high cost of vaccines and will assure that outreach and education programs on the importance of immunizing children are improved.

THE CHILD WELFARE/FAMILY PRESERVATION AND SUPPORT PROVISIONS

This program will prevent child abuse and neglect by strengthening families and providing them with the support and assistance they need. It will also improve the quality of services available to children who must be removed from their homes.

THE LELAND CHILDHOOD HUNGER RELIEF ACT

These provisions will increase food assistance to poor families who must pay more than half their income for rent and utilities, leaving them with a choice between paying the rent or feeding their children. Adoption of the Leland provisions will also promote responsibility by encouraging work and collection of child support.

THE EXPANSION OF THE EARNED INCOME CREDIT

A parent who works full-time should not have to raise his or her children in poverty. These provisions will move our nation closer to meeting this very modest, critically important, goal.

Our nation's children and their families—the children in your state/district—are counting on you to assure that all four of these provisions are included in the final version of the budget reconciliation bill.

We hope that you will find this information to be helpful. If we can be of assistance to you on any of these critically important provisions, please contact us at the attached numbers.

Sincerely,
Marian Wright Edelman, President, Children's Defense Fund; David Liederman, Executive Director, Child Welfare League of America; Robert J. Fersh, Executive Director, Food Research and Action Center; Jennifer Vasiloff, Executive Director, Coalition on Human Needs.

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CHILDREN'S INITIATIVE: MICHIGAN—CHILDHOOD IMMUNIZATIONS

| Children currently eligible: medicaid recipients | Additional Children eligible under— | | |
|---|---|---|---|
| | House | Senate Finance | Bumpers |
| Michigan: 255,000 | 171,000 | 52,000 | 0 |

CHILD WELFARE AND FAMILY PRESERVATION

[Estimated Federal Funding for provisions in House bill; in thousands of dollars]

| State | Fiscal year— | | | | |
|---|---|---|---|---|---|
| | 1994 | 1995 | 1996 | 1997 | 1998 |
| Michigan: | 2,542 | 5,516 | 9,766 | 14,872 | 25,083 |

*Mickey Leland Childhood Hunger Relief Act*

Number of Food Stamp Recipients who will receive increased food stamp allotments if the House provisions pass—

Michigan: 1,034,148—(April, 1993)

EARNED INCOME CREDIT

[Annual increase in dollars that low income workers will be eligible to receive as a result of EIC expansions (estimate is for FY97, the first year the Senate bill will be completely in effect; in two previous years, substantial funds will also be provided); in millions of dollars]

| State | House bill | Senate bill |
|---|---|---|
| Michigan | 189.83 | 142.57 |

Sources: attached.

CHILDREN UNDER AGE 5 ELIGIBLE FOR VACCINE ASSURANCE PLAN: ESTIMATES UNDER HOUSE AND SENATE PLANS

[Congressional Budget Office Estimates of U.S. children eligible for new vaccine assurance plan]

| | House-passed bill | Senate Finance Committee bill | Senate-passed bill |
|---|---|---|---|
| Total served by new plan. | 11.1 million (includes 4.6 million under- and uninsured and 8.5 million Medicaid-eligible children under 5). | 7.9 million (includes 1.4 million under- and uninsured and 5.5 million Medicaid-eligible children under 5). | No additional (coverage continues for 6.5 million Medicaid-eligible children under 5) |

Source: CBO Preliminary Staff Estimates, May-June, 1993.

| States | Currently eligible: Medicaid recipients age 5 and under* | CDF projections of newly eligible children, by State based on CBO national estimates** | | |
|---|---|---|---|---|
| | | Additional eligible: House-passed bill | Additional eligible: Senate Finance Committee | Additional eligible: Senate-passed bill |
| Alabama | 101,000 | 70,000 | 21,000 | None. |
| Alaska | 14,000 | 13,000 | 4,000 | None. |
| Arizona | N/A | 75,000 | 23,000 | None. |
| Arkansas | 71,000 | 40,000 | 12,000 | None. |
| California | 933,000 | 651,000 | 198,000 | None. |
| Colorado | 60,000 | 62,000 | 19,000 | None. |
| Connecticut | 70,000 | 56,000 | 17,000 | None. |
| Delaware | 15,000 | 12,000 | 4,000 | None. |
| D.C. | 27,000 | 10,000 | 3,000 | None. |
| Florida | 257,000 | 222,000 | 68,000 | None. |
| Georgia | 190,000 | 125,000 | 38,000 | None. |
| Hawaii | 21,000 | 21,000 | 7,000 | None. |
| Idaho | 23,000 | 20,000 | 6,000 | None. |
| Illinois | 300,000 | 212,000 | 65,000 | None. |
| Indiana | 107,000 | 95,000 | 29,000 | None. |
| Iowa | 58,000 | 46,000 | 14,000 | None. |
| Kansas | 50,000 | 44,000 | 13,000 | None. |
| Kentucky | 114,000 | 61,000 | 19,000 | None. |
| Louisiana | 183,000 | 80,000 | 24,000 | None. |
| Maine | 29,000 | 20,000 | 6,000 | None. |
| Maryland | 96,000 | 90,000 | 27,000 | None. |
| Massachusetts | 136,000 | 102,000 | 31,000 | None. |
| Michigan | 255,000 | 171,000 | 52,000 | None. |
| Minnesota | 106,000 | 79,000 | 24,000 | None. |
| Mississippi | 138,000 | 48,000 | 15,000 | None. |
| Missour9 | 128,000 | 89,000 | 27,000 | None. |
| Montana | 12,000 | 14,000 | 4,000 | None. |
| Nebraska | 37,000 | 28,000 | 9,000 | None. |
| Nevada | 17,000 | 25,000 | 8,000 | None. |
| New Hampshire | 14,000 | 19,000 | 6,000 | None. |
| New Jersey | 138,000 | 135,000 | 41,000 | None. |
| New Mexico | 50,000 | 31,000 | 10,000 | None. |
| New York | 614,000 | 322,000 | 98,000 | None. |
| North Carolina | 174,000 | 116,000 | 35,000 | None. |
| North Dakota | 11,000 | 11,000 | 3,000 | None. |
| Ohio | 326,000 | 187,000 | 57,000 | None. |
| Oklahoma | 69,000 | 55,000 | 17,000 | None. |
| Oregon | 76,000 | 50,000 | 15,000 | None. |
| Pennsylvania | 297,000 | 192,000 | 58,000 | None. |
| Rhode Island | N/A | 17,000 | 5,000 | None. |
| South Carolina | 97,000 | 64,000 | 20,000 | None. |
| South Dakota | 16,000 | 13,000 | 4,000 | None. |
| Tennessee | 168,000 | 83,000 | 25,000 | None. |
| Texas | 575,000 | 351,000 | 107,000 | None. |
| Utah | 37,000 | 41,000 | 13,000 | None. |
| Vermont | 14,000 | 9,000 | 3,000 | None. |
| Virginia | 120,000 | 110,000 | 34,000 | None. |
| Washington | 118,000 | 92,000 | 28,000 | None. |
| West Virginia | 72,000 | 25,000 | 8,000 | None. |
| Wisconsin | 85,000 | 85,000 | 26,000 | None. |
| Wyoming | 11,000 | 8,000 | 2,000 | None. |

*Source: US Department of Health and Human Services, Health Care Financing Administration, Medicaid Bureau, Medicaid Statistics: Program and Financial Statistics, Fiscal Year 1991 HCFA Pub. No. 02182, January 1993.

FY 1991 Medicaid data by age of recipient not available for Arizona and Rhode Island. While CBO numbers include all children through age 4, numbers published by HCFA are for children through age 5. Therefore state numbers for Medicaid, as presented in this table, represent all Medicaid recipients age 5 and under. Principally for this reason, the numbers in the column will not add up to the total of Medicaid recipients by CBO.

**Note: These are estimates of uninsured and underinsured (no vaccine coverage) children who would be eligible under the new plans. The precise number of children who would be eligible is unknown. The projections in this table for each state were calculated by multiplying the CBO national estimate by the proportion of U.S. children under age 5 living in that state. This estimation method assumes an equal distribution of uninsured and underinsured children across all states. For states with a higher or lower proportion of under and uninsured children, the numbers presented here are an underestimate or overestimate, respectively, of the true number of children who would be eligible.

ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS,
*Washington, DC, August 4, 1993.*

Hon. DONALD RIEGLE,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR RIEGLE: On behalf of the Association of State and Territorial Health Officials (ASTHO), which represents the chief health officer and health agency in each state, I am writing in strong support of the Budget Reconciliation language which will provide states with the option to purchase additional childhood vaccines at the Federal contract rate.

This option is critically important for state activities to ensure that we improve the immunization rates and ultimately the health of all of this nation's children. Last year, ASTHO surveyed its membership regarding the obstacles that state health departments face in improving immunization rates. Many obstacles were identified including the complication of the Vaccine Immunization Pamphlet, staffing needs, clinic hours, lack of education and the cost of vaccines. The importance of these issues in getting children immunized varies from state to state. For example in some states, the issue of clinic hours and lack of personnel far outweigh any other impediment while lack of education is more important in many others. In some states the cost of vaccines is an overriding issue. In those states where cost is one of the most recognized impediments to getting children vaccinated it is vitally important that those states have the option of purchasing vaccines at the federal contract rate. Without the state flexibility to implement such a program, scarce state and local resources that could be used for other immunization activities will be consumed by the high cost of vaccines at the private sector rate. This will continue to result in low immunization rates for our preschool children.

Many states will choose not to spend their limited resources on the purchase of vaccines but will direct their resources into other programs which they have identified as more important. Some states may only opt to purchase a small additional number of vaccines to cover certain populations in the state. Others may determine that they need the option for all children within their state. Of the current 14 states which use the universal option, only two are truly universal option states. Yet state flexibility is critical to ensure that states can improve the immunization rates within their jurisdictions.

As the Senate considers the Budget Reconciliation Bill, I strongly encourage you to support the optional use clause for states. Without this option, this nation's children will suffer.

Sincerely yours,

GEORGE K. DEGNON,
*Executive Vice President.*

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STATE MEDICAID DIRECTORS' ASSOCIATION,
*Washington, DC, August 6, 1993.*

Hon. DONALD W. RIEGLE, Jr.,
*Senate Dirksen Office Building, Washington, DC.*

DEAR SENATOR RIEGLE: I have just reviewed the immunization portion of the conference report of the budget reconciliation act, and want to thank you for being so sensitive to the states' concerns as you developed these provisions. The final bill will help states by freeing state dollars now spent on vaccines for other equally critical activities, such as parental outreach and education. States that already operate bulk purchase programs will be able to continue to do so. The decision to permit uninsured children to quality for free vaccines by a simple self-declaration will minimize any provider resistance to participation, and remove one more barrier in the path of assuring all our children are fully immunized. I look forward to the bill's prompt passage and early implementation.

Sincerely,

RAY HANLEY,
*Chair, State Medicaid Directors' Association and Director, Arkansas Office of Medical Services.*

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THE NATIONAL BLACK CAUCUS OF STATE LEGISLATORS,
*Washington, DC.*

NBCSL RESOLUTION IN FAVOR OF CHILDREN'S INITIATIVE

Whereas one out of five children in the United States lives in poverty;

Whereas still more children and their families are struggling to survive on incomes only slightly higher than poverty;

Whereas the Community Childhood Hunger Identification Survey (CCHIP) found that about 5 million children are hungry at some point each month and another 6 million are at risk of hunger;

Whereas about 8,000 children a day were reported abused or neglected in 1992;

Whereas only 20–33% of the nation's African American two year olds were fully immunized against vaccine preventable diseases in 1991;

Whereas African American children suffer disproportionately from problems of poverty and hunger; and

Whereas investing in the health and productivity of our children and our families is investing in our future;

Therefore, NBCSL believes that federal budget policy must address the needs of children and their families by including in the final Omnibus Reconciliation Bill the Children's Initiative provisions from the House-passed bill;

The Mickey LeLand Childhood Hunger Relief Act: This bill would make needed improvements in the Food Stamp Program; 90 percent of the bill's benefits would go to families with children. A key provision will increase food assistance to poor families who must pay more than half their income for rent and utilities. People who are elderly or disabled can already do this. Families will no longer have to choose between paying the rent and feeding their children.

The Childhood Immunization Initiative: These provisions will assure that no child goes unvaccinated because his/her parents are unable to pay the high cost of vaccines and will assure that outreach and education programs on the importance of immunizing children are improved.

The Child Welfare/Family Preservation and Support Provisions: This program will prevent child abuse and neglect by strengthening families, providing them with the support and assistance they need. It will also improve the quality of services available to children who must be removed from their homes.

The Expansion of the Earned Income Tax Credit: A parent who works full-time should not have to raise his or her children in poverty. These provisions will move our nation closer to meeting this very modest, critically important goal. Furthermore, NBCSL applauds the leadership that the Members of the Congressional Black Caucus and other progressive Members of Congress have shown in fighting for the inclusion of these programs. As CBC Chairman Kweisi Mfume wrote to President Clinton in his letter dated June 9, 1993: "Many of our constituents were left behind and neglected by two previous administrations. They cannot be expected to bear the brunt of deficit reduction alone."

NBCSL strongly urges adoption of the Children's Initiative.

Adopted July 28, 1993, Executive Committee.

San Diego, CA.

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JULY 28, 1993.

Hon. DONALD RIEGLE,
*U.S. Senate,*
*Washington, DC.*

DEAR MR. RIEGLE: As a conferee negotiating the budget reconciliation bill, you have the opportunity to significantly improve the immunization rates among our nation's children. The House bill includes a guarantee

that *all* American children have either private health insurance for immunizations or coverage through a new vaccine assurance system. In contrast, the Senate bill provides *no* additional children with coverage for immunizations, even though 8.3 million children lack any health insurance at all and fewer than half of traditional indemnity health insurance plans that do include children cover vaccinations for them.

Somehow, this very simple and cost-effective measure is threatened by the vaccine industry despite the support of over 50 provider and other child advocacy organizations who applaud the Administration's initiative to remove all barriers to immunizations. The main purpose of this legislation is to enable children to get immunizations as part of their routine health care, especially in private physicians' offices.

The federal government will spend 30 times as much for childhood vaccines this year as it did fifteen years ago. That is because the public cost to fully vaccinate a child has increased 11-fold and the private price (e.g., in a doctor's office) has increased 21-fold. There are many reasons for these price increases. However, the result is that while the cost was virtually nominal 15 years ago, many families cannot afford vaccines today.

The private sector cost of vaccines to fully immunize a child has climbed from less than $11 in 1977 to over $230 in 1993. In response, more and more children—many of them middle income but not insured for vaccines—are sent by their private pediatricians and family doctors to public clinics for their shots. Each time this happens, a child's health care is disrupted and an opportunity to vaccinate is lost. Many children then go to a clinic for shots, but many do not. Simply put, if the nation wants its children immunized, it cannot afford to make getting a shot a two-visit process for millions of children who get the rest of their care in the doctor's offices and for working parents who miss two days of work in the process.

If you reflect on the families in your own state, the following scenario probably rings true: rent to pay, car brakes need fixing, and kids due for immunizations. Which will have to wait until next month? That's a choice parents should not have to make.

Several studies document how parents are increasingly being referred away from their own family doctors and pediatricians because they are unable to afford immunizations for their children.

A recent North Carolina survey of every licensed pediatrician and family physician in the state, the first results of which were announced at the National Academy of Social Insurance in June, found that 94 percent of doctors referred children to public clinics for immunizations. Nearly all of the physicians (95 percent) cited parents' concerns over cost of vaccines as the most important reason for referring patients to health departments. The authors of the study concluded that "if out-of-pocket costs to patients for immunizations were significantly reduced or eliminated, referrals to health departments for immunizations would decrease substantially and physicians would immunize a much greater proportion of patients in their offices. This change could potentially enhance both immunization rates and continuity of care."

Orange County, California health officials wrote in the New England Journal of Medicine that "as those in moderately difficult financial circumstances use the immunization services provided by the public sector, the traditionally underserved population in greatest need of immunization and at higher risk for vaccine-preventable disease may be increasingly displaced. This factor may be exacerbating and feeding the U.S. measles epidemic. American families must be given the financial means to gain access to private physicians in their communities for childhood immunizations."

The House vaccine assurance provision coupled with components on access, tracking, and outreach provides a comprehensive solution. Opponents of the House bill propose alternatives which will send even children away from their own private doctors to public clinics for immunization services. The Senate bill, as amended on the floor, assumes that uninsured and underinsured children should go to public clinics rather than receiving the service from their family doctors.

Protecting our children against vaccine-preventable diseases is too important to delay. We urge you to build on the House bill to assure that as many children can be immunized as possible. Please do not hesitate to contact us if you need more information.

Sincerely,

AMERICAN ACADEMY OF PEDIATRICS.
CHILDREN'S DEFENSE FUND.
MARCH OF DIMES BIRTH DEFECTS FOUNDATION.

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MICHIGAN PTA,
*Lansing, MI, May 10, 1993.*

Hon. DONALD W. RIEGLE, Jr.,
*U.S. Senator, Dirksen Senate Office Building, Washington, DC.*

DEAR SENATOR RIEGLE: On behalf of the 800 delegates to our 1993 Annual Convention, thank you for taking time in your busy schedule to deliver your message about immunizations via video tape. While we would have preferred having you there in person, we understand the demands on your time and we are sincerely grateful to have had the opportunity to hear from you about this important children's issue.

We applaud your efforts to ensure that our nation's young children receive their vaccinations on time and we intend to monitor the progress of the Comprehensive Child Health Immunization Act of 1993, S. 732 and 733. I trust you will keep us posted as these bills move through the legislative process.

Thanks to your Lansing and Washington staff members for their efforts in working out all the necessary details and thanks to Debbie Chang whose presentation at the National PTA Legislative Conference whose presentation sparked the idea of inviting you to attend and to Elizabeth Gertz for being their in Dearborn to introduce your presentation and answer questions.

Again, thank you and we look forward to your attendance at a future convention.

Sincerely,

DAVID J. GROSS,
*President.*

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J.P. CHILDREN'S COALITION,
*June 8, 1993.*

Hon. DONALD RIEGLE,
*U.S. Senator,*
*Washington, DC.*

DEAR SENATOR RIEGLE: The Upper Peninsula Children's Coalition, an organization of over 85 agencies, and also additional citizen members, respectfully urges you to do what you can to safeguard the portions of the President's Budget Reconciliation Bill now before the Senate Finance Committee which pertain to the well being of our children.

Specifically, we would hope that you would be able to help safeguard the portions of the bill which relate to the Childhood Immunization Initiative, the Family Preservation Provisions, and the Earned Income Credit Expansion.

We believe that these portions of the bill should not be compromised.

Thank you for your continued support of children in Michigan and throughout the nation.

Respectfully,

CHARLES D. WILBER,
*Secretary, U.P. Children's Coalition.*

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MACOMB COUNTY HEALTH DEPARTMENT,
*Mount Clemens, MI, May 26, 1993.*

Senator DONALD W. RIEGLE, Jr.,
*Washington, DC.*

DEAR SENATOR DONALD W. RIEGLE: As Public Health Director of the Macomb County Health Department I strongly urge your support of the Comprehensive Childhood Immunization Act of 1993 and/or amended or substitute legislation with a similar intent.

Preventive services are the basis of public health's approach to the improvement of community and personal health status. Immunization programs have been eminently successful in not only accomplishing the improvement of health status but have proven to be extremely cost effective. One dollar ($1.00) spent on immunization results in a minimum ten dollars ($10.00) of savings in treatment costs. Public health preventive services such as immunization are a key to cost containment currently a major issue in the discussion of national health care reform.

As Director of the Health Department, I would particularly urge your support of provisions in the proposed legislation which fund in addition to vaccine, community outreach, the staffing of local health immunization programs and the development of tracking systems.

A major force of the Macomb County Health Department has been the strengthening of its immunization effort. In the last several years the demand for immunization services for children has increased substantially. In 1989 approximately 52,000 immunizations were given by this department and in 1992 this increased to 96,952. Similar to national data, it estimated that up to 40% of children under two in Macomb County are not adequately immunized.

Passage of federal legislation as proposed in the Childhood Immunization Act of 1993 would significantly assist local public health departments working with private health providers to assure that all children are adequately immunized thus improving their health status and the public health of the community in a most cost effective manner.

Yours truly,

DANIEL C. LAFFERTY,
*Director/Health Officer.*

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MICHIGAN CITIZENS FOR AMERICA'S CHILDREN,
*Ann Arbor, MI, May 11, 1993.*

Mr. KEVIN AVERY,
*Office of Senator Don Riegle, U.S. Senate, Washington, DC.*

DEAR KEVIN: First of all, congratulations on all the hard work Senator Riegle is doing for full immunizations (S. 733)! I am enclosing a piece I got from the Center for Disease Control about the barriers to full immunization for toddlers, which I thought might be helpful if you don't already have it. The thrust of the paper is to identify barriers, including cost, with the conclusion. "Though it is tempting for health care providers to attribute low immunization uptake to

consumer apathy, much evidence points to correctable deficiencies of the health care system." (p. 395).

The Family Preservation Act (S. 596) and Mickey Leland Hunger Relief Act are with us again, and maybe this time we will see them pass into law. I hope Senator Riegle will cosponsor these, or take a leadership role in getting them through.

When the Finance Committee considers the Earned Income Credit proposals, the following data might be helpful to enhance the feeling of urgency for helping working parents.

The younger you are in Michigan, the more likely you are to be poor.

Between 1969 and 1989, the poverty rate among Michigan's children nearly doubled—this is the worst record among the 50 states and the District of Columbia.—Tufts University Hunger, Poverty, and Nutrition Policy Center

One out of every four preschool children in Michigan lives below the official poverty level.

The number of children living in poverty in Michigan would fill the cities of Grand Rapids, Lansing, and Flint.

Children living in poverty die almost two and a half times more frequently than other children.—Michigan Department of Public Health

Another child is born into poverty in Michigan every 17 minutes.

Keep up the good fight.

Warm regards,

JAN KROHN,
*President.*

ENTERPRISE ZONE PROVISIONS

Mr. RIEGLE. Mr. President, I am particularly pleased that the agreement includes funding for a comprehensive, enhanced enterprise zone program designed to turn around some of America's most distressed communities.

I have long supported enterprise zones as an experiment worth trying to bring economic opportunity to inner city residents. But I have argued that enterprise zones must include more than just tax breaks for businesses that locate in zones. They must include enhancements in the form of targeted public investment to provide the tools to empower neighborhood residents to turn their communities around.

Along with Senators KENNEDY and BIDEN, I offered an amendment which added public investment enhancements to the enterprise zone provisions that Congress passed last year because I was convinced that enterprise zones as traditionally conceived are only half a strategy. And half a strategy is doomed to fail unless it is made whole.

In crafting the investment enhancements, I built on what I saw and heard in Benton Harbor, an inner city community in my home State of Michigan. Benton Harbor is Michigan's only State-sponsored enterprise zone. The lesson that Benton Harbor has learned from its enterprise zone experience is one we here in Washington should heed as we craft Federal enterprise zone legislation: Tax incentives can be helpful, but tax incentives alone will not provide an adequate new economic start for the poor and minority residents of our inner cities.

The people of Benton Harbor and of similar communities throughout the Nation must have the means to improve their job skills before they can fully take advantage of new employment opportunities. They also need better access to capital to start businesses of their own and to buy or upgrade their homes. Job skills and access to capital—along with targeted tax breaks for entrepreneurs—can be the foundation for true economic empowerment. In addition, distressed communities cannot begin to turn themselves around while most of the work force lives in dilapidated housing, has inadequate access to needed child care and faces an inadequate education system.

Unfortunately, the enterprise zone bill Congress passed last year was vetoed by President Bush. Therefore, this Congress, I introduced the Enhanced Enterprise Zones Act of 1993, which built on what we passed last Congress.

I have worked as a conferee with Senator BRADLEY and Chairman MOYNIHAN to ensure that the conference agreement before us today incorporates the ideas that we put forth in our previous legislation. It provides $2.5 billion over 5 years in tax incentives for 9 empowerment zones and 95 enterprise communities. But more important, it provides empowerment zones and enterprise communities with $500 million a year in targeted public investment for 2 years.

This targeted public investment will be channeled through an expanded version of the social services block grant, title XX of the Social Security Act. Federal assistance must be spent to benefit residents of empowerment zones or enterprise communities. The activities on which funds can be spent has been broadened so that zones and communities can allocate the additional investment consistent with a comprehensive development plan. The zones and communities can spend the money on a variety of services to promote affordable housing, community facilities, and public infrastructure; to develop job skills and provide financial and business counseling that improves access to credit and financial services; and to provide needed social services like child care and health-related assistance.

Even this enhanced empowerment zone and enterprise community program will only help a few communities. And, even for these communities, it will provide only a small part of the additional investment and support needed to restore them to economic self-sufficiency. But it is a welcome experiment which is long overdue. I urge my colleagues to support it and to support the reconciliation bill. I hope that the initiatives included to help our inner cities and distressed rural communities are only a first step in a renewed and strengthened commitment to restore economic opportunity to all our communities and all our citizens.

MEDICARE AND MEDICAID AND THE BUDGET DEFICIT PLAN

Mr. RIEGLE. Mr. President, the spending cuts from the Medicare and Medicaid programs in this budget deficit plan total $62.9 billion over 5 years. Medicare accounts for $55.8 billion and Medicaid accounts for $7.06 billion.

As a conferee, I was very concerned that we not undermine these important programs and I worked hard to make sure the cuts to these programs were achieved in the fairest way possible.

Medicare and Medicaid serve some of our most vulnerable populations—senior citizens, persons with disabilities, and low-income families. So, it is important to note that the savings were not achieved through increased beneficiary premiums or other cuts in benefits, but rather through cuts in reimbursements to providers. However, we were also concerned that providers be treated fairly as well.

This budget process has strongly reinforced the need for comprehensive reform of our health care system. Provider payment reductions in Medicare and Medicaid get quickly passed on to private payers, through a process called cost-shifting. The best way to address escalating health care costs is through a systemwide approach, rather than cuts targeted solely to the Medicare and Medicaid programs. All sectors of the health care system must be reformed to prevent cost-shifting; this is the only way to effectively halt skyrocketing health care costs. I will continue to work with the President and First lady and my colleagues to enact comprehensive reform of our health care system.

MEDICAID PROVISIONS THAT HELP MICHIGAN

Mr. President, I am very pleased that improvements in the Medicaid Program that I have been working on for several years were included in the final package. These provisions will directly help the State of Michigan. In last year's urban aid package, H.R. 11, Congress tried to move such Medicaid provisions but the plan was vetoed by former President Bush.

One provision, section 13643, would restore funding for a Medicaid demonstration program that Congressman DINGELL and I developed in the Omnibus Budget Reconciliation Act of 1989 [OBRA89]. This innovative program, called Caring for Children, provides essential health care services to uninsured children through the private sector. We supported Michigan's application for this funding which was approved last year. Due to the lengthy application process and startup time and the fact that authorization for funding was expected to expire this year, the funds haven't been used. The provision would provide $30 million for

the program, of which about $7 million would go to Michigan. Michigan has 300,000 uninsured children who may benefit greatly from this demonstration program.

The other Medicaid provision, section 13642, also builds on work I started in OBRA89. It will help two hospitals in Michigan that offer short-term psychiatric services—Kent Community Hospital and Saginaw Community Hospital. The legislation prevents HCFA from classifying these hospitals as Institutes for Mental Diseases [IMD]. Designation as an IMD would have resulted in the loss of an estimated $3 million in Medicaid funds for these hospitals with severe financial consequences for these essential community providers. Under health care reform, I expect the comprehensive benefit package will include mental health services and the services that these hospitals provide. For this reason, we need to extend the moratorium until this issue is addressed through health care reform.

FOOD STAMP FRAUD PROVISIONS

Mr. McCONNELL. Mr. President, I want to take a moment today to talk about some provisions that were not included in the final conference report to the budget reconciliation bill: provisions to fight fraud in the Food Stamp Program. This might seem like a minor issue to some in light of the fact that we are considering the largest tax increase in American history, but I want to point out to my colleagues certain provisions that were both included in and excluded from this tax package.

It is well known that $1 billion is lost annually to fraud, waste, and abuse in the Food Stamp Program. Earlier this year, I introduced S. 505, the Food Stamp Anti-Fraud Act of 1993, because of my concern with the fraudulent activities occurring in the program. From trafficking food stamp coupons for cash to trading the stamps for guns and drugs, the violations are deplorable and the transgressors must be brought to justice.

My bill focuses on improving the Department's ability to investigate trafficking abuses by both retailers and recipients, and strengthens the penalties imposed on abusers. Several of my provisions were included in the package, which I was pleased to see; however, two important provisions were stricken from the final version.

I know that many of my colleagues on both sides of the aisle share my concerns with fraud in our Nation's largest food assistance program. That is why I am perplexed with the actions taken by the Democrats with respect to fraud fighting initiatives in the budget package. While the Democrats have agreed to increase food stamp spending by $2.5 billion, they have also decided to cut funding that goes to the States to help them fight fraudulent activities.

Currently, the Federal Government pays the States 75 percent of the cost to investigate and prosecute violations under the Food Stamp Program. The reconciliation package cuts that support to 50 percent. Now, I am all for cutting Government spending, and I don't think this bill goes far enough in that aspect; but, to cut funds that are being used to improve the integrity and management of the Food Stamp Program baffles me.

Mr. President, to me this sends the exact opposite signal that I think we should be sending to the taxpayers. During tight fiscal times when we are increasing program spending, we need to be particularly concerned about how our taxpayer's money is being spent. We need to ensure that the food stamps are being used for the intended purpose: to help needy Americans buy food to supplement their diet. I know that the vast majority of the participants in the Food Stamp Program are honest, trustworthy citizens. But the stories of food stamp fraud you hear, do occur and must be stopped.

Mr. President, in my view, this Congress passed up the opportunity to advance meaningful antifraud legislation. As I said before, two provisions from my bill, S. 505, were removed from this conference report, and I am troubled by that action. These proposals would have strengthened the Department's ability to fight fraud in the Food Stamp Program, and in turn improve the integrity and administration of our Nation's largest food assistance program. I assure my colleagues that I will continue to push to see that these provisions become law.

NTIA

Mr. STEVENS. Mr. President, I would like to thank the chairman of the Communications Subcommittee, my good friend from Hawaii, for his efforts to attain in conference what we had in the Senate bill. It is unfortunate that the House would not accept more of the protections that were in our original provisions.

With respect to the conference report, I would like to ask for a clarification of one section regarding spectrum reallocation that was added in conference. I note the legislation calls for all persons using a Government frequency for non-Government applications to acquire a license from the FCC and to submit proof of such license to the Department of Commerce's National Telecommunications and Information Administration. There are many situations in which members of the public communicate with Federal agencies over Federal radio frequencies, particularly agencies charged with ensuring safety and the protection of our various transportation systems. For example, all private and commercial aircraft work with the Federal Aviation Administration-authorized stations in the air traffic control system; a multitude of boats, aircraft, and hikers have emergency position-indicating radio beacons that work in conjunction with the National Oceanographic and Atmospheric Administration's search and rescue satellite; and thousands of private and commercial vessels work with Coast Guard-authorized stations.

In my State of Alaska, requiring private parties who are communicating with Federal agencies to obtain and file with NTIA a license would result in an unnecessary and onerous burden on the public. The National Telecommunications and Information Administration is ill-equipped to enforce such a provision or process data to implement it.

If read too broadly, the language could be construed to require NTIA to keep proof of millions of FCC licenses associated with a single NTIA license. It would be nearly impossible for NTIA to maintain an accurate database, as FCC licenses for private parties expire and are canceled routinely.

For these reasons, I would like to obtain the chairman's assistance in clarifying the intention of this provision. The legislative language requires private parties using Federal Government frequencies and Federal Government radio stations to obtain licenses and file proof of those licenses for any nongovernmental application. I believe that the use of Federal Government frequencies by the users specified above would not constitute nongovernmental applications so that such users would not be required to obtain an FCC license and would not be required to file proof of such license with NTIA. Mr. Chairman, I assume it is not the intent of this provisions to reach these types of situations. Am I accurate in my understanding?

Mr. INOUYE. That is correct. The examples you have mentioned all involve Federal agencies that are communicating with the public in the course of fulfilling their agency missions. Section 6001(b) is not designed to require these users to obtain an FCC license or to require NTIA to monitor the status of the FCC licenses of members of the public who are communicating with agencies in the course of their official business. The intention of this provision is to preclude commercial entities from using Federal Government spectrum for nongovernmental purposes. I consider the public safety uses described above to be the kind of governmental applications that do not require an FCC license.

FEDERAL GRAIN INSPECTION SERVICE REAUTHORIZATION (FGIS) LEGISLATION

Mr. DASCHLE. Mr. President, the U.S. Department of Agriculture's Federal Grain Inspection Service [FGIS] is responsible for designing grain standards that effectively communicate the storability and end-use characteristics of grain, maintaining and supervising the official inspection system, and conducting mandatory inspections of export grain. FGIS was last reauthorized

in 1988, and this authority expires September 30, 1993. While I had anticipated introducing a reauthorization bill prior to the August recess, the press of other business has forced a postponement until September when the Senate reconvenes. Therefore, I will now present an overview and summary of the bill I intend to introduce immediately after the Senate reconvenes in September.

The Subcommittee on Agricultural Research, Forestry, and General Legislation, which I chair, has conducted frequent and intensive oversight activities on FGIS. The oversight included a year-long investigation by the General Accounting Office. Most recently, on May 13, 1993, the Subcommittee held a hearing to examine opportunities to improve the operations of FGIS. Among other witnesses at that hearing, GAO presented the results of their investigation.

The hearing demonstrated a consensus of views that will be incorporated into the legislative proposal. The hearing produced the following broad conclusions with disagreement coming from some interest groups:

The official grain inspection system serves a necessary and important component of the U.S. grain production and marketing system by assuring integrity in international and domestic markets.

The mandatory export and voluntary domestic design framework of the official inspection system is working well and should be maintained into the future.

Designated State and private inspection agencies do have sufficient control and flexibility to be competitive providers of inspection service with the introduction of the Official Commercial Inspection option.

There is no compelling administrative or financial reason to delegate mandatory export inspections to profit-making private inspection agencies. Reversion to such pre-1976 system would risk undermining the integrity of the now widely respected independent role played by FGIS.

FGIS standardization activities are becoming increasingly important to the future of the grain industry as grain buyers become more demanding of particle purity, soundness, and intrinsic quality characteristics. The benefits of standardization work are widely distributed throughout the grain industry, having the character of a public good that cannot be supplied on a user fee basis, and should continue to be funded through appropriations.

There are opportunities for FGIS to improve its operations and reduce costs that can be facilitated by granting the agency greater flexibility in charging fees for testing commercial inspection equipment and contracting with private providers of services.

This Federal Grain Inspection Service Reauthorization Act of 1993 will continue the activities of the U.S. Department of Agriculture's Federal Grain Inspection Service [FGIS] through September 30, 1999.

A number of amendments to the U.S. Grain Standards Act will enable FGIS to operate in a more efficient and cost-effective manner. In short, the proposed legislation will reauthorize FGIS for the next six years. FGIS will continue to receive appropriated funds to carry out compliance and standardization activities. FGIS will continue to be responsible for conducting or delegating to State inspection agencies mandatory inspections of all export grain. The cost of export inspections as well as the cost of supervising official inspection agencies will continue to be recovered through fees on the recipients of these services. The bill will propose several changes that give FGIS increased flexibility in dealing with the ups and downs of grain marketing. The bill will also give FGIS authority to provide fee-based testing services to the manufacturers and users of commercial grain inspection and weighing equipment.

Another mission of FGIS, and one that was given higher priority by the grain quality title of the 1990 farm bill, is to provide leadership in building incentives into the grain marketing system that will encourage all participants—from plant breeders, to farmers to country elevators, to shippers, to exporters—to meet the quality needs of end users. Not only does the U.S. grain industry have to compete in the world export market, it will increasingly have to compete with other countries in our own domestic market.

The grain industry is beginning to recognize that grain is not a bulk commodity. It is an industrial ingredient that must meet the quality specifications of different processors making different products. For this Nation's grain industry to compete in a global economy—and that includes here in our own domestic market—we need a grain marketing system that rewards quality, with quality defined by end-use value.

The front-page Wall Street Journal article titled, "Soaking 'Em" (July 1, 1993) amplified my concerns about, and focused the attention of probably everyone in the grain industry, on problems caused by the abusive addition of water to grain. Water systems are now used to control grain dust. Maybe this is an effective dust control technique that when done properly does not add weight or cause end-use quality problems. However, there is evidence that many foreign buyers find the practice unacceptable and insist that the inspection certificate attest that water has not been added. Furthermore, the opportunity to add weight in the name of dust control and sell water for the price of grain may be an irresistible temptation.

The abusive and illegal addition of water to grain, which is done for the fraudulent purpose of increasing its weight, cannot be tolerated. It is also my belief that the image created by telling the world's grain buyers that the United States waters its grain will seriously undermine the integrity of America's grain industry.

The FGIS reauthorization bill will impose a ban on the addition of water to grain. Such strong action appears to be the only way of preventing every grain handler, and possibly every farmer, from installing water-based dust control systems that raise the moisture level of grain up to the maximum contract limits. A ban is the only practical way to assure world grain markets that the United States is committed to exporting grain that has not been soaked with water.

Instead of banning the application of water, I would prefer a solution that is self-enforcing in the marketplace. It would be preferable to simply eliminate any potential financial gain that would result from adding water to increase weight. Pricing and contracting grain on the basis of its dry matter weight is exactly such a market-driven enforcement scheme. Maybe in the long run the marketing system will move to dry matter pricing. However, there is currently no indication of a shift in that direction and nothing to encourage the adoption of dry matter marketing.

Therefore, the bill will include another provision that might unobtrusively encourage the grain industry to always seek quality improvement. Specifically, the bill will require that official inspection certificates report the net weight of sound whole grain at a standardized moisture level. Net grain pricing would eliminate the opportunity to profit from increasing the weight of grain by adding water. But until the marketplace adopts net grain pricing or dry matter pricing, it will be necessary to enforce a ban on watering grain.

In summary, the FGIS reauthorization bill that I will introduce immediately after the August recess will: reauthorize FGIS through September 30, 1999; limits use of State agency inspection fees to only inspection activities; authorize pilot tests allowing official designated agencies to compete across territorial boundaries; authorize FGIS to test commercial inspection equipment on a fee basis; broaden FGIS's contract authority to carry out technical functions; make willful violations of the law felonies; authorize FGIS to offer small courtesies to foreign officials visiting FGIS research and laboratory facilities; ban the addition of water to grain in both domestic and export marketing; and, require the reporting of net whole sound grain on inspection certificates.

COMMUNICATIOINS SITE FEE INCREASE ISSUE

Mr. BURNS. Mr. President, I rise today in strong, unequivocal opposition to a provision in the reconciliation package which calls for an increase in the fees paid by broadcast and other telecommunications providers whose transmitters are located on Federal land.

As a former broadcaster and Member of the Senate who takes a personal, active interest in national telecommunications and information policy, I know first hand how rural communities in Western States heavily rely upon local radio and television broadcasting service and other wireless telecommunications services for vital, essential services.

Broadcasting service, for instance, is not merely entertainment. More importantly and critically, its local news, weather, public service, farming and ranching news, high school sports events, et cetera—all provided free to the public and vital to a community's proper functioning.

The best sites for broadcasting transmitters and other telecommunications antennas in Western States dominated by mountainous terrain are mountain tops which often are on Federal lands.

Mountain transmission ensures that broadcast and other telecommunications signals have clear reception. Broadcasters, in most cases, have no other choice but to build their towers on mountains in order to reach and serve their community of license.

These mountains are owned primarily by the Federal Government and managed either by the U.S. Forest Service or the BLM. At the same time, these sites are good for little other than communications towers or sheep grazing.

All sides recognize that increases in rental fees for these Federal sites are appropriate. But the agencies need to balance fair return for these rentals with a recognition of the vital, free public service provided by the broadcast site lessors.

That fairness and balance has been lacking to date in the proposed unfair, unjustifiably high increases by agencies. That is why Congress has blocked these increases for 4 years in a row, and why Congress established the advisory group to develop recommendations for a fair resolution of this issue.

The agencies have proposed increases which were out of line with local market place conditions. The agency proposed increases ranged from 1,000 to 8,000 percent over current rates in 1 year. We in Congress repeatedly refused to allow the agencies to enact these outrageous fee proposals.

The Advisory Committee was directed by Congress to establish a methodology for the Secretaries of Agriculture and Interior to establish fair market rental fees for radio and television broadcast uses on Federal land.

The committee consisted of 11 members appointed jointly by the Secretaries of Agriculture and Interior. Only 1—and I repeat, only 1—of the 11 members of the Advisory Committee represented broadcasters with sites on Federal land.

The agencies picked the committee members, directed the discussions, voted on every provision in the report and signed it. The recommendations in the report are the recommendations of the Forest Service and the BLM as well as the majority of the other committee members.

The recommendations of the Advisory Committee appear to me to be a fair, reasonable, and sound solution. I would remind my colleagues that the increases recommended by the Advisory Committee range from 200 to 900 percent. These new fee schedules will bring in roughly $9 to $10 million over a 5-year period, according to CBO.

The Advisory Committee recommends a fee schedule, which is much easier to implement than individual site appraisals. The schedule reflects the public service that these broadcast stations provide, and reflects appropriate distinctions between fees for radio and television stations. And, as noted, the schedule would provide for substantial increases in the moneys the Federal Government would receive from these sites.

I understand that both the industry representatives and the agency staff agreed upon these recommendations. It appears, however, that higher-ups at the agencies now believe that they can get even more money, and thus have rejected these recommendations.

It is tremendously disappointing—indeed, I consider it an outrage—that the agencies changed their position of support upon transmittal to the Congress.

After all, each of the meetings held by the Advisory Committee was public, announced in the Federal Register, and detailed minutes were kept of each meeting.

Congress should not support any agency proposal that merely seeks to raise the most money possible from these broadcasters and other telecommunications service providers, who are providing vital service to their local communities. The Advisory Committee recommendations are sound, and I believe that the Congress should codify them and put this contentious issue to rest.

The authorizing committees for these agencies need some time to work on legislation to codify the schedules recommended by the Advisory Committee. In the interim period, I believe it is necessary to place another moratorium on fee increases for the fiscal year 1994 bill to ensure that the agencies are not allowed to implement the fees they are currently proposing to be effective January 1, 1994.

These agencies have thwarted and ignored congressional intent and direction on this issue for nearly 5 years. By participating, directing, controlling and selecting the Advisory Committee and its agenda, signing off on its recommendations, and then reversing their position upon transmission to Congress, these agencies have brought the debate back to 1988.

We have made no progress. We have received absolutely no cooperation from the agencies. I strongly believe that we should hold them accountable for their actions. Until the Advisory Committee fee schedule can be authorized, these agencies do not deserve additional revenues or communications sites on their lands.

Finally, Mr. President, an effort was made to include the Advisory Committee fee schedule in the reconciliation package. In fact, Mr. President, the Senate Energy and Natural Resources Committee approved the Advisory Committee recommendations in the Senate version of reconciliation. Despite the support of a majority of the Natural Resources conferees, it was not included.

Therefore, Mr. President, it may be appropriate that we address this issue in the Interior appropriations bill. By placing a 1-year moratorium on any fee increases until an authorization bill can be introduced and makes its way through the legislative process we will ensure that these agencies no longer thwart the intent of Congress on this important issue.

FOOD STAMP TITLE IN RECONCILIATION BILL

Mr. LEAHY. The childhood hunger relief title of the reconciliation bill contains major provisions that help hungry families with children.

This bill aids needy families who often pay more than their incomes in rent and heating bills—and may have to choose between paying for shelter costs or eating.

A study by Boston City Hospital last winter found that emergency room visits by malnourished children increased 30 percent in the coldest winter months. When they followed up with parents they discovered the heat or eat dilemma.

Parents were making the decision to pay their winter fuel bills even thought it meant there was not enough money left to feed their families. According to Dr. Deborah Frank of the Boston City Hospital, "Parents know children will freeze before they starve. From a health point of view, the choices are intolerable."

This bill will mean that poor families on food stamps will no longer have to make such a choice.

By increasing the excess shelter deduction for the Food Stamp Program, the reconciliation bill would provide additional food stamps to families with especially high rent and utility bills.

One in five children in the United States are poor; and over half of food stamp recipients are children.

Fifty-eight percent of households receiving food stamps are so poor that their income is less than half the poverty line.

The changes in reconciliation are designed so that 85 percent of the benefits go to families with children.

We should not tell children to tighten to tighten their belts when they are wearing diapers.

In addition to helping children the bill also provides several incentives to encourage food stamp recipients to work or to hunt for work. For example, the bill requires that earned income tax credit payments, whether Federal or State, not be counted against food stamp benefits.

This food stamp title helps working families become self-sufficient—poor families deserve Government support as they try to make ends meet and work their way out of poverty.

The bill helps food stamp recipients to participate in the employment and training programs by raising reimbursements for child care costs.

Any person of food stamps who wants to work, and has the opportunity to work, should not be hindered because they cannot afford to pay for child care or transportation. We need to help them get off food stamps.

The bill also increases the fair market value of a vehicle which a food stamp recipient can own, eventually to $5,250. If families have to sell their car before they can get food stamps it will be difficult for them to find work, or keep a job, in rural areas. The $5,250 limit ensures that no one on food stamps has an expensive car, but that food stamp families can have a reliable car.

President Reagan's task force on food assistance recommended an increase in that exclusion to $5,500.

The bill provides for demonstration projects to allow food stamp recipients to save up to $10,000 for specific self-sufficiency goals such as starting their own business or saving to finance an education. The money could only be used for those purposes. This will help persons get off food stamps.

The bill encourages the payment of child support by excluding legally required child support payments from being counted as income for the purposes of food stamp eligibility and benefits. Now these payments are counted as income to the family that pays them, and to the family that receives them. This is not only unfair, it is a disincentive for absent fathers to pay child support.

We must remove current disincentives for absent parents to take respsonbility for their children—this bill will do that.

If you think $2.5 billion is too much to pay, over 5 years, to help hungry Americans, remember that each hungry child is an empty promise.

Remember that the increase in the bill are important since the average food stamp benefit is only 75 cents per meal, and millions of families run out of food stamps way before the end of the month.

American can afford to reduce hunger—and to reduce the deficit. Children are American's future.

This chapter in the reconciliation bill also makes other improvements in the program.

Mr. President, the Mickey Leland Childhood Hunger Relief Act, which is contained within this conference agreement, contains much to be proud of. It represents years of hard work by countless Members of this and the other body and embodies our conviction that investments in the health and well-being of our children will pay rich dividends in the years and decades to come. I appreciate that President Clinton sent a budget proposal to the Congress including the Mickey Leland provisions. I wish to note that on his last day a Member, the OMB Director Leon Panetta introduced the legislation that provided the core of the final package.

I was also pleased that last session the Senate Agriculture Committee reported out a version of the Mickey Leland bill, which I introduced, with only one dissenting vote.

The centerpiece of the bill is the removal of the cap on the excess shelter deduction. In the time since this cap was imposed in 1977, the supply of low-cost housing has fallen rapidly at the same time that the number of low-income households has risen to a level higher than even the worst recession year in the 1970's. Just paying the rent or mortgage has always been hard enough for many low-income families.

Now many families' ability to stay in their homes hangs in the balance each month on whether they can make a particular payment on a second or third mortgage, a bankruptcy plan, or a payment plan entered to reschedule their debts. With families in these circumstances, it makes no sense for the Food Stamp Program to assume that this money is available to buy food. Yet that is exactly what current rules do. By eliminating this arbitrary cap, we allow households to avoid having to choose between food and shelter, or between heating and eating.

As the conference report reiterates, the excess shelter expense deduction will only serve its intended purpose if it is administered in a way that complements, rather than undercuts, the purposes of other programs helping this population with housing expenses. A recent court decision declined to strike down a policy that denied the standard utility allowance to some households receiving energy assistance under a HUD program.

The Court urged the Secretary to find "an alternative to the incredibly and needlessly complex scheme we address herein, and/or to attempt to carry out the perceived congressional intent with a simplified set of regulations." It concluded that "anyone reading this opinion is bound to conclude there must be a better way." The conference report this year, as well as the conference report to the 1985 farm bill, makes clear that Congress never intended for the excess shelter deduction to be burdensome to administer or for the standard utility allowance to hinder, rather than help, program simplification.

We certainly never intended for the Food Stamp Program to undercut energy assistance programs operated by HUD or any other Federal, State, or local agency. Since this policy has never been published as uniform national regulations, the conferees hoped, as do I, that the Secretary will follow the Court's advice and find a better, simpler way that is more consistent with the purposes of both programs.

Although the primary impact of the resource exclusion for earned income tax credits is for recipients of the Federal credit, it should also apply to refunds that households receive because of a State EITC. Several States have State earned income credits based on the Federal earned income credit system. The bill uses the term "earned income tax credit" generically; it does not restrict this provision to the Federal EITC or cite the EITC sections of the Internal Revenue Code. The purpose of this provision is to avoid undercutting tax policies designed to reward work among low-income families by forcing them to spend refunds quickly to avoid exceeding food stamp resource rules. I am proud to say that Vermont is one of the States with such a State earned income credit.

The final bill excludes from food stamp resource calculations any vehicle that a household uses to carry fuel or water if that household lacks piped-in heating fuel or water. This provision, like others enacted over the last few years, is intended to ensure that a household is not denied food stamps for failing to dispose of a vehicle when it would be pointless or counterproductive to dispose of that vehicle. Heat is an obvious necessity, and it makes no sense to ask a household to sell a vehicle that helps it get coal, firewood, kerosene, or other heating fuel. This provision would apply both to households that live in communities unserved by gas or water pipes as well as to households that do not currently have gas or water service to their particular houses or apartments.

The bill includes a major revision of the food stamp household definition. This is intended in part to eliminate disincentives for low-income people to share housing to save on costs. The revised household definition in this legislation requires, among other things, that spouses be included in the same food stamp household. This language

has no application to adults who are not actually married. Persons living together who have not been married should be combined into the same household if, but only if, they customarily purchase and prepare food together.

The deduction for child support payments made to nonhousehold members is intended to supplement existing deductions and exclusions. Working households should still receive the earned income deduction on 20 percent of their gross earnings, and households with high shelter costs should still have the excess shelter deduction computed based on their income after all other deductions, including this one. Since the purpose of this amendment is to encourage absent parents to live up to the full extent of their child support obligations, the value of legally binding child support that is provided in-kind, such as payments of rent directly to the landlord would also be eligible for this deduction.

The prohibition on prorating of food assistance for households reapplying less than 1 month after being terminated from the program will correct a policy that has long been criticized by the General Accounting Office. It will make a difference in many circumstances: Where a household missed a deadline in the monthly reporting system or the recertification process or when a household member violates an employment and training requirement but the household has cured the violation or otherwise regained its eligibility.

It also applies to households terminated in one area and reapplying in another, as migrant farmworkers do and as homeless households and others may be expected to do. The 30 days would only start to run once the household had actually been terminated from the program. Time during which the household is only suspended, with the possibility of reinstatement, would not count toward the 30 days even if the household was not receiving benefits during that time.

This legislation contains two specific exclusions for vendor payments. This represents a recognition that vendor payments are be definition not available to the household as cash to spend on discretionary expenses. It is not intended to imply any limiting or narrowing construction of the existing exclusions in law for in-kind or vendor payment income. The exclusion for AFDC and general assistance vendor payments for transitional housing applies to any arrangements meeting the broad McKinney Act definition of transitional housing, whether or not the particular program receives funding under that act.

Agencies directing programs for the homeless, not the Food Stamp Program, should be the ones to decide what sort of housing programs are most appropriate. Also, the broader exclusion for general assistance vendor payments applies regardless of the name of the particular program: Whether it is called general assistance, general relief, home relief, or something else. If the program provides means-tested assistance for basic living expenses to poor households or individuals not covered by the Federal AFDC or SSI programs, and is funded entirely with State or local funds, it is covered by this provision.

The conference agreement allows the Secretary to the offset Federal pay to collect claims caused by households' errors. This device is appealing because it allows the collection of claims owed the Government without reducing the food resources of poor households. This device should, of course, be applied only when the household had been given clear notice of what the claim is, when it occurred, how it was calculated, and that the State will seek to recover it through a pay offset. A household's failure to respond to a general notice about the claim that does not specify how it will be recovered would be insufficient to establish the claim.

The bill also improves the Food Stamp Program's treatment of low-income families with children who are working or in education or training programs. As the conference report makes clear, the increased limits for dependent care deductions and reimbursements should be applied in a manner to minimize burden on States and households. Neither should be asked to track the care expenses for each individual dependent. Instead, a household should be assigned a single limit, based on the number of dependents under age 2 plus the number of older dependents, with a deduction or reimbursement allowed so long as the household's total dependent care expenses do not exceed that limit.

The final bill requires the Secretary to conduct demonstration projects allowing households to accumulate resources in excess of the program's normal limits. Secretary Espy expressed a strong interest in these empowerment programs that allow individuals to work their way out of poverty, to improve their circumstances or help their children. The bill limits the total number of households with assets that would otherwise disqualify them from the Program that may be allowed to participate. There is no limit on the number of otherwise eligible households that may reside in the areas in which these demonstrations are taking place, and the Secretary should strive to undertake these demonstrations in areas with as large a total number of participants as possible, consistent with the statutory language's limit on the number of otherwise ineligible households that may receive food stamps. These areas should include urban, suburban, and rural areas as well as diverse regions of the country.

This provision, recommended by Secretary Espy and Assistant Secretary Ellen Haas, is also modeled on a provision passed last year as part of H.R. 11 but vetoed by President Bush. Although this provision is intended only to allow households that have initially met food stamp income and resource criteria to accumulate resources, the Secretary has discretion to apply its provisions to households whose food stamp participation is interrupted for a few months. This would be fully consistent with the terms of H.R. 11, which served as a model for this provision. A change in program rules intended to encourage selfsufficiency should not create disincentives for recipients to take temporary jobs or jobs whose future is uncertain.

Also, for this resource exclusion to achieve its purpose, the exclusion would need to cover income that is generated by and added to the excluded resources which are accumulating. For example, interest that is accrued on a bank account excluded under the rules of the demonstration project would not count as income unless it is withdrawn and spent.

Finally, households that are legitimately accumulating resources for one of the designated purposes should not be denied benefits or terminated from the demonstration project because they are forced to expend some of their excluded savings for a family emergency such as preventing an eviction or utility shut-off.

Mr. President, I urge my distinguished colleagues to consider carefully the excellent features of the Leland bill provisions included here when they cast their votes on final passage of the conference report.

It is impossible to thank everyone involved in helping develop this legislation. I want to thank the Food Research and Action Center, their director Rob Fersh and their deputy director Ed Cooney for continuous and indispensable support for the Mickey Leland bill.

Also, Bob Greenstein and David Super of the Center on Budget and Policy Priorities provided data and analysis critical to our ability to craft a great bill.

Dr. Larry Brown of Tufts University, Jim Chapin and Bill Ayres of World Hunger Year, David Beckman of Bread for the World, Christina Vladimiroff of Second Harvest, and many others have been extremely helpful.

As always Julie Isaacs of CBO was very patient even though we asked her to estimate costs on a multitude of variations of provisions.

In my home State of Vermont, Commissioner Jane Kitchel provided very valuable input on how to design the legislation. She noted that removal of the excess shelter deduction cap, for

example, will help around 6,800 Vermont households. Also she pointed out that the provisions will foster the efforts of low-income Vermonters to help themselves through education and employment.

I especially need to thank Senator SASSER for leading the fight to include funding for childhood hunger initiatives in the budget resolution. Provisions from his antihunger legislation are included in this bill.

Mr. JEFFORDS. Mr. President, as the ranking minority member on the Subcommittee on Education, Arts and Humanities I wish to comment on the education provisions under the jurisdiction of the Labor and Human Resources Committee. I was also author of the amendment setting forth the percentage of participation requirements set forth below. Thus I wish to make my intent clear.

The reconciliation savings instruction to the Senate Committee on Labor and Human Resources was $4.6 billion over 5 years. The main assumption underlying the savings was a complete replacement of the current guaranteed student loan program by a direct loan program.

Direct lending would eliminate the current procedure of using private capital to finance student aid and instead replace it with a system whereby the Federal Government would provide both the capital for, and administration of the loan program. Such a shift was first proposed by President Clinton in his budget recommendations to Congress. Both the House and Senate's original reconciliation package included full immediate implementation of direct lending.

During Senate committee consideration the bill was altered to phase in only 50 percent of loan volume to direct lending while the other 50 percent would remain in the current system. Included in this new Senate version were also changes to streamline and cut excess costs in the current program. The House bill, however, remained committed to full 100 percent phase-in of direct lending over 5 years.

The conference report before us today includes a good portion of the Senate-passed bill. The agreement negotiated between the House Committee on Education and Labor and the Senate Labor and Human Resources Committee now provides that in the first year of implementation 5 percent of student loan volume will be shifted to direct lending, up to 40 percent in year 2, 50 percent in years 3 and 4 and 60 percent in year 5.

In the last 3 years, however, the conference agreement allows the Secretary to move beyond these caps if demand warrants. This provision was a fundamental part of the negotiated agreement but one that must be clearly understood. The intent is to limit the authority of the Secretary to mandate participation in the direct lending program to the percentages stated unless demand for the program exceeds those percentages. The Secretary first must accept all those that want to participate before he can order others to participate to meet the desired balance of institutions and the required percentage. If the number requesting participation still exceeds the stated percentage the Secretary may allow them to participate.

The agreement creates a finely balanced test between direct lending and the current student loan program. As such, it is important that there be enough loan volume in the direct lending program to test its effectiveness against the current program. Second, it is important that the loan portfolio being tested reflects the make up of the total loan portfolio of the student financial aid program nationwide. That means that students attending Ivy League institutions as well as those that attend for-profit proprietary institutions be included in the test in a balanced fashion. To this end, the Secretary has the authority to mandate that institutions of higher education participate in the direct loan demonstration project—both to achieve the necessary goals of the loan volume suggested in the legislation as well as to ensure that the institutions that participate represent a broad and diverse group of institutions. Thus if the additional institutions requesting and receiving participation over the set percentage present an unbalanced situation the Secretary should have the authority to require institutions to participate to provide the balance to have a legitimate test. It should be noted that since the admission of additional institutions is discretionary that authority could be used to attain the required balance.

In the third and fourth years if the starting percentage exceeds the stated percentage because of demand the Secretary may allow additional participants consistent with the above described intent. In summary if demand for participation for the direct lending program is growing it should be allowed to occur consistent with the intent to allow a fair comparison. On the other hand, the Secretary should not have the power to create artificial demand by use of the authority to require institutions to join except to meet the percentages set forth in the bill.

For those of us who wish to see a true demonstration between the two programs, it is imperative that there be no misunderstanding concerning the Secretary's authority to require institutional participation. In 4 years, this body will be asked to review the student loan program in relation to the direct loan program. To be able to make a thorough judgment and comprehensive review it is important that the direct lending demonstration be as fair as possible. Ensuring that the Secretary not take advantage of his or her authority to force institutions into direct lending is an important aspect of safeguarding this demonstration from impropriety.

I am pleased with the final agreement reached by the House and Senate on this provision. The compromise allows for a slow, thoughtful implementation of a new loan delivery system. It provides for a time frame to evaluate each loan delivery system to determine their effectiveness, costs and facility. Furthermore, the compromise provides critical benefits to students in the current loan program.

It lowers the interest rate on student loans during the in-school, grace, and deferment periods from the 91-day T-bill plus 3.1 percent to the 91-day T-bill plus 2.5 percent starting July 1995. It also lowers the origination fee charged to students and parents as well as reduce the maximum interest rate caps for all loans. Furthermore, it simplifies the loan program by merging two separate loan programs into one but keeps the combined maximum loan amounts which a student would have received under both loan programs the same.

I support the compromise because I believe that direct lending may be the best way to finance and administer student loans. However, I do not believe that it is wise to move to full implementation of direct lending without properly testing the implications for students and institutions,. This year alone over 7 million students relied on the student loan program—without a cautious approach, we risk disrupting the whole system and placing these students in jeopardy of losing access to financial aid.

For these reasons I fought during conference for a slower more cautious approach to direct lending. I believe that we have succeeded in our efforts to keep a viable loan option for students available through the current student loan program while, at the same time, we test the direct lending.

Mr. BIDEN. Mr. President, the debate on this deficit reduction plan has been usually long and heated. My vote for this program is not given lightly, or without serious reflection.

If I had designed a deficit reduction plan, I would have done it differently. Specifically, I want more spending cuts and, with those savings, a higher priority for investments in our economy. I will continue to work for those goals. But the choice before us is the plan that has come out of the House-Senate conference or no plan at all.

We have already wasted 12 years debating how we should attack the deficit, while the Federal debt has continued to grow. Some of my colleagues now suggest that we write off the months of hard work that have gone into the current package and go back to square 1.

Will the hard choices be any easier next week? Next month? Those who argue for more delay and more debate are like those who vow to start their diets—next week.

Bad habits are hard to break, Mr. President. We have become addicted to borrowing for the regular operations of our Federal Government. There is no painless way to break this habit. But I believe this budget package—like all things in this imperfect world, it is less than ideal legislation—will be an important step in the process of putting our Federal finances in order.

Before I decided to give my support to this package, I wanted answers to three essential questions: Will it reduce the deficit, will it be fair, and will it contribute to the real goal of budget policy, economic growth? Let me briefly answer each of those questions now.

Will this plan reduce the Federal deficit? Well, Mr. President, Alan Greenspan, Chairman of the Federal Reserve Board—first appointed by President Reagan and certainly no cheerleader for the current administration—tells us that this is a plan with realistic economic assumptions, the foundation of any budget plan. No rosy scenario, no wishful thinking is needed to achieve the goals of the plan. Compared to the blue chip survey of private economists, this plan is based on conservative estimates of how well the economy will be doing over the next 5 years.

Given these assumptions, the plan calls for a mix or revenues and spending that will result in $496 billion less Federal debt than we will have if we fail to act. Counting by the same rules used in past budgetmaking—including budgets supported by Republicans who now oppose this plan—there is a mix of more than $1 of spending cuts to $1 of tax increases.

We can debate in the abstract if this is enough; but the political reality—demonstrated clearly in the tough fights in Congress over the past 12 years—is that this is about as far as we can go this year and still find the votes we need to enact deficit reduction. The roughly $500 billion goal is also endorsed by Federal Reserve Chairman Greenspan as big enough to assure our financial industry that the Government is serious about deficit control.

At the same time, with economic growth and job creation still far behind other recoveries, simply driving the deficit down to zero for its own sake—slamming on the budget brakes with no thought of the effect on the economy—would be irresponsible. The plan's overall deficit reduction is a prudent mix of what is politically possible and economically desirable.

It took us years of financial mismanagement to get into this mess. President Clinton's first budget is only one step in what will have to be a long process to restore balance to our finances.

Now, some attack this plan because, even with it, we will still have deficits; this is true Mr. President, but what will happen if we do nothing?

If we fail to act, the deficit will be $47 billion more this year, $76 billion more in 1995, $98 billion more in 1996, $127 billion more in 1997, and $148 billion in 1998. That is what we will face if the opponents of this plan have their way.

If the deficit reduction numbers are realistic and substantial, Mr. President, is the plan fair? This is the question that has been subject to the greatest amount of distortion by the program's opponents.

Let's talk first about income taxes. Fully 100 percent of income taxes in this plan will be paid by those with family incomes over $180,000. Let me put this another way, Mr. President: those with family incomes of less than $180,000 will not pay a cent more in additional income taxes. That's right: despite fear spread by the misleading attacks of the opponents of this plan, the simple fact is that families who make less than $180,000 a year in gross income won't pay a cent more in income taxes.

Mr. President, only the top 1 percent of taxpayers will be subject to this increase in income taxes. The outcry we have heard—an outcry to proect 1 percent of taxpayers—has caused genuine fear among many of our citizens who have, unfortunately, trusted the opponents of the plan.

It is true, whatever their income, Americans will pay an additional gasoline tax of 4.3 cents a gallon. For the average American who drives 12,000 miles a year, that will mean $27 in additional gas tax a year, little more than $2 a month.

This plan is not an attack on those who have been successful in our free enterprise economy. The income tax changes—that affect only those with family incomes above $180,000 income, will only restore some of the balance lost in the last decade, when middle-class taxes went up while the tax burden on the wealthiest among us actually declined. This plan asks those who have benefited most during the period of spiralling deficits to contribute their share to brining the budget under control.

This tax increase will not affect the standard of living of those taxpayers. An analysis by PaineWebber—a private business analysis, not partisan or even government estimates—concludes first, that only 1 percent of taxpayers will be subject to increased income taxes; and second, quoting from that analysis: "since most of these generally earn much more than they spend, concern about a severe dampening effect on consumption appears misplaced." That is, those affected will still ample money to spend.

Over the last decade and more, Mr. President, the American middle class has already shouldered extra tax increases, while taxes on that top 1 percent were cut.

I do not want more taxes on anyone, but I know—because they have told us in poll after poll, that Americans are willing to pay a fair share to get real deficit reduction. With this plan, they will get something for their hard-earned tax dollars.

But even in the short run, deficit reduction is not all sacrifice—lower interest rates are one of the tangible rewards. Middle-class taxpayers who make about $40,000 a year and have refinanced a $100,000 mortgage down from 10 percent to 7.5 percent in recent months will be saving $175 a month compared to the additional $2 they will pay gas tax.

Interest payments on cars, appliances, and other major purchases will also come down with a credible deficit reduction package. These benefits far outweigh the few dollars a month increase in the gasoline tax.

And if we do not pass this plan, who thinks that interest rates will not go back up again, wiping out the gains we have made so far, and effectively cutting the paychecks of every American who pays interest on a loan.

If the wealthiest and the middle class contribute to deficit reduction according to their ability to pay, what of the working poor? Under this plan, a family of four earning less than $25,000 will pay, along with everyone else, a little more for gasoline, but, Mr. President, they are also eligible for a tax break.

Through the earned income tax credit, low-income working families with children will receive a tax break. Their tax credit—for holding a minimum wage job and staying off of welfare—can mean as much as $3,750 for a family of four with full time minimum wage earnings. This is the best kind of social policy—it supports families and rewards work.

Mr. President, I know that many Social Security recipients are concerned about the increased amount of their benefits that will be subject to taxation. I said when it was first proposed that this part of the plan was my greatest concern. In the Senate, I voted to reduce the number of Social Security recipients affected by this provision. I am pleased to see that the final version goes a long way toward the goals I sought in my Senate votes. Under this version, seven out of eight recipients would be unaffected by the changes in this plan.

I would prefer that Social Security recipients—and all other Americans, for that matter—could be spared increased taxes. But it should be stressed, Mr. President, that those who do not pay taxes on Social Security benefits now will not pay any additional taxes under this plan. Because of all the false information and genuine concern surrounding this provision, let

me say that again, Mr. President: If you are not paying taxes on your Social Security benefits now, you will pay no new taxes when this plan becomes law.

The money collected from this increase will stay within the Social Security system, to help the Medicare system, insuring that it will continue to be there for those who need it. Those who pay the taxes will be those who make use of the program. I think that meets the test of fairness.

Let's look at the impact on small businesses, the real job generators in our economy. Will they, as some have claimed, be stifled by the plan? Again, Mr. President, contrary to a well-orchestrated propaganda campaign, this plan guarantees that 96 percent of small businesses will pay no additional income tax.

Unless you are a small business person who makes more than $180,000, this plan will not change your income tax bill at all. Only a few small businesses—little more than 4 percent of the total—will pay any increased income tax. Ninety-six percent of small business make less that this, and will pay no additional taxes under this plan. For those who will, their tax increase will be based on their ability to pay, a principle based on both fairness and efficiency.

The plan provides investment incentives for over 90 percent of small businesses—not as much as I wanted and voted for in the Senate, but still considerable—to compensate those small businesses who will pay more in taxes. They will have capital gains relief, increased tax writeoffs for new equipment investments, self-employed health insurance deduction, and other benefits to keep our small business sector growing.

And given the recent credit crunch that affected the small business sector so directly, lower interest rates that will result from passage of this bill will be of particular help to them.

Finally, will this deficit reduction program meet the real test of budget policy—will it help the economy? Let me begin to answer that question with another—what will happen if we do nothing, if we put off to some uncertain future the hard choices we will not face today?

If we fail to act, the deficit will only get worse. The price of inaction will be an additional debt of $496 billion over the next 5 years. Every additional dollar borrowed by the Government is a burden on us today, shrinking the resources we need for current investment. And it will be a burden on the future of our children, who will have to pay off those debts.

Around the country, the lower interest rates we have enjoyed have helped to sustain the fragile recovery from the last recession. Now, I won't claim the only reason for lower interest rates is the anticipation of the deficit reduction plan. But it is clear that the financial markets that set those rates are confident that this plan will reduce the Federal borrowing that kept rates so high in the recent past.

Federal Reserve Chairman Greenspan warned Congress recently that failure to pass this plan will cause interest rates to rise, threatening to choke off recovery altogether.

To conclude, Mr. President, this plan will be good for our country. To earn its benefits, we will require no sacrifice from those with incomes below $30,000, very little sacrifice—only the 4.3 cent gas tax—from working families with incomes up to $180,000, and reasonable contributions from those most able to afford it. In return, our country will get real deficit reduction, based on honest economic projections.

We will put our country on a sound footing to take further steps to cut spending and increase investments for the future. This is a positive step to put our financial house in order.

This plan has required months of tough political negotiating. Our choices are clear. We can either face up to the need for a real change in policy or we can stick with the drift, the denial, and the indecision that have brought us to our current sorry state of affairs.

And we should not think that there is some easy, apparent alternative that we have overlooked, an alternative that a new round of debate and delay will reveal to us. Mr. President, it is hard to believe that at this late date there are those who are still calling for more talk instead of the action this plan provides.

Let us look at the alternative offered by the Republicans during our debate earlier this summer. To hear them tell it, their plan will cut spending and reduce the deficit more than the plan before us today. The reality is quite different from their claims.

First, their plan uses every one of the substantial spending cuts in the President's plan, the very cuts they claim are not there. They count as spending cuts the same things they denounce as gimmicks in the President's plan. The only real cuts they make are the ones that the President's plan has already committed to. On top of that, they promise that in the future, after 5 years, they will find unspecified cuts in entitlement programs. Then they complain that the President's plan has spending cuts that phase in over future years.

This transparently political plan—despite all the misinformation that has accompanied it—fails to make any hard choices, and still leaves the deficit $135 billion higher than the President's plan.

I am not happy with this vote. I wish there were a painless way out of the bad habits of the past 12 years. But I would be less happy if I ducked my responsibility and failed to face the need for action now. The tight votes, heated debates, and special interest pleading against this plan are all the evidence we need that while this may not be the best plan we can imagine, this is the best plan we will get. The time has come to take the first steps down a new path—a path that some are too timid to explore—the path away from the status quo and toward fiscal sanity.

STUDENT LOAN PROVISIONS

Mr. SIMON. Mr. President, an important part of this budget bill is a radical change in Federal student aid programs that will benefit anyone who has a student loan, anyone who is in college, and anyone who plans or hopes to go to college in the future. At the same time, President Clinton's reforms to the student loan program will save taxpayers more than $4 billion, part of the nearly half-trillion dollars in deficit reduction that the legislation will bring.

These changes faced strong special interest opposition, and would not have been included in this package without the leadership and courage that President Clinton showed in taking on this issue.

At the heart of the new program is President Clinton's promise to allow students to pay off their loans as a percentage of income, so that no one is prevented from serving the country as a teacher, rural health worker, or other valuable yet lower-paying profession.

Under the legislation that we will vote on today:

Over the next 5 years, the current, complex, bank-based student loan program will be replaced with a more streamlined system. By 1997, at least half of all colleges will be in the new system, and their students will have the option of income-contingent repayment of their loans.

Anyone who currently has a loan and cannot get income-contingent repayment from his or her lender will be able to convert the loan to the new system.

Fees that students pay on their loans are cut by as much as half, from the current high of 8 percent, to just 4 percent.

The interest rates on the loans are reduced during the in-school period starting in 1995, and are cut for the entire loan period beginning in 1998.

These changes benefit students, reduce costs to taxpayers, and simplify the process for colleges.

Yet, Mr. President, these reforms came close to failing due to a multimillion-dollar lobbying campaign by banks and other middlemen in the current student loan system. Over the next year or two, as we consider Vice President GORE's proposals to "reinvent government," we must keep in mind that these kinds of efforts will be fought strenuously.

On this particular issue, the special interests used virtually every available

lobbying tactic to undermine President Clinton's proposal: direct and indirect lobbying, grassroots scare tactics, front groups, and even studies by hired guns.

And while we have made remarkable progress despite the opposition, in one sense the real winners were the lobbyists: by not adopting the plan for a full phase-in of direct lending over the next 5 years, we have maintained a reason for those who profit from the status quo to continue paying the lobbyists to seek a reversal of policy in the future. We must be vigilant in tracking and countering that effort.

Mr. President, I would like to review the litany of lobbying that this issue has brought:

Direct lobbying: Sallie Mae, the banks, guaranty agencies and other secondary markets hired no less than seven of the top lobbying firms in Washington. More than anything else, these firms provide access to lawmakers. Some of these lobbyists have access because they are friends of ours; many of them used to hold important Government positions, a number of them advise their clients on campaign contributions.

Of course, none of these lobbyists are so crass as to threaten to withhold either friendship or campaign help because of a vote. Instead, they use their access to make arguments which, though biased due to the source, still seem compelling. For example, on this issue, many of my colleagues had never heard of direct lending until a lobbyist and friend brought it up and asked rhetorically, "Do we really want the Education Department to take over student loans from the private sector? What many of my colleagues did not realize, and some may still not understand, is that the current student loan program is not a private sector program at all. Instead, it is a program in which the colleges do most of the work, the taxpayers take nearly all of the risk, and the lenders get all of the profits. The Federal Government already oversees every aspect of the student loan program, including the collection of payments by banks. Direct lending is not a takeover, it is an effort to assert better control over a program that is already fully our responsibility.

But after a lobbyist has created doubt in a lawmaker's mind, it is that much more difficult to correct the misunderstanding.

Indirect lobbying: Probably more effective than the paid lobbyists are the powerful constituents who call, write and visit an elected official. Because of the links that guaranty agencies have with State governments, it was not unusual for a Governor or members of the State legislature to weigh in against direct lending. In other cases, guaranty agencies would have members of their boards visit with lawmakers. In my State, a college president forwarded me information about direct lending that had been prepared by Sallie Mae. It turns out that a vice president of that college also serves on the board of Sallie Mae.

Grassroots scare tactics: Guaranty agencies asked college presidents to send letters and make phone calls opposing direct lending. Sallie Mae sent at least two letters to college presidents claiming that direct lending would lead to all kinds of horrors. They even sent teams to campuses to analyze how direct lending would cost them. Fortunately, higher education groups did their own analyses and concluded otherwise. But many individual colleges were scared, and fear and uncertainty is enough to get someone to write a letter.

Hundreds of financial aid officers around the country signed on to a letter, distributed by Sallie Mae and others, suggesting that direct lending could take away from funding of Pell grants and other Federal aid programs. Of course, the opposite is true, since direct lending saves money. But by raising the question, the special interests were able to create fear and uncertainty and another signature on the letter.

Front groups: My colleagues may have heard of the group operating out of the offices of an Ohio lender, calling itself Ohio Students for Loan Reform. The group had a toll-free number, slick advertisements, and posters, all suggesting that direct lending could increase tuition and prevent someone from graduating from college. It was preposterous, but again, in defending the status quo it is enough to create fear and uncertainty.

One of the most active groups in Washington, hiring lobbyists and making contact with the media, was called the Coalition for Student Loan Reform. It is actually a group of guaranty agencies and their related secondary markets.

Studies. Opponents of direct lending also fell back on a time-honored special interest tradition made famous by the tobacco lobby: when they do not like the facts, they buy their own. Instead of just making their arguments themselves, opponents often cited studies by supposedly disinterested parties. But in most cases, there turned out to be a direct financial tie. For example, a report by a former Congressional Budget Office Director was paid for by guaranty agencies through the Coalition for Student Loan Reform. Another study, and an op-ed, by a "former senior staff economist for the Council of Economic Advisors" was paid for by an Indiana-based guaranty agency called USA Funds. Even one of the Congressional Research Service's reports was mainly a summary of the former CBO Director's study.

In contrast, studies by the U.S. General Accounting Office and the inspector general conclude that the current student loan system is riddled with conflicts of interests, perverse incentives, and unnecessary complexity.

Mr. President, given the lobbying effort against direct loans, it is remarkable that we were able to achieve as much as we did in this legislation. I support this compromise to move to at least 50 percent direct lending prior to the next reauthorization of the Higher Education Act because I am confident that direct lending will prove itself over time. But I am also aware that by maintaining the current system, there is a strong incentive for the same entities that have spent millions over the past several months to continue in the effort to sabotage reform. Officials at the Department of Education warned us of this danger. We must work to ensure that this does not occur. And if it does occur, we must expose it and act to counter it.

Mr. President, we have made great progress. This could not have happened without the strong leadership on this issue by President Clinton, and by the chairmen of the two relevant committees, Representative BILL FORD of Michigan and Senator EDWARD M. KENNEDY. Also battling long and hard on this issue, and deserving of much of the credit, were my colleague from Minnesota, Mr. DURENBERGER, the ranking member of the House Postsecondary Education Subcommittee, Mr. PETRI, and Representative ROB ANDREWS of New Jersey.

### EMPOWERMENT ZONE DIRECT SPENDING IN BUDGET

Mr. BRADLEY. Mr. President, I rise to speak briefly about one provision of this bill which has received little attention but that will make an immediate, positive difference in people's lives. In this budget, for the first time, we are finally singling out the urban areas of deepest economic despair for special attention. Barely a year ago, every American had a chance to see what has happened to our cities when we saw Los Angeles explode in disorder across our television screens. And then there was a parade of people saying it was time to do something. And nothing happened.

So now it's time to combine some old ideas that have never really been tried, and some programs that really work, and some new ideas that I have developed, and combine them into a politics of conversion for our cities. This legislation would establish 9 empowerment zones in urban and rural areas, and 95 enterprise communities. Both would be eligible for generous tax benefits and spending.

This is a big improvement on the bill passed by the House, which offered only tax incentives, 5.3 billion dollars' worth. Tax incentives are one part of the politics of conversion, but they cannot be the only solution. Tax incentives cannot restore meaning to life

where there is no community. Community means the chance to build a better future with savings and capital for economic growth. It means safe streets and comfortable public spaces, education and skills, and strong families. People who share goals and a common effort have a purpose in life.

Earlier this year, I introduced the urban community building initiative, a package of eight bills that provide tools to those who are committed to building community for themselves. The ideas come from the streets and community-based organizations where creative individuals have been developing these tools for themselves during 12 long years of neglect and insult by Washington. From the moment I introduced that bill, it began to draw bipartisan support and interest from my colleagues here and in the House of Representatives. I am very pleased that this initiative laid the groundwork for the significant improvement on the empowerment zone proposal which was developed in recent months, with invaluable help from Senators RIEGLE and KENNEDY, and Congressman RANGEL.

In this conference report, we give back more than half of the originally proposed tax incentives, and then convert just $1 billion of those savings to direct social investment. It takes the form of a targeted increase in the social services block grant by $500 million a year for 1994 and 1995. Each of six large urban empowerment zones would get $50 million a year; the remainder would be shared among rural zones and the smaller enterprise communities.

Zones and communities would have to develop a comprehensive plan, with cooperation among State and local government and community organizations, for use of the funds. The new funds can be used for seven purposes, most based on the proposals in my urban community-building initiative:

Residential early intervention programs for mothers and infants to provide comprehensive services through the first year of the child's life, including substance abuse counseling, primary and preventive health care, and cognitive stimulation.

Programs to train and employ disadvantaged youth in light repair of public facilities that benefit the zone, particularly by matching private sector investments in such projects.

Grants to community organizations and community colleges to train zone residents in business skills for entrepreneurship and self-employment.

To keep schools open after hours for mentoring programs, or safe havens.

Programs to help zone residents enter the work force, including job counseling and transportation programs such as my mobility for work initiative.

Emergency and transitional housing for poor families.

Programs that match families' savings to help them develop assets for homeownership or education, based on my individual development account proposal.

Empowerment zones may request a waiver to use these funds for other services developed at the local level that serve similar purposes.

The social services block grant was established in 1981 as title XX of the Social Security Act, to provide flexible funds for states to use to promote self-sufficiency and protect families. It is a mandatory appropriation in the jurisdiction of the Finance and Ways and Means Committees, and for the last 6 years, spending has been capped at $2.8 billion a year. The additional $500 million a year provided for empowerment zones marks the first attempt to target these funds to the neediest communities or to the most effective and innovative services.

With this balanced program, we finally pull it all together. Empowerment zones that combine some tax incentives with these new tools will create a climate that is not only healthy for business, but healthy for families, kids, and schools.

Mr. DECONCINI. Mr. President, I rise once more to raise a human rights issue that we had earlier thought would become a relic of the cold war. I am referring to the continued existence of state secrecy refuseniks in Russia. Despite the fact that most persons who wish to leave Russia are able to obtain exit visas, there are still an estimated 150 refusenik families in Russia.

Occasionally, human rights activists and Members of the Congress are taken to task for raising cases that are no longer active. Well, let us take a look at two very active cases, both of which are from St. Petersburg.

Yuri Rubinov worked at the Vavilov Optical Institute from 1970 until 1991 when he resigned. In July of that year he was refused permission to emigrate supposedly because he possesses state secrets. His last refusal was in June 1993.

Now, as we know, former secret facilities in Russia have been opening up all over the country. Hardly a week goes by without a newspaper account of the latest visit by Western journalists to some formerly closed city or Russian television reporting from some heretofore secret base in Russia.

So what has been happening with the formerly secret Vavilov Optical Institute? Well, according to the Center for Human Rights Advocacy in Denver, the Vavilov Institute now has business ties with Corning, Inc., Lawrence Livermore National Laboratory, and Lockhead. Moreover, according to the Center, Corning has hired approximately 115 scientists and technicians, and some of these researchers visited the Corning labs in 1992. In fact, the deputy chief of Mr. Rubinov's department and the laboratory chief have made trips to the United States, Japan, China, and Germany. So obviously some of the folks from Vavilov have been able to travel abroad, but not Mr. Rubinov.

A similar case is that of Dmitri Pevzner, a former employee of the Ravenstvo firm. Mr. Pevzner applied for an exit visa in June 1991, was refused, and has filed for reconsideration every 6 months, as stipulated by law. He has been refused each time on the grounds of secrecy. According to Pevzner, the assistant director of the Ravenstvo plant told him that he would be able to leave when the new law on entry and exit was passed, since his so-called secrets had been overtaken by events. Well, January 1993 has passed and Dmitri Pevzner is still in St. Petersburg. Incidentally, a colleague of his who worked with the same equipment emigrated to California in February.

What, then, does all this tell us about the validity of these secrecy claims? It tells us that they are entirely unsubstantiated. It tells us that there are discrimination and favoritism being perpetuated in these institutions. It tells us that Russia is lax in enforcing its commitment to the CSCE process and to human rights.

Mr. Pevzner and Mr. Rubinov both have spouses and family members in the United States. They should be allowed to join them as soon as possible.

Mr. President, the Russian Government frequently claims that it wants to enter into business partnership with the West. I am all for that. But at what cost? If Russia wants to reap the benefits of international trade with the West and move toward a democratic society and market-oriented society it cannot continue to violate the human rights of its citizens. It is time to end the institution of refusal.

REVIEW OF INTELLIGENCE SPENDING

Mr. MOYNIHAN. Mr. President, last evening it was stated by both the Speaker of the House, THOMAS S. FOLEY, and the majority leader of the House, RICHARD A. GEPHARDT, having regard for the House vote on the bill before us today that it is clearly understood that this is the beginning, not the middle or the end of the process of increasing spending cuts to bring the deficit down.

Similar remarks have been made on the Senate floor today. Senator WOFFORD, for example, reported that just this afternoon he had met with President Clinton to discuss some $58 billion, as I recall, in cuts—specific cuts—which he has in mind.

I rise for the purpose of stating and recording that in conversation with the Honorable Anthony Lake, National Security Adviser to the President, I was authorized to state that these deliberations and discussions will extend to the

size and direction of the intelligence budget. This budget is, of course, secret. A matter of clear unconstitutionality. It is, however, no secret that even as we are making the cuts included in our reconciliation bill, and contemplating more such cuts, the administration has been proposing to increase the intelligence budget. This was first revealed by the New York Times on April 15—a not inappropriate date.

I have spoken with President Clinton a number of times in this regard. Most recently just yesterday. The record of the intelligence community in altogether missing the breakup of the Soviet Union and the consequent end of the cold war has produced a crisis of confidence—not to mention the fiscal crisis to which I referred in my remarks earlier today. This crisis of confidence must be addressed, and I can now report to the Senate that it will be addressed.

I would hope this will be a public debate. But cold war habits die hard, and monumental mistakes are most easily concealed under the guise of national security. Even so, it is a large event that the President has agreed to this enquiry and debate. I believe this is the first time any President has done so since the National Security Act of 1947. It is about time.

I speak with no animus. I speak as a proud recipient of the Seal Medallion of the Central Intelligence Agency and sometime vice chairman of the Senate Select Committee on Intelligence. In the interests of the intelligence community, the time has come for this review. The community budget reportedly doubled in the 1980's. It is legitimate to ask whether that improved the quality of our intelligence—clearly it did not—or worsened it through extravagance and redundance.

TARGETED CAPITAL GAINS

Mr. BUMPERS. Mr. President, I am very pleased that the targeted capital gains legislation that I have been the principal sponsor and author of for several years has been included in the final version of the deficit reduction/tax bill we are considering today. I am grateful for the wide support this legislation has received in the Senate, particularly from my numerous cosponsors.

Of course, the bill now needs to be implemented properly, and I wanted to take this opportunity to comment and interpret several issues in the final version of the bill, illuminating the underlying intent. I speak from my perspective as the originator of this legislation and as its principal Senate supporter.

Concerning section 13113 of the Omnibus Budget Reconciliation Act of 1993, which establishes a 50-percent exclusion for gain from certain small business stock, I want to comment on three aspects of this provision regarding its intent:

*Redemptions by issuing corporation.* If taxpayer acquires stock that otherwise would be qualified small business stock, and the corporation issuing that stock purchases (directly or indirectly) any of its stock from that taxpayer or a related person within the 4-year period beginning on the date 2 years before the issuance of the stock held by the taxpayer, such stock will not be treated as qualified small business stock. In addition, stock issued by a corporation will not be treated as qualified small business stock if, during the 2-year period beginning on the date 1 year before the issuance of such stock, the corporation made 1 or more purchases of its stock with an aggregate value (determined as of the date of the respective purchases) exceeding 5 percent of the value of all of its stock as of the beginning of such 2-year period. If a transaction is treated under section 304(a) as a distribution in redemption of the stock of any corporation, such corporation shall be treated as purchasing an amount of its stock equal to the amount treated as such a distribution. For these purposes, it is intended that a purchase will not include an exchange of stock for stock, a conversion of preferred stock or convertible debt into common stock, or a redemption treated under section 302 as a dividend under section 301.

*Active business requirement: treatment of subsidiaries.* In determining whether a corporation satisfies the active business requirement, stock and debt in any subsidiary corporation are disregarded, and the parent corporation is deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities. For this purpose, a corporation will be considered a subsidiary if the parent owns more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent in value, of such corporation. It is intended that, for this purpose, a parent corporation's ratable share of any subsidiary's assets and activities shall be equal to the parent corporation's share of the total combined voting power of all classes of stock of the subsidiary entitled to vote.

*Working capital.* For purposes of the active business requirement, any assets which are held as part of the reasonably required working capital needs of a qualified trade or business of the corporation, or are held for investment and are reasonably expected to be used within 2 years to finance research and experimentation or increases in working capital needs of a qualified trade or business, shall be treated as used in the active conduct of the trade or business. For periods after the corporation has been in existence for more than 2 years, however, no more than 50 percent of the assets of the corporation may qualify as used in the active conduct of a qualified trade or business by reason of the working capital exception. In determining whether assets are reasonably required for working capital, it is anticipated that regulations will incorporate standards similar to those articulated in *Bardahl Mfg. Corp.* v. *Comm'r*, 24 TCM 1030 (1965).

ESTABLISHING A TARGETED CAPITAL GAINS APPROACH FOR CERTAIN SMALL BUSINESSES

Mr. LIEBERMAN. Mr. President, I have been pleased to join my colleague Senator DALE BUMPERS of Arkansas as a principal advocate for the past several years of legislation creating a capital investment incentive for small business.

As a leading cosponsor of this legislation, I am very pleased that this provisions has now been included in the final version of H.R. 2264, the Budget Reconciliation Act, as section 13113, a 50-percent exclusion for gain from certain small business stock.

At this time, it is appropriate to clarify the intent of four aspects of section 13113: redemptions by issuing corporations; treatment of passthrough entities; active business requirement related to treatment of subsidiaries; and working capital. These provisions are interpreted below and will help assure the legislation's successful and proper implementation.

Senator BUMPERS has also placed this language regarding legislative intent in the RECORD, and by inserting this I join him in his interpretation. In addition to the language he has put in the RECORD, I have included language on passthrough entities.

*Redemptions by issuing corporation.* If taxpayer acquires stock that otherwise would be qualified small business stock, and the corporation issuing that stock purchases (directly or indirectly) any of its stock from that taxpayer or a related person within the 4-year period beginning on the date 2 years before the issuance of the stock held by the taxpayer, such stock will not be treated as qualified small business stock. In addition, stock issued by a corporation will not be treated as qualified small business stock if, during the 2-year period beginning on the date 1 year before the issuance of such stock, the corporation made 1 or more purchases of its stock with an aggregate value (determined as of the date of the respective purchases) exceeding 5 percent of the value of all of its stock as of the beginning of such 2-year period. If a transaction is treated under section 304(a) as a distribution in redemption of the stock of any corporation, such corporation shall be treated as purchasing an amount of its stock equal to the amount treated as such a distribution. For these purposes, it is intended that a purchase will not include an exchange of stock for stock, a conversion of preferred stock or convertible debt into common stock, or a redemption treated under section 302 as a dividend under section 301.

*Treatment of Pass-Thru Entities.* If any amount is included in gross income by reason of holding an interest in a pass-thru entity, such amount is attributable to gain on the sale or exchange by the pass-thru entity of stock which is qualified small business stock in the hands of such entity (determined by treating such entity as an individual) and which was held by such entity for more than 5 years, and such amount is includable in the gross income of the taxpayer by reason of holding an interest in such entity on the date that such pass-thru entity acquired such stock and at all times thereafter before the disposition of such stock by such pass-thru entity, then such amount will be treated as gain from the disposition of such qualified small business stock and the taxpayer's proportionate share of the adjusted basis of the pass-thru entity in such qualified small business stock shall be taken into account. However, the amount taken into account in determining the taxpayer's excludible gain shall not exceed an amount determined with reference to the interest the taxpayer held in the pass-thru entity on the date the qualified small business stock was acquired. "Pass-thru entity" means any

partnership, S corporation, regulated investment company or common trust fund.

In the case of a partnership, it is intended that a partner's interest in that partnership at the time the partnership acquired qualified small business stock will be equal to the greater of the partner's interest in the capital or the profits of the partnership at that time. A taxpayer who is an individual holding an interest in an upper-tier partnership that is a partner in a lower-tier partnership shall be entitled to exclude that taxpayer's share of gain realized on the sale or exchange by the lower-tier partnership of stock that would be qualified small business stock if held directly by an individual, subject to limitations similar to those applicable to taxpayers holding direct interests in the lower-tier partnership but determined by reference to both the upper-tier partnership's interest in the lower-tier partnership at the time that stock was acquired, and by the taxpayer's interest in the upper-tier partnership at such time. Similar rules will apply for purposes of determining the treatment of gain attributable to a sale or exchange of stock received by a taxpayer in a transfer from an upper-tier partnership that received that stock in a transfer from a lower-tier partnership.

*Active business requirement: treatment of subsidiaries.* In determining whether a corporation satisfies the active business requirement, stock and debt in any subsidiary corporation are disregarded, and the parent corporation is deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities. For this purpose, a corporation will be considered a subsidiary if the parent owns more that 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent in value, of such corporation. It is intended that, for this purpose, a parent corporation's ratable share of any subsidiary's assets and activities shall be equal to the parent corporation's share of the total combined voting power of all classes of stock of the subsidiary entitled to vote.

*Working capital.* For purposes of the active business requirement, any assets which are held as part of the reasonably required working capital needs of a qualified trade or business of the corporation, or are held for investment and are reasonably expected to be used within 2 years to finance research and experimentation or increases in working capital needs of a qualified trade or business, shall be treated as used in the active conduct of the trade or business. For periods after the corporation has been in existence for more than 2 years, however, no more than 50 percent of the assets of the corporation may qualify as used in the active conduct of a qualified trade or business by reason of the working capital exception. In determining whether assets are reasonably required for working capital, it is anticipated that regulations will incorporate standards similar to those articulated in *Bardahl Mfg. Corp.* v. *Comm'r*, 24 TCM 1030 (1965).

Mr. PELL. Mr. President, I support the compromise worked out by the Education conferees on title IV of the budget reconciliation conference report concerning student loan issues. In my view, the conferees produced an agreement that assures the maintenance of a viable mechanism for financing federally insured student loans through a private sector-government partnership that has existed for nearly three decades.

The conference agreement makes it clear that the private sector can continue to play an essential role in the financing of higher education in this country. Furthermore, the agreement allows us to test direct student lending through a pilot program that is similar, albeit on an expanded scale, to what we provided for only last year when we reauthorized the Higher Education Act.

I am confident that the agreement reached by the conferees will work. I am also confident that the Department of Education is committed to providing a fair and level playing field so that a valid comparison can be made between direct lending by the Government and the present guaranteed loan system modified in this agreement. Strong congressional scrutiny, directly and through the Advisory Commission on Student Financial Assistance, will also ensure that there will be equity in this test program.

The conference agreement assures continued congressional oversight over the direct lending test program. Specifically, the Conferees have called on the Advisory Committee to submit a final report by January 1, 1997 to help Congress and the Secretary of Education decide whether or not to move forward with full implementation of direct lending.

My colleagues and I in the Senate and the House intend to keep close watch on these issues, and I specifically urge the Department of Education, in carrying out its authority under these student loan reform provisions, to work with the community to establish reasonable, performance based regulations for both programs.

My objective, which I am sure that the President and his administration share, is to do what we can to ensure that student loans are delivered in a timely, effective, and cost-efficient manner. Our work on student lending in the Labor and Human Resources Committee and in conference was undertaken to achieve savings to help accomplish the President's budget objectives, provide increased benefits to students, and ensure that we have an effective student loan program. I remain hopeful that we have achieved those objectives.

It is without question that the final agreement would not have been possible without strong and consistent bipartisan support. We are particularly indebted in this regard to the chairman of the Labor Committee, Senator KENNEDY, to the ranking Republican, Senator KASSEBAUM, to the ranking Republican on the Education Subcommittee, Senator JEFFORDS, and to the strong leadership we have from Senators DODD and MIKULSKI, among others.

Mr. President, the conference agreement is, to my mind, worthy of the strong support of my colleagues and one that definitely should be enacted.

COMMUNICATION SITE FEES

Mr. CRAIG. Would the Senator from Wyoming yield for a question?

Mr. WALLOP. I would be glad to yield to my good friend from Idaho.

Mr. CRAIG. It is my understanding in section 10004 of the Budget Reconciliation bill, which deals with communication site fees that the intent of the conferees in the language referring to "radio and television, and commercial telephone transmission communication sites" includes both the broadcast and nonbroadcast users on Forest Service and Bureau of Land Management Lands.

Mr. WALLOP. The Senator from Idaho is correct. The language in section 10004 refers to all communication site users on the Federal lands under the jurisdiction of the Forest Service and Bureau of Land Management.

Mr. CRAIG. I thank the Senator from Wyoming.

SECTION 197 INTANGIBLES

Mr. HEFLIN. With respect to the intangibles provision, I have a concern. The House and Senate Committee report language describes the treatment of amounts paid under covenants not to compete. There has been some concern that Committee Report's description of the new amortization rules for noncompete covenants paid for with fixed payments might be interpreted to require a deferred, backloaded deduction. The result would be worse than the amortization the bill provides for goodwill.

Mr. MOYNIHAN. I wish to clarify that the legislation is not intended to treat covenants differently than other section 197 intangibles. If an amount is properly amortized ratably under current law—over the duration of the contract—the writeoff is ratable over 15 years under the new law. The committee report language providing for a deferred, backloaded deduction is intended to apply only to contingent payments. Thus, the amortization provided under the bill is the same as for goodwill and other section 197 intangible assets.

HARDROCK MINING CLAIM MAINTENANCE FEES

Mr. WALLOP. Mr. President, during consideration of the holding fee provisions in this budget reconciliation package, the Senate Energy and Natural Resources Committee included report language to restate and clarify current practice with respect to reclamation and payment of the claim maintenance fees. This language was inadvertently omitted from the statement of managers accompanying the conference report. For purposes of legislative history, I will restate the original report language.

It is the committee's understanding that a claimant may choose to maintain a claim, and the claim maintenance fee must be paid. If the claimant does not choose to maintain the claim,

and does not pay the fee, the claimant's interest in the claim lapses. However, this lapse in no way affects any requirement to reclaim. The maintenance fee requirements are separate from requirements to complete reclamation. Reclamation after a claim lapses is enforced by, among other requirements, a reclamation bond which is retained in whole or in part until reclamation is fully completed.

It is the committee's intention not to impose the claim maintenance fee where a claimant has completed all mining activity, only reclamation work remains to be completed, and the claimant's purpose is to relinquish permanently the interest in the claim. Where mining activity and reclamation occur contemporaneously, the claimant is required to pay the fee.

THE WALLOP-BREAUX PROVISION

Mr. WALLOP. Mr. President, the 4.3-cents-per-gallon gasoline tax increase is actually more than it seems because this Clinton tax bill also permanently extends the temporary 2.5-cents-per-gallon tax that was to expire in 2 years. So the tax is actually 6.8 cents. One particularly noxious aspect of this tax is the violation of a trust, a commitment.

The gasoline tax affects not just automobiles but all forms of transportation. This includes motorboats. Now, motorboats do not normally cruise on our Nation's highways. Ten years ago, congress adopted the Wallop-Breaux amendment which created the aquatic resources trust fund. The fuel taxes paid by boaters would go to that trust fund rather than the highway trust fund. It is a pure example of a program funded solely by the users. The aquatic resources trust fund, also known as the Wallop-Breaux fund, provides assistance for boating and fishing programs in every State. Every penny comes from fishermen and boaters. Not one cent of Federal general revenues goes to this program.

When Congress increased the gas tax in 1990 by 2.5 cents, the tax collected from motorboats continued to go to the aquatic resources trust fund. But, the extension of this tax in the Clinton tax package also includes a provision to divert these funds to general revenues. The chairman of the Finance Committee once stated, in another context, that diverting funds from a trust fund was "thievery." That is what we have here.

What is worse is that the tax package which we will vote on today would begin the diversion immediately, rather than in 1995. This revokes the language, the commitment made in the 1990 Budget Act. It is just one more reason why Clinton's tax bill is a bad deal for America.

Mr. COHEN. Mr. President, I rise to voice my opposition to the budget reconciliation conference report, the President's modified budget plan. There are few things more important to the long-term growth of the U.S. economy than reducing the deficit. Unfortunately, the plan before us will not achieve lasting deficit reduction because it relies too heavily on new revenues and not enough on spending cuts.

I am not opposed to new taxes, especially on the wealthiest members of our society. However, no taxes should be increased until all possible spending cuts are made. Unless spending is restrained, new revenues will lead to more Government, not lower deficits. Since World War II, spending has increased $1.59 for every new $1 in taxes. The record is clear: Without enforceable spending restraints, new taxes will not lower the deficit.

During last year's campaign, President Clinton pledged to cut spending by at least $2 for every $1 in new taxes. This pledge was renewed during the Office of Management and Budget [OMB] Director Panetta's confirmation hearing. I regret that this objective was abandoned subsequently by the administration. I believe the administration and the Democratic majority too quickly resorted to new taxes. Any public tolerance for new taxes that may exist is based upon the belief that new revenues will be used to reduce the deficit. I am afraid that few people realize that the President's budget cuts nondefense domestic spending by only $65 billion over the next 5 years, most of which was already required under the 1990 budget agreement. Taxes, on the other hand, are raised by $240 billion.

I am not opposed to reducing defense spending, nor am I opposed to increasing spending for certain domestic programs with proven records of success. However, I believe that the peace dividend should be used solely for the purposes of helping individuals and communities affected by defense cuts, and for reducing the deficit. The end of the cold war provides a unique opportunity to cut spending and reduce the deficit. We should not squander this opportunity.

As I noted, certain domestic programs with proven track records may warrant increased funding. However, we should pay for these programs by shifting money from wasteful or unproductive programs. There are legions of programs that have outlived their original purpose but have, nonetheless, become part of the permanent Washington landscape. Just last week, the Governmental Affairs Committee on which I serve held hearings on the billions of dollars of wasteful programs in the Department of Agriculture alone.

I do not suggest that deep spending cuts are easily obtained. It is critical, however, that we commit ourselves to make the necessary cuts. We cannot tax or borrow our way out of the spending binge we have been on. While over the past 30 years Federal taxes as a share of the economy have remained about the same, spending has increased steadily.

Serious deficit reduction is impossible without addressing entitlement spending which accounts for half of all Federal spending and is the fastest growing part of the budget. Entitlement spending is on automatic pilot in that expenditures are made without direct appropriations by the Congress. It is fiction, however, to suggest that Congress has no control over entitlements. Congress has the power to modify entitlement programs at any time. Failure to restrain spending in these programs is a willful act by the Congress and the President. I regret that an amendment I cosponsored which would have saved $97 billion over 5 years by limiting entitlement spending did not pass. This amendment would have held Congress' feet to the fire to reform health care since escalating health care costs are the principal cause of rising entitlement spending.

It should make us very queasy to look at the mountains of debt we are passing along to our children and their children. By our actions and choices, we are jeopardizing the future of our children. Our debt-financed consumption binge will lower future economic growth and future standards of living. As a recent General Accounting Office [GAO] report on the deficit pointed out, "[T]he key question facing policymakers is not whether to undertake major deficit reduction, but when and how."

We cannot reduce the deficit without sacrifice. In his State of the Union Address, President Clinton made an impassioned plea for the need for common sacrifice if we are to reduce the deficit in any meaningful way. I was very encouraged by the President's words because, in my view, the word "sacrifice" has been banned from the political lexicon for too long. We have been telling people they can have lower taxes and higher spending for too long.

Unfortunately, it soon became apparent that these calls for sacrifice were not as they appeared. The beginning of the end of any serious deficit reduction plan occurred on March 3 when, as reported on the front page of the Washington Post, "Clinton Bows to Westerners on Grazing Fees." At that moment, it became open season for special interests to ask to be excused from the cost-cutting table.

Soon thereafter, the voters and editorial boards across the country started to wonder whether the plan presented by the President to Congress was the same one he described in his State of the Union Address. On April 10, for example, the Portland Press Hearld's lead editorial read, "Voters expected real reductions in Government spending. Where are they?"

The President's budget asked taxpayers to contribute more in terms of

taxes. But for long-term deficit reduction, sacrifice in terms of spending cuts is essential. Without enforceable spending cuts, higher taxes will simply mean bigger Government.

Early in the budget process, I joined Senators BOREN, DANFORTH, and JOHNSTON in offering the only bipartisan alternative to President Clinton's budget. Our plan exceeded the President's deficit reduction goal by $46 billion without imposing any new taxes, gasoline or otherwise, on middle-income families. Furthermore, our plan maintained a 2-to-1 ratio of spending cuts to new taxes.

Despite strong support for this plan in Maine and throughout the country, it soon became clear that there was little interest in Washington in pursuing a bipartisan approach to reducing the deficit. The President decided early on to pursue a Democrat-only strategy in the budget process. And, to be sure, many Republicans were just as pleased not to have been invited. Unfortunately, partisanship has been the rule rather than the exception in terms of how best to deal with the deficit. Republicans generally have opposed new taxes under any circumstances while Democrats generally have opposed spending cuts. The result has been a stubborn standoff and a rising national debt.

So, once again Congress is about to pass a deficit reduction plan that cannot help but to fail to cure the underlying problems of the deficit. The plan, in fact, will add nearly $1 trillion to the deficit over the next 5 years. Even as a percentage of gross domestic product, the deficit in 1997 when the economy is predicted to be a full employment will be about the same as it was in 1989, the last year of full employment. It is difficult, therefore, to see how this plan will remedy the deficit in any significant way.

The economic problems caused by the deficit—higher interest rates, lower future economic growth, larger trade deficits—have been well documented. Perhaps more than the economic anemia associated with the deficit, however, is the effect it has on the public's perception of Government. To many, the deficit stands as a symbol of Government incompetence. Households throughout the country understandably bristle at the notion of Congress not doing what each of them is required to do, balance their checkbooks. The deficit thereby has come to epitomize an inability of Congress to solve problems in effective ways. For this reason alone, we must eliminate the deficit.

Deficit reduction inevitably will require sacrifice, but this sacrifice should come in the form of spending cuts before tax increases. We should not ask the American taxpayer to send another nickel to Washington until we have fixed the leaky bucket of wasteful Federal spending. Only when spending is controlled can the deficit be reduced. Because the President's plan asks taxpayers to contribute more in taxes before reducing spending, I cannot support the plan. When the issue of deficit reduction is revisited as it inevitably will be, I will be working with both Republicans and Democrats to develop a more long-term solution to the deficit. Meanwhile, I will continue to support cost-cutting measures that will reduce the deficit now to relieve future generations from the burdens of our fiscal irresponsibility.

Mr. BYRD. Mr. President, the reconciliation bill provides for major changes in the composition of spending and revenue programs and tax policies. Making these changes is a complex, arduous, and trying process. Members of Congress, like other human beings, prefer to give benefits rather than take them away, prefer to cut taxes not increase them, and prefer to please everyone and offend no one.

The test of the reconciliation procedure is to make the difficult choices to cut the deficit and get those cuts enacted into law. The reconciliation procedure by its nature runs contrary to what we as legislators would like to do, but it is the best mechanism thus far developed that assists us in making the cuts we must make.

The bill before us is not perfect. No Member would claim that it is. But the bill before us reduces the deficit primarily and reduces the deficit with few frills.

In some instances, in order to reach agreement on an acceptable package, provisions were included in the final conference report that may not have stood the test of section 313 if they had been in the Senate-reported bill. The number of provisions that were brought to conference, and excluded from the final conference agreement, far outnumber the provisions now included in this package that some may question.

Let me use the example of the enterprise zone spending provisions. Mr. President, I have not opposed the inclusion of the enterprise zone spending provisions in this bill.

These provisions would not necessarily have been in order on the Senate reconciliation bill. These provisions would likely have run afoul of section 313 of the Congressional Budget Act of 1974, as amended, commonly referred to as the "Byrd rule" on extraneous matter on reconciliation legislation, on two grounds.

First, section 313(b)(1)(C) prohibits a provision that is not in the jurisdiction of the committee that submitted the provision for inclusion in the conciliation bill. This section does not apply to conference reports.

Second, section 313(b)(1)(B) prohibits any provision increasing outlays—or decreasing revenues—if the net effect of all provisions reported by the authorizing committee is not in compliance with its reconciliation instructions. The Parliamentarian has stated publicly that he would advise the Chair not to apply this section to conference reports.

There are two principal considerations behind this reasoning: Attribution of jurisdiction of a provision; and determination of the applicable instruction.

It is not necessarily possible to attribute jurisdiction of a provision on a bill in conference involving nearly all authorizing committees. Drafting of these provisions involved at least two authorizing committees of the Senate and as many, or more, committees in the House. There is no incontrovertible basis on which to assign a provision to one committee over another when more than one committee involved in a subconference may be involved in its writing.

Second, there is no equitable method of determining what instruction controls the consideration of elements of the conference report—the original House instruction, the original Senate instruction, or some hybrid of the two. In the House, unlike the Senate, it is a common practice to require two committees to achieve the same reconciliation savings.

Let me give an illustration. The conferees on a budget resolution may contemplate achieving savings of $1 billion in Medicare savings and $1 billion in fees for use of the radio spectrum. In the Senate, instructions would be given to two committees: Finance for $1 billion in Medicare savings; and Commerce, Science and Transportation for $1 billion for radio spectrum fees. In the House, instructions would also be given to two committees: Energy and Commerce for $2 billion, of which $1 billion would be for spectrum fees and $1 billion would be for Medicare; and Ways and Means for $1 billion for Medicare which shares jurisdiction with Energy and Commerce for a portion of the program. Keep in mind that only the instruction, but not the assumptions behind the instruction, is binding on the instructed committee. If in conference, an agreement is reached that includes $1.5 billion in spectrum fees and $750 million in Medicare, $250 million in excess of the original House instruction, would you call the Finance Committee out of compliance with its instruction? Such an interpretation, binding the conference to the most restrictive of interpretations of the instructions in the respective Houses, could very well make any conference agreement on any reconciliation bill impossible to attain. The ultimate goal of the reconciliation procedure is to enact deficit reduction, not to fill in numbers on some budgetary tot sheet.

The "Byrd rule" was not designed to make conference agreements impossible to attain. Section 313(b)(1)(B) explicitly contemplates the inclusion of provisions increasing outlays, this is, spending, in a Senate-reported reconciliation bill. I note that not all spending decreases are permitted under section 313 of the Budget Act, just as not all spending increases are banned. These increases might offset potentially deleterious effects of provisions in the bill or otherwise make the provisions of the bill more acceptable. The ultimate goal of the reconciliation procedure is to achieve deficit reduction. The ultimate goal of section 313 of the Budget Act is to protect the rights of all Senators from the willful, action of a few.

Earlier, I stated that the provisions would "not necessarily have been in order in the Senate." I say this because the drafters have shown such great ingenuity in preparing their language that, with time they might have been able to draft it in compliance with the more stringent tests for Senate consideration of a provision reported to the Senate pursuant to a reconciliation instruction.

Now, with respect to the enterprise zone proposal in the reconciliation bill: This is an idea that has been supported, in its various configurations, by Republicans and Democrats, and by conservatives and liberals. Over time, it has been called "enterprise zones," "community investment," "Weed and Seed," and, recently, "empowerment zones and enterprise communities."

The proposal before us is a limited experiment. It provides for funding to be mandatory for fiscal years 1994 and 1995 only. Rather than beginning a new, never-ending, back-door spending program, this experiment is limited to 2 fiscal years only.

It is correct to say that these provisions cause new spending that, by themselves, would increase the deficit. In the context of this bill, these provisions offset a portion of deficit reduction that otherwise would be achieved. These provisions increase spending, but that spending is covered by other offsetting cuts elsewhere in the bill.

The conferees should be commended for the special efforts they have taken to expunge from the legislation extraneous matters. Applying the tests of section 313 requires great thought and prudence. While there may yet be an occasional provision that some might challenge under section 313, this conference report, at first blush, is extraordinarily clean.

I commend the conferees on their diligence. Their task has been a most difficult one. Section 313 is but one arrow in the deficit reduction quiver. It was the will of the conferees to cut spending that makes the reconciliation process work.

Mr. President, I yield the floor.

Mr. BRADLEY. Mr. President, I would like to thank the chairman of the Finance Committee, my friend Senator MOYNIHAN, for his help and attention in developing the empowerment zone provisions of this bill. For the first time, we are focusing our concentrated attention on the most desperately impoverished urban and rural areas of our Nation, with a combination of tax incentives to lure back investment and jobs, and direct spending to help creative leaders rebuild vibrant communities.

That spending is particularly important because tax incentives on their own cannot restore meaning to life where there is no community. So instead of $5.3 billion in pure tax incentives as in the bill the House passed, we designed a more balanced package: $2.5 billion in tax breaks and $1 billion, over 2 years, in spending through a new targeted allotment to title XX of the Social Security Act, the social services block grant.

As my colleagues know, the social services block grant has been, and in the main it will continue to be, a fairly open allotment to States for a variety of social services, defined more by its limitations than by specific purposes. But for this new investment in empowerment zones, I believe we agree that we want to encourage innovative thinking and build on some of the approaches that imaginative individuals and community organizations developed on their own during the last dozen years when the Federal Government essentially abandoned the cities.

To that end, we have described a series of purposes for just the new title XX funds that are targeted to empowerment zones and enterprise communities. They include residential early intervention programs for mothers and infants to provide comprehensive services through the first year of the child's life; programs to train and employ disadvantaged youth in rehabilitation of public facilities that benefit the zone; programs to train zone residents in business skills for entrepreneurship; keeping schools open after hours for mentoring programs, or safe havens; and programs to help families develop assets for home ownership or education. Of course, we also want to give the local and State governments and community organizations that will be involved in developing the zone's strategic plan an opportunity to use the funds for other purposes that are more suited to local needs.

To provide that local flexibility, we have included a provision that requires zones, in their strategic plan that accompanies their application for designation as a zone, to explain their intention to use any funds for purposes other than those described. We do not want to place an unreasonable burden on those zones that have their own priorities or needs.

But I would like to ask my colleague, the chairman of the Finance Committee, if he agrees with me that zones should have both incentive and encouragement to use these funds for the innovative programs described in the bill. Specifically, I would hope that when all the relevant departments, not only the Department of Health and Human Services but also the Departments of Housing and Urban Development and Agriculture, which will designate the zones, put forth guidelines for areas to apply, they will detail these purposes and indicate that the strategic plan for a successful application should involve a serious effort to undertake one or more of the purposes described. It should not be sufficient for a zone applicant simply to declare that it prefers to spend the funds on general social services, such as those currently funded through title XX, rather than develop innovative locally designed programs.

Mr. MOYNIHAN. I thank my colleague for his work on these provisions. I believe the result in this bill is a good balance between tax incentives and direct investment, and will give us the first real test of whether empowerment zones can work as promised.

I share my colleague's view that the innovative purposes described in this new section of the social services block grant are central to the provision and should be a priority for any applicant. I agree that the relevant departments should describe these purposes in some detail to applicant areas. I believe that is the intent of this Congress.

Mr. BRADLEY. I thank my colleague.

THE DIRECT LOAN PROGRAM

Mr. DURENBERGER. Notwithstanding my intention to oppose this bill, Mr. President, I must point out one very positive feature that I do hope will become law.

This provision establishes a new direct student loan program to be gradually phased-in over the next 5 years.

This new program is modeled after the IDEA proposal that Senator PAUL SIMON and I first introduced almost 2 years ago. That legislation, in turn, had been previously introduced in the House by Representative TOM PETRI of Wisconsin.

Under the compromise reflected in this bill, a new direct student loan program will be phased-in beginning next July. Under this new program, loans will be made directly to students—without going through banks and all the other players that now help clog up the system. And, when students repay their loans, they'll have the option of adjusting their payments to reflect changes in their income each year.

These two features—direct lending and payments based on post-college income—will save taxpayers billions of dollars a year in lower overhead and fewer defaults.

And, they will launch a program that is much simpler and that helps both students and their families meet the rising cost of going to college.

In addition to Representative PETRI; I want to pay tribute to Senator SIMON, Senator BRADLEY, and others in this Chamber who have helped make this new opportunity for American students and families a reality.

And, I also want to commend President Clinton for his leadership in building the kind of national constituency for this reform that we will need.

Once this new program is enacted, Mr. President, the hard work of designing its mechanics and totally overhauling our existing student loan system will begin.

One of the most important elements of implementing direct lending must be effective use of the IRS in collecting loan payments that are based on borrower income.

The mechanics of loan repayment are also very important to the long-range feasibility of this program.

I want to call attention to the guidance given the administration by the conference committee on how to design income-dependent direct lending, Mr. President, and to include the relevant portions committee's report at the conclusion of my statement.

I would also like to enter into the RECORD a letter that Representative PETRI and I have today written to President Clinton.

Our letter makes a number of the same points about the importance of IRS collection of student loans and the importance of designing the new program in a way that is consistent with the IDEA proposal that Senator SIMON, Representative PETRI, and I have previously proposed.

If properly implemented, direct lending with income-dependent repayment through the IRS represents a significant and very positive reform—not just for today's students but to future generations who will benefit from its flexibility and its savings to both borrowers and taxpayers.

Thank you, Mr. President. I yield the floor.

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

U.S. SENATE,
*Washington, DC, August 6, 1993.*

Hon. BILL CLINTON,
*Office of the President, The White House, Washington, DC.*

DEAR MR. PRESIDENT: Despite our opposition to the Budget Reconciliation Act, we wanted to take this opportunity to reaffirm our strong support for the new direct student loan program it creates and to commend you for your leadership on this issue as we launch a new era in how American students and their families pay for college.

We also want to state again our strong support for using the IRS to carry out the income-dependent repayment option contained in the new direct loan program; and to offer our assistance to you and your Administration in designing the mechanics of income-dependent repayment as the new direct loan program is implemented.

As you know, our own interest in this new program stems from our authorship of the Income Dependent Education Assistance (IDEA) Act. We are pleased that essential elements of that legislation—including direct lending and income-dependent loan repayment—are contained in the legislation being acted on by the Congress this week.

We are also very pleased that the Budget Reconciliation Conference Report includes the attached strong statement of legislative intent on how the authority to design income dependent loan repayment should now be carried out.

This guidance to the Administration is important since, like you, we believe the IRS is an efficient and cost-effective resource to both calculate the size of payments that vary each year according to income and to collect those payments from student borrowers.

In addition, the attached Conference Committee report language includes guidance to the Administration on a number of issues that need to be faced in designing the mechanics of income-dependent loan repayment. Again, based on more than a decade of work on this issue, we believe this direction is needed to ensure that income-dependent repayment will be feasible to borrowers and actuarially sound.

Finally, because of our strong interest in both the policy issues and mechanics of income-dependent direct lending, we would appreciate being kept regularly informed on the Administration's implementation of this new legislation. And, we want to make ourselves—and our staffs—available as resources to the Administration in designing the mechanics of income dependent repayment and in determining an appropriate IRS role in student loan collection.

Thank you again for your leadership in carrying forward this important example of reinventing government. We look forward to continuing our past support and involvement on this issue in the weeks and months ahead.

Sincerely,

DAVE DURENBERGER,
*U.S. Senator.*
THOMAS E. PETRI,
*U.S. Representative.*

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MANAGERS' STATEMENT ON IRS ROLE IN INCOME-CONTINGENT LOAN REPAYMENT CONFERENCE COMMITTEE REPORT, BUDGET RECONCILIATION ACT OF 1993, AUGUST 1993

The House bill contained a section (Sec. 4033) expressing the sense of the Education and Labor Committee that, although it lacked jurisdiction over amendments to the Internal Revenue Code, it would support provisions providing for the collection of student loans using the Internal Revenue Service, as well as amendments to the Higher Education Act, in the manner proposed by H.R. 2073, introduced by Mr. Petri on May 11, 1993. The managers on the part of both Houses reaffirm that IRS collection of student loans should be explored and that the following principles behind H.R. 2073 provide a useful guide to that exploration:

1. That IRS collection should be as convenient as possible for borrowers.

2. That it should impose no significant burden on employers.

3. That to produce the simplest, most efficient program and minimize burdens on the IRS, it should conform as closely as possible to the operations of the IRS in collecting the regular individual income tax, self employment tax, and social security taxes on tip income not reported to an employer.

4. That in the case of income dependent loans:

a. The repayment schedules should accommodate individuals with high indebtedness and large loan volumes.

b. Payments should be kept manageable for borrowers.

c. No payments should be required of borrowers whose incomes fall below the income tax filing threshold.

d. Payments should generally be directly proportional to the amount borrowed (to discourage overborrowing).

e. Borrowers should be excused from further payments when they have repaid their loans at some effective interest rate.

f. Most borrowers should finish repayment in a reasonable period of time.

g. Borrowers should be allowed to repay, in any year, more than they owe under the income-dependent schedules, in order to complete their obligations more rapidly, and

h. There should be adequate treatment of marriage, including:

(1) no excessive marriage penalties or subsidies,

(2) no ability to avoid payment by shifting income between spouses,

(3) equal payments for couples with equal joint income and borrowing, and

(4) fair allocation of a joint payment between two spouses' accounts (in case of later divorce).

5. That the combination of IRS collection and an income-dependent repayment option provides an opportunity to further streamline student loan programs and to target subsidies more fairly based on the wherewithal to repay loans, which is post-school income.

Accordingly, the managers request that the Secretaries of Education and Treasury jointly develop a plan for involvement of the Internal Revenue Service in collection of student loans, including an analysis of its feasibility, the additional resources that would be required for the IRS, the enforcement procedures that should be used, the effect on the collection of ordinary income taxes, and the effect on the management of federal student loan collections and on borrower repayment of such loans. The Secretaries are further requested to submit this plan to the Congress together with the results of the feasibility study and any legislative recommendations they may deem advisable, no later than six months after the date of enactment of this bill.

Mr. PRYOR. Mr. President, I would like to commend President Clinton for his Tuesday night address to the American people.

The President has had the courage to propose a specific and serious solution to a huge and growing deficit, while at the same time, managing to redirect money for investments in the American people.

President Clinton has accepted responsibility and provided solutions to problems he was elected to solve—especially the deficit that he inherited.

As the electorate's agent for change, President Clinton deserves credit from both supporters and detractors alike for standing up, proposing specific solutions, and marshaling support to bring his deficit reduction plan to a final vote in record time.

Immediately after President Clinton's Tuesday night address, the Republican response was delivered by the

Republican leader of this body, Senator DOLE.

Senator DOLE asked four questions about the Clinton deficit reduction plan:

First, does President Clinton's plan increase taxes?

Second, does President Clinton's plan reduce Government spending?

Third, does President Clinton's plan help put Americans back to work?

Fourth, does President Clinton's plan reduce the deficit?

I thought that I would take a few minutes today to give some straightforward, complete, and direct answers to his questions.

Question 1: Does President Clinton's plan increase taxes? The Republican leader's answer was "yes."

Well, Mr. President, the answer is "Yes"—the Clinton deficit reduction plan does increase taxes—it contains 241 billion dollars' worth of tax increases over the next 5 years. But let's look at the whole story.

No one likes increased taxes. I don't like it one bit. I certainly wish that we could pass a $500-billion budget deficit reduction package that would be fair, without raising taxes. But no one—on either side of the aisle—has presented a serious and fair plan to cut the deficit by $500 billion without raising some new revenues.

So who pays the new taxes in the Clinton plan? Only single individuals with more than $115,000 taxable income and couples with more than $140,000 of taxable income will pay any additional income taxes. Mr. President, let me repeat: No family with less than $140,000 in taxable income will pay one additional penny in new income taxes—only the wealthiest 1 percent of the American people pay any additional income taxes.

The Republican leader also claims that this budget reconciliation bill contains the largest tax increase in history. Unfortunately, this claim, which has been repeated by many, is not accurate.

As the first chart shows, in inflation-adjusted dollars, Tax Equity and Fiscal Responsibility Act of 1982 was a larger tax increase than is the current reconciliation bill.

Just for the record, I would also point out that the chairman of the Finance Committee in 1982, and the principle sponsor of the tax bill in the Senate, was Senator DOLE.

Question 2: Does President Clinton's plan reduce Government spending? Senator DOLE says "No."

Mr. President, this answer is simply wrong. If there were no true spending cuts in President Clinton's plan, then why did Senator DOLE'S alternative budget plan, offered on the Senate floor in June, use all of President Clinton's specific spending cuts? In fact, President Clinton's spending cuts were the only specific cuts in the whole Republican alternative.

So in June, the Republican leader embraced and endorsed President Clinton's real spending cuts by putting them in his plan. And now, when the same spending cuts come to a vote as part of the President's package, my friends on the other side of the aisle say they are not real.

Were they real then and not real now? Some might call this exercise political expediency and doubletalk at its worst, but the American people must be the ultimate judge.

The truth is that President Clinton's plan reduces Government spending by over $250 billion over the next 5 years. This $500 billion deficit reduction package is made up of one-half specific spending cuts and one-half tax increases.

Mr. President, this next chart may be very difficult to read, because 200 specific spending cuts look pretty crowded on a single page. This is a list of over 200 specific spending cuts that President Clinton requested this spring.

These are specific, difficult choices that President Clinton had the courage to lay out on the table, out in public months ago, where everyone could debate their merits openly.

How many additional, specific spending cuts did our colleagues from the other side of the aisle include in their alternative? You guessed it, zero.

They have talked about spending cuts for months, but it is August and we haven't seen one specific cut yet. Not one. It might make someone wonder how serious they actually are about cutting spending.

Mr. President, I submit that any true plan to reduce the deficit by $500 billion will be controversial. A responsible plan must be thoughtful, fair and serious. The Republican alternative plan failed that test—it was not responsible. President Clinton's plan is the only thoughtful, fair, and serious plan—and it must pass.

Question 3: Does President Clinton's plan help put Americans back to work? The Republican leader's answer was "No."

This to me seems quite an inappropriate attack from the member who led the filibuster that killed President Clinton's jobs bill this spring—the jobs bill would have meant 800,000 new jobs this year and next. Where was the concern about jobs then?

I have been concerned about job creation in this country for years, especially the previous 4 years when only 1 million new jobs were created. As a matter of fact during the Bush administration only 21,000 private sector jobs were created on average every month. During the first 5 months of the Clinton administration over 750,000 private sector jobs have been created, an average of almost 150,000 per month. President Clinton is concerned about job creation, and under his administration, more jobs are being created every month—and this bill will add to that total.

Mr. President, was the concern by Members on that side of the aisle during the filibuster on the jobs bill the same as it is now—to politically embarrass the President of the United States? I hope not.

Mr. President, let me answer the Republican leader's question directly. Yes, this plan will create jobs, and without this economic plan we will return to the status quo, slow-growth Bush era.

As President Clinton said in his speech Tuesday night, this plan will create over 8 million new jobs in the next 4 years. The Congressional Budget Office has projected that unemployment will be lower in each of the next 4 years with this bill.

This bill contains important incentives for businesses, large and small, to create jobs—including a targeted capital gains tax reduction, an increase in the amount that small businesses can expense when they buy new equipment, and a research and development tax credit.

Reducing the Federal debt will free up money for private borrowers, both businesses looking to expand and consumers looking to buy. Long-term interest rates have already fallen by a full percentage point as a result of President Clinton's dedication to this deficit reduction package. Low inflation and low interest rates are perhaps the best ingredients for job creation—and this plan means both.

Question 4: Does President Clinton's plan reduce the deficit? Once again, the Republican leader's answer was "No."

This strikes me as confusing because the Republican leader in the next sentence went on to say that President Clinton's plan reduces the annual deficit to under $200 billion, from its current level of over $300 billion. That sounds like reducing the deficit to me.

Let me use a similar chart to the one that President Clinton used Tuesday. The top line is the deficit if we do nothing—if we follow the Republican leader and vote no on Friday. The bottom line is what will happen under the Clinton deficit reduction plan.

To answer the Republican leader's question—yes, the Clinton plan does reduce the deficit by about $500 billion over the next 5 years. Even Senator DOLE admitted that in his speech.

The Republican leader's concern is that the deficit will increase after 1998, even with the Clinton plan. I share that concern and so does the President.

Why does the deficit increase beginning in 1998? The answer is no mystery—health care costs.

President Clinton is not running away from that problem either. Let me quote his speech Tuesday:

> If you want the deficit to go down to zero as I think almost all of you do, we have got to challenge the health care system. It is

bankrupting the private sector, bankrupting the public sector, and millions of Americans live in insecurity and constant fear of losing their health care.

Sure, President Clinton could run away from the health care problem—remember that the deficit doesn't begin to go up because of health care costs until 1998, after the 1996 election. But unlike the leadership of the last 12 years, this President isn't making excuses and running away from the difficult problems—he's making the tough choices needed to solve the problems facing the American people. That's courageous leadership.

So will this plan reduce the deficit? Don't take my word for it—as a matter of fact, I'm a little sick and tired of hearing what politicians and Washington number crunchers have to say about this plan.

This chart isn't politicians and bureaucrats bickering back and forth—this is the verdict of millions of independent business decisions and transactions. The fall of interest rates accelerated because the markets have taken a long look at how serious and credible this deficit reduction plan is, and they have judged it as serious deficit reduction.

Don't forget what else this chart means—it means lower mortgages for homeowners, lower borrowing costs for a small business looking to expand, reduced interest payments for corporations seeking to pay off debt they ran up in the 1980's, and lower interest payments on everyone's monthly credit card bill.

So in the final tally, the Republican leader asked four questions and gave one almost correct answer; 1 out of 4—a mere 25 percent correct. That's not even close enough for Government work.

Mr. President, in the end, let us all remember what this debate is about. This debate is not about gaining political points or scoring some symbolic victory that scores political points.

This debate is about our country's economic well being. It is about our future standard of living.

It is unconscionable and inexcusable to pass this enormous and expanding Federal debt to the next generation. We must stop it now.

I have been in the U.S. Senate since 1978. I am willing to take my share of responsibility for our current situation. And I am also willing to make the tough choices and cast the tough votes to start in a new direction to curb deficit spending.

It all comes down to doing nothing, or taking the chance for change. And I believe the American people are right when they say "The status quo is not good enough." Therefore, I support the President.

Mr. KENNEDY. Mr. President, I give my strong support to the conference report on the Budget Reconciliation Act, and I urge the Senate approve it.

This measure is the cornerstone of President Clinton's strategy to reduce the massive Federal budget deficit and lay the groundwork for a return to economic growth. Its purpose is to get this economy back on track, and begin to undo the damage that 12 years of Republican rule have done to the economy and the country.

President Clinton is right to encourage the American people to take charge of their future and insist that Congress pass this economic plan. After years of irresponsible policies, the President has offered genuine economic leadership. He has proposed a realistic way to achieve the deficit reduction that is essential to revive the economy and achieve future economic growth.

The President's plan is fair to all citizens. It is not unreasonable to ask the wealthy, who have benefited most from 12 years of Reaganomics, to pay their fair share now.

I support this bill because it is balanced and it is fair. But most important, I support it because it is essential for Congress to act, and to end the gridlock that prevents Government from governing.

The President's plan puts us back on the road to fiscal responsibility. It will cut almost $500 billion from the Federal deficit over the next 5 years. It is a balanced plan, with more spending cuts than tax increases. Unlike past efforts to reduce the deficit, or the sham alternatives that have been offered by our Republican colleagues, President Clinton's plan makes over 200 specific spending cuts.

It rejects the "Gone With the Wind" Republican strategy that says "cut spending tomorrow." This bill puts in place a specific plan for specific spending cuts today and in the years to come. It is the only realistic alternative on the table to cut spending, and it deserves to pass.

It is also a fair plan with respect to taxes. The vast majority of the tax increases fall on the wealthiest 1 percent of Americans. Families with incomes of less than $180,000 a year will see no increase at all in their income tax rates.

And the gas tax that has become such a partisan punching bag in this debate will cost the average family the grand total of $31 a year. In other words, the entire sacrifice that middle-class Americans are being asked to make for deficit reduction in this bill is less than a dime a day—one single solitary thin dime.

Working families earning less than $30,000 a year won't even pay that. Their tax burden will actually go down because of the earned income tax credit, which helps to lift low-income working families and their children out of poverty.

The plan is well-rounded in yet another way. It contains specific incentives for business growth. The research and development tax credit is reinstated and extended.

Capital gains incentives are provided for investing in new small businesses. The ability of existing small firms to make investments is enhanced by raising the amount they can deduct in the year it is spent, instead of depreciating the investment over a period of several years.

This bill is important as well for many other worthwhile sections that achieve other needed reforms.

The enterprise zone provisions mean that this long overdue plan to revitalize our poverty-stricken inner cities and rural areas is finally under way. The immunization provisions will make timely vaccinations more available and accessible to millions of children in all parts of the country.

The reform of college student loans will streamline the current program, save money for students, and open up new opportunities for young Americans to pay for their college education by participating in community service.

But our Republican colleagues are endeavoring to obscure all of these achievements. The American people have been subjected to a brazen barrage of baloney about the President's program.

Rather than work in a bipartisan fashion, our Republican opponents have deliberately chosen the path of continued gridlock and obstruction. We will not see a single Republican vote cast in support of the President in the House or the Senate.

No other bill of this importance has ever been subjected to such a partisan stonewall. We all know that sometimes party loyalty asks too much—and this is one of those times.

The Republicans would have the American people believe that this bill raises significant taxes from the middle class. But it does not. They claim that they have an alternative deficit reduction plan.

But their plan is vague on all the details, and it would produce $80 billion less in deficit reduction than the President's plan, while not asking the wealthiest 1 percent of Americans to pay one extra dime in taxes.

The entire Republican strategy of opposition is based on their desire to protect the rich, to give Reaganomics one more try, to give trickle-down economics one last gasp. But those polices have failed. They didn't work for Herbert Hoover, they didn't work for Ronald Reagan and they didn't work for George Bush. This vote should be—and it deserves to be—the last hurrah for Reaganomics.

Our opponents make the preposterous claim that the President's plan will hurt small business. But 96 percent of all small businesses will pay no income taxes under this plan. And for those 4 percent whose taxes will go up,

their average income—their average income—is over $500,000 a year. So who are we kidding about whose taxes will go up under this plan?

Despite all the rhetoric and all the smokescreens, this bill is not an attack on the middle class or small business. All it asks is that the wealthiest Americans—the same high-income citizens who reaped vast tax breaks under trickle-down economics—pay their fair share. And that is a small price for them to pay for the economic recovery that is essential to their own future wealth.

The Senate is also awash in Republican crocodile tears over the retroactivity of these tax increases on the wealthy. The Republican leader is shocked—shocked to find that this bill actually applies to income earned starting on January 1, 1993.

Is there any wealthy person in America who didn't know that this tax increase might well be coming?

What about all the wealthy individuals who held their breath until the November election, and then rushed to manipulate the timing of their income, so that it would be received in 1992 instead of 1993, to avoid the higher taxes that President Clinton's deficit reduction bill was likely to impose.

The business press was full of stories about those tax shenanigans. The so-called retroactivity argument has no bite, no teeth, and no gums. This tax increase was widely anticipated by wealthy citizens—and it deserves to be applied starting January 1.

We all know what was at stake in the final hours of the conference on this bill.

The alternative to a retroactive tax increase for the wealthy was a higher gasoline tax on the middle class. The conferees made the right choice, and I commend them for their decision.

Finally, our Republican colleagues assert that the President's plan will hurt the economy.

If that charge wasn't being used to scare the American people, the criticism would be comical, coming from those who were the principal architects of the failed economic policies of the past 12 years. Let me remind my colleagues, and the American people, that the deficits we face today are the deficits that exploded under two Republican Presidents.

The Bush administration had the worst record on job creation of any Presidency since World War II. The American people do not believe that Republicans—who gave us the biggest deficits and the worst job growth in the past half century—have any lingering credibility when it comes to jobs and the economy. Their obstruction today is a cynical attempt to appeal the result of the 1992 election, and it deserves to fail, because their policies have failed.

We must not give in to that type of negative politics. It is time to move forward, not backward, to the future.

And after we pass this budget, we intend to come back again and again in the months and years ahead, to cut spending responsibly, to reform health care and welfare, to invest in education, to create jobs, and to help Americans compete again with any other country in the world. We know that a sound economy is the prerequisite for any other genuine social progress.

We need to approach these goals in a good faith bipartisan spirit. Gridlock is bad policy and bad politics. It is obstruction for the sake of obstruction. So let us pass this bill and move ahead, and find a way to work together once again, because it is the only realistic way to achieve the goals we share for the economy and for our country.

REGARDING THE DEFICIT REDUCTION BILL

Mr. EXON. Mr. President, we are now in a very important debate on the most critical matter facing this Nation—are we going to begin to get our financial house in order or are we not? This talk, and all others on the Senate floor today, is not likely to change one vote. The die is cast.

Sometime tonight the Senate will either tie on a 50–50 vote and the Vice President will cast the telling vote in favor of the $496 billion deficit reduction measure or it will fail on a 51–49 vote. We are, therefore, talking past each other on the floor of the U.S. Senate today and addressing ourselves to the public. There is nothing wrong with that; in fact, under the circumstances, it might be well and good.

Keeping my word that I would support the conference report if it basically followed the tenets of the version of the measure that earlier passed the Senate, I will do so. To say that this is not a perfect bill is an understatement. To say that the safe political vote is "no" is absolutely accurate. Using President John Kennedy's "Profiles in Courage" analogy, the Senate all too often shrinks from that worthy posture.

It may sound trite, it may sound self-serving, but my vote will be cast in favor of the reconciliation measure primarily because I am convinced it is the right vote for my grandchildren and all grandchildren of America similarly situated. We have been selling them into economic slavery. There is only one thing worse than tax and spend and that is borrow and spend. Will this reconciliation bill guarantee an end to that economic blood-letting of future Americans? No. But it is the only vehicle available to us to at least begin. More cuts must be made and the actions of the Senate and House leadership yesterday clearly promise that should come to pass in some form.

I am encouraged particularly by the agreement that has been worked out by painstaking negotiations and commitments the last few days that if the reconciliation bill prevails there will be some form of high profile, high stakes action on budget cuts this fall, while we are still in session. This has been specifically agreed to by the President, the Speaker and majority leader of the House and by the majority leader of the Senate.

I could go on for hours citing the pros and cons of this debate. I am not completely satisfied with the initial steps proposed in the reconciliation bill and certainly have serious objections to come of its tenets, including the unwise predating of the income tax increases. But I am sure that many of my other concerns have already been voiced in debate and this is no time for unnecessary redundancy.

I do want to talk briefly about what I feel have been unfortunate and, in some cases, premeditated falsehoods and in some cases outright lies being peddled by well-financed opponents.

The so-called Citizens for a Sound Economy has spent tens of thousands of dollars on mostly untrue advertising in my State of Nebraska. Citizens for a sound economy should be exposed for what it is—the brainchild of the Koch Brothers of Kansas, who owns the largest independent, privately held oil company in America. David Koch is chairman of the CSE Foundation. He also ran for Vice President on the Libertarian Party ticket in 1980. That party's platform included legalizing drug and prostitution, ending public education, abolishing Social Security, Medicare, and Medicaid, repealing all taxes and eliminating all agriculture subsidies. This is not a typical Nebraska grassroots organization.

To correct some of this horrible misinformation, as I use that word deliberately as an understatement, I reference page S9525 of the CONGRESSIONAL RECORD of Tuesday, July 27 where my colleague from Nebraska inserted my "Myth vs. Fact" statement on the reconciliation proposal.

Therefore, Mr. President, I would hope that the Senate and public at large would recognize this legislation as an important first step in the process of righting the wrong of years of deficit financing of the Federal Government. It is not the final product, but a recognition that we must begin and stop just talking.

There is one last comment I would like to make. I am discouraged that partisanship has taken on such a keen cutting edge to this process and debate. While the Democrats are not without our share of the blame, I note with interest that some Democrats here in the Senate as well as in the House have had the independence to leave their party ranks to vote in opposition. It may be just a coincidence, but there has been unanimous, without exception opposition by every elected Republican in the House and Senate. They have marched in lockstep against the proposal. Some may claim that shows how

bad the plan is. It also just might be that the Republicans, marshaled as one, see more of a chance for political gain. So much for profiles in courage.

WHY I SUPPORT THE BUDGET PLAN

Mr. KOHL. Mr. President, for weeks we have debated the details of this budget package. We have all pushed our policy preferences. We have all tried to shape this measure in ways that we believe meet the needs of our constituents and our country.

But all that is over. The deals are done. The details are finalized. The bill is before us. We cannot alter it. We cannot modify it. We cannot change it. We can simply vote "yes" or "no."

And I will vote "yes."

Not without reservation. But with a firm conviction that I am casting the right vote on behalf of the people of Wisconsin and the Nation.

Mr. President, this bill is not the bill I would have written. It is not everything I wanted it to be. Despite my efforts, it still contains a middle-class tax. It does not do enough to cut spending. It does little to control entitlement spending.

These are real flaws in the plan. But the decision before us is whether these flaws are fatal. And, in my mind, they are not.

Some believe we should reject this plan because it does not do enough. Yet it does more than we have ever done before.

Some suggest that we could solve all our problems tomorrow. Yet these problems have been accumulating for years.

John F. Kennedy once said that "a journey of a thousand miles must start with a single step."

And this is that step—toward the long journey of eliminating our deficit and reducing our national debt. Other steps will be needed. But the time to begin that journey has come.

Mr. President, this bill is the largest single deficit reduction plan we have ever considered. And it has three basic elements.

CUTS IN SPENDING

First, it contains $255 billion in real spending cuts. More spending cuts, in fact, than tax increases. Programs are eliminated. Funding levels are cut. Enforceable spending limits are established.

While many of us, myself included, believe that we can do more to cut spending, we must all keep in mind that no cut is painless. Eliminating the Federal wool and mohair program, for example, may make sense, but not to the sheep farmers in my State. But when I voted against that program, I voted against a program that benefits people in my State. And the same is true of countless other programs we reduced or eliminated in this bill.

Cutting spending is not pleasant. It is not easy. But it is done in this bill. Over $255 billion will be cut from Federal spending. Entitlements will be reduced. Discretionary spending will be frozen. And after this package is adopted, total Federal spending next year—with the exception of spending on health care—will be about the same as total Federal spending this year.

INCREASES IN REVENUES

Second, this bill will raise an additional $250 billion in new revenues.

That is a substantial sum, Mr. President. But we cannot look just at the size of the tax increase. We have to look at who pays those taxes.

Let me look at it from a Wisconsin perspective first. There were 2,287,060 tax returns filed by Wisconsin residents last year. Only 20,645 would force people to pay a higher tax rate. That is less than nine-tenths of 1 percent. For 99 percent of the residents of Wisconsin, there will be no increase in Federal income taxes.

Higher tax rates come into effect when a family has a gross income of approximately $180,000 a year and an individual has a gross income of approximately $140,000 a year. Approximately 80 percent of the tax increase in this bill will come from those making more than $200,000 a year.

Our motive here is not to punish the rich. Our motive is to recognize that a relatively small segment of our society did extremely well in the 1980's and now, in a time of national need, can legitimately be asked to do more.

This plan also asks business to make a modest contribution to deficit reduction. The corporate rate will be increased by 1 percent on firms with taxable income above $10 million. And businesses will no longer be able to deduct certain expenses—like club memberships and executive salaries in excess of $1 million a year—to the same degree. Again, the motive is not to punish business. It is to raise needed revenue in a way that does not hamper business growth and economic expansion.

While I believe that the personal and corporate tax increases are reasonable, I do recognize that there are some special problems associated with the way they are implemented. Let me discuss three of those problems.

RETROACTIVITY

Even though this problem affects less than 1 percent of the people of Wisconsin, I do not like the fact that personal income tax increases will be applied retroactively. In fact, I was one of several Senators who told the President we would oppose retroactivity when this bill first came before the Senate and, as a result, there was no retroactive provision in the Senate bill. Since learning that the conference rejected the Senate's position and included retroactivity, I have signed a letter to the majority leader asking him to cooperate with an effort that a number of my colleagues and I will be making to correct this problem.

While I obviously dislike this provision and will seek to eliminate it, I recognize that steps have been taken to reduce its impact. We allow people subject to this retroactive tax increase to pay this year's increase in three installments over the next 2 years without paying penalties or interest. It isn't perfect, but as one of the people who will be paying higher taxes, I know it is bearable.

THE GAS TAX

The only tax middle-income Americans will be asked to pay—the only tax 99 percent of the people in Wisconsin will be asked to pay—is a 4.3-cent-per-gallon gas tax.

Mr. President, I fought hard to eliminate this gas tax increase. I offered an amendment to eliminate the tax when the Senate considered the bill—an amendment that was unfortunately defeated on a 50–48 vote. I repeatedly told the President and the Senate leadership that I opposed the tax. But in the end, it was clear that some level of gas tax had to be included in the bill. The President wanted it. The mathematics of reaching close to $500 billion in deficit reduction required it. And once that became clear, I fought to prevent the tax from being increased. There was talk during conference of a 6, or 7, or even 10-cent increase. But I made it clear that I would not vote for anything more than the Senate's 4.3-cent increase.

And that is what we have. A 4.3-cent per-gallon tax.

I am not happy about even this small increase. I do not want to vote for even that. But I will, because it is part of an overall deficit reduction plan. Because it will cost the average Wisconsin driver $25 a year, 52 cents a week, 7 cents a day. Because without a gas tax we would have no deficit reduction package. And because I saved middle-income Americans over $8 billion by holding the line at 4.3 cents.

TAXES ON SELECTED SOCIAL SECURITY BENEFITS

Some senior citizens will pay increased taxes on their Social Security benefits. But most will not. This increase will affect only individuals whose total incomes exceed $34,000 and couples whose total incomes exceed $44,000. And the impact of the legislation is limited even as it applies to them: a greater percentage of their benefits—not their total income—will be taxed if they earn more than the $34,000 or $44,000 threshold.

While the impact is limited, I recognize it is still real. Any tax increase has a real impact. But it is an impact which should not cause an undue burden on senior citizens and will produce real benefits in terms of reducing the deficit and protecting the future for their children and grandchildren.

Mr. President, to be honest, if the bill only included these first two elements—spending cuts and tax increases—I might not have supported it.

I know deficit reduction is important. But I also know that the economy is fragile. We have, too often, destroyed something in the name of saving it. We could have destroyed the economy in an effort to free it from the drag created by our deficit and debt. But we did not and we will not. Because there is a third element to this plan.

GROWING THE ECONOMY

The third element includes business incentives and investments. We have modified the alternative minimum tax provision. We have expanded the expensing provisions available to small businesses. We have eliminated luxury taxes. We have created a targeted capital gains provision. We have liberalized the passive loss rules. And we have extended effective tax incentives, like tax-exempt financing for small business, the research tax credit, the low-income housing credit, and the targeted jobs tax credit. Additionally, and perhaps most importantly, this deficit reduction package should continue to keep interest rates low. For individuals and businesses, that will mean lower costs and increased purchasing power.

Independent economic experts have also estimated that the plan will produce an additional 8 million jobs over the next 5 years. And this plan will help people get those jobs. There are training provisions included in the package. And there is a major expansion of the earned income tax credit. That will encourage people to take jobs because the expanded EITC will help to ensure that anyone who works 40 hours a week will not be forced to live in poverty. In Wisconsin it means help for 193,000 families. It means over $313 million coming into our State. It means real progress for real people.

These are the three elements. Interconnected. Balanced. And reasonable.

MISCONCEPTIONS ABOUT THE BUDGET

But, unfortunately, not well explained to the American people.

Mr. President, I am not a partisan person. I believe cooperation is important between Republicans and Democrats and Independents. I believe that is the best way to solve our national problems. To pull together and to work together.

But I have to confess that cooperation has not been possible in regard to this bill.

Maybe the President did not reach out to the Republicans early enough. But his failure does not justify or excuse the action taken by some leaders of the opposition.

It isn't just that facts have been distorted. It is that they have refused to cooperate at all.

For the first time in memory, no Member of Congress not of the President's party will vote for his budget. Not one. For the first time in memory, opponents have used obscure Senate rules to block policies that they actually agree with in an effort to damage the bill. Republicans in the Senate have used the rules to prevent this legislation from having a deficit reduction trust fund, even though they support that idea. They have used the rules to keep from including enforcement mechanisms which would let us better control entitlement spending, even though they support that idea. They have blocked a host of legitimate and worthwhile programs and projects—like Project New Hope, a model welfare-to-work project in Wisconsin—simply because they don't want to make a package they oppose better.

They have not just cut off their nose to spite their face, they have disfigured a plan which will affect all Americans simply because they can not defeat it. And that is unacceptable. It is childish. It is totally unjustified.

And the distortions that have been made are incredible. Let me take just four of the major ones.

First. The plan will hurt small business. Nonsense, Mr. President. Only 4 percent of the small businesses in the country will face higher taxes under this plan. Four percent. But because we lower the deficit, all small business will benefit from lower long-term interest rates. And over 90 percent of this country's small businesses will qualify for a tax cut because the plan increases the expensing allowance, creates targeted capital gains reductions, and retroactively restore the 25 percent deduction for health insurance.

Second. There are no spending cuts in this plan. Again, nonsense. There are cuts. Real cuts. They happen now and they continue for the next 5 years.

Third. The plan is nothing more than a re-hash of the 1990 budget summit; that plan failed and so will this one. This may be the most dishonest claim made. It ignores the fact that the 1990 deal did succeed in one respect; it restrained spending—and so will this plan. It ignores the fact that the 1990 deal was based on overly optimistic economic forecasts—and this plan is based on conservative economic assumptions. It ignores the fact that the 1990 deal was based on a deficit estimate which was, by the Bush administration's own admission, almost $115 billion off the mark due to a calculating error—while this plan is based on the worst case estimates available. It ignores the fact that the 1990 deal did not contain any incentives—while this plan does.

Fourth. If this plan is defeated, we will work with the President to create a new tone. If I believed that, I might vote against this plan in an effort to craft a bipartisan policy. But I don't believe it. There are no credible alternatives which have been proposed. There are no realistic alternatives on the table. There is no choice available other than doing nothing and watching the deficits mount.

MORE WORK TO DO

But making the choice to vote for this plan is not enough. After all, it simply reduces the deficit, it does not eliminate it. That means our job is not done. We need to keep going. And I am going to do everything I can to make sure we do.

I have joined Senator BOB KERREY in calling for a special session of the Congress to consider additional spending cuts; I have joined Senator JOHN KERRY in calling on the President to submit a series of spending recision proposals to the Congress; and, at the request of the majority leader, I have been working with a number of other Senators to develop a specific plan—one which can gain bipartisan support—to ensure that the Congress will act on a series of specific spending cut proposals in a specific timeframe.

Mr President, as I look back at this entire budget process, I wish we had done it differently. I wish Democrats and Republicans had worked together. I wish there were more progrowth incentives, fewer taxes, and more spending cuts in the plan. But in the end, I am convinced that this is the best option we have. I am convinced that it will help reduce the deficit, that it will increase the share of taxes paid by the wealthiest among us, and that it will control spending. I do not believe it does enough to encourage business or enough to cut spending. But this is just the first step in the long and painful process of getting our budget in order and our economy growing. More needs to be done. but this does enough to get us started.

TITLE XII OF H.R. 2264—VETERANS' AFFAIRS PROVISIONS

Mr. ROCKEFELLER. Mr. President, as chairman of the Committee on Veterans' Affairs, I rise to comment on title XII of the conference report on the proposed Omnibus Budget Reconciliation Act of 1993, H.R. 2264, and to urge my colleagues to support this enormously important measure.

Section 7(b)(12) of the concurrent resolution on the budget for fiscal year 1994 (H. Con. Res. 64) required our committee to report changes in laws within our jurisdiction sufficient to reduce outlays for veterans' programs by $266 million in fiscal year 1994 and a total of $2,580,250,000 during fiscal years 1994-98.

Pursuant to section 7(b)(12) of the budget resolution and the unanimous, bipartisan vote of the committee at a June 10, 1993, meeting, the Senate Committee on Veterans' Affairs submitted legislation to the Budget Committee on June 15, 1993, that complied with our reconciliation instructions. Estimated savings from that legislation would have exceeded the 5-year total required savings of $2.58 billion by approximately $29 million. According to CBO estimates, the committee's legislation would have produced net savings of $2.609 billion in outlays during fiscal years 1994 through 1998.

The conferees on this part of the reconciliation bill met in open session on July 26, 1993. Title XII of the conference report contains the final agreement of the subconference on veterans' programs. According to CBO, the provisions in title XII would produce net savings of $2.544 billion in outlays during fiscal years 1994 through 1998.

SUMMARY OF PROVISIONS

Mr. President, title XII of the conference report contains amendments to title 38, United States Code, and free-standing provisions that would make changes in laws relating to VA compensation and pensions, health care cost recovery, educational assistance, and home loan guaranties. These provisions would:

First, in section 12002, extend through September 30, 1998, the Department of Veterans Affairs' current authority to collect copayments from certain veterans for certain medical care and outpatient medications.

Second, in section 12003, extend through September 30, 1998, VA's current authority to recover from a veteran's private medical insurance the cost of medical care VA provides for non-service-connected conditions.

Third, in section 12004, extend through September 30, 1998, VA's current authority to verify eligibility for VA need-based benefits using income information provided by the Internal Revenue Service and the Social Security Administration.

Fourth, in section 12005, extend through September 30, 1998, the current $90-a-month limitation on pension benefits paid to Medicaid-eligible veterans and surviving spouses who are in nursing homes and who have no dependents.

Fifth, in section 12006, extend through September 30, 1988, the current requirement that VA consider its average resale loss in the formula VA uses to determine, upon foreclosure of a VA-guaranteed home loan, whether to acquire and resell the property or pay off the VA guaranty.

Sixth, in section 12007, increase the fee borrowers pay to VA for a VA-guaranteed home loan by 0.75 percent of the loan amount—increasing the basic fee from 1.25 to 2 percent—and require a higher fee for borrowers who previously have used a VA-guaranteed loan and make no downpayment. The increased fees would apply to loans closed between October 1, 1993, and September 30, 1988.

Seventh, in section 12008, require that each new payment rate resulting from enactment of an fiscal year 1994 cost-of-living adjustment for veterans' disability compensation and survivors' dependency and indemnity compensation be rounded down to the next lower whole dollar. The provision also would limit the fiscal year 1994 COLA for survivors receiving dependency and indemnity compensation under the formula that existed before Congress enacted DIC reform in 1992 to half of the COLA amount paid to those who receive the basic DIC rate under the new law formula.

Eight, in section 12009, eliminate the automatic increase for Montgomery GI bill educational assistance for fiscal year 1994 and limit the increase in fiscal year 1995 to half of the percentage that would have been provided under the statutory formula.

DISCUSSION

Mr. President, the effort to meet the budget reconciliation instructions with respect to veterans' programs has been a long, difficult, and painful process. The task of cutting programs and imposing fees for veterans benefits and services is certainly not a pleasant one.

Mr. President, all of the provisions in the veterans' programs portion of this bill are real spending reductions. The opponents of this reconciliation bill do not want the public to know about the real, painful spending cuts that this legislation contains. They want the American people to think of this as a tax bill.

The veterans' provisions provide a good example of the difficult choices that have been made in this bill. As difficult as the process was, the people who care about these programs made the necessary cuts, rather than resorting to the meat-cleaver approaches of those who advocate entitlement caps or other, supposedly easy answers. The provisions in this title will reduce fraud and waste in VA programs.

At the outset of the reconciliation process, I decided that my guiding principle would be to protect service-disabled veterans, their families, and their survivors. Simple, crude answers like entitlement caps allow no room in the budget-cutting process for this kind of compassion toward deserving individuals.

Mr. President, most of the credit for the compassion that has been shown to veterans in this deficit-reduction measure goes to President Bill Clinton and Secretary of Veterans Affairs Jesse Brown. We also must pay tribute to veterans themselves, who deserve a great deal of the credit in the process leading to this legislation. From the beginning, veterans organizations indicated that veterans were willing to do their part in the effort to reduce the deficit. This legislation reflects the commitment by veterans to share in the sacrifices that are required, and it shows our commitment to ensure that those sacrifices be reasonable and fair.

Mr. President, while I believe that the veterans' provisions in this bill could have been less painful, they are not as objectionable or harmful as they might have been. When the House initially passed the reconciliation legislation, it rejected a provision in the President's proposed package that would have increased servicembmers' payments for Montgomery GI bill education benefits. In order to make up for the savings lost as a result of rejecting that provision, the House proposed four alternative measures. One would have authorized VA to collect from veterans' private health insurance the cost of medical care VA provides for service-connected conditions. The other would have totally eliminated the fiscal year 1994 cost-of-living adjustment for survivors receiving dependency and indemnity compensation paid under the formula that existed before enactment of our landmark DIC reform law late last year.

Mr. President, without the dire need for us to reduce the deficit, I would not recommend any of the provisions contained in this legislation.

The Senate package I proposed—which the Senate Veterans' Affairs Committee passed unanimously—was almost identical to the President's proposed reconciliation package. We explicitly rejected the House's authorization for third-party billing for service-connected medical care and elimination of the old law DIC COLA. The Senate Committee unanimously agreed to a set of provisions that actually would have exceeded by a small amount our reconciliation instructions, in a manner the committee believed was least harmful to veterans.

The unanimous, bipartisan vote in our committee showed strong support for the reasonable and fair proposals by the administration.

Mr. President, all of the members of the Senate Veterans' Affairs Committee, Republicans and Democrats alike, felt strongly that third-party billing would undermine the Federal Government's solemn obligation to take care of those who were injured through service to our country. Primary entitlement for VA medical care is based on service connection. To collect from a third party the cost of treatment for service-connected disabilities undercuts the entire basis of the VA health care system. Many of us on the committee also were concerned that such a provision would have an adverse effect on the availability and cost of private health insurance for service-disabled veterans.

Mr. President, I am enormously pleased that we succeeded in excluding this terrible House provision from the conference report.

The Senate Veterans' Affairs Committee also was committed to ensuring that survivors receiving old law DIC receive a COLA in fiscal year 1994. For weeks, I adamantly refused to accept any package that included the elimination of the old law DIC COLA for fiscal year 1994. the House committee just as adamantly refused to make a very reasonable increase in new military recruits' payments for Montgomery GI bill educational assistance, or even to limit the automatic increases in educational benefits, so the Senate was

forced to agree to some limitation of the fiscal year 1994 COLA for old law DIC recipients.

Mr. President, despite the House's position, I am pleased that the conference report ensures that these survivors receive at least one half of the COLA that recipients of DIC under the new law will receive. I greatly regret that we were compelled to agree to any reduction at all, but I am proud that the Senate successfully avoided totally eliminating the COLA for these deserving survivors. Given the unyielding position of the House committee on the Montgomery GI bill, we had no other choice.

CONCLUSION

Mr. President, as I mentioned earlier, if it were not for the dire necessity to reduce the deficit, I would not recommend any of these provisions. I believe we could have achieved our goals through more appropriate and less harmful means, as demonstrated by the original Senate-passed version of this bill. But, given the importance of reaching a compromise to meet our obligation, and in light of the House committee's inflexible position with respect to the Montgomery GI bill provisions, we have accepted certain provisions that I would not otherwise have accepted.

Mr. President, I urge my colleagues to support this reconciliation measure. We must make this courageous and difficult step toward reducing our huge, growing deficit. The alternatives are frightening and far more detrimental than what is contained in this bill. We need to support the President's bold move toward positive change. He has shown incredible political courage and leadership, and now it is our turn to do the same.

TRANSPORTATION FUELS TAX

Mr. BREAUX. Mr. President, I rise for the purpose of entering into a colloquy with the chairman of the Finance Committee, the senior Senator from New York.

Mr. President, when I first proposed adoption of a transportation fuels tax and more spending cuts to replace the Btu tax, I did not propose taxing all liquid fuels or compressed natural gas [CNG]. The conference agreement we are considering today further expands the transportation fuels tax to CNG, a gaseous fuel, when it is used as a highway or motorboat fuel. This is the first instance in which the motor fuels taxes have been imposed on nonliquid fuels.

Because this is the first fuel to be taxed which is not in liquid form, the conferees were required to determine an appropriate rate of tax for CNG. It is my understanding that the U.S. Conference on Weights and Measures is currently considering the establishment of standards of measurement for natural gas. I would like to clarify with the Senator from New York that the conferees did not intend to influence the efforts of the U.S. Conference in adopting the unit of measurement they adopted for CNG.

Mr. MOYNIHAN. The Senator is correct.

Mr. BREAUX. I thank the Chairman.

Mr. DASCHLE. Mr. President, as chairman of the Subcommittee on Energy and Agricultural Taxation, I support the effort of my distinguished colleague from Louisiana to clarify this point, and I appreciate the interest expressed by the chairman of the Senate Finance Committee.

Mr. BREAUX. I thank my distinguished colleagues from South Dakota.

APPLICATION OF INTANGIBLES PROVISIONS TO VIDEOTAPES PURCHASED AS PART OF THE ACQUISITION OF A TRADE OR BUSINESS

Mr. MITCHELL. Mr. President, I would like to ask the chairman of the Finance Committee his view as to the application of section 13261 of the conference report, the provisions dealing with the amortization of acquired intangible assets, to mass-produced videotapes, recordings, books, and other similar items that are readily available for purchase by the public, have not been substantially modified, and are acquired without the acquisition of the copyright or any right to copy or other exclusive license. It is my understanding that when such items are purchased as part of the acquisition of a business that sells or rents such items, the items are not section 197 intangibles.

Mr. MOYNIHAN. That is correct.

THE MARK-TO-MARKET ACCOUNTING METHOD FOR SECURITIES DEALERS

Mr. MITCHELL. I understand that the statement of managers provides clarification as to when a financial institution that is treated as a dealer under the mark-to-market provision is to identify certain indebtedness as held for investment, and thus not subject to the provision, based on the accounting practices of the institution. I wish to clarify two things for this purpose: First, the term "held for investment" generally means the same as "not held for sale" as provided in the statute; and second, that the "accounting practices of the institution" refers to the time when the institution identifies the indebtedness, not to the generally accepted accounting principles that are used to determine whether or not an evidence of indebtedness is to be marked-to-market for financial accounting purposes.

Mr. MOYNIHAN. The Senator is correct.

FAMILY PRESERVATION AND RECONCILIATION

Mr. BOND. Mr. President, in earlier speeches today I have laid out the reasons for my opposition to this package. There is, however, one part of this package that I will find it very difficult to vote against: the family preservation piece.

There is a desperate need for reform of the child welfare system to protect abused and neglected children.

The child welfare system has been stretched to the limit. More than 2.6 million children were reportedly abused or neglected in 1991—an increase of more than 150 percent over a decade. Skyrocketing caseloads have overwhelmed the State child welfare systems responsible for the care and protection of abused, neglected and vulnerable children, and troubled families.

The solutions are not simple. Back in 1980, Congress passed the adoption assistance and child welfare amendments to modify our child welfare system. However, while foster care payments became an entitlement to States for children placed in out-of-home care, we failed to invest a proportionate amount of money on prevention and training.

Since 1980, we have learned a great deal about the value of prevention and crisis intervention. We have also learned that there is a great emotional toll on children who are removed from their families unnecessarily. Many children are shifted from placement to placement, unable to form the stable attachments necessary for emotional well-being. While part of this is due to parents' unwillingness to terminate their rights, others have had parental rights terminated but languish in foster care because adoptive families cannot be found for them.

Over the last year, the Senator from West Virginia [Mr. ROCKEFELLER] and I have worked together on several initiatives to benefit children and families. Key among these is providing more funding for family preservation services, and for reform of the child welfare system generally.

The conference report agreement contains many of the same provisions we argued for in S. 596, the child protection reform bill. States will have new money to invest in child abuse prevention and prevention of family dissolution. States like Missouri can expand their family preservation programs which prevent family dissolution through intensive counseling and case management for those facing crises they cannot handle on their own.

Certainly family preservation is not appropriate in cases of serious and ongoing physical or sexual abuse, and States which have implemented family preservation programs do not recommend those services for children who are in danger of such abuse. But there are plenty of other reasons that children are now removed from their homes unnecessarily. Inadequate housing is one primary example. Temporary crises like separation, divorce, and unemployment often lead otherwise decent parents to lash out at their children when they would not under normal circumstances.

In these cases, and certainly there are fine lines to be drawn, we believe family preservation and family support

programs may be a more effective solution to the family's problems than splitting them up.

Many States currently operating family preservation programs have found that it is successful in the large majority of families—over 80 percent—where it is tried. But the realization that family preservation will not work for every child or every family is why we have insisted on continuing Federal reimbursement to States who must place children outside their families.

The decision to remove a child from his or her family is a difficult, but sometimes essential, judgment to make. It requires skill and compassion on the part of the social workers, the judges, and others responsible for making the decisions. Yet the combination of escalating caseloads and tight social service budgets has many social workers and judges unable to cope. Our bill, and the conference agreement, contains funds for needed improvements in the court system so that the decisionmakers are better equipped to act in the best interest of the child.

Other improvements include easing States' ability to implement automated data systems, to cut down on paperwork, and permanently extending the independent living program for children who age out of the foster care system.

And so, while I am disappointed that I cannot support the package that contains some much-needed reforms of the child welfare system, I remain committed to these reforms.

BUDGET

Mr. JEFFORDS. Mr. President, today's vote has been described in historic terms. Only the historians can ultimately make that decision, but a brief discussion of our budget history might be instructive. In the heat of our arguments the past gets poorly presented.

Some of my Democratic colleagues seem to have their own version of recent history. In it, the massive tax cuts of 1981 gave a huge windfall to the wealthy and absolutely nothing has occurred since then to rectify that terrible injustice. Time and again I have heard my colleagues on the other side of the aisle complain about 12 years of inaction, of how today's is the first serious attempt to deal with the deficit.

Meanwhile, some of my Republican colleagues hold fast to the belief that we can cure our enormous Federal deficit through spending cuts alone, that there is no need for tax increases. They diminish the problems that President Clinton has inherited—from Republican Presidents and many Congresses. They argue that the bill before us is the largest tax increase in our history.

The Democrats, quite naturally, argue that this is not the largest tax increase, that when you account for inflation, the 1982 tax bill was the biggest. Indeed, they would have us believe that this is the largest, indeed the only effort to reduce the budget in the past 12 years.

Wait a minute, what is wrong with this picture? Well, what is wrong is that the Democrats cannot have it both ways. Much as they might like to rewrite history, they cannot ignore the actual record of the 1980's. They cannot stop history in 1981, and yet charge that the 1982 tax bill was history's largest. This is the very sort of double-talk that has made the American people distrustful of what Congress tells them.

I do not lay this out as an indictment of the Democrats. My party is guilty of plenty of the same revisionism. For example, many will not admit that the 1981 tax bill, a bill which I opposed, did indeed dramatically reduce Federal tax revenues.

But in the wake of that tax bill, Congress did not sit on its hands. Indeed, in 1982 we passed what the Democrats now want to call the largest tax increase in history. In 1982 we passed legislation to overhaul the troubled Social Security System, increasing taxes in the process. In 1985 we passed Gramm-Rudman. In 1986 we passed the Tax Reform Act. In 1987 and 1989 we passed substantial budget reconciliation bills.

And in 1990 we passed the Budget Enforcement Act, which promised close to $500 billion in deficit reduction, something like $532 billion in real dollar terms, which Senate Budget Committee Chairman SASSER labeled "the largest deficit reduction package in the history of this Republic."

All this history may be a bit dry, but I hope it illustrates that we have not been unmindful of the deficit for the past 12 years.

But the fact that we are here today facing continuing deficits is proof enough that while we were not unmindful, we clearly were unsuccessful. We need to do more. But we should not go about our business by ignoring what should be the lessons of our past efforts.

I suspect the White House was mindful of some of these lessons in adopting its strategy on this legislation. The process by which the 1990 budget agreement was adopted was long and messy. The administration and the bipartisan leadership of the House and Senate met for months in an effort to fashion an agreement, only to have their efforts rejected by the House on the first attempt.

I do not blame the Clinton White House for avoiding this course. But I think it made a serious mistake by deciding instead to adopt a "Democrats-only" strategy for creating and passing this legislation. From the beginning, this bill was drafted by and for the Democrats. Republicans were excluded from the start.

Why was this a mistake? First, the result of such a strategy makes the margin of votes so close that each Member of the Senate and House has enormous leverage over the process. As a result, a bill designed to reduce the deficit must be littered by spending provisions catering to the special interests of individual Members. We know of plenty of these provisions, and plenty more will come to light when people actually have a chance to read this bill.

Second, by adopting a Democrats-only strategy, the President was forced to abandon his goal of an equal ratio of tax increases to spending cuts, relying instead on far more tax increases than spending cuts because that is where the center of gravity lies within the Democratic Party. Reaching out for bipartisan agreement would have resulted in a more balanced bill.

Finally, such a fragile coalition can only produce temporary results. Even by the administration's estimates, this bill will do no more than take the deficit from the current $300 billion to about $200 billion in 1997. In 1998, at the end of the President's budget proposal, it will rise to $220 billion, just about where it was in 1990. Our national debt will be over a trillion dollars higher than it is today. And from that point on, the deficit is projected to rise steadily.

Thus, I think that while adopting a partisan strategy may have been good politics, I think it made for bad policy. Regardless of what happens with this legislation, which I suspect will pass, the President should join with Democrats and Republicans who are interested in real, long-term deficit reduction to agree on a plan to achieve it. As I and others have proved time and again—on family and medical leave, campaign finance reform, national service and other issues—there are plenty of Republicans who want to help President Clinton succeed on goals we have in common. And no goal is more important to me than reducing the deficit.

Health care has to be part of that equation, and the President is fully aware of that fact. I have made it clear that I will support real, tough spending restraint in Federal health care programs, and will support his efforts to do so.

And I have made it clear that I will support the President in a balanced effort. As my colleagues will recall, candidate Clinton called for deficit reduction comprised of $3 in spending cuts for every $1 in tax increases. Two months later, at the time of his inauguration, that ratio slipped to $2 in cuts to every $1 in increased taxes. And less than a month after that, in his budget speech to Congress, the ratio slipped to 1-to-1.

Bill Clinton is not the first candidate to make grandiose claims on the campaign trail that prove difficult to implement once in office. I don't fault him for the slippage in his promises,

and unlike many if not most of my Republican colleagues, I would support him if he had achieved his goal of an equal measure of tax increases to spending cuts.

Despite claims to the contrary, he has not. Proponents of this legislation want us to believe that there are more spending cuts than tax increases in this bill. Upon any objective examination, that claim is sadly hollow. Here's why.

If you asked most Vermonters, charging them more for a government service is not a spending cut. Yet categorized as spending cuts in this bill are $15 billion in increased fees.

If you asked most Vermonters, interest payments saved from a $250 billion tax increase are not spending cuts. No choice was made, no program reduced.

Finally, if you asked most Vermonters, counting $44 billion in savings that were achieved by the 1990 budget agreement as savings achieved by this bill is insulting to their intelligence. Yet that is what proponents of this bill would do, pretending that the spending caps put in place by the 1990 agreement do not exist.

Not only is this bill tilted too far toward tax increases, but the timing of the taxes and spending cuts is skewed as well.

The 1990 budget agreement, which I supported, contained more than $2 in spending cuts for every dollar in tax increases. But just as importantly, it contained at least an equal measure of tax increases and spending cuts from the very first year it was in place. This is important, because as we have seen throughout the past decade, the tendency in Congress is to quickly undo whatever budget agreement we reach.

The ink on the 1990 agreement was barely dry before efforts began to undermine it. And I think we can anticipate that the shelf life of this agreement may only be about 2 or 3 years.

Why does this matter? Because the vast majority of spending cuts, over 80 percent, are promised for 1997 and 1998, after the next Presidential election. Yet the tax increases started eight months ago. They are retroactive. A very disturbing precedent.

In the first few years, the years that really matter, the ratio of taxes to spending cuts is as follows: In 1994, there are $29.5 billion in tax increases versus $3.3 billion in savings, savings that are more than wiped out by $2.3 billion in unemployment spending, increased entitlements in the bill and billions in flood relief. In 1995, there are $43.5 billion in increased taxes, compared to $4.3 billion in spending cuts. And in 1996, there are $19.6 billion in spending cuts, versus $48.4 billion in tax increases.

That's the 3-year picture, and that's the picture we should focus on. All told, it adds up to about $121.4 in taxes and only $26.2 in spending cuts, almost a 5-tol ratio of taxes to spending cuts.

I know full well we need to increase taxes to address the deficit. That's why I could not support the Republican alternative offered by Senator DOLE, which purported to cut the deficit without raising taxes. I am not interested in making political hay out of this issue, I want to solve the problem. And surprisingly, the Vermonters I have talked to who are going to pay these taxes are quite willing to pay them if that is the price of real change and a real reduction in the deficit.

So I neither have an interest in protecting the rich, nor much of a constituency. Let is face it, we are in a hole. Affluent Americans should pay more in taxes to get us out of it, and no doubt they will pay. But what do these increased taxes buy in terms of reduced spending? Sadly, precious little. Spending will rise over the next 5 years, and the fundamental mismatch between spending and receipts will not have been fixed.

Not many people will lose sleep at night if millionaires pay more in personal income taxes. Unfortunately, filing tax returns right alongside them are hundreds of thousands of small businesses, the very same businesses that are producing jobs in this country.

What most people do not realize is that perhaps two-thirds of the rich who will be affected by the tax increases are not people at all but small businesses—the self-employed, partnerships and subchapter S companies. That's because the vast majority of companies, over 80 percent, file their tax returns as individuals. And the vast majority of individuals who file with incomes over $200,000, are companies.

The number of companies affected by the tax increases are significant, perhaps as many as 800,000. As a percentage of all companies, they are small. Estimates run as low as 4 percent, but probably the true share is more like 10 percent.

Given the relatively small number of companies, it might not appear too worrisome. But the fact of the matter is that when you look at where the jobs are being produced in our economy, it is from an equally small share of companies. According to one recent study, only 4 percent of the small businesses in our country produced 70 percent of all the jobs in our economy over the past few years.

To be fair, it is not clear how much these numbers overlap, but I think it stands to reason that companies would not be growing and producing jobs if they did not have profits to plow back into their operations. This bill will take over $100 billion in tax increases out of businesses over the next 5 years. And it is abundantly clear that that is $100 billion that will be unavailable to help produce jobs in this country.

Of course the argument is made that this tax bite out of businesses will be offset by lowered interest rates. Certainly low interest rates, produced by the Federal Reserve's efforts to spur the economy, could help. But if companies are burdened by higher taxes and lack the cash to borrow, low interest rates may be of no help in creating jobs.

These businesses will be caught by surprise by this legislation. Having made plans, and operating under tight budgets, they will be subject to retroactive tax rate increases that date back to the beginning of the year, before the President took office, before the President's speech, before this bill was introduced, before they could have possibly anticipated this tax increase. I think this is unfair.

Mr. President, this debate has been filled with history and histrionics, facts and fiction. Our past has been twisted beyond recognition in hopes of influencing our future. This bill has been described as our only course, and it is not. It has been described as the same old course, and it is not that either.

It is a sincere effort from a President who has inherited a terrible legacy, the product of both our parties. But it is not our last, best hope. It is a first and insufficient effort.

I do not want to oppose this effort. My career has been one of trying my best to tackle the problems of our country, of joining with whatever party, and whatever President, to meet our challenges.

But Vermonters did not elect me to cast aside my judgment, to support this President or any President regardless of the course they are embarked upon. I could not support President Reagan is his effort to cut taxes, and I cannot support this President in this effort to raise them. I was, I am, and I will continue to be willing to meet this President halfway. But I cannot go further. I cannot vote for a bill that increases taxes while cutting spending so little. Such an approach will only give the illusion of deficit reduction.

### BROWN AMENDMENT TO STRIKE TOBACCO PROVISION

Mr. MCCONNELL. Mr. President, we have reached a point where something must be done to protect our tobacco farmers. Prior to 1970, very little Burley tobacco was imported into this country. Today, foreign Burley makes up one-third of the total volume which goes into manufacturing tobacco products. Nearly $600 million of foreign grown tobacco was imported into the United States, and over one-half of this directly displaced Flue-cured and Burley tobacco usage.

I find the present situation very discouraging. While I wish this issue could be resolved without legislation, few other options exist. Kentucky Burley farmers suffered a 45 million pound

drop in the 1993 basic quota, due largely to the decline in manufacturer purchase intentions. This represents a direct loss of nearly $200 million in farm income to Kentucky Burley growers.

Unless something is done Kentucky Burley producers will suffer another major cut in income and Kentucky farming communities will suffer. We have reached the point where something must be done to protect tobacco quota holders.

Section 1106 of H.R. 2264, the conference report on the Omnibus Budget Reconciliation Act, requires domestic manufacturers of cigarettes to report and certify the quantity of tobacco both foreign and domestically grown. If manufacturers import unusually large amounts of foreign grown tobacco, then the manufacturers are required to pay an assessment.

Also, the current budget deficit assessment placed on domestic tobacco is extended to imported tobacco. Importers will be required to pay an assessment into the no net cost tobacco fund, which allows the tobacco program to operate at no cost to taxpayers. In addition, imported tobacco must meet the same grading and inspection guidelines as U.S. tobacco and importers will pay for the cost of this inspection, not taxpayers.

Mr. President, I support my colleague from Kentucky and thank him for his work in crafting this legislation. Tobacco farmers have been faced with many obstacles; fighting mother nature, fighting against bans on the use of the product which they grow, and fighting against those who want to tax their product out of business. I am very proud to represent Kentucky's 60,000 farmers' tobacco and will continue to fight to protect their right to grow tobacco and make sure they are treated fairly and justly.

FINAL PASSAGE OF THE BUDGET RECONCILIATION ACT

Ms. MIKULSKI. Mr. President, I rise today to support President Clinton's deficit reduction package.

Its time for change. Not time to defend the status quo. Not time for more delay and more process. It's time to move it.

President Clinton inherited a crippling budget deficit that threatens our future prosperity. He has faced that deficit head-on, and given us a plan for action.

This budget deficit places our children's future at risk. It stifles the growth of our economy, and straight jackets our ability to meet the needs of our people.

Where did this deficit come from? It grew out of control as a result of the policies of the last 12 years. Let there be no mistake, the American people do not want us to keep going in the direction of the last 12 years.

President Clinton's deficit reduction initiative moves us in a new direction—a direction that will generate jobs, generate opportunity, and remove the burden of our debts from our children and grandchildren.

This plan creates jobs today and jobs tomorrow. Not just McNugget jobs. But good jobs at good pay, doing a good day's work.

This plan will give a good guy bonus to the sheet metal company in Glen Burnie that wants to purchase new equipment to help it stay competitive—this means more jobs.

This plan creates new opportunity. It will help the single mother in Baltimore who practices self help. Through expanding the earned income tax credit, that working mother gets a helping hand up, instead of a hand out. This credit will mean a tax cut for 20 million working families across America.

Most importantly, this package lowers the deficit. We are doing more to reduce the deficit than ever before.

Cutting the deficit will benefit the family in Rockville who can refinance their home at a lower interest rate. They can use that extra cash to set aside in their savings account, fix up their home, or buy new, American-made products.

We must get this deficit off the backs of our children, and our children's children. We must take this strong medicine now.

And Mr. President, the only sacrifice this plan asks of working Americans is less than a nickel a gallon on the gasoline tax—this will mean about a dime a day for the average family.

This country has bounced its checks for too long. This legislation cuts spending by more than $255 billion. For the other side that says cut spending first, I want to know where have they been on spending cuts over the last 12 years when more than $3 trillion was added to our national debt?

Furthermore, I just dispute the new wave of Washington wisdom that now says we must make further cuts in medical care for older Americans and the poor, or further limit payments to health care providers that serve critical needs in rural and urban areas.

To those of my colleagues who advocate this, I say: Cost reductions will come in health care. They'll come later this year, when we reform our entire health care system. We're make our system more efficient, and provide affordable access to all Americans.

We could keep talking about this. We could keep wonking around the process. Hold more hearings. Hold more summits. But Mr. President, I am impatient for change—and the American people are impatient for change.

We need to end the uncertainty that's crippling the American economy. We need to move it.

This Senator will not hold up change. I will not participate in gridlock—I will not be a roadblock. I will not defend the status quo. I am ready to roll up my sleeves and work for change.

Our constituents believe that when all is said and done in Congress, a lot more gets said than done. It's time to act, to bite the bullet and make the decisions we were elected to make.

The days of drift and decline are over. We have an opportunity to begin building toward a strong and prosperous economy in the 21st century, if we act.

When we do act and pass this deficit reduction package, it will keep the faith with the people at home who voted for change.

Mr. President, a new millennium is on its way. A new era is about to be born. And when that new century begins, only 7 years from now, I want to be able to look back and know that we in this Congress acted to ensure: A strong and growing economy that generates jobs, creates new opportunities for Americans, and gets the Federal debt under control for all future generations.

RETROACTIVE TAX INCREASES

Mr. GORTON. Mr. President, the regrettable closing remarks of the distinguished majority leader indicate that he is misinformed on the law on the subject of the constitutionality of retroactive tax increases and is thus led to characterize the arguments by this Senator and others as disingenuous. The majority leader should have known by listening to the debate that this Senator did not question the constitutionality of retroactive tax increases in general. The point of order questioned the constitutionality of retroactive tax increases on the American people without notice. The majority leader's failure to appreciate that distinction led him to attack a straw man, and to avoid addressing the real issue.

I refer the majority leader to the ninth circuit decision last year in Carlton versus United States, which it was held that "retroactive application of the tax laws is not 'automatically' permitted so long as a wholly new tax is not involved." Based on previous Supreme Court decisions, the panel held that:

> Two circumstances emerge as of paramount importance in determining whether the retroactive application of a tax is unduly harsh and oppressive. First, did the taxpayer have actual or constructive notice that the tax statute would be retroactively amended? Second, did the taxpayer rely to his detriment on the preamendment tax statue, and was such reliance reasonable?

The court found that "the 1987 amendment to the Federal estate tax imposing a decedent ownership requirement on the ESOP proceeds deduction formerly contained at U.S.C. 2057, as applied to the transaction at issue here, violated the due process clause of the fifth amendment." In other words, an attempt to tax a transaction completed before a bill proposing to tax such transactions had been introduced

or recommended by the administration was held to constitute a deprivation of due process and struck down.

So you see, Mr. President, this Senator did not, as the majority leader asserted, "know better" and make a unsubstantiated remarks. Had the majority leader listened carefully to the entire debate he might have adhered to his present views, but I do not believe that he would have characterized those of his opponents to be without merit. I suppose this Senator and other proponents of our actual point of order should take it as a compliment that no substantive counter argument was made by the majority. However, when the leader of the majority questions the intentions and character of this Senator and many of his well-meaning colleagues, he must be corrected for the RECORD.

TAXPAYER PROTECTION IS NOT GRIDLOCK!

Mr. KEMPTHORNE. Mr. President, Americans are the victims of the angry and devisive debate about whether Congress should pass President Clinton's budget bill.

In newspapers and on television and radio, charges and countercharges about the President's bill are flying fast. Republicans say the bill raises taxes retroactively, hurts the economy, cripples small business and is backloaded with spending cuts and deficit reduction gimmicks.

The President fires back. He says Republicans are on a mission of misinformation to deceive the public about his budget and its effect on the economy.

For those living in Boise or Boston who want to know the real story and not just the score in the partisan debate, who should they believe? The President? Or the Republicans unanimously opposed to the President's budget?

Let's look at the record and at actual quotes from policy leaders. Let's find out who's really telling the truth.

The gas tax. There is one point that neither side disputes. This tax bill raises gasoline taxes 4.3 cents a gallon. Consider this quote from the June 7, 1993 Los Angeles Times: "A gasoline tax * * * would tend to hit rural areas harder."

Who said that? Senate Minority Leader BOB DOLE? The president of the American Farm Bureau? Office of Management and Budget Director Leon Panetta?

The answer is that it was the President's own Budget Director, Leon Panetta who said a gasoline tax hits rural areas harder. And he's right. There is no regional balance in a gas tax. This tax punishes those States that have vast rural areas or don't have extensive mass transit.

On this issue, you don't have to take my word that it is a bad idea. You don't have to take any Republicans word either. Take it from the President's own Budget Director.

The deficit reduction trust fund. There has been a sharp debate about the merit of the deficit reduction trust fund the President has created by executive order. Regarding the trust fund concept, who said:

* * * It is a display device (The Washington Times, May 18, 1993, and * * * As long as the government is spending more than it's taking in, I don't see that [the trust fund] has any real meaning. It's really just a gimmick.? (Washington Post, May 13, 1993).

Who said that? Republican Senator PHIL GRAMM? The president of the National Taxpayers Union? Republican Senator PETE DOMENICI? Or Alice Rivlin, Deputy Director of the Office of Management and Budget?

The answer is the President's own OMB Deputy Director Alice Rivlin who first stated that opinion in 1992 and affirmed it in the Washington Post. And she's right. It is just a gimmick created to get the votes of those who need to show they are serious about deficit reduction.

Don't take my word for it. Take Dr. Rivlin's.

Tax and spend. Then there is the concern that President Clinton's package is nothing more than tax and spend. There is no dispute that the ratio of new taxes and fees to spending cuts is $2.11 to $1 for the full 5 years, and a staggering $28 to $1 in the first year. Republicans claim that this is part of the President's tax and spend, elect and elect strategy. Who is quoted on the front page of the Washington Post on May 14, 1993 saying: "I think it will help the economy bring in more revenue and permit us to spend more."?

It would be unfair to make you guess this one. The answer is President Clinton. That's right. President Clinton. His confession that he wants to tax and tax—spend and spend, was on the front page of the Washington Post for all to see.

Small business. A sharp debate has raged on the effect that the President's tax increases will have on small business. The White House has said only 300,000 small businesses would be affected. Republicans disagree. Who said the following:

Using the more liberal definition of who might be characterized as a businessman or woman, about 300,000 of the 14.5 million sole proprietorships, 600,000 of the 4.8 million partners, 300,000 of the 1.9 million filers reporting S corporation income, and less than 50,000 farmers will pay higher taxes this year (CONGRESSIONAL RECORD July 23, 1993).

Did Senator BOB DOLE say that? The president of the National Federation of Independent Business? Jack Kemp? Treasury Secretary Lloyd Bentsen?

The answer is the President's own Treasury Secretary Lloyd Bentsen said the tax bill would raise taxes on 1.2 million small businessmen and women, four times the number claimed by the White House.

This is a crucial issue to Idaho. Nearly 95 percent of all businesses in Idaho are small business. Those firms employ 66 percent of all Idahoans. Most small businesses file their tax returns as individuals and they will pay the taxes imposed by this bill.

Retroactivity. The President chose to make the effective date of the income tax rate increases in this bill retroactive to January 1, 1993. The tax increases go back 20 days before President Clinton took the oath of office.

I think retroactivity in tax rate legislation is dangerous. There are a significant number of Idahoans who have taken the proper withholdings, and now find they have underwithheld. They will be forced to write out a check to the Government to meet the new tax codes.

There is a nation which has an explicit constitutional law forbidding the imposition of retroactive taxation. Which one is it? The United States? Canada? England? Russia?

The answer is Russia. Article 57 of the Russian Constitution forbids the imposition of retroactive taxation. That's right, Russia. Now I won't ever advocate we follow the Russian lead in fiscal management, but if retroactivity in tax law is apparent to the Russians, it should be painfully obvious that it's a bad idea for America.

Budget alternatives. Finally, the President says Congress should pass his plan because there is no other plan. Which newspaper or magazine wrote an editorial that said the spending cuts in the congressional Republican deficit reduction plan are "far more specific than the Democrats are contemplating (and) * * * it involves no tax increases."?

The Wall Street Journal? Fortune? BusinessWeek? The New York Times?

It was the New York Times—hardly a bastion of conservative Republican thinking—that said Republicans had the guts to propose spending cuts as an alternative to tax increases.

Mr. President, I rise today in opposition to the current budget reconciliation bill as both a U.S. Senator, and as a U.S. taxpayer. In doing so I vehemently reject President Clinton's description of those who do not support his tax and spend bill as guardians of gridlock. Taxpayer protection is not gridlock.

Supporters of this bill would have the American public believe that it accomplishes deficit reduction while it reduces spending. That simply is not true! You cannot reduce the deficit without either making significant spending cuts, imposing large tax increases on American business, or both. The President has chosen to implement only half of this equation and that just won't work. In fact, under the President's plan, almost 80 percent of the proposed spending cuts are not scheduled to take effect until 4 or 5 years from now.

Mr. President I would like to highlight portions of letters I received this week from folks in Meridian, Fruitland, and Geneva, ID. I have submitted the full text of these letters for the RECORD. They state, and I quote:

From David and Sharyl Holm, of Fruitland, Idaho; "We are overwhelmed by the Clinton administration's so-called deficit reducing budget, whose proposed tax increases would greatly impact our cash flow in a negative way. Please do not endorse this superficially disguised tax increase with your favorable vote!"

From Ben Jepson, of Meridian, Idaho; "I am convinced that the new budget is entirely wrong. Additionally, how can congress be so arrogant as to pass a tax bill that is retroactive. If I as a private citizen ran my financial dealings the way Congress does I'd be locked up. I very strongly urge you to vote against the current proposal and to dig in and come up with a reasonable plan to provide the stimulus needed for the country to recover."

From Harry Armstrong, of Geneva, Idaho; "You and your fellow members must reduce government spending now, not in 1996 or 1997. The tax increases will not reduce government spending. We elected you and your other fellow Congressional, Senatorial and Presidential officials to reduce our Federal Deficit, balance the budget and get our country back in world leadership status. Start that process of spending reduction this fiscal year.

Mr. President, I am going to vote against President Clinton's budget. And for these reasons.

I agree with the President's own Budget Director Leon Panetta that a gas tax is unfair to rural States.

I agree with the President's own Deputy Budget Director Alice Rivlin that the deficit reduction trust fund is a display device that has no real meaning.

I agree with the President's own Treasury Secretary that this bill will affect far more small business men and women than the President claims.

I agree with the President and the Congressional Budget Office that adoption of this plan will cost jobs.

I agree that this bill is part of the President's confessed strategy of tax and tax, spend and spend, elect and elect. And I am against that.

I agree with the New York Times that Republicans have a credible spending reduction alternative.

Mr. President, I agree with Idahoans, like David and Sharyl Holm, Ben Jepson, and Harry Armstrong.

I ask that the letters be included in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

MERIDIAN, ID,
*July 28, 1993.*

Senator DIRK KEMPTHORNE,
*U.S. Senate, Washington, DC.*

DEAR SENATOR KEMPTHORNE: I am becoming more and more concerned about the direction that this country appears to be taking, and especially about the lack of control in the Congress of the United States.

Every time I hear about another proposal coming from our President or from the Congress, I wonder just how much this country will be able to tolerate.

I am convinced that the new budget proposal is entirely wrong. Additionally, how can Congress be so arrogant as to pass a tax bill that is retroactive. That is unconscionable.

The budget plan presently before the conference committee makes little sense to me. To increase taxes will only place further burdens on an already weak economy and only serve to further stagnate any expected recovery. The way to revive the economy is not to tax and spend, but rather to encourage growth by holding taxes at current levels, or to reduce them, and to reduce the deficit by reducing spending. This would encourage small businesses, the heart of the economy, to further invest and hire more workers, causing growth to occur, which would increase revenue and foster a stronger economy. We need to get the government out of the business of trying to run private businesses.

I am becoming very, very angry with the direction that many of our elected officials are taking. It's time that you folks in Washington start to make sound fiscal decisions based on the input and desires of the populace. If I as a private citizen ran my financial dealings the way Congress does I'd be locked up.

I very strongly urge you to vote against the current proposal and to dig in and come up with a reasonable plan to provide the stimulus needed for the country to recover.

Please vote against the proposed budget bill.

Sincerely,

BEN JEPSON.

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HALF CIRCLE RANCH,
*Geneva, ID, July 30, 1993.*

Hon. DICK KEMPTHORNE,
*Senate Office Building,*
*Washington, DC.*

DEAR SENATOR KEMPTHORNE: My name is Harry Armstrong and my wife, Cathy, and I and several of our employees are among your voting constituents. We have recently returned to Montana ranching near Ryegate, Mt. and own commercial ranching operations in Idaho and Wyoming. My wife and I employ ten (10) full time and three part time workers. Nearly all have family which reside on our ranches.

We have a major problem with the current tax and budget package you are working on at the present time. You and your fellow members must reduce government spending now, not in 1996 or 1997. The tax increases will not reduce government spending. It will reduce the amount of revenue available to the small businessman for expansion and it will reduce the amount of dollars his customers have available to purchase his products. The resultant reduction in sales revenue reduces the business profit and therefore reduces the amount of taxes payable and, probably, contributes to an increase in the Federal Deficit.

My wife and I have always paid all of our bills and have not always been as fortunate as we, perhaps, are at this time. Both she and I are from relatively poor working families and have always been taught to work hard, be fair, honest, and believe it is a sin to not pay our bills and respect others.

We worked in the agriculture, aerospace and health services industries until the mid-70's when I, and three others started a computer business. Those were years which had extremely high interest and high inflation rates. We lost our business and I personally ended up repaying over $150,000 of debt which the business incurred. I did not declare bankruptcy. My wife and I went to work and we repaid every penny.

I was very fortunate in the early 1980's to be one of the founders of an extremely successful computer software company, Novell, Inc. We gave partial ownership of our company to all employees in the form of employee stock options and we set out to become successful. We enthusiastically gave of ourselves, whatever personal sacrifices it took, to ensure the success of our products, customers and our company. All we had to do was work 70–80 hours per week, develop our product to perfection, travel all over the world to develop sales channels, meet sales and profit goals, maintain our products and customer relationships, and—when we could—we spent some quality time with our families.

We truly lived the "American Dream". Our company employed 12, highly motivated, individuals at our low point and over 1500, highly motivated associates when I left seven years later. By the way, my wife and I have paid thousands and thousands of dollars in the form of taxes on this success and will continue to do so if our governmental policies are such that our business can continue to prosper and grow. Mr. Clinton, and many of our elected officials, must be reminded that there are many of us out here who have held real jobs and have been successful and who do pay all of our taxes and obligations and we still manage to employ, at more than fair wages, those fine people who work in our businesses.

We have leveraged our investment in Novell and other stocks to fund this business as have several of my other associates. We always invest to the long term benefit of our family, fellow employees, business and, as livestock producers, our land resources, no matter if they are private, State, BLM or USFS land entrusted to our care. Increasing taxes and increasing governmental borrowing and spending are very restrictive to all investments which are the basis of every viable business entity in this country.

We demand that our elected and appointed governmental officials reduce and balance the Federal Budget. We do not want more taxes, more entitlements, more foreign aid, more farm subsidies or subsidies of any type. Let them die of their own accord. We do need a strong National Defense.

We elected you and your other fellow Congressional, Senatorial and Presidential officials to reduce our Federal Deficit, balance the budget and get our country back in world leadership status. Start that process of spending reduction this fiscal year.

My wife and I will work very hard for the re-election of those candidates which vote to reduce our spending and balance our budget. Our employees have the very same opinions as my wife and myself. We will all work very hard to replace those officials who vote for the current budget which has been presented to the Congress.

Your Non-Political response is requested.

Sincerely,

HARRY J. ARMSTRONG.

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FRUITLAND, ID,
*July 28,1993.*

Hon. DIRK KEMPTHORNE: We're writing on behalf of our young families, and agribusiness. Since 1979, our family has earned its living, solely, on the money generated by our 300 acre dairy farm in Fruitland Idaho. One day, we hope to pass the family business, and lifestyle, on to our children, but

now we aren't sure if the proposed tax increases, and intensifying federal regulations will permit us to continue, as planned.

We are overwhelmed by the Clinton administration's so-called deficit reducing budget, who's proposed tax increases would greatly impact our cash flow in a negative way. Please do not endorse this superficially disguised tax increase with your favorable vote!

Thank you for continuing to keep small business in mind as you ponder the merits of laws that impact not only business, but families too!

We're eagerly awaiting the result of your vote.

Sincerely,

DAVID W. HOLM.

Mr. BYRD. Mr. President:

Man is no angel. He is sometimes more of a hypocrite and sometimes less, and fools say that he has or has not principles.—HONORÉ DE BALZAC.

The opponents of the President's plan moan about the tax increases, but they know full well that we will never reduce the deficit without taxes. These same opponents cry out for spending cuts, and yet they glibly vote for additional spending with abandon. Only this week we saw repeated attempts on this Senate floor to increase spending for the flood disaster by some of the most severe critics of this deficit reduction effort. Many of these same members heartily endorse billions for aid to Israel and Egypt each year without a thought about the deficit. The administration will undoubtedly not oppose the billions in foreign aid that we spend each year—billions that could be used here at home.

We ask the American people to sacrifice. There is nothing wrong with that. Americans should be willing to sacrifice for the future good of their country. But if we ask them for sacrifice we then certainly owe the American people a more diligent effort in cutting wasteful spending and in taking a very hard look at some of the sacred cows in the budget that we fund yearly almost by rote. And we owe them a more diligent effort in the Congress in trying, where we can, to hold down spending.

Government spending is not inherently wasteful. To the contrary, Government does many good things; Federal spending supports many necessary and beneficial activities. Federal dollars are used to good effect to help bright young Americans go to college; help young married couples buy a home; help find cures and treatments for cancer and other deadly diseases; help build the public infrastructure that keeps our economy moving; help keep our senior citizens from having to live out their lives in poverty; help prevent the scourge of drugs from destroying our children; help keep our environment clean; help fight crime, and help keep our Nation safe from a sometimes hostile world.

So let us not mislead our constituents. Let us not tell them that all Government spending should be cut or that cutting spending alone will get our budget deficits down. But let us try to exercise prudence as we enact spending measures or contemplate new spending programs

The time for indulgence is over. The time for sacrifice is here. For the future of our great land we must stop thinking only of ourselves and begin to worry about our posterity and the future of this Republic.

I have been on the Senate floor for several months now talking about Roman history once a week. Every Senator here would be wise to study Roman history because it holds lessons for us here today. The Roman Republic lasted over 700 years. It finally fell for a variety of reasons, but some of those circumstances have parallels with our own society. We, too, seem to have lost our sense of direction like Rome. We, too, are over extended, not in territorial acquisition, but financially. We, too, have rampant crime in our streets. We, too, increasingly enjoy violence and revere the Almighty dollar. A night spent watching American television will rival the gladiatorial exhibitions of Rome. We are slowly separating into a society of the haves and the have nots. Greed thrives.

Living for today seems to be the dominant lifestyle. Our leaders shrink from telling the people the truth. But, it is now time to think and think hard about the very economic and moral survival of this Nation. We are in extreme trouble and we are headed down. That is the truth. I fear this Nation will never make anything like 700 years of survival. I fear that we have become fat and happy and largely uncaring about much of anything but day to day gratification. Our leaders pander. Courage is in very short supply.

The naysayers make it all sound so simple and so easy. In their simplistic world, our deficits result from nothing more than Government spending. Yet, other than abstract budget freezes and caps on spending growth, they are unable to tell us how they would cut spending. They argue that we need not even consider higher taxes, ignoring the fact that non-Social Security revenues, measured as a percent of our gross domestic product, stand today at their lowest level in 50 years. That's right, excluding Social Security taxes, the share of our national income taken by the Federal Government in the form of taxes is lower today than at any time since 1943.

In addition to refusing to face up to the reality of what is required to get the budget under control and reduce the deficit in the years ahead, the critics cry that the tax increases in the conference agreement will slow our economy and hurt job growth. To this charge, I respond by saying frankly that it is time that we take our heads out of the sand and recognize that real deficit reduction is not a painless process. The fact is that, with respect to its near-term economic impact, deficit reduction is inherently contractionary. Moreover, cutting spending is likely to slow the economy as much, if not more, than raising taxes. There are no easy choices.

I don't enjoy voting for measures like the one before us, but I know that we have to do something. I would be less than honest if I were to say that there is a painless way to deal with the deficit. I would also be less than honest if I were to say that this plan is the solution to our economic woes. It is not. Yet it is a start. It may help control the deficit if this administration does not squander the savings on ill conceived United Nations adventures or on nonessential foreign aid programs or on unwise new domestic spending programs or on deals to capture votes for this issue or that.

This plan may help if we do not become entangled in a war or experience another catastrophe like the S&L crisis or have a series of natural disasters which are exceptionally costly. Any one of the above occurrences could negate the effect of this plan and wipe out all of the deficit reduction. There are no guarantees. We are unwise if we sell this plan to the American people as a sure-fire recipe for deficit reduction. There is only a possibility that it will work, just as there is a possibility that it will not.

Still we must try. For not to try is to risk the fate of the Nation and to pass a horrendous debt on to generations of Americans yet unborn.

According to the Congressional Budget Office, 10 years from now, if we do nothing, the deficit will be $655 billion and the cost of servicing our national debt will have soared to $436 billion. Five years from now, if we do nothing, the national debt will be six trillion, four hundred and seventy-eight billion dollars. If everyone in this Nation would seriously contemplate those mid-boggling numbers and what they mean for our children and grandchildren, I believe we would hear less grandstanding and hypocrisy and more talk of sacrifice and finding a solution.

To the President's credit he has done what his recent predecessors refused to do. He has faced reality and risked proposing some unpopular remedies for our deficit problem. I hope, if we pass this plan, he and we will not foolishly squander the hard won ground we may gain. If we pass this deficit reduction effort, the job will have only just begun. So let us realize that even if we adopt this deficit reduction plan we will only have taken a first step this day. We, as leaders, must build on the effort if we are to convince the American people that their sacrifice is worthwhile. We cannot go to the well again without evidence of some success. Each of us here will have a responsibility in that regard. As I cast

my vote today in the hope that this plan will be effective, I also hope that all of us in this Government will do our part to make it so.

NATIONAL HEALTH CARE REFORM

Mr. HATFIELD. Mr. President, as we anticipate the debate over national health care reform and the development of strategies to contain and reduce escalating health care costs, I again bring to the attention of my colleagues the importance of medical research.

Health care cost containment depends largely upon preventing and curing those diseases that incur the greatest need for long-term care. Investment in medical research is the most successful method of controlling the costs associated with disease as it is the first step toward preventing disease. As an example of the importance of medical research, I would like my colleagues to consider Alzheimer's disease. This perilous disease affects 4 million people and the indirect and direct costs of Alzheimer's disease are in excess of $90 billion annually. As Dr. Gene Cohen, Director of the National Institute on Aging, testified before the Senate Appropriations Committee earlier this year, without substantial advances in the prevention and treatment of diseases which lead to disability, the growth in the size of our oldest age groups will have a devastating impact on future health care costs. These increased costs will more than offset potential gains from any cost containment strategies. We know, Mr. President, that simply delaying the onset of Alzheimer's disease by 5 years would yield savings of $45 billion annually.

Two days ago I received a letter which reported recent developments in Alzheimer's disease research and which gives me reason to believe that our investments in this research are beginning to pay off. Dr. Allen D. Roses, the chief of neurology at Duke University, wrote that, "The pace of new discovery concerning the cause[s] of Alzheimer's disease has accelerated to the speed of light." Dr. Roses went on to say, "we have found an important genetic risk factor for the most common form of this devastating disease which, through further research, promises to pinpoint the mechanisms of this disease. This will allow new, relevant therapies to be developed. It will also allow us to have early and more accurate diagnostic procedures. Early diagnosis also would allow us to test treatments which may significantly slow or stop the progression of this disease."

These recent discoveries were reported in a June 7 Wall Street Journal article. I ask unanimous consent that it be included in the RECORD immediately following my remarks.

[From the Wall Street Journal, June 7, 1993]

CLUE TO A KILLER: ALZHEIMER'S IS LINKED TO THE WAY THE BLOOD TRANSPORTS CHOLESTEROL

(By Michael Waldholz)

An Alzheimer's disease research finding considered outlandish when first reported late last year is igniting a new assault on the baffling, mind-destroying brain disorder.

A Duke University scientist says his laboratory last year stumbled upon a startling discovery: People born with a certain fairly common gene are at high risk of developing Alzheimer's late in life. The gene makes a protein whose sole job, scientists had believed was to shuttle cholesterol in and out of cells and tissues. Now it appears the protein also carts into brain cells a normally harmless substance that, over time, may destroy memory.

Alzheimer's researchers agree it is too soon to know the full implications of the finding. But even the most cautious concede that it opens an entirely new area of research into diagnostics and therapies for a disease that afflicts about four million Americans and for which there is currently no good treatment.

A SIMPLE BLOOD TEST

If further research definitively fingers the cholesterol-carrying protein as a culprit in Alzheimer's, work will turn to seeking drugs to block its role in killing brain cells. The find also might someday lead to a blood test to show who is a risk of developing the disease.

"It's very suggestive of a major breakthrough," says Jo Ann McConnell, vice president at the Alzheimer's Association in Chicago. Dr. McConnell believes the Duke find is so "earth-shattering" that other scientists should immediately attempt to duplicate it or prove it wrong.

Earlier this year, the Duke lab's claim was seen as just one of a flurry of fascinating but inconclusive new findings about Alzheimer's. But since early April, reports of numerous supporting discoveries circulating among scientists are converting the staunchest of skeptics. Several drug makers are courting the Duke lab's lead scientist, Allen D. Roses. He has been invite to present his findings to Abbott Laboratories, to Italy's Sigma-Tau SpA and to a lab of Britain's Glaxo Holdings PLC.

THE TIDE TURNS

Dr. Roses is a brilliant but controversial neurologist whose ideas about Alzheimer's have often been at odds with mainstream thinking. The link between the cholesterol-transporting protein and Alzheimer's was found in a burst of recent serendipitous experiments following 13 years of Alzheimer's research at his lab.

Scientists have long known that the brains of Alzheimer's victims are littered with clumps of an insoluble, epoxy-like material known as beta amyloid. But what its role was—as a cause or merely a byproduct—has been far from clear. And how the material builds up in the brain has been a subject of intense scientific research.

Dr. Roses's claim that it is brought in by one of the proteins that carry cholesterol in the blood—one known as apolipoprotein E, or ApoE—was first greeted with suspicion, since it seemed at odds with prevailing theories about amyloid accumulation. "If you asked me three months ago, I'd have told you the research was rubbish," says John Hardy, a top British Alzheimer's scientist and frequent critic of the Duke laboratory's work. "But now I've now seen the data and it's very strong," Dr. Hardy adds. He says his mind was changed "quite dramatically" during a 15-minute talk Dr. Roses gave at a scientific symposium in early April near Washington. "As I sat there I became increasingly worried that I'd been wrong—that perhaps I'd missed something quite obvious," he says. "When he finish speaking I thought, 'Oh s——, we could have done those same experiments.'"

Especially intriguing, scientists say, is a study by Dr. Roses showing that many people with the common "late-onset" Alzheimer's—after age 65 or so—are born with a form of ApoE that is particularly adept at binding to beta amyloid. The finding supports the notion that this particular cholesterol-carrying protein can pull tiny bits of amyloid from the bloodstream and pile it up in the brain.

Dr. Roses's lab says most healthy elderly people carry different versions of ApoE that don't bind well to beta amyloid, suggesting why most people don't accumulate the brain plaques. "The guess is that the one form of ApoE is especially powerful at accumulating amyloid, while other forms don't," Dr. Roses says. "We think getting Alzheimer's depends on which form you inherit."

When he presented his work at another scientific meeting later in April at a New York hotel, researchers who hadn't previously heard details of the findings jumped to their feet, pelting him with questions. In the hallways afterward, several noted Alzheimer's researchers buzzed around Dr. Roses, seeking to collaborate with him on efforts to validate—or refute—the findings.

One advised him that a colleague at the University of Washington already had reproduced an important aspect of the Duke finding. The colleague, Gerard D. Schellenberg, says his lab has found a "statistically significant" link between those who carry one version of ApoE and those who have Alzheimer's. He declines to release details because he hopes to publish his findings soon, but says they were "close" to what Dr. Roses is reporting.

"It's clearly a risk factor," Dr. Schellenberg says. "People with this protein circulating in their blood are at higher risk" of developing Alzheimer's. But he adds, "Exactly what that means is far from clear. We still don't yet know if or how [ApoE] actually plays a role in causing the disease. I'd be very cautious about jumping to conclusions."

Despite advances over recent years in understanding alterations in the brain anatomy of Alzheimer's patients, scientists are still baffled as to exactly why crucial brain nerve cells, or neurons, deteriorate and then expire, causing loss of memory, ability to function and, eventually, death. Hence the excitement Dr. Roses is stirring.

"After years of not getting anywhere, there has been a steady stream of exciting findings in the field of late," says Zaven F. Khachaturian, head of Alzheimer's disease research at the National Institute of Aging. "Now people are beginning to see how [Dr. Roses's work] might fit in, perhaps even help explain a great deal."

It is just in the past four years that scientists have found that beta amyloid is the main component of the "senile plaques" found in autopsies of Alzheimer's victims. Researchers have speculated that the brain plaques form when thousands of molecules of amyloid accumulate over many years, perhaps blocking nutrients from getting to the nerve cells.

As far the source of the amyloid, scientists increasingly have accepted the notion that it

forms from the abnormal breakdown of a "precursor" protein. Several biotechnology companies and numerous academic labs have been racing to identify this abnormal process, hoping it might lead to new drugs.

For years, Dr. Roses has enjoyed ruffling the scientific feathers of the Alzheimer's research establishment, stubbornly arguing that scientists were wrong to focus solely on the precursor protein. To prove his point, the 50-year-old Dr. Roses, who runs the Joseph and Kathleen Bryan Alzheimer's Disease Research Center at Duke University Medical Center in Durham, N.C., spent years scouring the globe for families where two or more siblings develop Alzheimer's late in life. His hope was to find a shared gene.

"My only problem was I couldn't prove it until I identified the gene," he says. That was before biochemist Warren Strittmatter arrived at the Duke University lab. About a year ago, Dr. Strittmatter developed a test to identify natural substances that chemically bind to amyloid. His goal was to find something involved in amyloid accumulation. In one series of experiments, Dr. Strittmatter says he was annoyed to discover the frequent presence of what he thought was an experimental contaminant. After finally isolating it, he found it was ApoE.

"I didn't know what it was until I looked it up in a textbook," he recalls.

Discovered about 20 years ago, this cholesterol-carrying substance is one of the hottest subjects of study in heart disease. Scientists have found that it is made from combinations of three different genes, dubbed E2, E3 and E4. By getting one gene from each parent, a person can have any one of six combinations.

Very recent research shows, for instance, that people born with the E4/E3 combination have a high risk of developing a heart attack. That's because that gene combination makes a form of ApoE that allows cholesterol-rich deposits to clog coronary arteries. But there was no reason to think that inheriting a form of ApoE had anything to do with an increased likelihood of Alzheimer's.

"When I looked up ApoE, I found that the gene for it already had been located and isolated," Dr. Strittmatter says.

Moreover, the ApoE gene sat in the very spot where Dr. Roses previously had located the suspect gene in families with late-onset Alzheimer's. "I had known the ApoE gene was in the region, but I had no reason to suspect it had anything to do with Alzheimer's," says Dr. Roses.

Through a series of experiments, he, Dr. Strittmatter and their Duke colleagues forged a link between ApoE and Alzheimer's. They studied tissue samples from 176 deceased individuals whose Alzheimer's had been confirmed by autopsy and found that 64% inherited at least one copy of the E4 gene, while only 31% of a group of healthy people did. Moreover, they found that people who inherit an E4/E4 gene combination were nine times more likely to develop Alzheimer's than people with the E3/E3 variant.

In addition, his study of samples from autopsied patients found that, on average, people with the double dose of E4 genes developed Alzheimer's at about age 68; those with the E4/E3 variation at about 77; and those with E3/E3 at about age 85.

Dr. Roses argues that these findings may support his long-held hypothesis that Alzheimer's disease is something that eventually arises in all humans. "Carrying the E4 gene merely means you can get the disease earlier," he says.

Still, some Alzheimer's scientists urge caution. "I'm not convinced by any measure that ApoE4 is causative," says Dennis Selkoe, a researcher at Harvard University's Brigham and Women's Hospital and one of the world's pre-eminent amyloid experts. "In fact, even Dr. Roses's data shows that some people with the E4 genes don't get Alzheimer's and many with Alzheimer's don't have the E4 variant. What's becoming apparent is that many things cause Alzheimer's. But ApoE looks as if it plays a role."

If it does prove true, Dr. Roses speculates, doctors may use the gene to identify who would benefit from drugs that keep ApoE from locking on to amyloid. Richard Mayeux, a neurologist at Columbia University, is beginning a study that will follow about 1,500 healthy elderly people to determine whether Alzheimer's disease can be predicted based on their ApoE typing. "We need to show if, indeed, this gene can be predictive," Dr. Mayeux says. "We should know in a few years."

COLLOQUY

Mr. STEVENS. Mr. President, I would like to engage the distinguished chairman and ranking member of the Senate Finance Committee in a brief colloquy concerning the ability of Alaska Native Corporations [Native Corporations] to avail themselves of the judicial system in certain tax cases. Last year, the conference report to H.R. 11, the Revenue Act of 1992, contained a procedural provision of critical importance to Native Corporations. This provision granted the Native Corporations standing to contest deficiencies in so-called net operating loss [NOL] transactions expressly permitted by law. Working with the Department of the Treasury, the Joint Committee on Taxation [JCT] and the Senate Finance Committee, we were able to craft a detailed provision which protected the rights of all of the parties and was self-financed by revenue estimating purposes. However, because of the President's veto of H.R. 11, this provision failed to become law and the Native Corporations remain without the right to go to court to contest a tax liability for which they are the true party in interest.

Recently, I reintroduced this standing amendment as S. 353, which I had hoped would be included in this bill. Since so much effort has been expended on this provision to protect the interests of the parties to the transaction and the Government, I trust that the provision should raise little controversy, particularly since it pays for itself. Indeed, we have once again received a revenue-neutral estimate from the JCT and have once again worked with staff of the JCT and Treasury to address all technical questions. Now, all we need is enactment of the provision. However, because additional tax legislation may not be enacted for some time and because Native Corporations face critical administrative determinations by the Internal Revenue Service [IRS] which may negate the standing provision for some Native Corporations prior to its presumed enactment, I am concerned that such IRS actions might render congressional consideration moot.

Currently, Native Corporations are in, or are moving to, the final IRS administrative stage—the Appeals Office review process. While at one time it was anticipated that many of the cases would be settled at that level, recent meetings with the IRS have proven disappointing. Failure to reach settlement with the IRS will result in the IRS effectuating an unusual spring-back theory which will transfer all excess income, as determined by the IRS because of its denial of a major portion of a Native Corporation's losses, back to the buyer. The Native Corporation will thus be left with no income, no tax and hence no standing, and the IRS will be in a position to issue a deficiency notice—commonly known as a 90/day letter—to the buyer, which has that time period to file a petition in the Tax Court. once such a buyer petition is filed, even the subsequent enactment of a provision creating standing for Native Corporations would have no effect since the controversy would already be subject to the court's jurisdiction. That is why this provision is so time-sensitive and why we must insure that the IRS take no action which could jeopardize the very viability of these Native Corporations until Congress can once again consider the standing legislation.

I would ask the distinguished chairman and ranking member of the Finance Committee to join me in urging that, in the absence of an agreement of both the Native Corporation and the buyer in a transaction to accept such a deficiency notice, the Secretary of the Treasury and the Commissioner of the IRS refrain from issuing such a buyer-deficiency notice based on an NOL transaction until Congress has had the opportunity to again consider the previously passed standing provision. It is further recommended that the IRS continue the expedient processing of these cases but, after the Native Corporation exhausts all administrative rights, the parties remain in the status quo until the end of this Congress or until the standing legislation becomes law, whichever occurs sooner. However, such a deficiency notice could be issued upon agreement of both parties to the transaction—the Native Corporation and the buyer.

Mr. PACKWOOD. I understand the concern of the distinguished senior senator from Alaska. It is clear that the underlying amendment is procedural in nature and would merely grant the Native Corporations a judicial forum to adjudicate this tax issue. Having once expressed its view that such relief should be available, Congress should be given the opportunity to confirm that action without the IRS preempting such legislation to the detriment of the

Native Corporations. I join my distinguished colleague in urging the Secretary and the Commissioner to refrain from issuing such deficiency notices to the buyer until Congress once again has had the opportunity to address the issue or until the end of this Congress, if the matter has not been legislatively disposed of by that time. Of course, the parties to the transaction could jointly agree to accept such a deficiency notice at any time.

Mr. MOYNIHAN. I concur in the views of the distinguished ranking member of the Finance Committee.

MEDICAID PEDIATRIC IMMUNIZATION PROVISIONS

Mr. President, I understand that the portion of the statement of managers intended to accompany the conference report relating to childhood immunization inadvertently was omitted from the filed copy of the conference report. Therefore, I would like to take this opportunity to set forth the contents of that statement of managers language for the benefit of my colleagues and any other individuals with an interest in this portion of the legislation.

There being no objection, the provisions were ordered to be printed in the RECORD, as follows:

*Sec. 13631. Medicaid pediatric immunization provisions.*

*House Bill*

The House bill establishes a new Subtitle 3 of Title 21 of the Public Health Service (PHS) Act dealing with childhood immunizations. It establishes a new entitlement program, under which the Secretary of HHS will provide adequate amounts of vaccine to each State to immunize fully every eligible child within the State. Eligible children are defined to be children eligible for Medicaid, children without any form of health insurance (including indemnity plans, pre-paid plans, and ERISA plans), children with insurance but without coverage under those plans for immunization, and children who are Indians. The Secretary is to ensure the distribution without charge of Federally purchased vaccines to be made available to States and providers. These obligations are undertaken by the Federal government in advance of appropriations acts and are binding regardless of the availability of appropriated funds or of discretely segregated or named funds or accounts. The effective date of the program is October 1, 1994.

The House bill requires that a State or a provider apply to the Secretary in order to participate in the program, and establishes conditions under which providers may participate, including that providers or entities receiving federally purchased vaccines must agree not to charge for the vaccine and not to deny immunization services to persons unable to pay an administration fee.

The bill prohibits States from modifying or repealing, in a manner that reduces the amount of currently required coverage, any State laws in effect as of May 1, 1993, that require insurance plans to provide coverage for immunizations.

The House bill allows the Secretary to enter into, or decline to enter into, contracts with manufacturers of pediatric vaccines for an agreed upon duration and, with the consent of the manufacturers involved, to modify or extent contracts. The Secretary must negotiate a price that includes a reasonable profit for manufacturers and provides for shipping and handling of the vaccine, without subsequent additional charges for delivery of vaccines. Information supplied by a manufacturer for these purposes shall be considered a trade secret (under Sec. 552(b)(4) of the U.S. Code) and maintained in a confidential manner by the Secretary. In addition, the bill requires HHS to negotiate for the maintenance of a six-month supply (or a "stockpile") of vaccines to meet unanticipated needs.

The bill requires that Secretary to provide a State that manufactures vaccines an amount equal to the value of the vaccine that otherwise would have been provided to the State under the program. Funds received by such States in lieu of vaccines may be used only for purposes relating to pediatric vaccines.

The bill establishes a State option regarding vaccine purchases for additional children within the State. The Secretary's obligation to provide vaccine under this option is limited to the vaccine that has been made available under manufacturers' contracts. If multiple contracts with multiple prices are in effect, the Secretary is authorized to determine which contract is available to States electing this option.

The Secretary is required to establish a list of recommended pediatric vaccines, subject to medical contraindications, and a recommended schedule for the administration of such vaccines. Such list and schedule established by the Advisory Committee on Immunization Practices (ACIP) (an advisory committee established by the Secretary acting through the Centers for Disease Control and Prevention) is deemed to be the Secretary's list for purposes of this requirement. The establishment of a list and schedule does not supersede State laws regarding immunizations (including laws relating to religious or medical exemptions).

The bill establishes a Trust Fund in the Treasury of the United States to assist the Secretary in carrying out activities of the program. The Trust Fund will receive funds appropriated, funds directed from the Internal Revenue Code, and any income earned from investment of the Trust Fund.

Finally, the bill terminates this program on such date as may be prescribed in a Federal law that provides for immunization services for all children as part of a broad-based reform of the National health care system.

*Senate Amendment*

Although the Senate amendment contains no provision comparable to the House bill, it does provide for several changes in immunization programs of the Federal government, including a requirement that State Medicaid programs provide for the establishment of a State vaccine bulk purchase program or a vaccine replacement program for the purchase of pediatric vaccines; limitation on the price of a vaccine purchased through such a program to the price that is in effect in contracts with the Centers for Disease Control and Prevention on the date of enactment, (increased by the consumer price index from the date of the contract); and optional authority for multiple contractors for such purposes.

*Conference Agreement*

The Conference Agreement is a substitute provision incorporating elements of both the House bill and the Senate amendment and reflects the requests of the Administration.

SUMMARY

In broad terms, the agreement provides for the establishment of a new entitlement program that is a required part of each State's Medicaid plan. Under this program, States are entitled to receive from the Federal government sufficient vaccine to provide fully for a limited class of children (i.e., Medicaid-eligible, uninsured, and Indian children and children receiving immunizations at Federally qualified health centers or rural health clinics). In turn, States must make this free vaccine available both (1) to all public and private health care providers who are authorized to administer vaccines under the laws of the State, who are willing to participate in the program, and who satisfy the Secretary's requirements and (2) to all children who seek such vaccine through a willing health care provider. No charge may be made for the free vaccine, either by the State or by the providers, although providers may charge a limited fee for the administration of the vaccine (subject to prescribed limitations).

To provide the vaccine needed to carry out this program, the Secretary is to negotiate with manufacturers for a consolidated purchase price. For currently recommended vaccines, this price may not exceed the current purchase price under vaccine contracts administered under the Public Health Service Act, adjusted for inflation. For new vaccines, the Secretary is to negotiate a consolidated purchase price and no ceiling is specified. Special rules are provided for States that manufacture their own vaccines.

No change is made in other current law programs regarding immunization, including the program for grants to States for childhood immunization programs (under section 317(j) of the Public Health Service Act). The Conferees expect those Federal programs to continue in place. To the extent that discretionary funds provided by grants under these programs—or State immunization program funds—are no longer needed for the purchase of vaccines, the Conferees expect that these funds will be used to provide for the important infrastructure for vaccine delivery. Indeed, the Conferees note their belief that the provision of free vaccine must be done together with essential immunization infrastructure improvements (such as longer clinic hours, more outreach workers, better parent education, innovative community-based activities, and improved physician fees).

DESCRIPTION AND INTENT

*Subsection (a)—State plan requirement for pediatric immunization distribution program.*

Subsection (a) creates a new requirement of State Medicaid plans regarding immunizations as Section 1902(a)(61) of the Social Security Act, and makes various conforming amendments.

Under the Conference Agreement, States must establish a pediatric vaccine distribution program as an amendment to their Medicaid plans, although (1) this program is available to a larger class of children than those who receive general Medicaid benefits and (2) the program providers may include a larger class of providers than those who agree to be Medicaid providers. (The Conferees note that providers who have not elected to be Medicaid providers may still participate in this new program.) Other than for those children whose eligibility for the program derives from their status as Medicaid beneficiaries, Medicaid eligibility requirements are not to be applied in determining which children are eligible for free vaccine.

*Subsection (b)—Description of required program*

Subsection (b) creates a new program for distribution of pediatric vaccines as Section 1928 of the Social Security Act.

"Section 1928(a)—Establishment of Program":

Under the Conference Agreement, each State must establish a program of distribution of free vaccines to certain Federally vaccine-eligible children (defined below). This program may be administered by the State department of health or other agency designated by the State.

To facilitate these State-administered pediatric vaccine distribution programs, the Conference Agreement requires that the Secretary provide for the purchase and delivery for each State (or Indian tribe or tribal organization) sufficient vaccine to immunize certain children within the State (or tribe or tribal organization). This requirement constitutes the creation of a new entitlement and represents an obligation to provide for the purchase and delivery of vaccines that is undertaken by the Federal government in advance of appropriations acts and is binding on the Federal government regardless of the availability of appropriated funds or of discretely segregated or named funds or accounts.

The Conference Agreement provides special rules regarding the administration of this entitlement for situations in which a vaccine is unavailable or in which the State is a manufacturer.

The Conference Agreement also requires that States provide that any willing health care provider in the State, who meets enumerated registration requirements, be entitled to receive free vaccine to administer to Federally vaccine-eligible children. States may not impose additional qualifications or conditions for providers, except those approved by the Secretary to prevent fraud and abuse and for related purposes.

The Conferees intend that this program may be administered within States by the State health department, or by another department, if the State so designates. Because many providers who might see Federally vaccine-eligible children are not Medicaid providers and many Federally vaccine-eligible children are not Medicaid beneficiaries, failure to distinguish between this program and the Medicaid program could create confusion and result in fewer providers and children receiving free vaccine. In most cases, immunization programs have been administered within public health programs and thus, the Conferees believe that an administrative location in the public health program will benefit the increased immunization efforts outlined herein.

The Conferees do not intend that this new group (i.e., federally vaccine-eligible children) be treated as Medicaid eligibles for purposes of Medicaid quality control eligibility and reviews.

The Conferees adopted an entitlement approach because they believe that the commitment to provide vaccine against preventable childhood diseases must be constant and certain and that State that come to rely on the Federal promise to provide vaccine must be protected against possible shortfalls. Funding by any other mechanism (such as a reliance on discretionary spending) is inherently less reliable than the guarantee authorized here and could place States and their citizens at risk of outbreaks of serious disease.

The Conferees have provided that States create entitlements for children and providers as a means to ensure that the program reaches all Federally vaccine-eligible children and all willing providers. While providers are not required to take part in the program, States may not restrict the availability of free vaccine if a provider is willing to participate and is otherwise qualified to administer vaccines under applicable law. The Conferees seek to forestall any attempt by a State to require that patients be referred from a qualified, willing provider to another site, because such referrals often result in a postponement of immunization or failure to immunize. The Conferees also seek to assure that Federally vaccine-eligible children are able to choose the provider that they wish to use for this benefit.

The Conferees recognize that the enforcement of the entitlement rights for providers may, in many cases, be of little value to providers, but of great value to the Federally vaccine-eligible children who may wish to be served by that provider. The Conferees intend, therefore, that Federally vaccine-eligible children be allowed to enforce a provider's rights on behalf of the provider.

In the event that available quantities of vaccine are insufficient to cover all children, both Federally and State-eligible, the Conference Agreement provides that the Secretary is to establish priorities for purchase and distribution of the available vaccine, with priority given to Federally vaccine-eligible children unless the Secretary finds that there are other public health considerations. The Conferees believe that the Federally vaccine-eligible children are the most vulnerable populations and, in the event of shortages, should be given highest priority. The Conferees recognize, however, that, in some instances, there may be other needs, such as the control of outbreaks of disease, which the Secretary may find are more pressing.

"Section 1928(b)—Vaccine-Eligible Children":

The Conference Agreement defines children eligible for the provision of free vaccine purchased by this program (known as "Federally vaccine-eligible children") to be those children who are Medicaid-eligible, uninsured, Indians, or children who are administered vaccines in a Federally qualified health center or a rural health clinic and who are not insured for vaccine costs. Any child who meets these criteria is entitled to receive an immunization without charge for the vaccine.

In addition, the Conference Agreement establishes a category of children known as "State vaccine-eligible children" to be those children who are not Federally vaccine-eligible children but who are children that a State elects to provide with vaccine without charge for the vaccine. Such an optional category will include children in those States that currently purchase vaccines for all children, and potentially other States as well.

"Section 1928(c)—Program-Registered Providers":

Under the terms of the Conference Agreement, to be program-registered providers, health care providers must agree to ask parents if a child is eligible for free vaccine, although the providers are not required independently to verify the answers to these questions. Providers must maintain certain records and comply with applicable State law, including laws relating to religious or other exemptions. Providers must administer vaccines according to the schedule recommended by the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention, unless in the provider's medical judgment (subject to accepted medical practice) such compliance is medically inappropriate.

While providers may not charge for the vaccine per se, providers may charge a fee for the administration of the vaccine. Providers may not, however, charge an amount greater than the actual regional costs for such administration, as determined by the Secretary. Providers may not, under any circumstance, turn away a child because of the inability of the child's parents to pay the administration fee. Providers need not, however, accept every request for immunization.

States are required (1) to encourage a variety of different providers to participate in the program and (2) to administer vaccines in an appropriate cultural context.

The Conferees note that the Conference Agreement's provisions regarding providers are simple and underscore the intent that both the Secretary and the States implement these provisions in a similarly simple manner so as to encourage providers to participate and yet maintain accountability for the program. The Conferees recognize that different States have established a wide variety of distribution programs for vaccines and intend that existing effective distribution systems, including the use of independent wholesale distributors, be left in place.

The Conferees emphasize that this program in no way mandates immunization. This program deals with payment for vaccines. Individual State laws regarding immunization status are preserved, and the exemptions under these State laws for religious, medical, and other reasons are also preserved. The Conferees affirm their support of compliance with such laws and their exemptions. Acting under those laws, providers are to use their best medical judgment regarding an immunization and may decline to administer an immunization if it is medically inappropriate within the range of accepted medical practice.

The Conference Agreement does not require program-registered providers to administer a vaccine to each child seeking to be immunized. The Conferees clearly intend for this program to serve as many children as possible. But the Conferees believe that it is impractical to require that each provider who administers one shot to a vaccine-eligible child in his/her practice to immunize every other child who seeks vaccines whether in his/her practice or not. Such a requirement could quickly serve to drive all providers from the program. The Conferees do intend, however, that the Secretary seek to encourage program-registered providers to participate to the greatest extent possible.

The Conference Agreement provides for some restrictions on the fees that program-registered providers may charge to Federally vaccine-eligible children. Such fees may not exceed a schedule developed by the Secretary. The Conferees have included such a schedule because they believe that the cost of administration may serve as a significant roadblock for families of limited means that are eligible for this program. The Conferees recognize, however, that if fee limits are set too stringently, few providers may be willing to participate in the program and the Conferees intend for the Secretary to establish the schedule with these two problems in mind. The Conferees have not limited the fees for providers participating in a State-option programs. If States wish to limit such providers' fees, they are free to do so as part of their State option program.

The Conferees have also prohibited program-registered providers from denying vaccine to any vaccine-eligible child (whether State or Federal) because of the child's family's inability to pay for the administration of the vaccine. The Conferees believe that this protection is a fundamental standard to

which providers may be reasonably expected to adhere.

Finally, the Conferees note that they have prohibited States from imposing additional qualifications for eligibility as a program-registered provider. The Conferees have done this because, as was discussed above regarding enforcement of entitlement rights, they seek to forestall any attempt by a State to require that patients be referred from a qualified, willing provider to another site. The Conferees also seek to assure that Federally vaccine-eligible children are able to choose the provider that they wish to use for this benefit.

"Section 1928(d)—Negotiation of Contracts with Manufacturers":

The Conference Agreement requires that the Secretary negotiate and enter into contracts with manufacturers of vaccines to meet the requirements of this program. The Secretary is required to consolidate these negotiations and contracts with other such activities. These contracts may be for multiple years.

The Conference Agreement specifies that the Secretary may not agree to a contract for these purposes under which the price of the vaccine would exceed the cost of the vaccine under the contract of the Centers for Disease Control and Prevention on May 1, 1993, adjusted for inflation. If, however, a new vaccine is recommended for routine use in children, the Secretary is required to negotiate for the purchase price of that vaccine and is not bound by prices set for current vaccines. Contract prices are to include the price for shipping and handling. In carrying out these negotiations, the Secretary is to take into account the needs that States have identified (and provided in advance of negotiations to the Secretary) for State vaccine-eligible children under their own programs. The Secretary is also to take into account the need to maintain a 6-month supply of pediatric vaccines to meet unanticipated needs and to consider the potential for disease outbreaks.

The Conference Agreement further provides that the Secretary shall, as appropriate, enter into a contract with each manufacturer of the vaccine that meets the terms and conditions of the Secretary. The Secretary also may have multiple prices.

The Conferees intend that negotiations proceed according to the Federal Acquisition Regulation, subject to specific provisions of this section, including the price ceiling. The Conferees note that the maximum price allowed under the Conference Agreement is intended to be a ceiling and not a floor or a presumptive price. The Conferees understand that in recent years, the increase in the public price on some vaccines has not kept up with the Consumer Price Index. They intend to retain Secretary's ability to negotiate savings below the maximum price that is established in this section.

The Conferees also intend, however, that the Secretary conduct negotiations in a manner that will ensure the continuation of research and development toward new, better, and safer vaccines. The Conferees recognize that most vaccine innovation is conducted in the private sector by manufacturers and intend that the Secretary act to foster such innovation through every means available. While the program provides substantial fiscal relief to the States and is cost-effective for the Federal government and the public at large, the Conferees have not adopted the new vaccine program principally as a cost-cutting measure but rather as a public health measure. To the extent that increases in negotiated prices can be justified as subsidizing research and development necessary for the improvement of public health, the Conferees intend for the Secretary to allow such increases. Indeed, recognizing that research and development in vaccines are vital to public health, the Conferees have not attempted to cap the cost of new vaccines but have chosen to leave such negotiations to the Secretary to be done on an ad hoc basis. Moreover, if the Secretary comes to believe that the statutory limitation on prices for current vaccines does not allow for sufficient research and development subsidies, the Conferees expect her to report that belief to the Congress and to request an amendment to the limitation.

The Conferees intend that vaccine manufacturers retain their ability under these contract provisions to distribute pediatric vaccines through independent drug wholesalers. Manufacturers may elect to subcontract the shipping, handling, and related distribution functions to such wholesalers. Independent drug wholesalers frequently have served these functions in the past and the Conferees do not intend to disrupt such practices. The Conferees further intend that States be allowed to retain their distribution systems.

In carrying out the responsibilities of this subsection, the Secretary is intended to consolidate these negotiations with all others that she carries out for the purchase of vaccine, including those for the use of grants funds under the Public Health Service Act. The Conferees believe that this consolidation is an efficient means of assuring that the largest possible number of children have access to vaccines and do not intend the explicit description of authority in this program to limit the Secretary's authority in any others.

The Conference Agreement also provides for an emergency stockpile of vaccines to be negotiated and purchased under these provisions. While the Conferees recognize that this is an increased cost in the short run, they believe it is necessary to avoid situations in which potentially life-saving vaccines are unavailable because of natural disasters or manufacturing problems.

The Conference Agreement provides authority for the Secretary to decline to enter into contracts. The Conferees have provided this authority for extreme circumstances only and, again, would emphasize the importance of continuity of vaccine supplies for Federally vaccine-eligible children and States.

Recognizing that the manufacturing process for vaccines is complex and has specific physical plant requirements, the Conferees understand that manufacturers may need the reassurance of contracts for a time longer than the traditional one-year period. The Conferees have, therefore provided the Secretary with the unusual authority, traditionally reserved for defense issues, to provide multi-year contracts to allow for stability of vaccine supply.

Also recognizing that the Federal market share in the vaccine industry will be increased under the new program, the Conferees have provided that the Secretary shall, as appropriate, enter into a contract with each of the manufacturers that meets the terms and conditions of the Secretary, attempting to ensure that each manufacturer obtains an appropriate share of the contract. The Conferees have adopted this provision to assure that Federal contracts under the program encourage competition, innovation, and efficiency. In order to do so, the Secretary may, at her discretion, also allow for different prices from different manufacturers.

The Conferees intend that manufacturers involved agree to submit to the Secretary such reports as the Secretary determines to be appropriate with respect to compliance with the contract.

"Section 1928(e)—Use of Pediatric Vaccines List":

In carrying out the requirements of this section, the Secretary is to purchase vaccines from the list established, maintained, and revised by the Advisory Committee on Immunization Practices. The Conferees understand that this list includes the guidelines and schedule of appropriate immunization as outlined by the Advisory Committee on Immunization Practices.

The Conferees note that they do not intend that this list and these guidelines be considered guidelines, standards, performance measures or review criteria for purposes of the Agency for Health Care Policy and Research under Title IX of the Public Health Service Act or under Section 1142 of the Social Security Act.

In carrying out negotiations under this subsection and all duties of this section, the Secretary is to rely on the ACIP list of recommended vaccines. The Conferees intend that the Secretary provide for Federally vaccine-eligible children the same vaccines that are recommended for children with their own source of payment.

The Conferees intend that the Advisory Committee on Immunization Practices be allowed to conduct its work in an objective manner, concerned only with issues of public health and medicine. While decisions regarding the listing of recommended vaccines will, undoubtedly, have some budget implications for the program and the Secretary, it is the Conferees' intention that the ACIP's work be rigorously separated from such concerns. The Conferees are troubled by past examples of budgetary influence in matters of science and has chosen the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention as a committee less vulnerable than some others to such influence. So, for example, if the ACIP were to decide that one vaccine that produces side effects and reactions should be replaced with a more produces side effects and reactions should be replaced with a more expensive vaccine that does not, neither the Secretary nor any other public officer should attempt to affect that judgment. If proposed changes present a budget implication so serious as to cause the Secretary to question their validity, the Secretary should present that concern and a proposed legislative change to the Congress, but until legislative change is made, the entitlements of States to ACIP-recommended vaccines are to continue in effect.

"Section 1928(f)—Requirement of State Maintenance of Immunization Laws":

The Conference Agreement requires the maintenance of State laws that were in effect on May 1, 1993, that require health insurance policies or plans to provide some coverage with respect to pediatric vaccines. In addition, the Conference Agreement prohibits any group health plan that is covered by the requirements of Title XXII of the Public Health Service Act from reducing its coverage for the costs of pediatric vaccines.

In keeping with other provisions in this Act regarding the maintenance of insurance immunization benefits (whether private, ERISA, or State-run), the Conferees have adopted this requirement to forestall any attempts to decrease the amount of private insurance coverage that currently exists for

vaccines. The Conference Agreement necessarily includes only a limited pool of eligible children and the Conferees do not intend for States or private insurers to shift costs now borne by private third-party payors onto the new program.

"Section 1928(g)—Termination":

The Conference Agreement provides that the new plan requirement and this program terminate upon the enactment of additional Federal law providing for immunization services for all children as part of a broad-based reform of the national health care system.

"Section 1928(h)—Definitions":

Section 1928(h) provides definitions for the terms used in the creation of the vaccine distribution program.

*Other Provisions Relating to Immunizations*
*Current Law*

(a) *Outreach and Education.* States participating in Medicaid are required to cover Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services for all eligible children under 21. States are required to inform all Medicaid-eligible children under age 21 of the availability of EPSDT services.

(b) *Schedule of Immunizations under EPSDT.* The screening services element of the EPSDT benefit must, at a minimum, include appropriate immunizations according to age and health history, at intervals which meet reasonable standards of medical practice, as determined by each State.

(c) *Assuring Adequate Payment Rates for Administration of Vaccines to Children.* States are required to reimburse for EPSDT and other pediatric services at levels which are sufficient to enlist enough providers so that care and services are available to Medicaid beneficiaries at least to the extent that they are available to the general population in the geographic area. With respect to pediatric services, States must submit, by April 1 of each year, a State plan amendment that specifies, by procedure, the payment rates to be used for pediatric services in the year beginning the following July 1 and that includes data to assist the Secretary in evaluating the State's compliance with the provider participation requirement.

(d) *Denial of Federal Financial Participation for Inappropriate Administration of Single-Antigen Vaccine.* Federal Medicaid matching funds are available for the costs of single-antigen vaccines and their administration.

(e) *Requiring Medicaid Managed Care Plans to Comply with Immunization and Other ESPDT Requirements.* States may contract on a risk basis with managed care plans to deliver covered services, including appropriate immunizations and other EPSDT benefits, to Medicaid-eligible children and other beneficiaries.

*House Provision* (Section 5183)

*(a). Outreach and Education.* Requires the States to inform all Medicaid-eligible children under age 21 of the need for age-appropriate immunizations against vaccine-preventable conditions. Requires State Medicaid agencies to enter into agreements with State agencies and other institutions or organizations receiving Maternal and Child Health (MCH) Block Grant funds under Title V providing for coordination of information and education on childhood vaccinations and to coordinate delivery of immunization services. Requires State Medicaid agencies to provide, or assure the provision of, information and education on childhood vaccinations and the delivery of immunization services with the State's operations under the Special Supplemental Food Program for Women, Infants and Children (WIC).

*Effective Date:* Enactment.

(b) *Schedule of Immunizations Under EPSDT.* Requires that States, as part of the screening services element of the EPSDT benefit package, cover appropriate immunizations according to the schedule recommended by the Secretary under the Public Health Service Act.

*Effective Date:* 90 days after the issuance of the Secretary's recommended schedule of immunizations.

(c) *Assuring Adequate Payment Rates for Administration of Vaccines to Children.* Clarifies that, for purposes of determining whether pediatric service payment levels are sufficient, pediatric services include the administration of vaccines by health care practitioners.

*Effective Date:* Applies with respect to State amendments submitted by April 1, 1994.

(d) *Denial of Federal Financial Participation for Inappropriate Administration of Single-Antigen Vaccine.* The House bill denies Federal Medicaid matching funds for single-antigen vaccines, and the administration of such vaccines, in any case in which the administration of a combined-antigen vaccine was medically appropriate (as determined by the Secretary).

*Effective Date:* Applies with respect to vaccines administered on or after October 1, 1993.

(e) *Requiring Medicaid Managed Care Plans to Comply withImmunization and Other EPSDT Requirements.* Requires that a risk contract between a State Medicaid agency and an entity: (1) specify which EPSDT services are to be provided under the contract to children enrolled with the entity; (2) specify, with respect to those EPSDT services that are not to be provided under the contract, the steps the entity will take (through referrals, scheduling appointments with appropriate providers, monitoring the receipt of referred services, or other arrangements) to assure that such individuals will receive such services; and (3) require the entity to submit periodic reports as necessary to enable the State to meet its reporting requirements under sections 1902(a)(43)(D) (relating to EPSDT screening and referral rates and State participation goals) and 506(a)(2) (relating to progress in achieving the national year 2000 health status objectives relating to mothers and children). Provides for the imposition of a civil monetary penalty in an amount of up to $25,000 for each instance in which an entity fails substantially to provide EPSDT services to the extent specified in its contract with the State.

*Effective Date:* Applies to contract years beginning on or after October 1, 1993.

*Senate Amendment:* The Senate amendment contains no comparable provision.

*Conference Agreement:*

(a) *Outreach and Education.* The Conference Agreement follows the House bill with a modification.

(b) *Schedule of Immunizations under EPSDT.* The Conference Agreement follows the House bill.

(c) *Assuring Adequate Payment Rates for Administration of Vaccines to Children.* The Conference Agreement does not contain the House language regarding Medicaid vaccine administration fees. The Conferees agree with the Secretary's view that, under current law, she has the authority and the Conferees understand that it is the Secretary's intent to accomplish what the House bill would have required.

(d) *Denial of FFP for Inappropriate Administration of Single-Antigen Vaccines.* The Conference Agreement follows the House bill.

(e) *Requiring Medicaid Managed Care Plan to Comply with Immunization and Other EPSDT Requirements.* The conferees have been informed that a point of order could be raised in the Senate, under the so-called "Byrd rule" (section 313 of the Congressional Budget Act of 1974), to the substance of the House provision if included in the conference agreement. In order to avoid such a possible point of order, the conference agreement does not include the House provision. The conferees express no views on the merits of the provision.

*Availability of Medicaid Payments for Childhood Vaccine Replacement Programs.*

*Current Law. States may not make payment for covered care or services provided to Medicaid beneficiaries to anyone other than the beneficiary or the practitioner or institution providing the service, with certain limited exceptions.*

*House Bill (Section 5184)*

Allows States, at their option, to make payments directly to vaccine manufacturers participating in a voluntary replacement program. Under such a program, the manufacturer supplies doses of the vaccine to providers that administer it, periodically replaces the provider's supply of the vaccine, and charges the State the manufacturer's bid price to the CDC, plus a reasonable premium to cover shipping and handling of returns.

*Senate Amendment (Sec. 7801)*

Require state Medicaid agencies to purchase vaccines directly from manufacturers at prices negotiated by the Centers for Disease Control (plus shipping and handling fees for return doses) and develop a distribution system to deliver the vaccines to all Medicaid providers for inoculation of Medicaid eligible children. Annual price increases under the CDC contract are limited to increases in the CPI beginning in fiscal year 1994 through fiscal year 1998.

*Conference Agreement*

The Conference agreement follows the House bill with a modification limiting its duration to FY 1994.

*Sec. 13632. National Vaccine Injury Compensation Program Amendments.*

*Current Law*

The National Childhood Vaccine Injury Act of 1986 (P.L. 99-660) created a system for compensating children for injuries received from routine pediatric immunizations. The Vaccine Compensation Amendments of 1987 (P.L. 100-203) provided for a source of payment for such compensation and began the implementation of the system.

*House Bill*

The House bill increases the amount of administrative expenses for Health and Human Services, Department of Justice and the U.S. Claims Court from the Compensation Trust Fund from $2.5 million to $3 million. It allows individuals to file for compensation if the effect of a revision in the Vaccine Injury Table were to increase significantly the likelihood of such individual's obtaining compensation. It extends the time period for suspension of proceedings for pre-enactment cases from 540 days to 30 months (but for no more than six months at a time). It also simplifies requirements regarding vaccine information materials and provides for a quicker process through which the required information is to be made available.

*Senate Amendment*

The Senate amendment contains similar provisions. In addition, the Senate amendment increases the direct spending authority for awards for retroactive cases and amendments to the table of injuries for compensation.

*Conference Agreement*

The Conference Agreement contains the House and Senate provisions regarding extension of time and the Senate provisions regarding increases in direct spending and amendments to the table for compensation.

The Conferees have been informed that a point of order could be raised in the Senate, under the so-called "Byrd rule" (section 313 of the Congressional Budget Act of 1974), to the substance of the remaining House and Senate provisions if included in the Conference Agreement. In order to avoid such a possible point of order, the Conference Agreement does not include these provisions. The Conferees express no views on the merits of these provisions.

The Conferees also express their intention that the Administration make substantive proposals to address the serious problems that remain in the vaccine injury compensation system regarding payment of claims for pre-enactment cases. Continued postponement of addressing these issues threatens to work a serious injustice to petitioners, manufacturers, and the program itself.

*National System for Monitoring Immunization Status of Children*

*House Bill (Sec. 5181)*

The House bill establishes a new discretionary State grants program (to be administered by the Centers for Disease Control and Prevention) for the purpose of developing and maintaining registries containing information relating to the immunization status of the Nation's children. It requires States as a condition of receiving free vaccine under the free vaccine distribution program to have a registry in place not later than October 1, 1996. The bill also allows for State exemption for the collection of data on any child if a parent of such a child makes such a request. The bill authorizes appropriations for this purpose.

*Senate Amendment*

The Senate amendment contains similar provisions, although participation in the registry program is not made a condition of participation in the free vaccine distribution program.

*Conference Agreement*

The Conferees have been informed that a point of order could be raised in the Senate, under the so-called "Byrd rule" (Section 313 of the Congressional Budget Act of 1974), to the substance of both the House and the Senate provisions if included in the Conference Agreement. In order to avoid such a point of order, the Conference Agreement does not include either the House or Senate provision. The Conferees express no views on the merits of these provisions.

*House bill*

The House bill establishes in Title XXI of the Public Health Service Act a new childhood immunizations grants program. This Program replaces the Centers for Disease Control and Prevention program authorized under Section 317 of the Public Health Service Act, and authorizes all activities previously funded through that program with the exception of the purchase and delivery of vaccines. The bill authorizes appropriations for this purpose.

*Senate amendment*

The Senate amendment contains similar provisions, although it does not replace Section 317, and focuses on rebuilding the public health infrastructure and outreach activities to enhance the delivery of immunizations. It also contains provisions for better coordination of Federal efforts to improve immunization rates.

*Conference agreement*

The Conferees have been informed that a point of order could be raised in the Senate, under the so-called "Byrd rule" (Section 313 of the Congressional Budget Act of 1974), to the substance of both the House and Senate provisions if included in the Conference Agreement. In order to avoid such a possible point of order, the Conference Agreement does not include the House or the Senate provision. The Conferees express no views on the merits of the provisions.

*Healthy Start for Infants*

*Current Law*

In FY 1993, the Federal Government made $79 million in grants for the purpose of reducing infant mortality in selected communities. There is no statutory authority for the appropriation of funds for these "Healthy Start" demonstrations.

*House Bill (Sec. 5185)*

The House bill authorizes the Secretary to make grants for the operation of no more than 21 Healthy Start demonstration projects for the purpose of reducing, in the geographic area involved, (i) the incidence of infant mortality and morbidity; (ii) the incidence of fetal deaths; (iii) the incidence of maternal mortality; (iv) the incidence of fetal alcohol syndrome; and (v) the incidence of low-birthweight babies. The Secretary is required, in providing for a demonstration project in a geographic area, to seek to meet the applicable Year 2000 Health Status Objectives with respect to each of the four program purposes described above. For each of FY 1994 through 1997, the Program is authorized at an amount of "such sums as may be necessary." The program sunsets on October 1, 1997.

*Senate Amendment*

The Senate Amendment contains no similar provisions.

*Conference Agreement*

The Conferees have been informed that a point of order could be raised in the Senate, under the so-called "Byrd rule" (section 313 of the Congressional Budget Act of 1974), to the substance of the House provisions if included in the Conference Agreement. In order to avoid such a possible point of order, the Conference Agreement does not include the House provisions. The Conferees express no views on the merits of the provisions.

*Tort Claims Coverage for Health Centers*

*House Bill*

The House bill clarifies that a Community Health Center (or other entity described in section 224(g)(4) of the Public Health Service Act) may elect not to participate in coverage under the Federal Tort Claims Act if the entity establishes that it has been a participant in, and a partial owner of, a nonprofit risk retention group. In addition, the bill clarifies that officers and employees of entities under section 224(g)(4) are covered under the FTCA, even if they are not health care providers.

*Senate Bill*

The Senate bill made similar changes to the Public Health Service Act, with minor technical differences.

*Conference Agreement*

The conferees have been informed that a point of order could be raised in the Senate, under the so-called "Byrd rule" (section 313 of the Congressional Budget Act of 1974), to the substance of the provision if included in the conference agreement. In order to avoid such a possible point of order, the conference agreement does not include the provision. The conferees express no views on the merits of the provision.

Physician Ownership Study:

*House Bill*

The House bill contained no provision.

*Senate Bill*

The Senate bill required the Secretary of Health and Human Services to study the desirability of mandating that providers not refer patients to entities in which the providers have a financial interest and to evaluate different options with respect to the scope of such prohibition.

*Conference Agreement*

The conferees have been informed that a point of order could be raised in the Senate, under the so-called "Byrd rule" (section 313 of the Congressional Budget Act of 1974), to the substance of the Senate provision if included in the conference agreement. In order to avoid such a possible point of order, the conference agreement does not include the Senate provision. The conferees express no views on the merits of the provision.

National Health Service Corps Retirement:

*House Bill*

The House bill contained no such provision.

*Senate Bill*

The Senate bill required that retirees of the National Health Service Corps be treated the same as military retirees with respect to increases in retirement pay.

*Conference Agreement*

Senate recedes.

ARKANSAS BEST

Mr. LUGAR. Mr. President, I would like to call attention to an important tax issue, the treatment of hedging transactions, which is touched upon the revenue reconciliation bill but is left largely unresolved. This issue, referred to as the "Arkansas Best" issue has major ramifications on the commercial activities of business across America. In this uncertain economy, the last thing the business community needs are further impediments to their activities, particularly their risk management activities.

I urge that resolution of the hedging problem be giving immediate attention by the administration. This is an issue that should not be permitted to remain unfinished. Hedging transactions contribute to the efficient operation of businesses by reducing or transforming unwanted risks encountered by farmers and other businesspersons in their business activities. Hedging should be encouraged as a matter of public policy. Yet, hedging activities are being unfairly and unnecessarily challenged by the Internal Revenue Service.

The tax problem concerning the business world is the prospect of having hedging losses considered nondeductible against the ordinary income produced by the business operations being hedged. This problem can arise in many different business contexts, from farmers and grain dealers to currency traders and petroleum companies.

For example, assume that a farmer wants to insure himself against a decline in corn prices during the period of

time prior to the harvest and sale of his 1994 corn crop. Therefore, in the spring of 1994 he enters into corn futures contracts for the sale of corn for December 1994, delivery in a quantity approximating what he expects to harvest and at a price of $2.50/bu. A $2.50/bu. price is expected to result in a $.50/bu profit after taking account of the farmer's out-of-pocket expenses.

If, at the time of harvest in the fall, the then-prevailing price for corn is only $2.30/bu., the farmer's sale of corn on the spot market for that price will ostensibly reduce his profit to only $.30/bu. However, closing out the short December corn futures contracts at that time—through offsetting trades on the futures exchange—should produce a counterbalancing gain of about $.20/bu., leaving the farmer with the anticipated profit of $.50/bu. And, if the prevailing price when the farmer sells his corn turns out to be $2.70/bu., the ostensible $.70/bu. profit from the sale of physical corn will be offset by a $.20/bu. loss on the futures contracts, resulting again in a $.50/bu. profit.

In the example, the farmer has used short futures contracts effectively to lock in a price of $2.50/bu. and, under the expense assumptions, a profit of $.50/bu. Through hedging, the farmer has insulated his before-tax economics profits from commodity price fluctuations.

The only rational tax result is to tax the farmer on the $.50/bu. net economic profit in the example, regardless of whether the insured-against commodity prices have fallen to $2.30/bu.—resulting in an offsetting hedging gain—or risen to $2.70/bu.—resulting in an offsetting hedging loss. Appropriately, for over 60 years, this rational result was accepted by taxpayers and the Internal Revenue Service. The farmer's sale of physical corn produces ordinary income—or loss. And, until recently, there was no question but that the futures transactions in the example would also receive ordinary treatment, so that any hedging losses could be fully offset against ordinary income from the physical corn transactions being hedged.

However, many IRS agents are now claiming that the futures transactions produce capital gain or loss. This claimed capital treatment for hedges creates an intolerable tax risk. Because capital losses can be deducted only against capital gain—and, in the case of individuals, $3,000 of ordinary income—the hedger may have his taxable income distorted to his disadvantage. In the example of corn prices rising to $2.70/bu., the IRS will tax the farmer the full $.70/bu. gross profit on the sale of physical corn without permitting any deduction, except possibly $3,000, for the $.20/bu. economic loss on the corn futures. The farmer is effectively taxed on $.20/bu. of phantom profits.

Taxing this phantom income is unquestionably bad tax policy, but many IRS agents take the view that the result is required by the 1988 Supreme Court opinion in Arkansas Best versus Commissioner. Although Arkansas Best was not a hedging case, language in the opinion has been interpreted by some to require capital gain or loss treatment for sales or exchanges of virtually all property except inventory, such as the farmer's physical corn, or substitutes for inventory. In the narrow view of some agents, long futures contracts, that is, contracts to buy commodities, qualify as inventory substitutes for this purpose, but short contracts that is, contracts to sell, do not.

This misguided interpretation of Arkansas Best adversely affects a wide range of hedging activities in addition to the classic agricultural futures hedge just described. It places a cloud of uncertainty over the use of various techniques utilizing options positions to hedge business transactions, including the use by farmers of options on futures contracts under the Options Pilot Program, established by Congress in 1980 as a market alternative to farm price supports. Also affected are hedges of business borrowing costs, manufacturing profits, fuel costs of airlines, prices for energy producers, and many other risk management activities.

A recent decision of the U.S. Tax Court in *Federal National Mortgage Association* v. *Commissioner*, 100 T.C. No. 36 (June 17, 1993), represents a significant rejection of the IRS' litigating position. In the Fannie Mae case, the court upheld the ordinary treatment claimed by the taxpayer with respect to losses incurred on interest-rate hedges. The taxpayer had used futures contracts, options, and short sales of securities to hedge against the risk of rising interest rates in connection with the taxpayer's commitments to purchase interest-bearing obligations and the taxpayer's anticipated issuances of debentures to finance or refinance the acquisition of such obligations.

While Fannie Mae represents a major advance in the development of reasonable tax results for hedges, the Tax Court opinion does not put the hedging issues to rest. The court left unanswered questions abut types of hedging transactions dissimilar from those at issue in that case. Also, the opinion is subject to appeal and thus cannot now be considered a determinative judicial rejection of the IRS' arguments.

Eventually, if the IRS insists upon pursuing its litigating position through a series of cases and years of trials and appeals, the courts would like decide definitively that most business hedges qualify for ordinary treatment notwithstanding Arkansas Best. But the years of uncertainty resulting from protracted litigation would be costly for the U.S. economy. The prospect of IRS challenge has already forced many farmers and other businesspersons to forgo prudent hedging activities to reduce their business risks. The threat of being taxed on phantom profits is simply too dire.

The tax problems of hedgers are noted in the conference report on the revenue reconciliation bill. The bill itself would add a new section 475 to the Internal Revenue Code, which provides for mark-to-market accounting for securities dealers and addresses part of the hedging problem encountered by those taxpayers. But the bulk of the hedging issues are not addressed in the bill, and the conferees have urged in the statement of conference managers that the remaining hedging problems be resolved expeditiously through legislation, regulations, or some combination of the two.

Immediate action is urgently needed to remove the threat of this unwarranted tax penalty for hedges. If, as many believe, the current tax laws give the administration the ability to correct this uncertain environment, then regulations should promptly be drafted to achieve that result. If legislation is needed, the administration should send that signal. In no event should the threat of devastating tax results be allowed to continue to disrupt important risk management activities in the economy.

Mr. MCCONNELL. Mr. President, I have come to the floor today to oppose the President's tax package. That's right, tax package. Let's quit trying to hoodwink the American people in thinking this package reforms the wasteful way Congress spends taxpayers' dollars.

This package contains the largest tax increase in history, and promises deficit reduction. This package will not reduce the Federal debt, or even balance one annual budget for that matter. Under the bet circumstances this package merely slows the growth of Federal spending to no less than $200 billion per year. In fact, even by the President's own calculation, this package will contribute $1 trillion to the deficit over the next 5 years.

President Clinton has saddled this country with $255 billion in taxes and user fees, while only reducing spending by $119 billion. Mr. President, it is important to note that 80 percent of the few proposed cuts have been put off until after the next election. Therefore, the American people are left with fewer after-tax dollars, while the Government is allowed to increase in size and scope, putting off promised cuts until the hazy future.

In fact, this proposal raises nearly $2.13 in taxes for every $1 in spending cuts. In the first year, the ratio of taxes to spending is $30 to $1. Not until 1998, after the next election, does the ratio narrow to about $1.10 in new taxes to $1 in cuts. OMB Director Leon Panetta testified the President's package would be about $2 in cuts to $1 in taxes. Despite the promises, taxes will

outpace the promised cuts by over 2 to 1.

If the people of this country had any question regarding President Clinton's true colors, it is now painfully clear that he is a tax-and-spend Democrat.

President Clinton ran for President like Ronald Reagan, and now he is running the country like Jimmy Carter. Rather than delivery on his deficit-cutting promise, he has betrayed the American people with massive tax increases. The only promise Bill Clinton has fulfilled is his promise of change—he has changed all of the policies that got him elected while making the middle class pay more.

The message I am receiving from an overwhelming majority of Kentuckians is clear: Cut spending, period. We don't have a budget deficit because we tax too little, but because we spend too much. This tax package is crafted with the largest percent of deficit reduction coming from hard-earned tax dollars.

Higher taxes, increased Government spending, and budget gimmicks contained in this tax package are identical to the failed budget agreement passed in 1990. The 1990 agreement also included ineffective budget restraints, false promises of future deficit reduction, and what we can now consider a relatively small tax increase of $164 billion. The agreement was a disaster. Instead of the intended $527 billion in deficit reduction, the deficit is now expected to be $875 billion higher than intended.

Mr. President, I would like to point out to my colleagues and the American people that Mr. Clinton modeled his package so closely after the failed 1990 budget agreement that he actually included $44 billion in cuts enacted in 1990. That's right. Mr. Clinton poached $44 billion from the 1990 agreement. So, instead of the projected $427 billion in deficit reduction, I guess his cuts only amount to only $383; and believe me, I am giving him the benefit of the doubt.

Since 1980, Congress has increased taxes six times under the pretense of deficit reduction. In each of the six budget agreements of 1982, 1984, 1985, 1987, 1989, and 1990, higher taxes coupled with promised deficit reduction produced higher deficits. It's critical that we break the tax-and-spend budget mold this Congress has cast.

In Mr. Clinton's address to the American people he told them that his administration was going to end business as usual. Rather than a departure from business as usual, I think Mr. Clinton intended to say that the tax-and-spend Democrats are open for business.

Throughout this budget process, President Clinton has insisted that only the wealthiest Americans will pay higher taxes, when in truth, small businesses, the elderly, and anyone who drives a car will be hit with a higher tax bill. In Kentucky, residents will see a 14.8-percent increase in the gasoline tax, draining over $420 million from the Kentucky economy. This means a tax increase of $326 a year for Kentucky families.

Small businesses, which have accounted for over 80 percent of the new job creation in the past decade, will also be targeted. President Clinton is entirely wrong in burdening the best and the brightest small businesses. If we are to restore economic vitality to this country we cannot cripple the over 800,000 small businesses that will bear the burden of higher taxes. Mr. President, we cannot afford to tax success.

Mr. Clinton insists that this package will create new jobs and restore vitality to the economy. I have listened to the businessowners of Kentucky, and they are downright pessimistic about Clintonomics. In an Associated Industries of Kentucky survey, an overwhelming 84 percent of employers blasted the President's tax proposals as bad or very bad for their business. In a similar poll of businessowners taken by Citizens for a Sound Economy, 85 percent opposed the plan and a whopping 40 percent stated they are likely to lay off one or more employees.

Mr. President, this is not a ringing endorsement of the President's tax plan. The American people oppose this plan and I will vote to defeat the largest tax increase in this Nation's history, in hopes that a compromise can be worked out that will make substantial and lasting cuts in Government spending.

Mr. ROCKEFELLER. Mr. President, how many times has the direction of this country been decided here in the Senate? How many times has the Senate debated the question of war, pondered the prosperity of our people, or weighed the fate of our Nation? This Chamber has been something of a crossroad for America. It is right here where policies and ideas meet and diverge, and where the destiny of the American people has hung in the balance.

Today, once again, the crossroad of America lies right here. This is the time to determine the direction of the country's economic future. A vote in support of this budget plan is a vote to, finally, begin to get our economic house in order. It is a vote for an essential part of an economic strategy to create jobs and invest in the American people. It is a vote for the first step in a long march for progress that must include reforming our health care system, regaining our economic competitiveness, and reviving a sense of hope among all of our people.

A vote against the plan is an endorsement for stagnation and for the fiscal foolishness that has sapped our strength and brought us to the brink of ruin.

This budget plan lives up to principles that we share with the President. It is fair and equitable, and it offers encouraging news for those Americans hit hardest by our economic slump. It meets the test that I have heard time and time again expressed by the West Virginians I represent—when they said they were willing to shoulder part of the burden of digging out and moving forward, but if and only if everyone else were required to do their fair share.

For American families, passing this plan will translate into lower interest rates on houses and cars. Less of their tax dollars will go down the black hole of debt service, which in the end buys nothing. The fears of tax hikes—fueled by special interests and scare tactics—are unfounded. Working families in West Virginia and throughout America will pay less than $3 a month on a 4.3-cent-a-gallon gasoline tax. The expansion of the earned income tax credit will allow working families—100,000 in West Virginia alone—to pull themselves out of poverty. Expansion of the earned income tax credit is a major downpayment on building income security for our families, and another step forward in implementing the recommendations of the bipartisan National Commission on Children, which I was so proud to chair.

In addition to helping working families struggling to make ends meet with this pro-work tax credit, the package makes needed social investments for children and families. Over $1 billion will be invested in new innovative programs for family preservation and family support as a way to strengthen family and help prevent child abuse and neglect. As the sponsor of legislation in the Senate to reform child welfare services, which shares the same fundamental goals, I am delighted that we are acting to help our most vulnerable children. My State of West Virginia should receive as much as $8 million under this initiative for children. Improvements in the Food Stamp Program and child immunizations are meaningful initiatives that will make a real difference in the lives of children and families in West Virginia and across our country.

Small businesses will benefit from incentives and tax cuts aimed at stimulating job creation and capital formation. Fully 96 percent of business owners will get more out of the plan than they will put in through capital gains tax cuts for equipment, research, bricks, and mortar. West Virginia is projected to get an economic boost that will yield 23,000 new jobs.

Some of our Nation's most desperate and destitute areas—both urban and rural—will benefit from a new and innovative empowerment zone proposal. This will encourage development, investment, and job creation to help people replace their welfare checks with pay stubs.

This package also invests in affordable housing with the permanent extension of the low-income housing tax

credit and the Mortgage Revenue Bond Program. These programs help finance new construction which creates good jobs for Americans. In West Virginia, the Mortgage Revenue Bond Program has helped over 20,000 middle-income families secure the American Dream, a home of their own, and this package will ensure that similar help is available in the future for young families seeking to buy their first home.

A dramatic reform of the student loan program will save $4 billion, cut borrowing costs for students, and put a college education within reach for millions with the skill and the will for college, but not the wallet.

For me personally, the President's plan holds additional reasons for optimism—it is an encouraging first step on the road to health care reform. Deficit reduction and health care reform have a symbiotic relationship—like the conundrum of one hand clapping, one will not succeed without the other.

In this long and laborious process of trying to enact this deficit reduction part of the President's economic plan, I focused on the role that the Federal health care programs, Medicare and Medicaid, would play in making their contribution to the savings we needed to achieve in Federal spending. Working with the new, stupendous chairman of the Senate Finance Committee, Senator MOYNIHAN, I fought to find the right level of savings and the responsible blend of policies to achieve those savings. We had no choice but to look to the Medicare Program to do its fair share, but I was adamantly against resorting to drastic, indiscriminate cuts. Some of my colleagues actually called for subjecting these programs to over $100 billion in cuts. Some suggested arbitrary caps, turning a blind eye to the effects on the poor and the elderly, and the promises we made to them.

Benefits for more than 34 million Medicare beneficiaries and cost-of-living adjustments for millions of Social Security recipients are spared in this legislation. Payments to health care providers are curbed, allowing us to move on to health care reform with the support of senior citizens and veterans.

We also succeeded in incorporating some changes to the Federal health programs to improve our health care system. We worked hard to emphasize and prioritize primary care and rural health care in every way possible.

And I would like to dwell for a moment on one small, but important initiative that has been adopted in this legislation. Based on a bill that I first introduced 2 years ago, important improvements in Medicare coverage for cancer patients were included that will result in spending Medicare dollars more wisely and more humanely.

Medicare's reimbursement policy for chemotherapy drugs will be, for the first time, uniform and consistent. Medicare cancer patients will get the most appropriate therapy based on their own doctor's best medical opinion and sound medical evidence. No longer will they have to wonder and worry whether or not Medicare will pay for their doctor's prescribed treatment. All cancer patients, but particularly rural patients, will benefit from another cost effective provision that will allow Medicare reimbursement for oral chemotherapeutic drugs when substituted for an IV drug. This will decrease drug side effects, greatly increase patient comfort, and, very importantly, relieve rural patients from the ordeal of daily trips—often, involving great distances—to a doctor's office to receive their prescribed therapy. Both of the provisions have been included at no additional cost to the Medicare Program because the additional costs are offset by savings from unnecessary hospitalizations and fewer doctor visits.

This bill also clarifies past Federal policy that limited Medicaid reimbursement for certified nurse midwives to maternity-related services. When we enact this legislation, Medicaid coverage will extend to primary and preventive care services provided by certified nurse midwives, such a cancer screening and well baby care.

Clearly, if this bill fails, then it's virtually impossible to see how we go to the next step of health care reform. It would force all of us to go back to square one on an economic package and it would force health care reform into a near-permanent holding pattern. Passing this budget plan opens the way to placing health care reform front and center on our agenda. That is still more good news for middle-class Americans and senior citizens who now watch 100,000 people lose their health coverage each month and tremble about their own health security.

That is why I stand to urge all of my colleagues—Democrats and even Republicans—to vote in support of this budget plan. The President offered a plan that helps move the country back towards economic stability.

With a vote looming, we need to see this package for what it is: a first genuine step in the right direction. The President's plan is not perfect or painless. But any plan that seeks to seriously attack our deficit burden cannot be perfect or painless. By definition, what is demanded to tackle our deficit will be difficult. No magic bullet. No economic sleight of hand. No creative bookkeeping.

We in the Senate have followed a long and convoluted path to get to this point. Demands for more spending cuts were met. Concerns about unfair burdens on the middle class were debunked. Assurances that new revenue would go only to deficit reduction were guaranteed. In the end, what we are going to consider is a fundamentally good bill.

This package offers nearly $500 billion in deficit reduction—the largest in history. It relies on $255 billion in real spending cuts and asks the wealthiest 1 percent of Americans to shoulder 80 percent of the burden. For the vast majority of Americans, the President's economic plan asks for only $33 per year. There are incentives for businesses to invest and expand, creating new jobs. In short, the President's plan is founded upon turning the myth of trickle-down economics upside-down, restoring fairness and protecting the middle class.

If fairness and equity is not enough to convince you to support the President's plan, I offer you a vision of our country without this plan: a $600 billion deficit within a decade; 20 percent of our tax dollars spent on nothing but debt service; higher mortgage and auto loan interest rates; slumping stock prices, stagnant economic growth, an even weaker job market. I don't know, maybe some of you who plan on voting against this bill come from States that can afford this fate, but I know my constituents in West Virginia cannot and should not have to wait any longer.

Some will stand up and say we should wait a while longer, look at other options, maybe go back to square one. Those are not options. Those are the ideas that got us here in the first place—the idea of waiting another day, of looking for someone else to lead, of hoping that the next quarter will show a miraculous upturn.

This country cannot afford any more tomorrows. And we should not have to wait. No one is holding this package out as a cure-all. No one has boasted of its infallibility. And to do so would be to deny the seriousness of our economic straits. For our economic peril will require far more than one bill or one budget from Congress.

This plan is a statement from Congress to the American people, to the markets and the investors, to our trading partners around the world, that we are serious about getting our economic house in order. It is, as so many have said, a step in the right direction.

But it was never supposed to be an easy step. To back this plan many of us will have to vote against interests and concerns we have long championed. We will have to explain how the good of the country may have cost some of our constituents. We will have to cut through all the rhetoric, statistics, and static to the two kernels of truth that matter: First, this plan asks the most from those who benefited the most during the past 10 years and a very small contribution from every other American; and second, we cannot afford to put this off or wait 1 day longer.

To reject the President's budget—to vote "no"—is to stand paralyzed upon ground that is crumbling beneath us. The Nation's roads cross right here—in this Chamber, in this well. Our votes

will decide the path. Voting "yes," to support the President's economic package, puts this country, at last, upon a firm, stable path.

Mr. COATS. Mr. President, I rise today to voice my concerns about a part of this package which has received little attention during this budget debate, but which will impact tens of thousands of families in each of our States—the student loan provisions contained in title IV. Under title IV, the Federal Government will take over 60 percent of student loan volume in the current guaranteed Student Loan Program.

Under the existing Federal Family Education Loan Program [FFELP], students receive loans through a system of private lenders and guarantors. This spring, President Clinton proposed legislation which would eliminate the existing program and replace it with an untested direct Government loan program by 1997.

The administration, without benefit of a pilot program, and driven only by disputed budget analyses, would have us throw away the entire existing system. This is especially disturbing since the call for direct lending is not driven by any clearly defined benefits that will accrue to student borrowers. It is driven by a budget process in which statistical claims fly back and forth with little concern about how any changes will affect the students and parents borrowing the money, and the educational institutions providing the education.

Many Senators from both sides of the aisle were extremely concerned about the advisability of adopting full-fledged direct Government lending. As a result, the Senate Committee on Labor and Human Resources crafted a bipartisan compromise to test the program. The compromise authorized a 5-year test, in which a maximum of 50 percent of loan volume would be handled through direct Government lending. This approach would allow for a true test, while ensuring the stability of the existing Student Loan Program, so as not to disrupt the flow of funds to students.

Unfortunately, the conferees did not adopt the Senate position. Instead, they adopted a 5-year phase in to at least 60 percent of loan volume.

Mr. President, I was upset by the process during the direct lending conference because the scoring—not the policy—drove the debate. This is especially troublesome since the scoring is based on the smoke and mirrors accounting methods of the Credit Reform Act. Even the Congressional Budget Office [CBO], which had initially stated that direct lending would lead to savings of $4.27 billion, admitted that more than half of these supposed savings are smoke and mirrors. In other words, take away the budgeting tricks and you have, at most, $2.08 billion in savings.

Another little known fact about direct lending is that the Federal Government will be forced to borrow money by issuing new debt—to the tune of $10 to $15 billion going into the third year of the program. However, due to the smoke and mirrors accounting methods of the Credit Reform Act, these funds will not be counted as new debt. CRS estimates that 100 percent direct Government lending would add an additional $200 to $300 billion to the national debt over a 20-year period.

These trick accounting practices enabled the supporters of direct lending to claim savings of $4.27 billion when, in fact, they were only saving $2.08 billion. This put the supporters of the current loan program in the position of having to slash the current program to achieve the same savings. As a result, when the conferees adopted the 60-percent loan volume, they were forced to make even deeper cuts in order to maintain the student savings from the Senate bill. Cutting fees and allowances to the bone, as we have in title IV, puts us on the edge of impoverishing the whole system to the point that student access to capital may be jeopardized.

For these reasons, I am unable to support the direct lending provisions in title IV. I cannot, in good conscience, risk the student financial aid of our Nation's students to an untested Federal bureaucracy. Imposition of direct Government lending is a big Government solution in search of a problem. If we use the budget process to force big Government back into every aspect of student aid, our young people, their families, and the colleges and universities will bear the burden.

I would, however, like to commend Chairman KENNEDY and Senator KASSEBAUM for their patient and persistent leadership during the conference and their willingness to accommodate the concerns of Senators throughout this process. I would also like to thank my colleagues Senator PELL and Senator JEFFORDS for their diligence in crafting the Senate compromise and, as always, for their expertise on education issues.

### REGARDING THE MORATORIUM ON BOVINE GROWTH HORMONE

Mr. HATCH. Mr. President, I would like to add my great concern to that expressed earlier by Senator DANFORTH regarding the inclusion of the moratorium on bovine growth hormone in the budget reconciliation bill.

First, this provision will make it unlawful for manufacturers to sell a product regulated by FDA after the FDA approves an application for commercial use. This is an unprecedented legislative intrusion of social and economic considerations into the regulatory process and the U.S. market-based system. While the current restriction is only for 90 days, I am concerned about the precedent it sets, and I fear that the sponsors of this provision will seek to extend the time indefinitely. This legislative action not only deprives Americans of U.S.-developed technology, but it also exposes the U.S. taxpayers to the costs of paying expensive judgments in likely to ensue takings litigation.

Second, the moratorium legislation imposes a projected cost of $5 million on the taxpayers for the payment of additional dairy subsidies as a result of the gimmick employed to allow this provision to pass the Byrd rule. Thus, the taxpayers will get stuck with two bills, one for takings judgments and one for the cost of getting this provision to pass the Byrd rule.

Third, while this provision is included in the agriculture title of the bill, it has severe implications for health care and other beneficiaries of biotechnology. Adoption of moratoria on biotechnology products by the Congress may begin to erode domestic support for the U.S. biotechnology industry, encourage our international competitors, and result in a loss of U.S. competitiveness. Instead of imposing a moratorium on biotechnology, we should be taking steps to maintain the United States as the world leader in biotechnology, an industry which now employs more than 80,000 employees and generates annual sales of around $5 billion.

Fourth, this legislation may well raise the specter of safety concerns that have not been supported in exhaustive reviews conducted by the Food and Drug Administration. I certainly hope that the FDA does not take this legislation as a signal to slow down or in any way change its current review procedures related to the application for market approval of bovine growth hormone.

It is time that we look to maintaining the U.S. competitiveness that benefits all of us.

### DIGITAL TELECOMMUNICATIONS: ABERDEEN UPDATE

Mr. PRESSLER. Mr. President, recently I addressed my colleagues on the issue of bringing digital telecommunications technology to Aberdeen and northeastern South Dakota. Thanks to the efforts of the region's leading citizens, telecommunications providers soon may begin to view Aberdeen as a potentially expanding market for telecommunications services. Signs are encouraging.

When I last spoke on this issue on the Senate floor, I described a South Dakota Public Utility Commission [PUC] meeting held in Aberdeen on June 2, 1993. The meeting brought telecommunications users, providers, and regulators together to discuss present and future communications needs. Consumers representing manufacturing companies, service industries, financial institutions, the medical profession, universities, and personal computer

users expressed their needs for state of the art telecommunications services. U S West, other local exchange companies, South Dakota Network, AT&T, and MCI listened to these diverse interests with attention.

The Aberdeen community is trying actively to attract new businesses to an area of my State steadily losing population. State of the art telecommunications facilities are essential to their economic development goals. U S West has begun sending a representative to the weekly meetings of the Aberdeen Community Action Resource Team—the group that organized the June 2 meeting. This is a hopeful a sign that U S West intends to work more closely with the community in determining how best to serve its telecommunications needs.

I am encouraged by U S West's initial responses. I understand that U S West recognizes the currently unmet communications needs in Aberdeen. To meet some of this demand, U S West plans to file tariffs soon for SwitchNet 56, which originally was scheduled for installation in 1994. As I understand the technology, SwitchNet 56 would upgrade the analog switch so that it could support some high-speed data services. In addition, video conferencing service would be available to customers who purchase the appropriate equipment.

SwitchNet 56 may be an important first step, but is at best a short-term solution to the Aberdeen area's current telecommunications needs. SwitchNet 56 provides only a partial interface with services based on integrated services digital network [ISDN] technology. To make use of the most advanced reservation systems, companies like Super 8 Motels may need ISDN and be forced to bypass U S West's switch. Not all customers can afford this option. Digital switching in the public telephone network would make ISDN services available to all customers, including small businesses and residential users. SwitchNet 56 simply will not meet Aberdeen's future needs and economic development goals.

U S West and other common carriers have spent years developing, sustaining, and upgrading analog-based telecommunications systems. With so much time and energy invested, I understand the difficulties of immediately moving to an entirely digital network. Technology is changing rapidly. Therefore, communities like Aberdeen are faced with the difficult question of which technology advancement to invest in. Should a community upgrade its analog systems? Should the entire system quickly move to digital transmission and switching? Should a community wait for yet another advancement to surface before proceeding? Amidst this debate, one thing is clear: outdated analog systems can no longer shoulder the demands of today's more sophisticated telecommunications needs. The present and future is digital.

Indeed, it seems not a week goes by without another newspaper or magazine article proclaiming how digital technologies are opening a new arena of communication possibilities. Very soon, through a television, one would be able to view, order, transfer, buy, link, research, and access worlds of entertainment and information. This data superhighway promises unlimited potential that begins with access to digital telecommunications.

The popularity of fax machines and cellular phones opened the minds of Americans toward new communications technology. Today it is hard to imagine doing business without these devices. Video conferencing, network computing, voice messaging, remote data transfer and processing, once only available to the largest corporations, are on the brink of becoming part of the everyday world for small business and residential customers.

Through the latest developments in satellite, cellular, digital, and fiber optic technology, telecommunications are on the launching pad of even greater change. Libraries of information and entertainment can be sent to a home terminal at the speed of light. From a computer terminal one will be able to work at home with all the capabilities of being at the office. News and information services, databases, long-distance services, classified advertisements, video catalogs, financial services, and interactive shopping channels soon will be at our fingertips.

Whether one is checking stock market investments or just doing local banking, the digital future promises to make either as simple as changing TV channels. Ordering books, buying groceries, and pursuing real estate options could be done with ease and convenience.

In terms of research, the information superhighway could bring the Congressional Research Service to American homes. Entire databases of Congressional and academic information could unfold on a TV screen. Think of it, Mr. President, the Library of Congress' 100 million item collection of books, films, maps, periodicals, and photographs could be accessed easily through a computer and phone line. One could read any book or periodical, explore court cases, or just browse the morning newspaper.

The American Bar Association is considering using digital technology to create a database of legal briefs. Countless hours of research are duplicated all over the United States as law clerks research similar areas. Creating a database of legal briefs would save time and money for both the lawyer and the client.

The convergence of television, computer, and telephone services in a digital world promises all this and more. While all of these innovations sound exciting, without on ramps to the digital highway, small cities and towns will be left behind in this telecommunications revolution. As communities attempt to solicit new businesses to areas of declining population, those with outdated analog-based telecommunications equipment are inhibited in their efforts.

According to the publication Communications Daily, no telephone company has purchased an analog switch in 10 years. Yet the seven Regional Bell Companies and GTE spent $1.13 billion in 1990 and 1991 upgrading analog switches. U S West led other companies by spending $126 million on analog switch upgrades in 1991. Overall, investment in digital switching surpassed investment in analog upgrades. During the same 1990–91 period, the Bell Companies and GTE spent $6.3 billion on digital switching. Nonetheless, considerable embedded investment in analog switching remains. Forty-four percent of the total investment value of the Bell Companies switching plant is tied up in analog technology.

Some Bell Companies have converted to digital more rapidly than others. The total investment value of analog plant is as follows: Ameritech, $2.6 billion, 46 percent of total switching value; Bell Atlantic, $2.158 billion, 37 percent; BellSouth, $2.472 billion, 37 percent; Nynex $2.183 billion, 32 percent; PacTel $2.664 billion, 51 percent; Southwestern Bell, $4.52 billion, 56 percent; U S West $2.149 billion, 45 percent. With billions at stake, how quickly can companies convert to all-digital networks? How much should they spend to upgrade analog systems with proven limits?

The South Dakota Public Utilities Commission [PUC] can be justifiably proud of its role in bringing digital switching technology to South Dakota. In 1989, U S West and the PUC entered into a agreement in which U S West agreed to provide state of the art switching capability to all its telephone exchanges in the State by 1994. Since then, U S West has invested millions of dollars in South Dakota to replace outdated switches. Today, most areas of my State are served by digital switches. The major exception is Aberdeen and the surrounding communities served by the host switch in Aberdeen.

Mr. President, I believe that it is our responsibility as Senators to encourage economic development in our own States. I will continue to work with South Dakota citizens and officials to upgrade our State's entire telecommunications network. As a member of the Senate Communications Subcommittee, I have been working to ensure that all communities—small cities, towns, and rural areas—have access to the digital information superhighway. We must invest in the small

cities of America and its capabilities and move away from the outdated analog systems that inhibit communications and thwart economic development. We must insist that communities large and small have the most advanced telecommunications equipment possible. I look forward to working with my colleagues to expand our nationwide telecommunications capabilities.

PASSAGE OF 5-YEAR DEFICIT REDUCTION PLAN

Mr. MITCHELL. Mr. President, the United States has a national debt of over $4 trillion. It was less than $1 trillion in 1980. So in 12 years the debt has risen by four times as much as it rose in the nearly two centuries of previous American history.

Unless we act, the annual deficits will keep rising—depriving American businesses of the savings they need for investment and expansion; depriving Americans of opportunities for more and better jobs; depriving all our children of a bright future.

Those are the facts. They're not in dispute. The only question is whether we will do anything about it.

The deficit reduction plan before us is the largest in our history. It contains $255 billion in spending cuts over the next 5 years.

It contains $241 billion in taxes over 5 years. Eighty percent of those taxes will be paid by those Americans whose incomes exceed $200,000 a year. Every dollar of taxes will go to reduce the deficit. Altogether, this bill will reduce the deficit by $496 billion over 5 years.

I think it's important to respond to the criticisms that have been made against this bill.

First, it has been argued repeatedly, including here this evening, that the bill is unconstitutional because the income tax rates in the bill take effect on January 1, 1993.

That is obviously untrue.

There has been an income tax in effect for 80 years. Throughout those years, there have been many changes in tax laws which applied retroactively. The practice goes as far back as 1917. Tax rates were raised in October 1917, effective January 1917.

Several Senators, Republicans and Democrats, some sitting in this Chamber right now, have written retroactive changes into the law, and many others here have voted for them.

Furthermore, the changes which take effect in January apply to only 1.2 percent of all American families. For families filing joint returns, taxable income must be more than $140,000 before the higher rate applies. That means that, on average, a family's gross income must be over $180,000 a year to be affected. So about 99 percent of all American families won't be affected. Let me repeat that. Nearly 99 percent of American families won't be affected by these changes in income tax rates. They won't pay higher income taxes.

A second criticism of this bill is that it doesn't cut the deficit enough. But the Republican alternative offered in the Senate cut the deficit far less. Their plan would have cut the deficit by $359 billion over 5 years. That's $137 billion less in deficit reduction. How can anyone who proposes to do less fairly criticize the President for not doing more?

A third criticism of the bill is that it doesn't contain enough specific spending cuts.

But when our Republican colleagues had a chance to amend the bill, their alternative did not include a single specific spending cut beyond those proposed by the President.

Let me repeat that.

For all of the rhetoric by our Republican colleagues, their alternative contained no specific spending cuts beyond those proposed by the President. None. Not one.

A fourth criticism of the bill is that the cuts that are in it come too late in the 5 year cycle.

But once again the critics are inconsistent.

In the Republican alternative offered here in the Senate, more than three-fourths of the cuts come in the fourth and fifth years, far more than in the pending bill.

What they're saying is: The cuts in this bill come too late. But in their plan, more cuts come later than in this bill.

A fifth criticism of the bill has been that it includes reductions in interest payments as spending cuts.

Once again the critics are inconsistent.

In every one of the 12 budgets submitted by Presidents Reagan and Bush, reductions in interest payments were counted as spending cuts. More recently, in the Republican plan offered here in the Senate, just a few weeks ago, reductions in interest payments were counted as spending cuts.

In other words, they are criticizing President Clinton for doing precisely what they did. There are many words to describe such conduct. The most charitable one I can think of is that it is inconsistent.

A sixth criticism of the bill is that it will tax small business. That's not true either.

There is no tax increase for small business in this bill. None.

Single persons who report business income and whose gross income is over $140,000, on average, will pay higher taxes. Married couples who report business income and whose gross income is over $180,000, on average, will pay higher taxes. So will everyone in those income levels.

In other words, if you file a joint return, you will pay at a higher income tax rate only if your gross income is over $180,000. If your gross income is less than $180,000, you won't pay at a higher income tax rate. The higher rate is applied based on income, not on the size of your business.

There is no tax increase for small business in this bill.

To the contrary: 90 percent of all small businesses will benefit from the increased expensing allowance and the capital gains incentive that are in this bill.

Millions of dollars have been spent by special interest groups to spread distortions about this bill.

The most common distortion is that large numbers of middle income Americans will pay higher income taxes if this bill passes. That's not true. Senator HEFLIN effectively punctured that distortion last night when he told the Senate that his State's tax assessor estimates that in the entire State of Alabama, with more than 1,800,000 working people, only 15,000 will pay higher Federal income taxes. Although the figures would vary, the same thing is true in every State because the truth is that only the highest 1.2 percent of incomes will pay higher income taxes. The other 98.8 percent of taxpayers will not pay higher income taxes.

The situation in my home State of Maine is as dramatic. There are about 1,200,000 people in Maine. In 1991, the most recent year for which figures are available, there were about 445,500 tax returns filed by Maine households. Of that total, only 3,800 of them will have higher income tax rates under this bill. I repeat. In the entire State of Maine only 3,800 families have incomes so high that they will have higher income tax rates. By contrast, 81,000 Maine families have incomes so low that they will benefit from the bill. Those 81,000 Maine families with incomes below $27,000 a year will get a tax cut under this bill because of the earned income tax credit.

To sum up, in Maine 3,800 families have gross incomes of over $180,000 a year and will be subject to higher income tax rates, while 81,000 families will get a tax cut because their incomes are below $27,000 a year and they are eligible for the earned income tax credit.

If every Senator looks at his or her State, you'll find about the same thing.

So, those who vote "no" on this bill will be voting to help the few whose gross incomes are over $180,000 a year and not to help the many whose incomes are below $27,000 a year.

This bill does not raise income tax rates on middle-income families. It does ask middle income families to pay about $30 more a year in gas taxes. And for eligible families whose incomes are below $27,000 a year, there's a tax cut.

The vote on this bill will be razor thin. It will be close because this bill is about real spending cuts and real deficit reduction.

There's no more smoke and mirrors. This plan doesn't have a magic asterisk, like the plan of 1981. It doesn't

have guesses in place of economic estimates. There's no rosy scenario.

That's why the vote will be close. Not because it's not a good enough plan. Not because it doesn't cut spending enough. The vote will be close precisely because it does make painful cuts and it does ask for sacrifice. This vote will be close because it's about a real program, a real program for change.

If we made a pile of the speeches that have been given in this Chamber about reducing the deficit, it would go up through the ceiling, beyond the Capitol Dome and reach high into the night sky. And, as usual, those who speak most and loudest, will be least willing to act. But we've had enough speeches.

The time has come to act. We need a sound economy, with low interest rates and the savings that will allow the private sector to invest in new products, to expand markets for American goods, to create more and better jobs for American worker, to keep the American dream alive for our children.

More than anything else we need economic growth.

We can't have economic growth when interest on the national debt is one of the fastest growing items in the budget. We can't have economic growth when government borrowing soaks up private savings. We can't have economic growth when engineers, computer programmers and skilled workers are thrown out of work and into a market that has no jobs for them.

The plan before us is the first step—not the only one or the last one, but the first step.

Those who don't like taking the first step won't like the next ones either. Mark my words, those who say this step doesn't go far enough will say the next step goes too far.

They'll offer the same excuses for doing nothing they've made for 12 years. That isn't going to change.

But the American people want change. Last year they voted for change. Tonight we're going to deliver it.

President Clinton has presented us with a credible plan. I say it's fair to give him a chance. Twelve years ago, the Republican majority in the Senate said it was only fair to give the new Republican President's program a chance. We did.

We ought to give the new President's program a fair chance.

We Americans are the most fortunate people ever to have lived, to be citizens of the most free, the most open, the most just society in all of human history. We enjoy enormous benefits from our citizenship. With those benefits come responsibilities. Especially for us, serving as the representatives of the people of our States, there are responsibilities. Greatest among them is the obligation to do what's right for our country. Sometimes the right thing is not the easy thing.

Every Member of this Senate loves our country. Love of country is not the franchise of any political party.

But if you believe as I do, that our country's future demands action now, I ask you to join me in voting yes on this bill.

The VICE PRESIDENT. All time has expired. The question is on the adoption of the conference report on H.R. 2264, the Budget Reconciliation Act.

Is there a request for the yeas and nays?

Mr. DOMENICI. Yes.

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

The VICE PRESIDENT. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The VICE PRESIDENT. The question is on the adoption of the conference report on H.R. 2264, the Budget Reconciliation Act. The yeas and nays are ordered.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted, yeas 50, nays 50, as follows:

[Rollcall Vote No. 247 Leg.]

YEAS—50

| | | |
|---|---|---|
| Akaka | Feinstein | Mikulski |
| Baucus | Ford | Mitchell |
| Biden | Glenn | Moseley-Braun |
| Bingaman | Graham | Moynihan |
| Boxer | Harkin | Murray |
| Bradley | Heflin | Pell |
| Breaux | Hollings | Pryor |
| Bumpers | Inouye | Reid |
| Byrd | Kennedy | Riegle |
| Campbell | Kerrey | Robb |
| Conrad | Kerry | Rockefeller |
| Daschle | Kohl | Sarbanes |
| DeConcini | Leahy | Sasser |
| Dodd | Levin | Simon |
| Dorgan | Lieberman | Wellstone |
| Exon | Mathews | Wofford |
| Feingold | Metzenbaum | |

NAYS—50

| | | |
|---|---|---|
| Bennett | Faircloth | McCain |
| Bond | Gorton | McConnell |
| Boren | Gramm | Murkowski |
| Brown | Grassley | Nickles |
| Bryan | Gregg | Nunn |
| Burns | Hatch | Packwood |
| Chafee | Hatfield | Pressler |
| Coats | Helms | Roth |
| Cochran | Hutchison | Shelby |
| Cohen | Jeffords | Simpson |
| Coverdell | Johnston | Smith |
| Craig | Kassebaum | Specter |
| D'Amato | Kempthorne | Stevens |
| Danforth | Lautenberg | Thurmond |
| Dole | Lott | Wallop |
| Domenici | Lugar | Warner |
| Durenberger | Mack | |

The VICE PRESIDENT. On this question, the yeas are 50, the nays are 50. The Senate being equally divided, the Vice President votes "yes," and the conference report on the President's economic plan is agreed to.

Mr. MITCHELL. I move to reconsider the vote by which the conference report was agreed to.

Mr. SASSER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SASSER addressed the Chair.

The VICE PRESIDENT. The Senator from Tennessee.

Mr. SASSER. Mr. President, a lot of people have put in a lot of work to get this bill passed, and I wish to take just a few moments to thank a few of them.

The majority leader worked tirelessly to help craft this legislation so that it could achieve its majority victory today.

Mr. President, I would also like to take the opportunity to thank some of the many Budget Committee staff who worked so hard on this bill. Many of them worked late into the night, on Saturdays and Sundays, to review legislation with the Parliamentarian to avoid points of order. These tireless staff helped to ensure that we could pass this bill today with a majority vote rather than 60 votes.

In particular, I want to single out Kathy Deignan and David Williams, who labored on some of the most complicated procedural questions. As well, Amy Abraham, Chuck Marr, Chuck Hanson, Bill Dauster, Agnes Bundy, and Matt Greenwald each helped to steer complex provisions through dangerous procedural shoals. Kip Banks, Randy DeValk, Doug Olin, Sue Nelson, and a number of others, played a vital part in this process.

And finally, I want to take a moment especially to thank the Budget Committee's staff director, Larry Stein, for his manifold contributions to the progress of this bill. His patience and good humor in the face of incredible pressures serve as an example for us all.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER (Mr. FEINGOLD). The Senator from New York.

Mr. MOYNIHAN. Mr. President, as has been commented on several times today, the largest portion of the work on the conferees committee fell to the Committee on Ways and Means and the Committee on Finance in the Senate.

On behalf of the Committee on Finance, I would like to acknowledge the extraordinary work of our respective staffs. The Finance Committee, Mr. Lawrence O'Donnell, Jr., the first role as the chief of staff performed incomparably well, as did Ed Lopez, Joe Gale, Paul Offres, also in their first positions in this respect.

On the House side, Janice Mays, in her first appearance as chief of staff; Chuck Brian, Deborah Colton, and Don Longano; and of course, sir, Hank Guttman and Peter Cobb of the Joint Committee on Taxation.

They have worked ceaselessly since February on this matter, and they deserve every bit of vacation coming to them.

Mr. President, the staff list is as follows:

FINANCE COMMITTEE STAFF

Lawrence O'Donnell, Jr., Ed Lopez, Joe Gale, Paul Offner, Chuck Konigsberg, Faye Drummond, Margaret Malone, Marcia Miller, Rob Connor, Susan Himes, Patty McClanahan, Will Sollee, Rob Hanson, Kevin Farrell.

Kathy King, Jane Horvath, Barbara Wynn, Webb Philips, Maya Bermingham, Annette Neilsen, Deborah Lamb, Eric Biel, Tim Bernstein, Jodie Taylor, Mark Blair, Darcell Savage, Jeanne Roby, Donna Ridenour.

Gayle Fralin, Genie McCreery, Ted Godbout, Paul Bledsoe, Janet Blum, Kerri Goshorn, Bruce Anderson, Eric Mayer, Wayne Hosier, Bob Merulla, Hope Zeitz, Frank Sebree, and Maneesh Shah.

JOINT COMMITTEE ON TAXATION STAFF

Hank Guttmon and Peter Cobb.

WAYS AND MEANS STAFF

Janice Mays, Chuck Brain, Deborah Colton, and Don Longano.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I too want to thank Senator SASSER for his work on this budget reconciliation bill, and on my staff side I wanted to thank Senator PACKWOOD for his extraordinary work; our distinguished leader, Senator DOLE, for his help; chairman of our policy committee; Senator NICKLES, of our conference committee; distinguished Senator from the State of Mississippi, Senator THAD COCHRAN; and, without their help we could not have been here tonight.

The staff members from the Budget and Finance Committees deserve our congratulations and thanks for a job well-done.

Mr. President, the staff list follows:

BUDGET COMMITTEE STAFF

Bill Hoagland, Austin Smythe, Bob Stevenson, Denise Ramonas, Ann Miller, Jim Capretta, Peter Taylor, Cheri Reidy, Lisa Morin, and Lynne Dayhliai.

FINANCE COMMITTEE STAFF

Lindy Paull, Rick Grafmeyer, Ed Mihalski, Mark Prater, Susan Nestor, Julie James, Greg Powell, and Kathy Leonard.

I yield the floor.

## MORNING BUSINESS

Mr. MITCHELL. I ask unanimous consent that there now be a period for morning business.

The VICE PRESIDENT. Without objection, it is so ordered.

## U.N. MEMBERSHIP FOR THE R.O.C.

Mr. WALLOP. Mr. President, one of the anomalies in today's world is the exclusion of the Republic of China on Taiwan from the United Nations. That is ironic, considering the R.O.C. was a founding member of the United Nations. Taiwan remained a constructive and faithful member of the United Nations and other subordinate U.N. organizations like the World Health Organization until 1971. As many of my colleagues remember, it was in 1971 that the People's Republic of China took Taiwan's seat on the United Nations.

The P.R.C. has never held jurisdiction over Taiwan, and it has never represented the 21 million Chinese people on Taiwan. Thus the rights and privileges of these 21 million residents of free and democratic Taiwan are not represented in the United Nations clearly, this goes against the United Nation's principal of universal representation.

But it is not only Taiwan's loss. The people of Taiwan are well-educated and hardworking. They enjoy an increasingly high standard of living, and they are willing and able to help other countries reach their own development goals. Countries around the world are emulating Taiwan's economic model.

To deny the people of Taiwan and their government the opportunity to be represented in the United Nations is unfair and unjustified. In closing, let me urge my colleagues to support the R.O.C.'s bid to reenter the United Nations.

## IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt stood at $4,355,231,149,967.19 as of the close of business on Wednesday, August 4. Averaged out, every man, woman and child in America owes a part of this massive debt, and that per capita share is $16,955.73.

## LANDLOCKED MARINE MAMMALS

Mr. PRESSLER. Mr. President, when Congress enacted the Marine Mammal Protection Act in 1972, the goal was to reduce practices that contributed to the dwindling numbers of marine mammal stocks in our oceans and waterways, since that time, many positive changes have been made.

At the same time, Congress recognized the positive aspects of the public display of marine mammals in national aquariums and zoos. This view was reinforced in the act's 1988 reauthorization language:

> Public display has served a useful educational purpose, exposing tens of millions of people to marine mammals and thereby contributing to the awareness and commitment of the general public to protection of marine mammals and their environment.

This statement certainly applies to my landlocked home State of South Dakota, where many young people may not have the opportunity to travel to coastal regions of the United States to see the oceans and view marine mammals firsthand. This is why the Marine Life Aquarium in Rapid City, SD, is such a valuable resource for awareness and education about marine mammals in my State.

The Marine Life Aquarium provides many Rapid City youngsters their first exposure to dolphins, sea lions, and two types of seals. Sunny, one of two dolphins, has been there since 1984, as have several other marine mammals. Firsthand experience with these animals creates greater awareness of and commitment to marine mammal conservation.

The Marine Life Aquarium has been educating South Dakotans and others since 1963. The aquarium allows yearround visitors, more than 80,000 last year, the unique experience of interaction with marine mammals not possible from reading books or viewing television.

The Marine Life Aquarium offers educational and entertaining marine mammal presentations geared to South Dakota residents and with sensitivity to Native American viewpoints on the environment. The aquarium routinely serves as an important educational tool for area schools and teachers. For example, 5,000 children participated in Operation Ocean, a free educational program this past spring. The aquarium also provides access to students for research and development.

The mammals at the Marine Life Aquarium also enjoy a safe and healthy environment. Marine Life Aquarium's professional staff ensure that all of its animals receive first rate care and medical attention. In addition, the training staff provide a changing environment for the animals, allowing them to use their natural curiosity and predatory skills.

Public display facilities are useful for entertaining and educating aquarium visitors about marine mammals. Research conducted by member facilities of the Alliance of Marine Mammal Parks and Aquariums, and the American Association of Zoological Parks and Aquariums [AAZPA] has provided much of the information available on marine mammals. This research has increased understanding of the health, diet, and reproductive biology of these animals.

Alliance and AAZPA member facilities also provide an invaluable service by volunteering to rescue and rehabilitate thousands of stranded or distressed marine mammals each year. This practice also contributes to our knowledge of ways to protect marine mammals in the wild.

The United States is a world leader in marine mammal research. Other countries look to American expertise for assistance in dealing with their own marine mammal populations. Chinese scientists, for example, have contacted aquariums and oceanariums in the United States for help in conserving the Baiji, or Chinese River Dolphin, which is the most endangered marine mammal in the world.

Despite the many benefits I have outlined, some individuals want to further restrict or even eliminate the public display of marine mammals in places like South Dakota's Marine Life Aquarium. I do not believe this is in the best interest of the American public, or the animals themselves. These

aquariums provide a unique opportunity to build strong public interest in and awareness of our Earth's environment and the survivability of marine mammals in their natural habitat. These facilities also allow experts to expand their knowledge of marine mammals, which benefits mammals living in the world.

Further, imagine with me the devastating environmental impact if an additional 1 million people attempted to view marine mammals in the wild. This would mean more boats, more trash, more disruption of the migration of whales, and other adverse consequences. Mr. President, imagine what this might do.

The small number of marine mammals on public display in ecoparks, zoos, and aquariums in the United States eliminates this need. Pubic display facilities increase public awareness of our animal friends from the sea without the serious environmental consequences of viewing them in the wild.

## SECTION 11004: FEDERAL EMPLOYEES SURVIVOR ANNUITY IMPROVEMENTS

Mr. PELL. It was a pleasure to work with the distinguished Senator from Ohio on the conference report for the reconciliation bill. I congratulate him for his fine work on this difficult piece of legislation.

The Foreign Relations Committee participated in the conference because of the committee's jurisdiction over the Foreign Service Retirement and Disability System. Throughout the consideration of the reconciliation bill, our committee's primary objective has been to ensure that there is comparable treatment of Foreign Service and Civil Service retirees.

I have noted with interest section 11004 of the conference report that would make it easier for Civil Service retirees who marry to establish a survivor's benefit for their spouse. This provision does not specifically reference the Foreign Service.

Nonetheless, I believe this provision would have applicability to Foreign Service retirees, and I would like to clarify that the chairman is of the same view. Specifically, section 827 of the Foreign Service Act of 1980 requires the President to prescribe by Executive order regulations to achieve compatibility between the Civil Service and Foreign Service Retirement Systems.

Would the Senator from Ohio share my view, that, pursuant to section 827 of the Foreign Service Act, the benefits accorded to Civil Service retirees under section 11004 of the conference report should also be extended to Foreign Service retirees?

Mr. GLENN. I appreciate the Senator's kind comments and his inquiry. In my view, he is correct. The provision in the conference report was not intended to exclude Foreign Service retirees from the benefit being accorded to Civil Service retirees and should be applied to Foreign Service retirees.

## AMERICANS WITH DISABILITIES ACT

Mr. DOLE. Mr. President, last week we marked the third anniversary of the Americans With Disabilities Act. As Members of this Chamber know well, ADA was a watershed event. We determined unequivocally that our Nation's proper goals regarding people with disabilities are to assure equality of opportunity, full participation, and economic self-sufficiency.

But less celebrated, indeed apparently forgotten, is next week's silver anniversary of the progenitor of ADA—the Architectural Barriers Act of 1968 (Public Law 90-480). On August 12, 25 years ago, the Barriers Act became this Nation's first attempt to legislate an accessible and inclusive society.

Mr. President, Senator E.L. "Bob" Bartlett of Alaska introduced the Barriers Act in January 1967. Only a page long and with no enforcement provision, its purpose was modest but compelling—that buildings built with Federal funds be accessible to people with disabilities.

Only several blocks from the Capitol is one place that prompted this legislation. In the early 1960's, a young aide to Senator Bartlett, Hugh Gallagher, a wheelchair user, wanted to visit the National Gallery of Art on weekends, as do thousands of other Americans. But to enter unassisted he needed a ramp at the Constitution Avenue entrance.

Gallagher wrote to the National Gallery, and was told that a ramp would destroy the architectural integrity of the building. He had the audacity to believe that a national museum belonged to all Americans, not just those who could walk into it.

Despite this refusal, Gallagher got his wish. Senator Bartlett prevailed on the museum's trustees to install a ramp in 1965. Made of wood and intended only to be temporary, that ramp is still there today and works fine. For those who still believe architectural modifications must be expensive, this ramp again proves otherwise.

But to improve accessibility more generally, Gallagher drafted the Barriers Act. The Barriers Act was the last legislative accomplishment of Senator Bartlett, who died in December 1968. Despite its limited scope, this legislation has been the model for all subsequent disability rights laws. I wonder what Senator Bartlett would think today of the profound changes in our values and law initiated by the Barriers Act.

Mr. President, we have come a long way in 25 years, but much remains to be done. Let me cite just two areas.

First, employment and economic security of people with disabilities. Today we spend over $55 billion on Social Security disability programs and vocational rehabilitation. Despite these great expenditures, only 40 percent of people with disabilities are working. It should not be surprising then that 30 percent of people with disabilities in poverty, and many more are what the Federal Government calls near poor. The rate of poverty among the disabled is nearly three times that for the general population. Something is profoundly wrong, and we must do better.

Second, health care reform. For many obvious reasons, there is perhaps no other group for whom health care reform holds such opportunity and peril. Apart from issues of access and equity that concern every American, people with disabilities have a keen interest in such things as personal assistance, assistive technology and durable medical equipment, rehabilitation services, and long-term care—which today are not covered or only partly covered by many medical insurance plans.

In closing, Mr. President, I would like to address the future, the place where we all shall live. With the aging of the American population and the increasing success of medicine in keeping people alive from once fatal conditions, although often with severe and lifelong impairments, an unprecedented number of Americans are predicted to become disabled over the next two decades. One likely scenario suggests a 42-percent rise in disability prevalence by the year 2010.

Mr. President, for this reason I believe disability will come to drive our health and social welfare policies in wholly unexpected ways. Let us prepare now, or be prepared for the consequences.

## FAMILY LEAVE ACT

Mr. DOLE. Mr. President, the Family and Medical Leave Act may have a great-sounding name, but it is a classic example of the law of unintended consequences.

The Family Leave Act exempts from its requirements those businesses with fewer than 50 employees. So, it's no wonder that many small employers have decided to take advantage of this exemption simply by keeping their payrolls under 50, as explained in today's Wall Street Journal.

The Wall Street Journal article proves the point that Senate Republicans have been making for some time now—that the Family Leave Act is a mixed bag: It may benefit some in the work force, but it may also mean a ticket to the unemployment line for others.

Mr. President, I ask unanimous consent that the article be inserted in the

RECORD immediately after my remarks.

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

SMALL FIRMS TRY TO CURB IMPACT OF LEAVE LAW

(By Jeanne Saddler)

The easiest way to handle the federal family-leave law, many small companies have decided, is to avoid it.

Many businesses are taking pains to keep their payrolls under 50. That's because the law, which takes effect today, requires employers with 50 or more people on their payroll to allow leaves for certain family and medical needs. Some small businesses plan to use temporary workers or limit expansion to stay under 50 employees.

"Fifty is the magic number," says Ruth Stafford, president of Kiva Container Corp., a Phoenix packing manufacturer with 48 employees. To keep her payroll under 50, she plans to use temporary employees as needed to handle simple jobs such as bundling cardboard boxes or stripping dye-cut items off a machine.

Smaller employers are trying other approaches, too. Personnel specialists say some have begun discriminating in hiring against younger women, thinking they would be the most likely to take family leave.

Employers trying to avoid the law fear it will raise costs and disrupt operations. The measure, signed by President Clinton in February, requires that workers at companies with 50 or more employees be allowed as much as 12 weeks of unpaid leave a year after the birth or adoption of a child. It also mandates leave to care for a spouse, child or parent during a serious illness as well as to deal with an employee's own medical problems. Businesses that provide health insurance must continue the coverage during a worker's leave.

To be sure, many smaller companies aren't worried about the prospect of more employees taking leaves of absence and are doing nothing to circumvent the law. Many have provided smaller benefits on their own for years and favor the law. But many entrepreneurs say the act will have the heaviest impact on them because they lack the staff and financial resources of big corporations to absorb the cost and dislocation of additional worker leaves.

That's why some small companies are pushing to curb permanent employment. Uniforce Temporary Services in Hyde Park, N.Y., is getting more inquiries from small employers that want to "keep their head count below 50 by using temporaries," says Rosemary Maniscalco, the company's chairwoman. (A long-term temporary worker, however, would come under the law for working more than 24 hours a week over a 12-month period.)

Similarly, several restaurant owners at a recent meeting of the Virginia Restaurant Association in Richmond, Va., "decided not to start new catering or carry-out services because of the additional employees" involved, says Jim Wordsworth, the group's chairman.

Other small businesses may be trying to minimize the leave law's impact by discriminating against young women. During the past year, about a third of employers calling Terry Neese Personnel Service in Oklahoma City have asked for female job candidates more than 40 years old, says Terry Neese, president of the Oklahoma City agency. In prior years, she adds, such requests were rare. Most of the agency's clients are small businesses.

"When I tell [clients] I don't discriminate based on age or sex, they're not real happy" Ms. Neese says. "They don't want to take the time to interview people they know they don't want to hire."

There may be some basis for such employers' reasoning. Women are more willing than men to take long amounts of unpaid time off, according to a recent nationwide survey of 700 employees by the Bureau of National Affairs, a newsletter publisher in Washington, D.C. About 43% of the women surveyed said they would take 12 weeks off after the birth or adoption of a child, compared with 7% of men. And 46% of the women said they would take off the maximum time allowed to care for a seriously ill parent or spouse, compared to 25% of men.

Some entrepreneurs say that following the law's uniform requirements could be expensive because they will have to hire temporary replacements and pay health-insurance benefits for workers on leave.

"I don't have a problem with the intent of the law. Where I have a problem is the costs," says James Bunnell, owner of Bunnell Printing Corp., a Norton Ohio, print shop with 65 workers. "If everybody took advantage of this, I'd have extra costs of $60,000 to $70,000 a year."

Other small employers worry that the law will encourage abuse of leave policies. In the Kessler Exchange survey, two-thirds of the small businesses polled said they were concerned that employees intending to quit would take leave under the act in order to maintain their health benefits. The same situation could occur when people face seasonal layoffs.

"I also think some workers will think this is a way to take time off and use it as vacation time," says Rebecca Llewellyn, president of Payco Specialists Inc., a San Diego construction firm. "By including different members of the family," she adds, the law "leaves the door wide open to abuse."

Some smaller employers, however, have decided against trying to limit the reach of the new law. Michael Rogers, a human-resources vice president for BancFirst Corp. In Oklahoma City, recently hung a big state map on the wall behind his desk so he could check the mileage between each of the bank's 20 branches and its headquarters. That's because regulations for the act exempt branch offices that are more than 75 miles from an employer's headquarters and have fewer than 50 workers.

Mr. Rogers found that five of its 20 branches were indeed more than 75 miles from headquarters. But the midsized bank, which already grants its 600 employees an average of six weeks of unpaid leave for childbirth or other personal reasons, will include the five branches anyway.

"We decided there's no benefit in us saying 'gotcha' to some of our employees because they technically aren't covered by the law," Mr. Rogers says. "The bank decided to cover everybody to maintain employee morale and to prevent an administrative headache."

BancFirst is among the many small businesses that already provided family leave on a flexible basis. A June survey of 300 small companies by the Kessler Exchange, a research company in Northridge, Calif., showed that 69% of businesses covered by the new law had family-leave policies, as did 60% of those with fewer than 50 employees.

A 1989 study sponsored by the Small Business Administration concluded that most small companies let their employees use a combination of paid leave and paid or unpaid sick leave to tend to family illnesses and childbirth. But few small companies had formal maternity and child-care leave policies, the study found.

## IMMIGRATION REFORM

Mr. DOLE. Mr. President, nearly every schoolchild in this country learns that America is a nation of immigrants.

For centuries, people from every corner of the world, from all racial and ethnic groups, from every religion, and with vastly different economic backgrounds—have come to our Nation's shores seeking a better life.

Some have found the life they sought. Others have devoted their lives to building better lives for their children. And, yes, there have been some notable failures, including the failure of slavery.

During my nearly 33 years in Congress, I have received many requests for help from people who want to come to America. But I have never, ever received a single request from anyone seeking help in getting a ticket out of this country. Everyone wants to come to America. Very few want to leave.

Now, America is not perfect, as history teaches us, but we have succeeded brilliantly in building a country founded on the shared ideals of self-government, liberty, and tolerance.

And America is more than a country, it is an experiment, an experiment in molding diverse peoples into a common culture bound by a common destiny and served by common institutions.

As historian Daniel Boorstin recently pointed out in Parade magazine, the American experiment has succeeded because America had been spared the ethnic conflicts of the Old World and has been blessed with a tradition that views the newcomer-immigrant not as an enemy to be feared or hated, but as a builder of the shared American community. We have also been the fortunate inheritors of perhaps the greatest achievement ever in political technology—the U.S. Constitution.

But, Mr. President, I suspect that even our Founding Fathers could not have foreseen the tide of immigration that is, today, crashing against our shores.

During the past decade, nearly 9 million people have immigrated legally into this country—a population greater than the population of most States. In the years ahead, we can expect that millions more will seek to immigrate into our country, and do so legally.

But these numbers just tell half the story. The other half involves the millions of undocumented, illegal aliens who choose to evade our laws and enter our country without our consent.

The Immigration and Naturalization Service, for example, estimates that more than 3,000 people illegally cross

the Mexico-California border each night. Nearly 60 percent of them succeed in entering our country without detection.

In 1986, the apprehension of illegal, undocumented aliens reached an all-time high of 1.8 million. Last year, in 1992, the number of apprehensions was still staggering—more than 1 million.

In some areas of the country, the issue of illegal immigration has reached crisis proportions.

In California, for example, there are an estimated 1.3 million illegal aliens, and more than half of these illegals live in a single county—the county of Los Angeles. Not surprisingly, a staggering 10 percent of the budget of Los Angeles County was spent last year on providing services to illegal aliens.

Now, the administration's recently-announced proposals to address the problems of alien smuggling and asylum fraud are steps in the right direction. In fact, in many respects, they reflect proposals first developed by my colleague from Wyoming, Senator SIMPSON.

Earlier this week, Senate Republicans also introduced a bill, the Neighborhood Security Act, that recognizes the link between illegal immigration and criminal activity. Today, criminal aliens make up 25 percent of the Federal prison population, a shockingly high number.

The Neighborhood Security Act cracks down on alien smuggling and asylum fraud, expedites the deportation of aliens who are in this country illegally, and authorizes funding for 1,000 additional border patrol agents, 1,000 additional INS criminal investigators, and a criminal alien tracking center.

In addition, the Neighborhood Security Act authorizes funding for 10 regional prisons that would house illegal aliens who have committed violent crimes while in this country.

These are important steps, but, again, we must do more.

Mr. President, when the Congress returns in September, Senate and House Republicans will propose a comprehensive plan to deal with the immigration crisis. This plan may ruffle a few feathers. It will be applauded by some, and criticized by others, but it will represent a national policy, a comprehensive approach to this very complex, and delicate, issue.

## A TRIBUTE TO OLGA ZHONDETSKAYA

Mr. COHEN. Mr. President, it is with great sorrow that I rise today in recognition of the passing of a very special citizen and an extraordinary woman: Olga Zhondetskaya.

Olga was born in Tallinn, Estonia. Eighty-two years old at the time of her death, Ms. Zhondetskaya led a difficult life. She was treated as a social outcast by the Communist Party for being born into the Czarist nobility. She was imprisoned by the Germans during World War II, and her husband was declared missing in action during that war.

It had been Ms. Zhondetskaya's lifelong dream to emigrate to the United States, and in 1988, after more than 40 years of struggle, she succeeded. Unfortunately, only months before she would have met the statutory 5-year residency requirement for U.S. citizenship, she was diagnosed with inoperable lung cancer and given only a short time to live. Disappointed but not defeated, she appealed to me to introduce private immigration legislation that would expedite her naturalization.

When I first met Olga last month, I was greatly touched by her ability to overcome adversity, her patient determination, and her love for this country. This remarkable women, dying of cancer, gave me a simple and elegant message during our meeting—that she wanted to die an American citizen. The legislation which I introduced and which was enacted into law earlier this week removed those barriers to her naturalization which she did not immediately satisfy. She became a citizen hours after the President signed the measure on August 3, and when asked how she felt, she responded with a single word—"splendid." It was one of the most eloquent and appropriate acceptance speeches that I have ever heard.

It was truly an honor and a privilege to help Ms. Zhondetskaya become a citizen as she so valued the principles and ideals that form the foundation of this country. She reminded me that none of us should take for granted the freedoms and privileges that accompany U.S. citizenship. Ms. Zhondetskaya spent a lifetime waiting for the opportunity to experience these freedoms and privileges, and though she only experienced them for a short time, I hope that they brought her much contentment.

Although Ms. Zhondetskaya had no living relatives at the time of her death, I wish to express my most sincere condolences to her immediate adoptive family, the many friends and admirers she acquired during her past 4 years in the United States. Among these are Ann Bay, the other staff of the Southern Maine Area Agency on Aging, the residents of the Thomas P. Smith House, and the medical staff of the Maine Medical Center in Portland. And I wish to express my sympathies to Ms. Zhondetskaya's extended family—all of her fellow American citizens. While I am greatly saddened by her passing, I am comforted by the fact that she will forever be a part of her country, the United States of America.

## SUPPORT FOR MULTILATERAL APPROACH TO BOSNIA

Mr. PELL. Mr. President, on Wednesday, I chaired a closed briefing on United States policy in Bosnia given by representatives of the State Department and the Joint Chiefs of Staff. The main goal of that session was to learn more about the decisions regarding Bosnia that were taken at the North Atlantic Council meeting held in Brussels earlier this week. The message we received was that the allies are considering air strikes against those responsible for strangling Sarajevo and other Bosnian cities.

Since July 22, the NATO allies have been ready to provide protective air power in case of attack against UNPROFOR in the performance of its mandate in Bosnia. They have this authority under existing U.N. Security Council Resolution 836, and the commitment to protect U.N. forces was an important part of the joint action plan put forth this spring. As I said last week after that decision was announced, this is a critical time for Bosnia, both in terms of the magnitude of human suffering, and in terms of the negotiations in Geneva. I welcomed the fact that after weeks of negotiation, the United States and other European countries have agreed to participate in a U.N. operation, to be carried out by NATO, to provide air cover for U.N. forces in Bosnia.

This past week, at President Clinton's initiative, the NATO allies took a further step to try to ameliorate the terrible suffering in Bosnia, and to improve prospects at the negotiating table for the beleaguered Bosnian Government. According to the press statement issued following the North Atlantic Council meeting, the allies reaffirmed their support for the Geneva negotiations; they characterized the humanitarian situation in Sarajevo and other cities as unacceptable, and they pledged "to make immediate preparations for undertaking, in the event that the strangulation of Sarajevo and other areas continues, including wide-scale interference with humanitarian assistance stronger measures including air strikes against those responsible, Bosnian Serbs and others, in Bosnia and Herzegovina."

Mr. President, NATO, in close consultation with the U.N. Protection Force in Bosnia, is now drawing up plans for air strikes to break the seige of Sarajevo and other cities in Bosnia being strangled by Serb forces. At our session with the Administration earlier this week, we were assured that the U.N. authority for this action is already in place under Security Council Resolution 770.

The North Atlantic Council will meet again next week to consider the options for air strikes, and I trust the administration will continue to consult with Congress as further details develop. Key questions, not only about how the strikes would be carried out, but about their precise relationship to our goals at the Geneva talks, need to be answered.

The Bosnian Serbs should make no mistake, however, that NATO is prepared to act if the seige of Sarajevo continues and that the international community is committed to preserving a Bosnian state. News reports this morning suggest that Bosnian Serb leader Radovan Karadzic agreed to lift the seige of Sarajevo and remove "all obstacles" hindering the talks with the Bosnian Government. Mr. President, time and again, Mr. Karadzic has proven himself to be a man of empty promises, and it is difficult to believe that he will follow through on his latest statement. I am convinced that Mr. Karadzic's forces will pay a heavy price if he fails to make good on his pledge to lift the seige of Sarajevo.

Mr. President, I commend President Clinton for taking a leadership role on this issue and demonstrating his commitment to the preservation of the principles of international law. As I have said previously, however, my support for military action in Bosnia is wholly contingent upon its being multilateral. I am hopeful that united action will help to bring about a negotiated settlement and an end to the terrible suffering in Bosnia.

## TRIBUTE TO C. COURTNEY WOOD

Mr. NICKLES. Mr. President, I am pleased and honored today to recognize and congratulate an outstanding fellow Oklahoman, Mr. C. Courtney Wood of Edmond who will become president of the Independent Insurance Agents of America [IIAA] this September.

Mr. Wood's contributions to his community, our State of Oklahoma and the insurance industry are significant. In addition to his civic service and responsibilities, Courtney has also been teaching insurance courses at several universities.

Courtney has compiled a long and distinguished record within the insurance industry in Oklahoma that includes serving as president of the Independent Insurance Agents of Oklahoma and the Independent Insurance Agents of Oklahoma City. In addition, he served as Oklahoma's member on the board of national directors from 1982 to 1987. He also acted as editor for 12 years of Policy magazine, an Oklahoma insurance publication.

In honor of his service, the insurance industry has awarded Courtney IIAA's Presidential Citation, the Oklahoma association's Pointer Education and Eagle of Excellence Awards, the Coalition of Property & Casualty Insurance Association's Insurance Industry Service Award, and the America Association of Managing General Agents' Mr. Chairman Award.

As the new president of IIAA, Courtney Wood's industry experience and myriad leadership roles will enable him to continue this organization's tradition of excellence within the insurance industry. I am proud to recognize a fellow Oklahoman in this distinguished role and I wish him well in his new leadership position with the Independent Insurance Agents of America.

## ON THE DEATH OF ED A. HEWETT

Mr. BINGAMAN. Mr. President, earlier this year Ed A. Hewett died. Ed was a renowned scholar and policy analyst in the field of Soviet and East European studies. For 10 years, 1981–91, he was a fellow at the Brookings Institution. In 1991, he was named Senior Director for Russian and Eurasian Affairs at the National Security Council, and served in that capacity and as a Special Assistant to President Bush until his death.

I knew Ed, was familiar with his work, and had the privilege of attending briefings and seminars with him. From time to time he testified as an expert witness about Soviet and related affairs before congressional committees. He appeared before the Joint Economic Committee, on which I serve, and he contributed on several occasions to studies and reports of that committee. He was an author of several important books and many articles. He was an extremely busy and productive person, but he always found time to respond to an inquiry or to provide counsel to a harried legislator.

Ed Hewett was the kind of person on which a policymaker could rely. He was knowledgeable, objective, and sincere. He had a knack of explaining complicated and technical matters in a way so that an average Member of Congress could comprehend them. He was also very persuasive. From what I understand, he was equally successful in practicing his skills at the highest levels of the Bush administration.

He was much admired and highly respected in the U.S. Senate and by all who knew him. His death was a great loss to his profession and to the political community, as well as to his family and friends.

A eulogy to Ed Hewett was delivered by his friend and mentor Herbert S. Levine, at a memorial service in Washington, DC, January 22, 1993. I request unanimous consent that the eulogy by Professor Levine be inserted in the RECORD at the close of my remarks.

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

ED A. HEWETT

(A Personal Eulogy by Herbert S. Levine)

Eulogy—from the Greek, "To Say Good Words." With Ed Hewett this is not a serious challenge. What is a challenge is to constrain oneself to an appropriate time frame for this Memorial Service.

Some brief biographical milestones. Ed was born on September 2nd, 1942 in Missouri. He went to Colorado State University where he earned a BS and MS in Economics and then to the University of Michigan, a certificate in Russian and East European Studies and a PHD in Economics in 1971.

Ed's professional life can be divided into three parts:

First: a primarily academic period of ten years (1971–1981) at the University of Texas, with visiting semesters or academic years spent in Budapest at the Institute for World Economics, Philadelphia at the University of Pennsylvania, and Cambridge, at the Harvard Russian Research Center (later he was also a visiting professor at Columbia);

Second: a combined academic-policy period in Washington at the Brookings Institution from 1981–1991;

Third: a two-year period of high-level policy advising as Special Assistant to the President and Senior Director for Russian and Eurasian Affairs in The National Security Council, from 1991 to January 15th, 1993, a week ago.

Ed was one of a very small number of people in the profession who could do basic research in both Russian and Hungarian. His early work, especially, reflected this. In the initial period, his research, including several econometric studies, focused heavily on foreign trade issues in the Soviet Bloc. He published his first book, "Foreign Trade Prices in CMEA" in 1974. This solid study did much to bring him to the attention of the profession. In 1981, when Abe Bergson and I organized the volume on the "Soviet Economy: Toward The Year 2000" Ed was the clear choice to do the chapter on "Foreign Economic Relations."

In the second period, at Brookings, his work turned significantly toward policy related issues. At first he focused on the issue of Soviet energy and energy Policy. His second book "Energy, Economics, and Foreign Policy In The Soviet Union" published by Brookings in 1984, was a masterful study, highly acclaimed by specialists and also generalists in both academia and the policy world.

When Gorbachev came to power in 1985 and serious prospects for economic reform in the Soviet Union began to arise, Ed turned his attention to the issue of reform. His work culminated in his magnum opus, "Reforming The Soviet Economy: Equality Versus Efficiency" published by Brookings in 1988. In this brilliant book, Ed carefully chronicled and cogently analyzed the operation of Soviet central planning, the need for and past attempts at reform, early reform efforts under Gorbachev and possible future paths and problems. The book is an achievement of major proportions and was recognized as such in both West and East. It established Ed as one of the leading experts in the world on the study of and understanding of the Soviet economy.

In the third period of his professional life, the two years that he spent in the White House as advisor to the President on Soviet affairs, his research was curtailed. His fourth book, "Open for Business: Russia's Return To The Global Economy," written with the assistance of Clifford Gaddy, was published by Brookings in 1992.

His contributions to the formulation of U.S. Policy in this historical period were enormous. A special award for exceptional service was presented to him by the President. Its citation stated:

"In recognition of Dr. Ed A. Hewett's vital role in the execution of United States policy toward the former Soviet Union in 1991–1992. Dr. Hewett's exceptional creativity, energy and leadership were instrumental in forging a new administration policy of support for democratic reform in Russia, Ukraine and the other new states. He provided brilliant advice and support to the President and the

National Security Advisor and made an important contribution to U.S. national security."

In addition to this scholarly and policy advising work, Ed was energetically engaged in creative organizational and administrative activities. He along with several of us was a founder and until 1991 a member of the Board of PlanEcon, Inc. He and I were founders of the SSRC Summer Workshop on Soviet and East European Economics. He was the founder and until 1991 the editor of the journal "Soviet Economy". He was the key organizer of the George Soros "Open Sector Project." And he was chairman of the National Council for Soviet and East European Research, and president of the Association for Comparative Economic Studies.

These are the milestones. What of the man? Thinking of Ed and the key characteristics that made him the man he was, a flood of qualities rush to my mind and to the minds of others with whom I have spoken.

Perception, insight, and judgment.

Relaxed intensity calm tenacity, self-assuredness, blunt and terse, and avoidance of self-glorification.

Honesty, loyalty, and absence of pettiness.

Leader, organizer, negotiator, gift for language, and ability to communicate.

Kindness, humanity, and gentleness.

Dignity and elegance.

Zest for life, love of humor, and courage.

PERCEPTION, INSIGHT, JUDGMENT

Ed's scholarly work is marked by his perception and insight into how what he was analyzing really functioned. He had, it seemed to me, almost an insider's feel for the operation and behavior of the Soviet economy. Alfred North Whitehead has written: "There are no whole truths: all truths are half-truths. It is trying to treat them as whole truths that plays the devil." Ed avoided that devil, he avoided the attempt to explain through the use of over-arching laws claimed to be everywhere applicable. He struggled with real life's half-truths in his attempt to generate meaningful analysis. But more than this perception and insight, what has always impressed me about Ed was his judgment. If intelligence can be said to be the ability to quickly apprehend, then judgment can be said to be the ability to use what is apprehended wisely. Oliver Wendell Homes in one of his decisions wrote: "General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise."

Ed's judgment was one of his strongest traits. I am told it played a crucial role in the policy our government adopted during the attempted Soviet coup. In the pressurized atmosphere that reigned on the morning of Monday, August 19th, 1991, the President was being advised by some to distance himself from Gorbachev and Yeltsin in preparation for having to deal with the apparent new leaders of the Soviet Union. But Ed opposed this advice. In his judgment, we needed to support the democratic forces in the Soviet Union at this critical moment in history. And it was Ed, I am told, who urged the President to make the now famous call to Yeltsin.

RELAXED INTENSITY, SELF-ASSUREDNESS

Ed always gave the impression of being relaxed, but one sensed that below that surface he was far from languid. There was an intensity, a tenacity, a self-assuredness. "The New York Times," in its obituary of Ed, noted that he could be blunt and terse. Yes, he could. Indeed, I shudder to think what he might have said about this eulogy. I can visualize the "Don't get sappy on me Herb" expression on his face. For along with his self-assuredness, Ed studiously avoided self-glorification.

HONESTY

Ed had a strong sense of honesty. Not only in his dealings with others but in his dealing with himself. I think the underlying self-confidence that he had allowed him to be honest with himself. In his academic life, he was quick to recognize errors and to attempt to correct them. And I am told that in his policy-advising work, during such a difficult, intractable period for policy formulation, he was often the first to acknowledge that a policy he had formulated and proposed was not working and should be abandoned.

Ed's loyalty to friends and associates could be depended upon. I never had a concern about what Ed might be saying about me to others. For I never heard him exhibit any pettiness in discussions with me about others.

LEADER, NEGOTIATOR

Ed was an established leader in the academic world before entering government. But academics do not often do well in government. We are used to developing our own ideas, publishing them, and then defending them against our critics in the scientific arena. Government is different. It requires repeated negotiation and compromise. I am told that Brent Scowcroft was concerned about this when considering Ed for the NSC position. But Ed flourished in the governmental environment. He was a superb negotiator and leader. He was an accomplished communicator. He had a gift for language, the colorful phrase, the appropriate metaphor. With the respect people had for him, he was an effective leader. Furthermore, he had "sharp elbows" and when necessary did not shrink from using them.

HUMANITY, GENTLENESS, DIGNITY

In his personal relations, Ed was gentle, and had a sense of dignity about him. He interacted, with interest and kindness, with people at all levels of life, from the top in social status to those at the bottom. Ed had a strong sense of what it meant to be part of humanity.

ZEST FOR LIFE

Ed was not all work and no play. He had a zest for life and a love of humor. On one occasion in the early eighties, I was asked to write a conference paper on "The Soviet Union's Economic Relations In Asia." I said I would do it, if it could be a joint paper with Ed, hoping that Ed knew something about the subject. I then called Ed and he started what appeared to me was going to be an explanation of why he couldn't do the paper with me. I cut in quickly and said a free trip to Korea was involved. His terse reply: "When do we have to have it in?"

COURAGE

The American author, Louis Adamic, has written: "There is a certain blend of courage, integrity, character and principle which has no satisfactory dictionary name but has been called different things at different times in different countries. Our American name for it is guts."

Ed had "guts" in his professional life, his personal life, and in his struggle this past year with cancer. That struggle epitomized his courage. He felt he had a chance to overcome the disease and he was anxious for the doctors to do everything that might contribute to his eventual recovery no matter how painful it might be. He wanted to work and kept coming to work during his treatment. He never gave up.

The following message was received from the Russian Federation Ministry of Foreign Affairs:

"It is with deep sorrow that we have learned the grievous news of the demise of our old friend Edward A. Hewett. We have lost one of the most longstanding and ardent proponents of friendship and cooperation between America and Russia. This great loss is especially hard to bear now that our two countries joined hands in building relations based upon democratic values and partnership which our friend Edward dreamed of. Please convey our deepest condolences to the Hewett family, his friends, and colleagues. We will always keep a memory of Edward Hewett and pray for his soul."—(signed) Andrei Kozyrev

One cannot speak of Ed without speaking of his life with Nancy. Nancy and Ed's devotion to each other was immediately apparent to all who knew them. They truly built a life together for they married at the young ages of 19 and 21. But they in no way resembled the classic story of kids marrying before they knew who they were and what they wanted. They simply understood their commitment and wished to make their future their present. The ensuing 29 years of marriage attest to their youthful wisdom. Their marriage was marked by elegance, dignity, equality, and cooperation. When our younger daughter first spent time in their home at the age of 15, she was struck by their method of alternating weekly duties for planning, shopping for, and preparing the family meals. Their mutual love for the art of cooking provided a demonstration of how women's entrance into the public sphere need not be accompanied by a decline in the quality of home life. Nancy and Ed were in the vanguard of a social movement that is coming to the fore in American society. Those who knew them had a model of husband and wife sharing responsibilities and power and thus we were prepared for what the Clintons have brought to the visibility of the White House.

The respect they gave each other was extended to others through acts of generosity and gentle kindness. When our daughter spent a year in Washington during a difficult and sad time in our family's history, Ed and Nancy went out of their way to ease her transition and provided quiet support throughout the year. When she found an apartment, Ed even paid a visit to make sure he was satisfied with the security of the building. I am told there are others who received similar warm welcomes upon arrival in Washington.

My association with Ed began a year or two after he completed his graduate work. From the beginning it was clear to me that though he could have developed into a highly proficient technical economist, his desires and interests lay elsewhere. He viewed economic science as a tool, not an end in itself, a tool to be applied for the improvement and benefit of society. His career goal was to play a major role in the formulation of national policy toward the Soviet Union and Eastern Europe. He structured his career toward this goal and this goal he achieved. Though his life was short, it was full, professionally and personally.

Life is often so mixed-up. Parents are not supposed to bury their children and the old are not supposed to outlive the young. Ed spoke at our son's funeral and now here am I speaking at Ed's memorial service. Nancy, along with all those who knew him and knew his work—by god, I will miss him.

## IRISH-AMERICAN HERITAGE MONTH

Mr. HATCH. Mr. President, I rise today as a proud cosponsor of Senate Joint Resolution 119, which designates March 1994 as Irish-American Heritage Month. The Irish have contributed a great deal to the United States in the arts, education, and science. In my own State of Utah, Irish-Americans helped to industrialize the territory. It is therefore fitting to recognize their important contribution to this country.

One figure of great importance for Utah was Father Lawrence Scanlan, who was born in Ireland in 1843. Father Scanlan was ordained in 1868 and appointed as the pastor of the diocese. He helped forge a close Irish community that subsequently flourished in Utah. Father Scanlan was instrumental in helping to establish Holy Cross Hospital, which today continues to serve patients from across the State. Father Scalan also helped construct the beautiful Salt Lake City of St. Mary's Cathedral dedicated in 1909. The cathedral was later renamed the Cathedral of the Madeleine. This cathedral was restored during the past year under the leadership of Bishop William Weigand and the Reverend Monsignor Francis Mannion. I had an opportunity to attend the restoration ceremony and it was a wonderful experience. I can personally attest to the beauty of this cathedral.

Mr. President, I would like to mention another example of a prominent Irish-American from my State, Mr. Thomas Kearns. He exemplified the spirit of the Irish-Americans. Mr. Kearns was a dedicated and hardworking individual who built a business from scratch. He is the personification of the Horatio Alger story. Mr. Kearns worked as a laborer in the mines and eventually established the Silver King Mine in the Park City Mining District. His work was important for mineral development and rapid industrialization of the intermountain region. He was also interested in philanthropy. Mr. Kearns started the St. Anne's Orphanage in Salt Lake City. In a fitting symbol of Mr. Kearn's commitment to the State, he turned over his mansion to the Utah Historical Society. The Kearns Mansion now serves as the Governor's mansion.

There are thousands of other stories far too numerous to tell. Irish-American labor was vital in the construction and completion of the transcontinental railroad, that helped build a bridge across the United States. This railway united the country and it represents one of the most important economic and social achievements in 19th-century American history.

Mr. President, Irish-Americans have a long and distinguished history in this country. These are but a few examples that illustrate why I am pleased to again serve as an original cosponsor of this legislation. I urge my colleagues to sign on to Senate Joint Resolution 119.

## A TRIBUTE TO A GREAT SURGEON GENERAL

Mr. HATCH. Mr. President, it was just a little over 3 years ago that a former staffer of mine, Antonia Novello, was before the Labor and Human Resources Committee for her confirmation hearing as Surgeon General of the United States. I am proud of what she did on my staff, but even more proud of what she contributed to the Nation.

She served her country well, not only as Surgeon General of the U.S. Public Health Service, but in other capacities as well. She served as one of the Federal health chiefs, the Veterans' Administration Chief and Surgeon Generals of the Army, Navy, and Air Force. She was also a member of the U.S. delegation to the World Health Organization.

But it was her service as Surgeon General that brought her the most satisfaction and generated for all of us a great health agenda.

Toni Novello's desire to have the best health care for all Americans probably began as she was growing up in Puerto Rico. She came from a small town. Her father died when she was a child. Her mother, a school principal, instilled in her the right values, to help others less fortunate. She brought those values with her to her new home in the United States.

Mr. President, I would like to outline a few of her many contributions. She saw the problems and tried to address them as this country's 14th Surgeon General.

### A MAJOR HEALTH ISSUE TODAY

One of the major health hazards facing us today is the menace of AIDS—and how to put a stop to this horrible disease.

No other public health problem in modern history has had the impact that HIV-AIDS is having on everyone in our society—but especially on our youth. Young people who engage in unprotected sex at an early age and with multiple partners, and those who use alcohol and other drugs are at special risk for HIV transmission.

Surgeon General Toni Novello has spoken out about the challenge to come up with solutions to this killer; but she has not hesitated to advocate abstinence as the best prevention. She is taken her story all over this country and in numerous other countries.

As Surgeon General, she chaired the PHS Panel on Women, Adolescents, and Children with HIV infection and AIDS and has provided HHS with pertinent information that will help guide policy.

She is currently finishing a report on adolescents and HIV-AIDS for use in every State and local community.

### WOMEN'S HEALTH

Dr. Novello has always emphasized that the health of our Nation's families is dependent on the health of women. She has been particularly concerned about the prevalence of domestic violence, something hardly recognized as a health problem before she brought it to the forefront.

Her reports indicate that there were more women who died of violent attacks by men than there were soldiers who died during the entire Vietnam war. And sadly, violence perpetuates more violence; children of violent parents are much more likely to become violent spouses themselves.

As Surgeon General, Toni Novello tried to get some answers to some very distressing statistics: Every year 250,000 women die of heart disease. It is known that by age 40, heart disease is the second leading cause of death for women; and, after age 65, it is the leading cause.

Breast and lung cancer are two killers of women. Breast cancer remains the leading cause of death in women ages 40 to 44. But, early detection can increase disease-free survival by 95 percent.

And while Toni has asked women to start to take control of breast cancer by early screening, she has also warned women to stop smoking in order to defeat lung cancer. Lung cancer has surpassed breast cancer as the leading cause of cancer among women. And, Dr. Novello believes prosmoking advertising is pushing that death toll even higher.

### CHILD AND ADOLESCENT HEALTH

In private life Toni is a pediatrician, so it is no surprise that child and adolescent health would be a cornerstone of her agenda. She's been active in many children's organizations and campaigns throughout the world to help give children's health the importance it should have. She participated in a children's vaccination program in her native Puerto Rico and throughout much of the United States.

### ALCOHOL—ILLEGAL UNDERAGE DRINKING

In addition, Dr. Novello has pointed out the danger of teen drinking. Ten million adolescents drink alcohol, including 90 percent of our high school students. This serious health problem has been underscored wherever Toni has spoken. She has been a tireless crusader on this subject. As a result, many teenagers are beginning to recognize the dangers of disease and injury caused by alcohol consumption and have taken steps to stop or curtail their drinking.

Likewise, she has tried to put a halt to underage smoking. She has been a leading critic of the tobacco industry's attempts to corner the youth market with the use of cartoon characters and other prosmoking devices.

### MINORITY HEALTH

Dr. Novello was among the first Surgeons General to focus on the health

care needs of minorities in America and the first Surgeon General to convene a national workshop on Hispanic-Latino health. She successfully developed five health concerns critical to the Hispanic community. A comprehensive research, health promotion, and disease prevention agenda was developed. Five regional meetings have taken place, and from those meetings health strategies and agendas pertinent to those living in the regions were developed.

Toni Novello has also been active in health programs devoted to organ donations, mental health, aging, and farm safety.

It is no wonder that I, like millions of Americans, am very proud of Toni Novello.

With the office of Surgeon General comes a great and somber responsibility for health matters, but Toni has managed to keep her sense of humor. By virtue of her vibrant and refreshing personality, I believe Toni has been able to reach a nation of people who sometimes need reassurance more than lectures and positivism more than doom and gloom. Toni managed to stay very down-to-earth, while at the same time, pursuing a necessary agenda and accomplishing all she did in such a very short time.

I which her well in her new endeavors, and I know the people of this Nation are in much better health because of what she has done and recommended as Surgeon General.

## DEVELOPMENTAL DISABILITIES AND TECHNOLOGY-RELATED ASSISTANCE ACT

Mr. HATCH. Mr. President, yesterday the Senate passed legislation to reauthorize two programs that are of vital importance to those Americans with disabilities: the Developmental Disabilities Act and the Technology-Related Assistance Act. I was pleased to be a cosponsor of these measures.

I want to congratulate Senator HARKIN, chairman of the Senate Subcommittee on Disability Policy, and Senator DURENBERGER, the ranking minority member, on developing legislation that has won broad support from the disability community as well as the unanimous support of the Senate Labor and Human Resources Committee. I sincerely appreciate their leadership in this area.

As some of my colleagues may know, I have an active advisory committee in Utah on disability issues. The committee is made up of representatives from virtually all the State's public and nonprofit organizations with interest and expertise in these matters. I have relied heavily on their advice, and I have appreciated the opportunity to discuss their recommendations with Senator HARKIN and Senator DURENBERGER as this legislation was being developed. I have joined as a cosponsor of these bills at their recommendation.

I do, however, want to take this opportunity to share with the Members of this body some of the Utah Advisory Committee's observations regarding this legislation. I believe it is important that we continue looking at ways we can improve services to individuals with disabilities as well as ways to ensure the effectiveness of disability policy overall.

With respect to the developmental disabilities bill, the Utah Advisory Committee recommended that the "age of onset" requirement be dropped. This requirement for determining eligibility for services has the effect of excluding many Americans whose disabilities occurred after the arbitrary age of onset. I am pleased that the bill allows for a waiver of this requirement on a limited basis in the projects of national significance, but I hope that Congress will give careful consideration to eliminating this requirement entirely in the future.

The Utah Advisory Committee also urged that the original mission of the University Affiliated Programs [UAP's] be maintained. The committee did not object to optional expansion of the role of the UAP's. However, they believed that the principal benefit of the university affiliation was to bring an interdisciplinary approach to training, data collection and analysis, research, and development of emerging technologies and models and that, in establishing new emphases for the program, these benefits should not be lost. I agree with them and hope that the optional inclusion of direct services in the UAP's will not compromise the excellent work that the UAP's have done to date.

Overall, the Utah Advisory Committee on Disability Issues supports the Technology-Related Assistance Act—the Tech Art—amendments proposed for this program and agree that systemic changes could have a greater impact over time than legislation that only permitted the purchase of devices for a few individuals with disabilities.

The Utah Advisory Committee has expressed to me their hope that title II programs would continue to emphasize training, and has recommended that opportunities for both inservice and preservice training to service providers be expanded. While studies and evaluations are important to determine what works and what doesn't, I agree with the consensus of my constituents that it should not take precedence over the training aspects of this title.

Finally, I want to share with my colleagues a few thoughts about the Protection and Advocacy [P&A] provisions that are in both the developmental disabilities bill and the Tech Act.

I recognize how important the P&A function is to maintaining the effectiveness of both the DD and Tech Act programs. I recognize that the P&A provides an essential check on any institution rendering services to individuals with disabilities under these bills. It it clear to me that the P&A is aimed at guarding the interests of those who cannot speak for themselves; and, to the extent that the taxpayers' money pays for these services, it is in the best interests of the taxpayers to have the P&A helping to provide proper oversight of these programs.

I appreciate the willingness of the Senator from Iowa and the Senator from Minnesota to work with me on these provisions.

However, in expanding the role of the P&A, it is equally important that we do not turn the program against itself. A dedicated P&A organization can ensure the efficacy of the programs; an out-of-control P&A can eat up precious resources in unnecessary litigation and destroy the credibility of institutions and the program itself.

There was no consensus on the Utah Advisory Committee on Disability Issues with respect to the expanded P&A function and particularly the mandatory set-aside for the P&A under title I of the Tech Act. I note this because, despite the strong view of my advisory committee that the P&A function was necessary and worthwhile, there were many opinions on how it should be structured in this legislation.

We have adopted these provisions, which are strongly supported by many organizations and individuals in the disability community, but not the entire disability community. I believe we should give the provisions for an expanded P&A role in both the DD and Tech Acts a chance to work. But I also believe that we should not be reticent to make changes of these changes do not work the way we intend them to work.

Mr. President, again, I want to complement my colleagues on the Labor and Human Resources Committee, Senators HARKIN and DURENBERGER, as well as their staffs, Bob Silverstein and Susan Heegaard, for the fair and efficient way they went about developing this legislation. I appreciate their efforts and am pleased to be a cosponsor of these bills that are so important to the disability community.

## JAMES PATRICK BEIRNE

Mr. WALLOP. Mr. President, earlier this week the people of this country lost a dedicated public servant. James Patrick Beirne died at his home in Florida at the age of 92.

Jim lived a long life, much of it dedicated to his job of 20 years with the Bureau of Land Management. He started at BLM when it was young and had a budget of only $40 million.

When he retired from BLM in 1971, he was the Assistant Director of Administration, the No. 2 man, and the Acting Director as Directors came and went.

He retired at a good salary. But rather than just vegetate in his retirement, he came back for several years at a salary that was less than half of what he had been making.

He received his training as an accountant from Benjamin Franklin University. He was a charter member of the Federal Government Accountants Association and of the American Accountants Association.

He worked on the energy policy project of the Ford Foundation, performed yeoman's duty on the mineral leasing records of the Federal Government, and early on dealt with royalty issues and what would later on become the Outer Continental Shelf Program of the Minerals Management Service.

Jim often traveled for the Government. Hating to fly, he would take a train whenever he could. By this means he often showed up relatively unannounced at field locations.

One of my favorite stories about James Patrick Beirne illustrates his dedication as a public servant. The story begins as he came into St. George, UT, on a very hot summer day many years ago. His first stop was the district office of the Bureau of Land Management.

I can imagine his surprise and chagrin when he found the office locked and a sign indicating that it was siesta time due to the heat. Well now, I don't know of any Government offices that made their own policy to close when it got hot out, and I don't think he knew of any either.

I wish that I had been there to hear his conversation with the District Manager, whom he called at home from a pay phone. Jim identified himself, and stated that he could be visiting the office soon. Since the District Manager thought that Jim was calling from Washington, he asked when Jim would be visiting.

I don't think he was ready for the answer that it would be in 30 minutes, and that Jim wanted every employee of the office to be there for a meeting. I am told that they were all there in time for the meeting. Jim told them clearly that the BLM was not serving the public by arbitrarily taking time off in the middle of the afternoon. I wish we had more public servants like Jim Beirne working for us today.

Jim Beirne was a force in the BLM, a dedicated man who knew the meaning of public service. Our thoughts and prayers go out to his family, including his wife Margaret, his son Jim, who works on my staff, and his daughter Carol. Perhaps in this, their hour of sorrow, it is of some comfort to know that James Patrick Beirne made a difference in the lives of the people he touched. He will be missed.

## REINVENTING GOVERNMENT

Mr. GRASSLEY. Mr. President, on Friday, I spoke before this body, along with my colleague Senator ROTH of Delaware, on the issue of reinventing Government. I had indicated on Friday that I would continue this week with further statements exploring the issue in greater depth. That is my objective today.

On Friday, I spoke of the definition of and need for reinvention. Today, I will talk about political context.

In recent days, a monograph was published by the Brookings Institution called "Improving Government Performance." The authors caution that reform should come incrementally and experimentally, and with humility.

They also argue that reinventors may be too optimistic about reforms taking hold in the bureaucracy. Reform, they say, will occur selectively, as an evolutionary process.

In Tuesday's Washington Post, another core point is addressed in an article on reinventing Government on the Federal page by Stephen Barr. The point is raised under the subheading "Seeking Allies in Cabinet, Work Force":

> Reinventing Government also has its skeptics, especially in political science circles and on Capitol Hill. A number argue that the performance review, which is the vice president's reinventing Government initiative, Mr. President, will be marginally effective, because Washington's real problems are shaped by larger political, policy and economic considerations:

Mr. President, I intend in subsequent statements to review in depth the Brookings work. Today, I want to keep my comments general.

And so I will address these two broad points; the one in the Post article and the other in the Brookings study.

Again, those two points are: First, we should take the incremental approach to reform, and second, the real problem is the larger political and economic consideration.

The quote from the Post article represents the typical Washington view toward reform: Skepticism. Washingtonians, in and out of Government, have seen so-called reform efforts come and go. There's hardly an administration that passes through town that doesn't try at least one major effort to reform the bureaucracy.

Yet all were unsuccessful when measured against the stated goals. Bureaucrats just hunkered down until the reform winds blew over. When the winds subsided, business-as-usual resumed.

You don't have to go back too far to recall a typical case in point. How about the Grace commission? Or the Packard commission. How about PPBS, or zero-based budgeting. There was some good work done in each of these endeavors. But it didn't do anywhere near what was advertised. And it certainly wasn't good enough to do battle with the system. Like a grand chess player, the system always wins.

Ironically, skepticism is also what the electorate, in growing and growing numbers, and with more and more vehemence, are fed up with. These are voters who are no longer content with sitting at home with their cynicism. They are actively doing things about it. They are swing voters. They are demanding change.

These people are tired of a political industry that feeds and grows at the expense of the country. This industry is a case study in destructive management. It is awash in money yet ineffective. Taxpayers get less and less value for their dollars. Its conspicuous symptom is a Federal debt that literally cannot diminish.

These voters are demanding corrections now. They are not enough in number, yet, to be able to form a Government. But they sure as heck can cancel out those not providing governance.

Washington, therefore, is caught between a rock and a hard place. On the one hand, it is realistic. Reforms come and go, and fail to take hold. Politicians are full of noblesounding platitudes but have insufficient commitment to rock the political boat.

On the other hand, there is the growing political imperative to either get the job done or throw the rascals out. These voters are intent on destroying politics-as-usual to save democracy.

The question, then becomes: Who will win, the rock or the hard place? Washington or a determined electorate?

This is not a question that will be answered anytime soon. One thing is clear, though. Previous would-be reformers did not have 20 million voters looking over their shoulders with a performance evaluation chart. So theoretically, at least, there's a chance history will not repeat itself.

There is a fine line between skepticism and realism. I'm not yet sure which side of that line the Brookings position lies. I do not consider this to be a fault, because regardless, the Brookings study is trying to inject some realism into the equation.

Incrementalism may or may not change bureaucracy's institutional culture. But it sure as heck won't address the political imperative, which demands a reinvention offensive. Glasnost and perestroika were incremental changes in Russia; unfortunately for Gorbachev they didn't meet the imperative of the Russian people.

Peter Drucker once said that when seeking to replace obsolete paradigms you must aim high. Incrementalism, I am afraid, is an insufficient aim.

To aim higher—to ensure that the administration's reinventing Government effort is more than marginally effective—we must lift our efforts to the larger political, policy and economic considerations, as the Post article puts it. Let me suggest how that might be done.

The first step would be to declare a reinvention offensive. The time has

come when we must reassess the balance of responsibilities between the public and private sectors.

This cannot be done by evolution. We don't have time, either politically or economically. In 1980, David Stockman and others laid out an aggressive economic agenda designed to avoid an economic Dunkirk—that is, to avoid a major economic debacle. Prudent decisions back then would have helped us avoid economic contraction and the need for radical reforms.

But we didn't make those prudent decisions. And now we're faced with a contracted economy and a more formidable task.

A clash is unavoidable. The question is, again: Who will win, Washington or a determined electorate?

The second step is to rethink the responsibilities of the public sector versus the private sector. We must decide which functions of Government are better off being run by entities closer to the citizenry. I spoke about this on Friday, offering three categories of Federal activities. The implications of this approach go way beyond turning bureaucrats into a bunch of smiling faces that still deliver monopoly services. I am talking about a fundamental rethinking of what Government does now and what it should do tomorrow. Believe me, such an approach would fit into the category of larger political, policy, and economic considerations.

Finally, we have to resist the urge to deal with the problem of change with happy-talk the problem of change with happy-talk platitudes. Change will not occur unless we reverse the upside-down structure of incentives. We must create disincentives to the shell game, which is at the heart of the management problem in both Congress and the executive branch. If we can somehow lick this shell game and all of its vestiges, we will have a chance to make reform take hold.

Mr. President, this issue of incentives and shell games is the key to reforming the bureaucracy. I will speak more in depth about this tomorrow.

Let me just say, in conclusion, that the scope of reinvention will tell all. I have high hopes for this administration, that the scope of its reinventing Government effort will be broad and ambitious. We must take a look at all of Government and ask the fundamental questions: Should we be doing this? Or, should we turn that function—that is, its ownership—over to the citizenry. All Government programs should be on the table. This is the reinvention offensive vision. Under this vision, health care and welfare reform would be subsets of the overall effort.

Perhaps, on the other hand, the effort might be restricted to small potatoes—a program here, a program there. This is the small potato vision. It is an approach that will be ginned up by bureaucrats. It is a bone thrown to the electorate so the President won't have broken another campaign promise. But the real intent is to provide cover, and time, for the next great hunkering-down. This is not a serious approach, in my view.

Mr. President, the people want a reinvention offensive. If they don't get it, they're likely to reinvent their representation in Government.

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## TO CORRECT THE RECORD REGARDING THE STATEMENT BY PROFESSOR BASSIOUNI ON MAY 12, 1993

Mr. DODD. Mr. President, on May 12, the Foreign Relations Subcommittee on Terrorism, Narcotics and International Operations held a hearing that I chaired in which testimony was taken on the issue of establishing an international criminal court. One of the witnesses at that hearing was Prof. M. Cherif Bassiouni, a professor of law at DePaul University and one of the world's leading scholars on this issue.

Unfortunately, Mr. President, the printed record of this transcript, contained in the appendix to Senate Report 103-71, contained several important printing errors in the opening statement of Professor Bassiouni's remarks. So that the record might accurately reflect the content of this statement, I ask unanimous consent to include in the CONGRESSIONAL RECORD at this time a corrected copy of Professor Bassiouni's remarks.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

STATEMENT OF PROF. M. CHERIF BASSIOUNI

Thank you very much, Mr. Chairman. I am grateful for your kind words, as well as for the words of Senator Specter. And I think I would be remiss if I would not acknowledge the leadership role and contribution of Senator Specter and Congressman Jim Leach for their work in support of the establishment of a permanent international criminal court.

I cannot help, if I may, recall that I met your father, Senator Tom Dodd, many years ago, and had an opportunity to discuss that very same question on a television program in Chicago called KUP's Show in which we harkened back to the days of Nuremberg and to the establishment of a permanent international criminal court. It was about 25 years ago.

And I think that to a large extent the question really has to start with whether or not one believes that the progress of the world and relations between states is moving toward making this a smaller world, which necessitates the establishment of permanent international institutions and mechanisms that would operate not as a substitute for national mechanisms, but as complementary thereto.

If one has a vision of the world as moving in a direction of increased interdependence, then the need for greater cooperation is obvious. This also means that we must fill in the gaps on bilateralism. Exclusively narrow perceptions of sovereignty are in this respect counterproductive to both international and national interests.

Efforts are now aimed at the creation of new permanent international legal institutions that are capable of functioning fairly, impartially and effectively. There is no doubt that the concerns that were expressed by Senator Helms are valid concerns, and there are many others he has not expressed which many of us who have worked on the subject also appreciate.

It is not easy to establish an international criminal court, no more than it is easy to establish a national criminal court elsewhere. The entire infrastructure of a system of international criminal justice needs to be established and needs to be built literally block by block, not only in order to ensure that it will work, but that it will work effectively and that it will accomplish the ends of justice with impartiality, in order to earn the credibility that Senator Helms referred to as possibly lacking if things are done on an ad hoc basis.

There are judgments that have to be made, there is no doubt about that. And there are judgments that can be made on the basis of the rule of law. I do not believe in an approach to international institution building based exclusively on geographic or political representation. I believe that institutions must be built not only on the sound rule of law, but with discriminating judgment as to how these institutions function. That includes the selection, quality and qualification of judges, their integrity, their independence, their impartiality, and their knowledge. It also includes a discriminating choice as to the selection of the crimes and jurisdictional mechanisms on the basis of which the tribunal shall function. That is why I am opposed to associating the ILC's draft code of crimes with the establishment of a permanent international criminal court.

Like Senator Helms and others, I am equally troubled by the ILS's draft code of crimes and have frequently criticized such notions as crimes of colonialism and mercenarism or the loose definition of environmental crimes. Other crimes, however, are well established: crimes against humanity, genocide, war crimes, slavery, traffic of women and children, sexual exploitation of women and children, traffic of children for adoption, international traffic in drugs, hijacking of airplanes, taking of civilian hostages, and the kidnapping of diplomats. These and others are well established crimes over which the tribunal could readily exercise jurisdiction.

What I have tried to do in the various proposals that I have drafted, some of which have been used as a basis for the work of the International Law Commission and now for the Ad Hoc War Crimes Tribunal for the Former Yugoslavia, is to offer what I would call discriminating and reasoned options.

There are 24 recognized international categories of crimes. I do not advocate that we should start a tribunal with all 24 categories of crimes. I would look for a minimum threshold of those crimes on which there would be the greatest agreement and consensus in the world, so that we can start with a foundation of consensus and build upon it. We need to find out if and how the tribunal will function, and then to allow it to gain confidence. Only then should we add more crimes to its jurisdiction.

I also believe that for a period of time we should try the international criminal tribunal on the basis of concurrent jurisdiction with national criminal justice systems. This approach avoids the problems that many perceive, as Senator Helms does, with relinquishing national sovereignty. Concurrent

jurisdiction gives a certain amount of flexibility in the initial stages of the tribunal's life to allow a state in which the crime has occurred to voluntarily transfer criminal jurisdiction to the court.

Now, for some this may be too much of a minimalist position, and some would advocate that there has to be at least some compulsory jurisdiction with respect to such crimes as genocide and crimes against humanity. While I fully sympathize and would hope that we would reach that point one day, I would argue caution in not wanting to achieve a maximalist position from the beginning. Instead we should try the institution with a minimalist position and build upon its success. This was a position I have taken in my work with Parliamentarians for Global Action and I think that it may be a wise route to follow.

If I may just spend a few words on what is happening today in New York, the discussions of the Ad Hoc War Crimes Tribunal on the Former Yugoslavia. As a member of the UN Commission of Experts and the Special Rapporteur on the gathering and analysis of the facts, I must first clearly state that my views do not represent the position of the Commission or that of the United Nations.

As I have spent the last 6 months gathering facts about this tragic conflict, I have been confronted with the reality of how do you gather evidence when a war is going on? What do you do to preserve the evidence when a conflict like this is going on? How do you record the evidence for future prosecution?

These are very difficult questions. I have interviewed and have records of a number of women who have been subjected to rape. Many of them may not want to be identified, or may not want to testify in the future. Some will certainly not want to go to the Hague and testify under confrontation and cross examination, under the glare of publicity, for the whole world to know what terrible things have happened to them.

This is a small practical question, but it's one that may doom the prosecution of these types of cases if they are not carefully handled, if the witness and victims are not carefully treated, and if they are not secure and protected from embarrassment, harassment, and future reprisals.

Another example is the torture victim. How many torture victims are going to want to relive their ordeal in open court? How many of them will want to travel to a foreign country to do that in public? How will they be able to prove months later when the scars have healed and there are no medical records that these scars were the result of torture?

All of these real problems of evidence which I have to face have given me a completely different perception on the work I have been doing for 25 years from the theoretical point of view. And I am the one who is today arguing caution with members of the Security Council and others about the Ad Hoc War Crimes Tribunal. Not because I don't want to see it, but because I want to see it succeed. And because I want to see it succeed, it has to be based on very strong foundations of credibility. It has to have the resources necessary to obtain the evidence. It has to be able to have impartiality of operation and function and not be tainted by any politics in order to be able to produce the quality of justice that the world would come to expect. We cannot have a low quality of justice become the minimum common denominator of the world but we must seek the highest quality of justice.

When we aim at the establishment of a permanent international criminal tribunal, in my humble judgment I think we should aim at establishing something that stands up to the highest common denominator of justice in the world and yet at the same time will be effective.

Thank you for the opportunity of being here, and I hope the Chairman and distinguished members will excuse me if I have to leave at 3:15 since I have to brief some members of the Security Council on this very topic at 6:00 today.

## NATIONAL AND COMMUNITY SERVICE

Mr. DOMENICI. Mr. President, I cannot express strongly enough my objections to the legislation we now have before us.

We have been presented with the conference report on the National and Community Service Act which in no way resembles the bill passed in the Senate. While I opposed that legislation for various reasons—and hoped against hope that the bill would be improved in confernece—the bill we currently have before us is far more objectionable than the bill that was passed by the Senate.

I think it is fair to say that all of us in the Senate are in favor of community and volunteer service. Frankly, it is because I am in favor of community and volunteer service that I will vote against this conference report.

I had several significant objections to the bill that was passed in the Senate. Mainly, I was concerned that the bill spent too much for too few participants, and that there were better ways to utilize the vast human resource of volunteers in a community than were provided for in the bill. This program is too expensive, especially as we are preparing to burden our citizens with new taxes under the President's budget.

However, the Senate bill did contain numerous amendments which, if we were to pass a bill, made the bill stronger in several meaningful ways.

For example, the Senate accepted two of my amendments to, first, increase the proportion of funding that initially flowed to the States, and second, to ensure that this new program was not treated or scored as an entitlement program. These were two reasonable amendments that were accepted unanimously by the Senate, and they gave the bill some much-needed teeth.

The bill before us sends on 33⅓ percent of the money directly to the Stats, as opposed to the 50 percent my amendment would have provided.

In addition, the House has increased the authorization levels for this bill beyond what we agreed to in the Senate bill. Under the Senate bill, we authorize the program to be funded at $300 million, $500 million, and $700 million over 3 years.

Although this is still, in my opinion, too much money, it was a significant reduction from the bill as it was introduced. What do we find now, but that the house conferees have not only added an additional $200 million to be spent over 3 years, but that these funds are to be used for administrative purposes.

Administrative purposes? Mr. President, I think if you ask the average person on the street if we need to spend more money on Government—because that is what we really mean when we say administrative purposes—he will tell you, unequivocally, no. And, frankly, he would be right.

But under this bill, not only do we decrease the proportion of funds that flow to the State—from 50 percent, as my amendment provided, down to 33 percent—but we have also increased the proportion of money that goes back into the bureaucracy. I find this provision alone outrageous, and I will not support it.

The bill also makes payments from the State trust fund and grants to States subject to the availability of appropriations.

However, the language in the bill stating that participants shall receive their educational award gives me pause. I am concerned that the present drafting that entitles eligible participants to receive educational awards will force the hand of the appropriators.

With this in mind, let me pause for a question to the chairman of the Labor Committee: "Is it your intention that participants in the program would be entitled to receive education awards, despite the availability of appropriations?"

Looking over the remainder of this bill, it seems to me the House conferees had already decided the fate of this legislation before it ever reached conference. And that, Mr. President, is not the purpose of a conference.

I regret we have come to this impasse, because I know many of the Senate conferees legitimately wanted to craft a compromise that stood at lest a ghost of a chance of meeting the volunteer needs of the States and local communities. This bill is not it.

I will vote against passage of the conference report.

## HERMAN E. TALMADGE: A NEW DEMOCRAT BEFORE HIS TIME

Mr. NUNN. Mr. President, on August 9, Herman E. Talmadge will celebrate his 80th birthday. Those of us who were his colleagues when he served in the Senate wish him well, and still remember clearly the special brand of wisdom and common sense that he brought to this body.

Senator Talmadge served with distinction in the U.S. Senate from 1957 to 1981. His exemplary career in public service began with his entering the U.S. Navy in 1941 and continued with

his service as Governor of Georgia from 1948 to 1955.

Senator Talmadge distinguished himself serving on the Senate Finance Committee, the Select Committee on Presidential Campaign Activities, known as the Watergate Committee, and during his almost 10 years as chairman of the Senate Committee on Agriculture, Nutrition, and Forestry.

While Senator Talmadge was a fiscally conservative Democrat, his philosophy is more in tune with what the press today refers to as the New Democrats. He felt that while the Government should help the less fortunate, it also had the responsibility to come up with money to pay for these programs. In fact, every year that he was in the Senate, he sponsored a constitutional amendment to balance the budget. This was long before the idea of such an amendment had any popularity or credibility in Congress. Further, he strongly advocated programs calculated to get people on their feet, and give them the means with which to secure their own future and the future of their children. He opposed programs which created and perpetuated cycles of dependency.

Under his tenure as chairman of the Senate Agriculture Committee, the child nutrition programs and the food stamp programs were greatly expanded. He was also an innovator and leader in the area of rural development. From early in his tenure in the Senate, he recognized that there was no way that any farm policy could succeed in keeping all of our farmers on the land. The mechanization of agriculture would inevitably diminish the available farm jobs. Therefore, he began a crusade for rural development, and when he became chairman of the Senate Agriculture Committee in 1971, he established a rural development subcommittee with his colleague Hubert Humphrey as chairman. Together they enacted the Rural Development Act of 1972.

In the 1980's, there was a loss of interest in rural development and it was deemphasized during the Reagan administration. However, in the last few years, more Members of Congress have realized the need for an improved rural development program, and it has resurfaced as a national priority.

Another area of public policy which has received increasing attention from new Democrats recently is job training and welfare reform. As a member of the Senate Finance Committee, Talmadge was very active in welfare reform and was the author of a provision providing private business with a tax credit for job training. He reasoned that it was more efficient to have incentives for private business to train people for jobs which existed rather than have the Government provide training for nonexistent jobs.

One hallmark of Talmadge's career as a public servant was his empathy with small business. Having been a successful entrepreneur himself, he realized firsthand what a crippling impact excessive regulations could have on small businesses. While he decried the tendency of the Federal bureaucracy to promulgate excessive regulations, he realized that a great deal of the blame lay with Congress. Therefore, he authored a rule, rule 29.5 of the Standing Rules of the Senate, requiring every Senate committee reporting a bill to include an evaluation of the regulatory impact of the legislation and the additional economic and paperwork burden that would result from the legislation.

While Senator Talmadge has not served in this body since 1981, if he were serving today, he would be known as a new Democrat. The simple values he loved to espouse, such as, You gotta have more people pulling the wagon than riding, are as true today as when he used to state them on the floor of the Senate. I think he would also urge us all to stop reading polls and get about the business of leading. He used to say, Being a leader demands more than riding the lead cow in a stampede. We miss the Senator and wish him well on the occasion of his 80th birthday.

## TRIBUTE TO MAJOR JOHN T. GODFREY

Mr. PELL. Mr. President, I rise to pay tribute to the late Maj. John T. Godfrey, USAF, who on Sunday, May 16, 1993, was inducted into the Rhode Island Heritage Hall of Fame. Major Godfrey served as a fighter pilot during World War II under the Royal Canadian Air Force, the British Royal Air Force, and the United States Army Air Corps. He showed uncommon valor, and earned the distinction as being one of the greatest aces of all time.

I am pleased to note that Major Godfrey was a native of Woonsocket, RI. Immediately following graduation from Woonsocket High School, he enlisted in the Canadian Air Force in order to bypass the U.S. Army college entry requirements. During his service, he was downed twice in addition to once begin lost at sea. He returned home to Rhode Island after the war, after having earned distinction as a renowned fighter ace while flying solo in British and American fighter planes.

Although Major Godfrey was able to escape harm and return home safely, he prematurely and unfortunately fell in 1958 to Lou Gehrig's Disease, also known as ALS. It is my hope that through his induction into the Hall of Fame, Major Godfrey will be remembered for his patriotism and his valorous achievements and accomplishments on behalf of our country.

Mr. President, I ask unanimous consent that a letter submitted by Major Godfrey, shortly before his death, to the Jay Egan Gazette, a local Woonsocket publication edited and produced by Jay Egan, then age 11, be inserted in the RECORD. This letter is particularly timely as it illustrates John Godfrey's final convictions as a man, and illustrates a page of our history as a nation.

CASCO LACES, INC.,
*Freeport, ME, October 28, 1957.*

JAY EGAN GAZETTE,
*Woonsocket, RI.*

DEAR MASTER EGAN: Your letter of October 4th chased me to Germany and finally caught up with me in Maine today. I'm very pleased to write a brief letter which I hope will suit you for one of the issues of the Jay Egan Gazette.

A new era in air history is now in the making. No longer will pilots such as I engage in the twisting and spinning Air Force of yesteryears. Gladiators of the Royal Air Force were the last planes in my lifetime to engage in the romantic and thrilling air fights. People have talked about and read with vivid interest how they fought in Greece in 1939 against the Messerschmits: They used the tactics of World War I, Immelmann, loops and stall turns. They were badly mauled by the German Air Force and the bi-wing fighter plane obscured itself in air war history.

I was privileged to fight in Spitfires, Thunderbolts and Mustangs; propeller driven aircraft which now are as obsolete as the Model T Ford is in the automotive industry. Tactics changed so that loops and Immelmann were suicidal maneuvers. Then the Air War was dependent upon the power of the engines and the maneuverability of the Fighter Plane in a tight turn climb or dive. The romantic days were gone when fighter planes waved to each other before engaging. Speeds were prohibitive and fast sneak attacks were the rule of the day. Some of the glamour was left however, but the Korean war with it's fast Jet Aircraft was the end in my opinion of the fighter pilot. Supersconic speeds made a ten mile radius necessary for a tight turn. Head on attacks were suicidal due to the fast closing speed of both aircraft.

Now the Rocket Age is upon us. Fighter Pilots will be seated in large comfortable chairs, sheltered 50 feet underground by massive concrete bunkers. His eyes, instead of scanning the blue skies above him, will be focused instead on a radar screen with only a blip to show his target. There will be no engine noises or a feeling of greatness such as former pilots experienced flying 30,000+ over the earths contours. His hands will flick a switch and his rocket will be airborne to meet his adversary hundreds of miles above the earths surface. The ignominious death of the fighter pilot is on its way. No power on earth can stop it as we plunge headlong into this new era.

My eminent death foreshadows all possibilities of my seeing this happen, but I am afraid my children will see the horror created by science plunging into a field which the devil himself would hesitate to enter. The unleashed fury of atoms and our tampering with this devil's tool hastens the world into a suicidal pact of destruction. We have commited ourselves now with no turning back. The fiends in hell wring their hands in satisfaction and laugh derisively at the catastrophy we are about to bring upon ourselves.

Sincerely yours,

JOHN T. GODFREY,
*President.*

SARAJEVO ON VERGE OF FALLING

Mr. DOLE. Mr. President, Sarajevo is on the verge of falling. The key strategic mountain overlooking Sarajevo, Mount Igman, is now in Serbian hands—its capture facilitated by Serb helicopters violating the no-fly zone. Although the Bosnian Serb leadership has promised to withdraw its forces, as we have seen over the past 16 months, they make and break promises as a matter of course. The fact is that Sarajevo is now effectively cut off, at the mercy of Serb Forces.

On Monday, our NATO allies at long last agreed to take tougher measures against Serbian Forces in Bosnia and Herzegovina. While the NATO agreement takes long-overdue and significant steps forward, in particular by preparing for air strikes against Serbian military positions, there are still some hurdles to overcome before such action can be taken.

Some of these hurdles result from continued French, Canadian, and British opposition to anything but narrowly defined military action to protect UNPROFOR troops. It is hard to imagine that after 16 months of brutal aggression against Bosnia, some of our allies still think that the move from words of warning to action is too soon. However, that is why there is a requirement that NATO Ministers meet again before initiating any military action. This NATO Council meeting will likely take place early next week; in my view, the sooner, the better.

There are also other political hurdles to overcome. While Serb forces continue their offensives on Sarajevo and other areas, the United Nations and NATO are locked in a political tug-of-war. So, instead of watching the launch of air strikes against advancing Serb units, we are watching the U.N. Secretary General launch letters to the State Department saying he is in charge.

President Clinton rightfully believes that air strikes should be undertaken to prevent the fall of Sarajevo and other cities, and that NATO should be in charge of such military operations—in consultation and coordination with the United Nations.

The fact is that NATO can handle the job and the United Nations cannot. It seems to me that with Serb Forces choking Sarajevo, we do not have time for a bureaucratic power struggle. We cannot let this tug-of-war continue. Let us be clear, NATO has the authority to act under United Nations Security Council Resolution 770 and under article 51 of the UN Charter. So Boutros-Ghali should step out of the way and let NATO do the job.

Mr. President, the credibility of NATO is on the line. And, U.S. credibility is on the line—not just at NATO, but in Geneva, too.

Yesterday the Bosnia desk officer at the State Department, Marshall Harris, resigned. This is the second State Department resignation protesting United States policy toward Bosnia; last year, George Kenney, who was also the Bosnia desk officer, resigned in protest. In his letter, Mr. Harris stated that he "could no longer serve in a Department of State that accepts the forceful dismemberment of a European State." This was a courageous move and despite the cheap shots hurled at Mr. Harris by the State Department spokesman, I think it is clear that Marshall Harris is a man of conscience, who puts his principles above promotions.

This resignation together with news reports from Geneva call into serious question the United States commitment to upholding the principle of the territorial integrity of Bosnia and Herzegovina.

Behind closed doors in Geneva, mediators Owen and Stoltenberg are pressuring the Bosnians to sign away most of their country. Their solution to silencing the guns around Sarajevo is to give the aggressors what they want. This is not a negotiation. Owen and Stoltenberg are merely facilitators of surrender.

The United States has sent representatives to Geneva, but the question is, what are they doing? Are they just watching the sell out? And, why isn't the United States attempting to bring principle back into the process?

In my view, there should be a time-out in Geneva. Owen and Stoltenberg should take a long vacation and review all of the U.N. resolutions upholding the principle of the territorial integrity of Bosnia and Herzegovina. They should also take a look at their own earlier statements against partition and dismemberment.

The United States has said that it will accept any settlement agreed to by all of the parties. Well, this approach guarantees that the party with the greatest strength and the most territory will dictate the terms of settlement. As the Bosnian Foreign Minister, Haris Silajdzic, said a few days ago this is the rule of force, not the rule of law.

I urge President Clinton to rethink his position on the Geneva talks and to commit the United States to supporting only a settlement that does not reward aggression and genocide. Maybe our United States representatives in Geneva could give the mediators a quick seminar on international law, the United Nations Charter and the rule of law.

Mr. President, this is not just Bosnia's last chance, but the international community's last chance to do what is right—to prevent the fall and partition of Bosnia.

I urge President Clinton to stay on course with our NATO allies—to press for their cooperation to move swiftly and decisively, and not to be deterred by bureaucratic obstacles raised by the United Nations.

STATEMENT OF SENATOR CONRAD BURNS

Mr. BURNS. Mr. President, today I would like to voice my opposition to H.R. 2348, the legislative branch appropriations bill. As a member of the subcommittee, I successfully added a cost-saving amendment regarding the printing Government documents. But during the conference committee the amendment was deleted. In a time when most people, including those in Montana, are saying cut Government spending, this amendment should have survived because it would save $120 million.

The amendment required that large print jobs be sent to the Government Printing Office and awarded to open-competitive, private sector bids at 21 offices across the country. These private sector competitive jobs save taxpayers approximately 50 percent over the agency in-house jobs of over $1,000 in cost. The bottom line is, this would have saved American taxpayers at least $120 million.

Not only would this have stopped redundancy in our Government, it would have created jobs. Allowing the private sector to perform these services would mean more jobs, and the Government in turn would be able to collect more taxes. This was a win-win situation, and I am very disappointed that the amendment was stripped.

Therefore, I will not support the final passage of the legislative branch appropriations bill. However, next year we will revisit this issue, I can guarantee it. Cutting Government spending and creating new jobs is what Montanans want.

Mr. President, I yield the floor.

MULTIPLE USE IS RESPONSIBLE USE

Mr. PRESSLER. Mr. President, the multiple use concept has worked well for managing the public lands in the Black Hills for many years. A wide variety of uses—including hiking, backpacking, snowmobiling, cross-country skiing, timber, cattle grazing, mining and hunting—are accommodated through a balanced multiple use approach. As my colleagues know, the National Forest Management Act of 1976 requires that every national forest be managed according to a plan based on the multiple use model. The Black Hills National Forest is no exception. An important part of multiple use is the harvesting of timber, which is accomplished by Forest Service timber sales.

However, a serious problem has arisen with Forest Service timber sales in the Black Hills, and on other public lands. Some environmental groups supposedly concerned with preserving the

forest for future generations actually may be doing more harm than good to the Black Hills National Forest. These environmental organizations file frivolous court appeals against timber sales. Their goal is not to stand by the law, but to stand against the lawful sale of timber. These frivolous appeals cost the American people a great deal in Government time, money, and resources that could be better spent taking care of the Black Hills.

Yes, some citizens do have legitimate appeals. But there are others who are abusing the Forest Service appeals process for no reason other than to pursue their own environmental agenda. For example, it is my understanding that in a university elsewhere in the country, students were required to appeal a timber sale as part of a class assignment. Under the current appeals regulations, the Forest Service must process each appeal and spend hundreds of man-hours and thousands of scarce taxpayer dollars, even if the appellant is a college student whose motive is to file the appeal for class credit.

In less than 10 years, the number of timber appeals has increased by more than 670 percent. In 1991, out of the 1,154 appeals that were filed, 94 percent were ruled to be without merit. The Forest Service issued 11 decisions on Black Hills timber sales in 1992. Six were appealed, and five of those six were upheld. The remaining decisions have yet to be determined. Each of these appeals costs an average of $8,000. Nearly $100,000 was spent in 1992 in the Black Hills alone. This expensive process diverts scarce Federal resources that could be better spent on actual forest management programs, which would be more in the public interest.

These frivolous appeals are having a detrimental impact on responsible forest management, responsible timber harvesting and the people that depend on the forest for their economic well-being. In the Black Hills, more than 1,900 jobs depend directly on the timber industry. More than $60 million are paid out directly to employees of processing companies, contract loggers, and other contractors. The value of the wood produced is more than $100 million.

As a result of these appeals, the timber industry cannot get at the abundant timber. The industry and the communities in the Black Hills region are facing very difficult times. Earlier this year one local lumber mill laid off a significant portion of its work force. Another mill closed altogether. The tightening supply of timber is causing the price of timber to skyrocket. This affects other timber-dependent industries. In February, 1,000 board feet sold for more than $437, a 75-percent increase from the previous 4 months. This increase has added $2,000 to $3,000 to the price of new houses, which in turn adds to the price of almost everything. These useless and expensive delays must be stopped.

Managing the forest to keep jobs, sustain the timber yield and preserve the environment is in everyone's best interest. The reality of the world we live in dictates that any responsible decisions involving our environment and public lands must be carefully researched and considered. We all know this and, as a result, the Black Hills and other forests are carefully tended. No clear-cutting or other injurious practices are allowed in the Black Hills. In fact, Ponderosa Pine, the predominant species of tree being cut in the Black Hills, grows so quickly that its growth must be managed to prevent dangerous forest fires and insect infestations.

Mr. President, the United States was founded on a principle of individual participation. I support the right of citizens to seek review of Government agency decisions with which they disagree. In this case, however, some irresponsible groups are filing frivolous appeals to tie up the system in order to pursue their own extreme environmental agendas. We must not tolerate this waste of time and money.

I have supported strongly revising the regulations governing the appeal of timber sales. Last year for example, I voted for the Craig amendment which allowed only citizens who were involved in the decision making process from the beginning to have standing for appeals. After a close vote in the Senate, a modified, and more modest amendment was passed. However, the new regulations to revise the Forest Service appeal process are taking a long time to be implemented.

Earlier this spring I was in Spearfish with a number of Black Hills residents who depend on a vibrant timber industry for their living. Their message was loud and clear: "Let us keep our jobs. We want to work and pay taxes." For their sake, I have urged Secretary Espy to act quickly on implementing the revised Forest Service appeal regulations.

Changing the appeals process will not silence the public's right to be heard. That is not the intent. Those citizens with valid interests still would be allowed an opportunity to participate in the decision making process from the beginning. By streamlining the appeal rules, jobs can be saved, timber can be available and the people's views can still be aired. We must moved forward on these changes and let the public know we believe in responsible forest management.

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NOTE

(The text of S. 1283, Technology Related Assistance Act Amendments of 1993, passed by the Senate on August 5, 1993, is as follows:)

S. 1283

*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 "Technology-Related Assistance Act Amendments of 1993".

**SEC. 2. REFERENCES.**

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2201 et seq.).

**SEC. 3. FINDINGS, PURPOSES, AND POLICY.**

(a) SECTION HEADING.—Section 2 (29 U.S.C. 2201) is amended by striking the heading and inserting the following:

**"SEC. 2. FINDINGS, PURPOSES, AND POLICY.".**

(b) FINDINGS.—Section 2(a) is amended—

(1) in paragraph (3)(C), by striking "nondisabled individuals" and inserting "individuals who do not have disabilities";

(2) by redesignating paragraphs (4) through (8) as paragraphs (5) through (9), respectively;

(3) by inserting after paragraph (3) the following new paragraph:

"(4) The goals of the Nation properly include providing individuals with disabilities with the tools, including assistive technology devices and assistive technology services, necessary to—

"(A) make informed choices and decisions; and

"(B) achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency, for such individuals.";

(4) in paragraph (6) (as redesignated in paragraph (2) of this subsection)—

(A) by striking "assistive technology devices and services" and inserting "assistive technology devices and assistive technology services"; and

(B) by striking "families" and inserting "the parents, family members, guardians, advocates, and authorized representatives";

(5) in subparagraph (C) of paragraph (7) (as redesignated in paragraph (2) of this subsection), to read as follows:

"(C) information about the potential of technology available to individuals with disabilities, the parents, family members, guardians, advocates, and authorized representatives of the individuals, individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities, educators and related services personnel, employers, and other appropriate individuals;";

(6) in paragraph (8) (as redesignated in paragraph (2) of this subsection) by striking "limited markets" and inserting "a perception that such individuals constitute a limited market"; and

(7) in the second sentence of paragraph (9) (as redesignated in paragraph (2) of this subsection), by striking "to individuals with disabilities" and all that follows and inserting the following: "to individuals with disabilities, the parents, family members, guardians, advocates, and authorized representatives of the individuals, individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities, educators and related services personnel, employers, and other appropriate individuals.".

(c) PURPOSES.—Section 2(b) is amended by striking paragraph (1) and inserting the following:

"(1) To provide financial assistance to the States to support systemic change and advocacy activities designed to assist each State in developing and implementing a consumer-responsive comprehensive statewide program of technology-related assistance, for individuals of all ages who are individuals with disabilities, that is designed to—

"(A) increase the availability of, funding for, access to, and provision of assistive technology devices and assistive technology services for individuals with disabilities;

"(B) increase the active involvement of individuals with disabilities, and the parents, family members, guardians, advocates, and authorized representatives of individuals with disabilities in the planning, development, implementation and evaluation of such a program;

"(C) increase the involvement of individuals with disabilities, and, if appropriate, the parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities, in decisions related to the provision of assistive technology devices and assistive technology services;

"(D) increase and promote interagency coordination among State agencies, and between State agencies and private entities, that are involved in carrying out activities under section 101, particularly providing assistive technology devices and assistive technology services, that accomplish a purpose described in another subparagraph of this paragraph;

"(E)(i) increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures, that facilitate the availability or provision of assistive technology devices and assistive technology services; and

"(ii) facilitate the change of laws, regulations, policies, practices, procedures, and organizational structures, that impede the availability or provision of assistive technology devices or assistive technology services;

"(F) increase the probability that individuals of all ages who are individuals with disabilities will, to the extent appropriate, be able to secure and maintain possession of assistive technology devices as such individuals make the transition between services offered by human service agencies or between settings of daily living;

"(G) enhance the skills and competencies of individuals involved in providing assistive technology devices and assistive technology services;

"(H) increase awareness and knowledge of the efficacy of assistive technology devices, and assistive technology services, among—

"(i) individuals with disabilities;

"(ii) the parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities;

"(iii) individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

"(iv) educators and related services personnel;

"(v) employers; and

"(vi) other appropriate individuals and entities;

"(I) increase the capacity of public entities and private entities to provide and pay for assistive technology devices and assistive technology services, on a statewide basis for individuals of all ages who are individuals with disabilities; and

"(J) increase the awareness of the needs of individuals with disabilities for assistive technology devices and for assistive technology services.".

(d) POLICY.—At the end of section 2, add the following new subsection:

"(c) POLICY.—It is the policy of the United States that all programs, projects, and activities receiving assistance under this Act shall be carried out in a manner consistent with the principles of—

"(1) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;

"(2) respect for the privacy, rights, and equal access (including the use of accessible formats), of the individuals;

"(3) inclusion, integration, and full participation of the individuals;

"(4) support for the involvement of a parent, a family member, a guardian, an advocate, or an authorized representative if an individual with a disability requests, desires, or needs such support; and

"(5) support for individual and systemic advocacy and community involvement.".

**SEC. 4. DEFINITIONS.**

Section 3 (29 U.S.C. 2202) is amended—

(1) in paragraph (2)(E), by striking "for an individual" and all that follows and inserting the following "for an individual with a disability, or, where appropriate, the parent, family member, guardian, advocate, or authorized representative of an individual with a disability; and";

(2) by redesignating paragraphs (3) through (8) as paragraphs (6), (7), (9), (10), (12), and (13), respectively;

(3) by inserting after paragraph (2) the following new paragraphs:

"(3) CONSUMER-RESPONSIVE COMPREHENSIVE STATEWIDE PROGRAM OF TECHNOLOGY-RELATED ASSISTANCE.—The term 'consumer-responsive comprehensive statewide program of technology-related assistance' means a statewide program of technology-related assistance developed and implemented by a State under title I that—

"(A) is consumer-responsive; and

"(B)(i) addresses the needs of all individuals with disabilities, including underserved groups, who can benefit from the use of assistive technology devices and assistive technology services;

"(ii) addresses such needs without regard to the age, type of disability, race, ethnicity, or gender of such individuals, or the particular major life activity for which such individuals need the assistance; and

"(iii) addresses such needs without requiring that the assistance be provided through any particular agency or service delivery system.

"(4) CONSUMER-RESPONSIVE.—The term 'consumer-responsive' means, with respect to an entity or program, that the entity or program—

"(A) is easily accessible to and usable by individuals with disabilities and, when appropriate, the parents, family members, guardians, advocates, or authorized representatives of such individuals;

"(B) responds to the needs of individuals with disabilities in a timely and appropriate manner; and

"(C) facilitates the full and meaningful participation of individuals with disabilities in—

"(i) decisions relating to the provision of assistive technology devices and assistive technology services to such individuals; and

"(ii) the planning, development, implementation, and evaluation of the consumer-responsive comprehensive statewide program of technology-related assistance for individuals with disabilities.

"(5) DISABILITY.—The term 'disability' means a condition considered to be a disability or handicap for the purposes of any Federal law other than this Act or for the purposes of the law of the State involved.";

(4) in paragraph (6) (as redesignated by paragraph (2) of this subsection), to read as follows:

"(6) INDIVIDUAL WITH A DISABILITY; INDIVIDUALS WITH DISABILITIES.—

"(A) INDIVIDUAL WITH A DISABILITY.—The term 'individual with a disability' means any individual—

"(i) who is considered to have a disability for the purposes of any Federal law other than this Act or for the purposes of the law of the State in which the individual resides; and

"(ii) who is or would be enabled by assistive technology devices or assistive technology services to maintain a level of functioning or to achieve a greater level of functioning in any major life activity.

"(B) INDIVIDUALS WITH DISABILITIES.—The term 'individuals with disabilities' means more than one individual with a disability.";

(5) in paragraph (7) (as redesignated by paragraph (2) of this subsection) by striking "section 435(b)" and inserting "section 481";

(6) by inserting after such paragraph (7) the following new paragraph:

"(8) PROTECTION AND ADVOCACY SERVICES.—The term 'protection and advocacy services' means services that—

"(A) are described in part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.), the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801 et seq.), or section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e); and

"(B) assist individuals with disabilities, or the parents, family members, guardians, advocates, or authorized representatives of the individuals, with respect to assistive technology devices and assistive technology services.";

(7) in paragraph (10) (as redesignated by paragraph (2) of this subsection)—

(A) by striking "several States" and inserting "several States of the United States";

(B) by striking "Virgin Islands" and inserting "United States Virgin Islands"; and

(C) by striking "the Trust Territory of the Pacific Islands" and inserting "the Republic of Palau (until the Compact of Free Association with Palau takes effect)";

(8) by inserting after such paragraph (10) the following new paragraph:

"(11) SYSTEMIC CHANGE.—The term 'systemic change' means efforts that result in public or private agencies and organizations having greater capacity or enhanced ability to be consumer-responsive and provide funding for or access to assistive technology devices and assistive technology services, or otherwise increase the availability of such technology, to benefit individuals with disabilities, or the parents, family members, guardians, advocates, or authorized representatives of such individuals on a permanent basis."; and

(9) in paragraph (12) (as redesignated by paragraph (2) of this subsection)—

(A) by striking "functions performed and"; and

(B) by inserting "any of subparagraphs (A) through (J) of" before "section 2(b)(1)".

## TITLE I—GRANTS TO STATES

**SEC. 101. PROGRAM AUTHORIZED.**

(a) GRANTS TO STATES.—Section 101(a) (29 U.S.C. 2211(a)) is amended—

(1) by inserting after "provisions of this title" the following: "to support systemic change and advocacy activities designed"; and

(2) by striking "to develop and implement" and inserting "in developing and implementing".

(b) ACTIVITIES.—Section 101 is amended by striking subsections (b) and (c) and inserting the following:

"(b) ACTIVITIES.—

"(1) USE OF FUNDS.—

"(A) IN GENERAL.—Any State that receives a grant under section 102 or 103 shall use the funds made available through the grant to accomplish the purposes described in section 2(b)(1) by carrying out any of the systemic change and advocacy activities described in paragraphs (2) through (12) in a manner that is consumer-responsive.

"(B) PARTICULAR ACTIVITIES.—In carrying out such systemic change and advocacy activities, the State shall particularly carry out activities regarding—

"(i) the development, implementation, and monitoring of State, regional, and local laws, regulations, policies, practices, procedures, and organizational structures, that will improve access to and funding for assistive technology devices and assistive technology services;

"(ii) the development and implementation of strategies to overcome barriers to funding of such devices and services, with particular emphasis on addressing the needs of underserved groups; and

"(iii) the development and implementation of strategies to enhance the ability of individuals with disabilities, and the parents, family members, guardians, advocates, and authorized representatives of such individuals, to successfully advocate for access to and funding for assistive technology devices and assistive technology services.

"(2) ACCESS TO AND FUNDING FOR ASSISTIVE TECHNOLOGY.—The State may support activities to increase access to and funding for assistive technology, including—

"(A) the identification of barriers to funding of assistive technology devices and assistive technology services for individuals of all ages who are individuals with disabilities, with priority for identification of barriers to funding through State special education services, vocational rehabilitation services, and medical assistance services or, as appropriate, other health and human services; and

"(B) the development, and evaluation of the efficacy, of model delivery systems that provide assistive technology devices and assistive technology services to individuals with disabilities, that pay for such devices and services, and that, if successful, could be replicated or generally applied, such as—

"(i) the development of systems for the purchase, lease, other acquisition, or payment for the provision, of assistive technology devices and assistive technology services; and

"(ii) the establishment of alternative State or privately financed systems of subsidies for the provision of assistive technology devices and assistive technology services, such as—

"(I) a loan system for assistive technology devices (including assistive technology demonstration and recycling centers);

"(II) an income-contingent loan fund;

"(III) a low-interest loan fund;

"(IV) a revolving loan fund;

"(V) a loan insurance program; and

"(VI) a partnership with private entities for the purchase, lease, or other acquisition of assistive technology devices and the provision of assistive technology services.

"(3) REPRESENTATION.—The State may support individual case management or representation of individuals with disabilities to secure their rights to assistive technology devices and assistive technology services.

"(4) INTERAGENCY COORDINATION.—The State may support activities—

"(A) to identify and coordinate Federal and State policies, resources, and services, relating to the provision of assistive technology devices and assistive technology services, for individuals with disabilities, including entering into interagency agreements;

"(B) to support the establishment or continuation of partnerships and cooperative initiatives among public sector agencies and between the public sector and the private sector to facilitate the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance for individuals with disabilities;

"(C) to convene interagency work groups to enhance public funding options and coordinate access to funding for assistive technology devices and assistive technology services for individuals of all ages who are individuals with disabilities, with special attention to the issues of transition, home use, and individual involvement in the identification, planning, use, delivery, and evaluation of such devices and services; or

"(D) to document and disseminate information about interagency activities that promote coordination with respect to assistive technology services and assistive technology devices, including evidence of increased participation of State and local special education, vocational rehabilitation, and State medical assistance agencies and departments.

"(5) STATEWIDE NEEDS ASSESSMENT.—The State may conduct a statewide needs assessment, which may be based on data in existence on the date on which the assessment is initiated and may include—

"(A) estimates of the numbers of individuals with disabilities within the State, categorized by residence, type and extent of disabilities, age, race, gender, and ethnicity;

"(B) in the case of an assessment carried out under a development grant, a description of efforts, during the fiscal year preceding the first fiscal year for which the State received such a grant, to provide assistive technology devices and assistive technology services to individuals with disabilities within the State, including—

"(i) the number of individuals with disabilities who received appropriate assistive technology devices and assistive technology services; and

"(ii) a description of the devices and services provided;

"(C) information on the number of individuals with disabilities who are in need of assistive technology devices and assistive technology services, and a description of the devices and services needed;

"(D) information on the cost of providing assistive technology devices and assistive technology services to all individuals with disabilities within the State who need such devices and services;

"(E) a description of State and local public resources and private resources (including insurance) that are available to establish a consumer-responsive comprehensive statewide program of technology-related assistance for individuals with disabilities;

"(F) information identifying Federal and State laws, regulations, policies, practices, procedures, and organizational structures, that facilitate or interfere with the operation of a consumer-responsive comprehensive statewide program of technology-related assistance;

"(G) a description of the procurement policies of the State and the extent to which such policies will ensure, to the extent practicable, that assistive technology devices purchased, leased, or otherwise acquired with assistance made available through a grant made under section 102 or 103 are compatible with other technology devices, including technology devices designed primarily for use by—

"(i) individuals who are not individuals with disabilities;

"(ii) individuals who are elderly; or

"(iii) individuals with particular disabilities; and

"(H) information resulting from an inquiry about whether a State agency or a task force (composed of individuals representing the State and individuals representing the private sector) should study the practices of private insurance companies holding licenses within the State that offer health or disability insurance policies under which an individual may obtain reimbursement for—

"(i) the purchase, lease, or other acquisition of assistive technology devices; or

"(ii) the use of assistive technology services.

"(6) OUTREACH.—The State may provide assistance to statewide and community-based organizations, or systems, that provide assistive technology devices and assistive technology services to individuals with disabilities. Such assistance may include outreach to consumer organizations and groups in the State to coordinate the activities of the organizations and groups with consumer-driven efforts (including self-help, support groups, and peer mentoring) to assist individuals with disabilities, or the parents, family members, guardians, advocates, or authorized representatives of the individuals, to obtain funding for and access to assistive technology devices and assistive technology services.

"(7) PUBLIC AWARENESS PROGRAM.—

"(A) IN GENERAL.—The State may—

"(i) support a public awareness program designed to provide information relating to the availability and efficacy of assistive technology devices and assistive technology services for—

"(I) individuals with disabilities;

"(II) the parents, family members, guardians, advocates, or authorized representatives of such individuals;

"(III) individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

"(IV) educators and related services personnel;

"(V) employers; and

"(VI) other appropriate individuals and entities; or

"(ii) establish and support such a program if no such program exists.

"(B) CONTENTS.—Such a program may include—

"(i) the development and dissemination of information relating to—

"(I) the nature of assistive technology devices and assistive technology services;

"(II) the appropriateness, cost, and availability of, and access to assistive technology devices and assistive technology services; and

"(III) the efficacy of assistive technology devices and assistive technology services with respect to enhancing the capacity of individuals with disabilities;

"(ii) the development of procedures for providing direct communication among public providers of assistive technology devices and assistive technology services and between public providers and private providers of such devices and services (including employers); and

"(iii) the development and dissemination of information relating to—

"(I) use of the program by individuals with disabilities, the parents, family members, guardians, advocates, or authorized representatives of such individuals, professionals who work in a field related to an activity described in this section, and other appropriate individuals; and

"(II) the nature of the inquiries made by the persons described in subclause (I).

"(8) TRAINING AND TECHNICAL ASSISTANCE.—The State may carry out directly, or may provide support to a public or private entity to carry out, training and technical assistance activities—

"(A) that—

"(i) are provided for individuals with disabilities, the parents, family members, guardians, advocates, and authorized representatives of the individuals, and other appropriate individuals; and

"(ii) may include—

"(I) training in the use of assistive technology devices and assistive technology services;

"(II) the development of written materials, training, and technical assistance describing the means by which agencies consider the needs of an individual with a disability for assistive technology devices and assistive technology services in developing, for the individual, any individualized education program described in section 614(a)(5) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(a)(5)), any individualized written rehabilitation program described in section 102 of the Rehabilitation Act of 1973 (29 U.S.C. 722), any individualized family service plan described in section 677 of the Individuals with Disabilities Education Act (20 U.S.C. 1477), and any other individualized plans or programs;

"(III) training regarding the rights of the persons described in clause (i) to assistive technology devices and assistive technology services under public laws and regulations in existence at the time of the training, to promote fuller independence, productivity, and inclusion in and integration into society of such persons; and

"(IV) training to increase consumer participation in the identification, planning, use, delivery, and evaluation of assistive technology devices and assistive technology services; and

"(B) that—

"(i) enhance the assistive technology skills and competencies of—

"(I) individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

"(II) educators and related services personnel;

"(III) employers; and

"(IV) other appropriate personnel; and

"(ii) include—

"(I) developing and implementing strategies for including such training within State training initiatives; and

"(II) taking actions to facilitate the development of standards, or, when appropriate, the application of such standards, to ensure the availability of qualified personnel.

"(9) PROGRAM DATA.—The State may support the compilation and evaluation of appropriate data related to a program described in subsection (a).

"(10) ACCESS TO TECHNOLOGY-RELATED INFORMATION.—

"(A) IN GENERAL.—The State may develop, operate, or expand a system for public access to information concerning an activity carried out under another paragraph of this subsection, including information about assistive technology devices and assistive technology services, funding sources and costs of such assistance, and individuals, organizations, and agencies capable of carrying out such an activity for individuals with disabilities.

"(B) SYSTEM.—In developing, operating, or expanding a system described in subparagraph (A), the State may—

"(i) develop, compile, and categorize print, braille, audio, and video materials, and materials in electronic formats, containing the information described in subparagraph (A);

"(ii) identify and classify existing funding sources, and the conditions of and criteria for access to such sources, including any funding mechanisms or strategies developed by the State;

"(iii) identify existing support groups and systems designed to help individuals with disabilities make effective use of an activity carried out under another paragraph of this subsection; and

"(iv) maintain a record of the extent to which citizens of the State use or make inquiries of the system established in subparagraph (A), and of the nature of such inquiries.

"(11) INTERSTATE AGREEMENTS.—The State may enter into cooperative agreements with other States to expand the capacity of the States involved to assist individuals of all ages who are individuals with disabilities to learn about, acquire, use, maintain, adapt, and upgrade assistive technology devices and assistive technology services that such individuals need at home, at school, at work, or in other environments that are part of daily living.

"(12) OTHER ACTIVITIES.—The State may utilize amounts made available through grants made under section 102 or 103 for any systemic change and advocacy activities, other than the activities described in another paragraph of this subsection, that are necessary for developing, implementing, or evaluating the consumer-responsive comprehensive statewide program of technology-related assistance.".

(c) CONFORMING AMENDMENT.—Section 231(b)(1) is amended by striking "section 101(c)(1)" and inserting "section 101(b)(2)(B)".

**SEC. 102. DEVELOPMENT GRANTS.**

Section 102 (29 U.S.C. 2212) is amended—

(1) in subsection (a)—

(A) by striking "3-year grants" and inserting "3-year grants to support systemic change and advocacy activities described in section 101(b)"; and

(B) by striking "to develop and implement statewide programs" and inserting "in developing and implementing consumer-responsive comprehensive statewide programs";

(2) by striking subsection (b);

(3) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively;

(4) in subsection (b) (as redesignated in paragraph (3) of this section)—

(A) in paragraph (3)(C), by striking "statewide program" and inserting "consumer-responsive comprehensive statewide program"; and

(B) in paragraph (5)—

(i) in subparagraph (A)—

(I) by striking "(A)" and inserting "(A) STATE.—";

(II) by inserting "United States" before "Virgin Islands"; and

(III) by striking "Trust Territory of the Pacific Islands" and inserting "Republic of Palau"; and

(ii) in subparagraph (B)—

(I) by striking "(B)" and inserting "(B) TERRITORY.—";

(II) by inserting "United States" before "Virgin Islands"; and

(III) by striking "Trust Territory of the Pacific Islands" and inserting "Republic of Palau (until the Compact of Free Association takes effect)";

(5) in paragraph (2) of subsection (c) (as redesignated in paragraph (3) of this section) by striking "statewide programs" and inserting "consumer-responsive comprehensive statewide programs";

(6) by inserting after such subsection (c) the following:

"(d) DESIGNATION OF THE LEAD AGENCY.—

"(1) DESIGNATION.—In each State that desires to receive a grant under this section, the Governor shall designate a lead agency responsible for—

"(A) submitting the application described in subsection (e) on behalf of the State;

"(B) administering and supervising the use of amounts made available under the grant;

"(C)(i) coordinating efforts related to, and supervising the preparation of the application;

"(ii) coordinating the planning, development, and implementation of the consumer-responsive comprehensive statewide program of technology-related assistance among public agencies and between public agencies and private agencies, including coordinating efforts related to entering into interagency agreements; and

"(iii) coordinating efforts related to, and supervising, the active, timely, and meaningful participation by individuals with disabilities, the parents, family members, guardians, advocates, or authorized representatives of such individuals, and other appropriate individuals, with respect to activities carried out under the grant; and

"(D) the delegation, in whole or in part, of any responsibilities described in subparagraph (A), (B), or (C) to one or more appropriate offices, agencies, entities, or individuals.

"(2) QUALIFICATIONS.—In designating the lead agency, the Governor—

"(A) may designate—

"(i) a commission appointed by the Governor;

"(ii) a public-private partnership or consortium;

"(iii) a university-affiliated program;

"(iv) a public agency;

"(v) a council established under Federal or State law; or

"(vi) another appropriate office, agency, entity, or individual; and

"(B) shall designate an entity that provides evidence of ability to—

"(i) respond to needs of individuals with disabilities who represent a variety of ages and types of disabilities;

"(ii) respond statewide to the assistive technology needs of individuals with disabilities;

"(iii) promote and accomplish systemic change;

"(iv) promote and accomplish the establishment of public-private partnerships;

"(v) exercise leadership in identifying and responding to the technology needs of individuals with disabilities and the parents, family members, guardians, advocates, and authorized representatives of such individuals;

"(vi) document consumer confidence in, and responsiveness to, the consumer-responsive comprehensive statewide program of technology-related assistance; and

"(vii) exercise leadership in implementing effective strategies for capacity building and training for appropriate entities, and enhancement of interagency coordination of activities related to funding for assistive technology devices and assistive technology services.";

(7) in subsection (e)—

(A) by striking paragraphs (1), (2), and (3) and inserting the following:

"(1) DESIGNATION OF THE LEAD AGENCY.—Information identifying the lead agency designated by the Governor under subsection (d).

"(2) AGENCY INVOLVEMENT.—A description of the nature and extent of involvement of various State agencies, including the State insurance department, in the preparation of the application and the continuing role of each such agency in the development, implementation, and evaluation of the consumer-responsive comprehensive statewide program of technology-related assistance, including a description of the process used by each agency for providing access to and funding for assistive technology devices and assistive technology services.

"(3) INVOLVEMENT.—

"(A) CONSUMER INVOLVEMENT.—A description of procedures that—

"(i) provide for—

"(I) the active involvement of individuals with disabilities, the parents, family members, guardians, advocates, and authorized representatives of the individuals, and other appropriate individuals, in the development, implementation, and evaluation of the program; and

"(II) the active involvement, to the maximum extent appropriate, of individuals with disabilities who use assistive technology devices and assistive technology services, in decisions relating to such devices and services; and

"(ii) shall include—

"(I) mechanisms to provide support for the expenses related to such involvement of individuals with disabilities, including payment of travel expenses, qualified interpreters, readers, personal care assistants, or other similar services and action necessary to ensure participation by such individuals; and

"(II) mechanisms for determining consumer satisfaction and participation of individuals with disabilities who represent a variety of ages and types of disabilities, in the consumer-responsive comprehensive statewide program of technology-related assistance.

"(B) PUBLIC INVOLVEMENT.—A description of the nature and extent of—

"(i) the involvement of—

"(I) individuals with disabilities;

"(II) the parents, family members, guardians, advocates, or authorized representatives of such individuals;

"(III) other appropriate individuals who are not employed by a State agency; and

"(IV) organizations, providers, and interested parties, in the private sector,

in the designation of the lead agency under subsection (d), and in the development of the application; and

"(ii) the continuing role of the individuals and entities described in clause (i) in the program.";

(B) in paragraphs (4) and (5), by striking "statewide program" each place the term appears and inserting "consumer-responsive comprehensive statewide program";

(C) by striking paragraphs (6) and (7) and inserting the following:

"(6) GOALS, OBJECTIVES, ACTIVITIES, AND OUTCOMES.—Information on the program to be carried out under the grant with respect to—

"(A) the goals and objectives of the State for the program;

"(B) the systemic change and advocacy activities described in section 101(b) that the State plans to carry out under the program, including, at a minimum, activities related to access to, and funding for, assistive technology devices and assistive technology services, case management or representation, and interagency coordination as described in section 101(b), unless the State demonstrates through the progress reports required under section 104 that—

"(i) significant progress has been made in the development and implementation of such a program; and

"(ii) other systemic change and advocacy activities described in section 101(b) will increase the likelihood that the program will accomplish the purposes set out in 2(b)(1); and

"(C) the expected outcomes of the State for the program,

consistent with the purposes described in section 2(b)(1).

"(7) DATA COLLECTION AND EVALUATIONS.—A description of—

"(A) the data collection system used for compiling information about the program, consistent with such requirements as the Secretary may establish for such system, and, to the extent that a national classification system is developed pursuant to section 201, consistent with such classification system; and

"(B) the procedures that will be used to conduct evaluations of the program.";

(D) in paragraphs (11)(B)(i) and (12)(B) by striking "individual with disabilities" and inserting "individual with a disability";

(E) in paragraph (16)(A), by striking "families or representatives" and inserting "parents, family members, guardians, advocates, or authorized representatives";

(F) by redesignating paragraph (17) as paragraph (22); and

(G) by inserting after paragraph (16) the following new paragraphs:

"(17) AUTHORITY TO USE FUNDS.—An assurance that the lead agency designated under subsection (d) will have the authority to use funds made available through a grant made under section 102 or 103 to comply with the requirements of section 102 or 103, respectively, including the ability to hire qualified staff necessary to carry out activities under the program.

"(18) PROTECTION AND ADVOCACY SERVICES.—Either—

"(A) an assurance that the State will annually provide, from the funds made available to the State through a grant made under section 102 or 103, not less than an amount equal to the lesser of—

"(i) $75,000; or

"(ii) 10 percent of such funds,

in order to make a grant or enter into a contract to support protection and advocacy services to assist individuals with disabilities in receiving appropriate assistive technology devices and assistive technology services through the systems established to provide protection and advocacy under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.), the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801 et seq.), and section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e); or

"(B) at the discretion of the State, a request that the Secretary annually reserve, from the funds made available to the State through a grant made under section 102 or 103, not less than the amount described in subparagraph (A) in order for the Secretary to make a grant or enter into a contract to support the protection and advocacy services described in subparagraph (A) through entities described in subparagraph (A).

"(19) LIMIT ON INDIRECT COSTS.—An assurance that the State will not use more than 8 percent of the funds made available to the State through a grant made under section 102 or 103 for the indirect costs of the program.

"(20) COORDINATION WITH STATE COUNCILS.—An assurance that the lead agency will coordinate the activities funded through a grant made under section 102 or 103 with the activities carried out by other councils within the State, including—

"(A) any council or commission specified in the assurance provided by the State in accordance with section 101(36) of the Rehabilitation Act of 1973 (29 U.S.C. 721(36));

"(B) the Statewide Independent Living Council established under section 705 of the Rehabilitation Act (29 U.S.C. 796d);

"(C) the advisory panel established under section 613(a)(12) of the Individuals with Disabilities Education Act (20 U.S.C. 1413(a)(12));

"(D) the State Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6024);

"(E) the State mental health planning council established under section 1914 of the Public Health Service Act (42 U.S.C. 300x-3); and

"(F) any council established under section 204, 206(g)(2)(A), or 712(a)(3)(H) of the Older Americans Act of 1965 (42 U.S.C. 3015, 3017(g)(2)(A), and 3058g(a)(3)(H).

"(21) COORDINATION WITH OTHER SYSTEMIC CHANGE PROJECTS.—An assurance that the lead agency will coordinate the activities funded through a grant made under section 102 or 103 with the activities carried out by other systemic change projects funded through Federal or State sources."; and

(8) by adding at the end the following:

"(f) PROTECTION AND ADVOCACY REQUIREMENTS.—

"(1) REQUIREMENTS.—A State that, as of June 30, 1993, has provided for protection and advocacy services through a program that—

"(A) is comparable to the program described in subsection (e)(18); and

"(B) is not carried out by an entity described in such subsection,

shall be considered to meet the requirements of such subsection.

"(2) PROTECTION AND ADVOCACY SERVICE PROVIDER REPORT.—

"(A) PREPARATION.—An entity that receives funds reserved under subsection (e)(18)(B) to carry out the protection and advocacy services described in subsection (e)(18)(A) in a State shall prepare reports that—

"(i) describe the activities carried out by the entity with such funds; and

"(ii) contain such additional information as the Secretary may require.

"(B) SUBMISSION.—The entity shall submit the reports to the program described in subsection (a) in the State not less often than every 6 months.

"(C) UPDATES.—The entity shall provide monthly updates to the program described in subsection (a) concerning the activities and information described in subparagraph (A).

"(3) CONSULTATION WITH STATE PROGRAMS.—Before making a grant or entering into a contract under subsection (e)(18)(B) to support the protection and advocacy services described in subsection (e)(18)(A) in a State, the Secretary shall solicit and consider the opinions of the lead agency designated under subsection (d) in the State with respect to the terms of the grant or contract.".

**SEC. 103. EXTENSION GRANTS.**

Section 103 (29 U.S.C. 2213) is amended to read as follows:

**"SEC. 103. EXTENSION GRANTS.**

"(a) EXTENSION GRANTS.—

"(1) INITIAL EXTENSION GRANT.—The Secretary may award an initial 2-year extension grant to any State that meets the standards specified in subsection (b)(1).

"(2) ADDITIONAL EXTENSION GRANT.—The Secretary may award an additional 3-year extension grant to any State that meets the standards specified in subsection (b)(2).

"(b) STANDARDS.—

"(1) INITIAL EXTENSION GRANT.—In order for a State to receive an initial extension grant under this section, the designated lead agency of the State shall—

"(A) provide the evidence described in section 102(d)(2)(B); and

"(B) demonstrate that the State has made significant progress, and has carried out systemic change and advocacy activities described in section 101(b) that have resulted in significant progress, toward development and the implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, consistent with sections 2(b)(1), 101, and 102.

"(2) ADDITIONAL EXTENSION GRANT.—In order for a State to receive an additional extension grant under this section, the designated lead agency shall—

"(A) provide the evidence and make the demonstration described in paragraph (1);

"(B) describe the steps the State has taken or will take to continue on a permanent basis the consumer-responsive comprehensive statewide program of technology-related assistance with the ability to maintain, at a minimum, the outcomes achieved by the systemic change and advocacy activities; and

"(C) identify future funding options and commitments for the program from the public and private sector and the key individuals, agencies, and organizations to be involved in, and to direct future efforts of, the program.

"(c) AMOUNTS OF GRANTS.—

"(1) IN GENERAL.—

"(A) STATES.—From amounts appropriated under section 106 for any fiscal year, the Secretary shall pay to each State that receives a grant under this section an amount that is not less than $500,000 and not more than $1,500,000.

"(B) TERRITORIES.—From amounts appropriated under section 106 for any fiscal year, the Secretary shall pay to each territory that receives a grant under this section an amount that is not more than $150,000.

"(C) DEFINITIONS.—For purposes of this paragraph:

"(i) STATE.—The term 'State' does not include the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Republic of Palau.

"(ii) TERRITORY.—The term 'territory' means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association takes effect).

"(2) CALCULATION OF AMOUNT.—The Secretary shall calculate the amount described in subparagraph (A) or (B) of paragraph (1) with respect to a State on the basis of—

"(A) amounts available for making grants pursuant to this section;

"(B) the population of the State;

"(C) the types of assistance to be provided in the State; and

"(D) the amount of resources committed by the State and available to the State from other sources.

"(3) PRIORITY FOR PREVIOUSLY PARTICIPATING STATES.—Amounts appropriated in any fiscal year for purposes of carrying out the provisions of this section shall first be made available to States that received grants under this section during the fiscal year preceding the fiscal year concerned.

"(d) APPLICATION.—A State that desires to receive an extension grant under this section shall submit an application that contains the following information and assurances with respect to the consumer-responsive comprehensive statewide program of technology-related assistance in the State:

"(1) INFORMATION AND ASSURANCES.—The information and assurances described in section 102(e), except the preliminary needs assessment described in section 102(e)(4).

"(2) NEEDS; PROBLEMS; STRATEGIES; OUTREACH.—

"(A) NEEDS.—A description of needs relating to technology-related assistance of individuals with disabilities (including individuals from underserved groups), the parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities, and other appropriate individuals within the State.

"(B) PROBLEMS.—A description of any problems that remain with the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance in the State.

"(C) STRATEGIES.—A description of the strategies that the State will pursue during the grant period to remedy the problems with the development and implementation of such a program.

"(D) OUTREACH ACTIVITIES.—A description of outreach activities to be conducted by the State, including dissemination of information to eligible populations, with special attention to underserved groups.

"(3) ACTIVITIES AND PROGRESS UNDER PREVIOUS GRANT.—A description of—

"(A) the specific systemic change and advocacy activities described in section 101(b) carried out under the development grant received by the State under section 102, or, in the case of an application for a grant under subsection (a)(2), under an initial extension grant received by the State under this section, including—

"(i) a description of State actions that were undertaken to produce systemic change on a permanent basis for individuals of all ages who are individuals with disabilities;

"(ii) a description of activities undertaken to improve the involvement of individuals with disabilities in the program, including training and technical assistance efforts to improve individual access to assistive technology devices and assistive technology services as mandated under public laws and regulations as in effect on the date of the application; and

"(iii) an evaluation of impact and results of the activities described in clauses (i) and (ii);

"(B) the relationship of such systemic change and advocacy activities to the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance; and

"(C) the progress made toward the development and implementation of such a program.

"(4) PUBLIC INVOLVEMENT.—

"(A) REPORT.—In the case of an application for a grant under subsection (a)(1), a report on the hearing described in subsection (e)(1) or, in the case of an application for a grant under subsection (a)(2), a report on the hearing described in subsection (e)(2).

"(B) OTHER STATE ACTIONS.—A description of State actions, other than such a hearing, designed to determine the degree of satisfaction of individuals with disabilities, the parents, family members, guardians, advocates, or authorized representatives of such individuals, public service providers and private service providers, educators and related services providers, employers, and other appropriate individuals and entities with—

"(i) the degree of their ongoing involvement in the development and implementation of the consumer-responsive comprehensive statewide program of technology-related assistance;

"(ii) the specific systemic change and advocacy activities described in section 101(b) carried out by the State under the development grant or the initial extension grant;

"(iii) progress made toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance; and

"(iv) the ability of the lead agency to carry out the activities described in section 102(d)(2)(B).

"(5) COMMENTS.—A summary of any comments received concerning the issues described in paragraph (4) and response of the State to such comments, solicited through a public hearing referred to in paragraph (4) or through other means, from individuals affected by the consumer-responsive comprehensive statewide program of technology-related assistance, including—

"(A) individuals with disabilities;

"(B) the parents, family members, guardians, advocates, or authorized representatives of such individuals;

"(C) public service providers and private service providers;

"(D) educators and related services personnel;

"(E) employers; and

"(F) other appropriate individuals and entities.

"(6) COMPATIBILITY AND ACCESSIBILITY OF ELECTRONIC EQUIPMENT.—An assurance that the State will comply with guidelines established under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

"(e) PUBLIC HEARING.—

"(1) INITIAL EXTENSION GRANT.—To be eligible to receive a grant under subsection (a)(1), a State shall hold a public hearing in the third year of a program carried out under a grant made under section 102, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

"(2) ADDITIONAL EXTENSION GRANT.—To be eligible to receive a grant under subsection (a)(2), a State shall hold a public hearing in the second year of a program carried out under a grant made under subsection (a)(1), after providing the notice described in paragraph (1).".

**SEC. 104. PROGRESS CRITERIA AND REPORTS.**

Section 104 (29 U.S.C. 2214) is amended to read as follows:

**"SEC. 104. PROGRESS CRITERIA AND REPORTS.**

"(a) REGULATIONS.—The Secretary shall by regulation establish criteria for determining, for purposes of this title, whether a State that received a grant under section 102 or 103 is making significant progress in developing and implementing a consumer-responsive comprehensive statewide program of technology-related assistance. Such criteria shall include standards for assessing the impact of the systemic change and advocacy activities described in section 101(b) in the State in achieving the purposes described in section 2(b)(1).

"(b) REPORTS.—Each State that receives a grant under section 102 or 103 to carry out a program shall submit to the Secretary annually a report that—

"(1) documents the significant progress made by the State in developing and implementing the program, consistent with the standards and criteria established under subsection (a); and

"(2) includes information on—

"(A) identification of the successful systemic change and advocacy activities carried out through the program to increase funding for, and access to, assistive technology devices and assistive technology services, including an analysis of laws, regulations, policies, practices, procedures, and organizational structures, that—

"(i) have changed as a result of the program to facilitate the acquisition of assistive technology;

"(ii) the program has attempted to change during the grant period; or

"(iii) need to be changed in the next grant period;

"(B) the degree of consumer involvement of individuals with disabilities who represent a variety of ages and type of disabilities, in terms of—

"(i) the numbers of consumers involved;

"(ii) the activities that the consumers are involved in; and

"(iii) the outreach activities of the State intended to increase consumer participation in the consumer-responsive comprehensive statewide program of technology-related assistance;

"(C) the degree of consumer satisfaction with the program;

"(D) the degree of involvement of various State agencies, including the State insurance department, in the preparation of the application for the program and the continuing role of each agency in the development and implementation of the program, including—

"(i) a description of the process used by each agency for providing access to and funding for assistive technology devices and assistive technology services; and

"(ii) a description of the activities undertaken to enhance interagency coordination of the provision of assistive technology devices and assistive technology services;

"(E) documentation of efforts to collect and disseminate information on successful efforts to secure assistive technology devices and assistive technology services that occurred as a result of systemic change and advocacy activities identified in paragraph (2); and

"(F) identification and documentation of State and local laws, regulations, policies, practices, procedures, and organizational structures that have been developed or changed in order to inform individuals with disabilities, or the parents, family members, guardians, advocates, or authorized representatives of the individuals, of Federal requirements pertaining to assistive technology devices and assistive technology services, particularly under parts B and H of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq. and 1471 et seq.) and title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.).".

**SEC. 105. ADMINISTRATIVE PROVISIONS.**

(a) REVIEW OF PARTICIPATING STATES.—Section 105(a) (29 U.S.C. 2215(a)) is amended—

(1) in paragraph (1), by inserting before the period the following: ", consistent with the standards and criteria established under section 104(a)";

(2) in paragraph (2), to read as follows:

"(2) ONSITE VISITS.—

"(A) VISITS.—The Secretary shall conduct an onsite visit during the final year of each State's participation in the development grant program. The Secretary shall conduct an additional onsite visit to any State that received an extension grant under section 103 and whose initial onsite visit occurred prior to the date of enactment of the Technology-Related Assistance Amendments of 1993.

"(B) TEAM.—Two-thirds of the onsite monitoring team in each case shall be qualified peer reviewers, who—

"(i) shall not be agency personnel;

"(ii) shall be from States other than the State being monitored; and

"(iii) shall include an individual with a disability, or a parent, family member, guardian, advocate, or an authorized representative of such an individual.

"(C) COMPENSATION.—

"(i) OFFICERS OR EMPLOYEES.—Members of any onsite monitoring team who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States, but they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5702 of title 5, United States Code, for individuals in the Government service traveling on official business.

"(ii) OTHER MEMBERS.—Members of any onsite monitoring team who are not officers or full-time employees of the United States shall receive compensation at a rate not to exceed the daily equivalent of the rate of pay for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including traveltime) during which such members are engaged in the actual performance of their duties as members of an onsite monitoring team. In addition, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government service employed intermittently.

"(D) REPORT.—The Secretary shall prepare a report of findings from the onsite visit. The Secretary shall consider the findings in determining whether to continue funding the program either with or without changes. The report shall be available to the public.";

(3) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively;

(4) by inserting after paragraph (2) the following:

"(3) ADVANCE PUBLIC NOTICE.—The Secretary shall provide advance public notice of the onsite visit and solicit public comment through such notice from individuals with disabilities, and the parents, family members, guardians, advocates, and authorized representatives of such individuals, public service providers and private service providers, educators and related services personnel, employers, and other appropriate individuals and entities, regarding the State program funded through a grant made under section 102 or 103. The public comment solicitation notice shall be included in the onsite visit report described in paragraph (2).''; and

(5) in paragraph (4) (as redesignated by paragraph (3) of this subsection) by striking "statewide program" and inserting "consumer-responsive comprehensive statewide program".

(b) CORRECTIVE ACTION PLAN.—Section 105(b) is amended—

(1) in paragraph (2)—

(A) in the heading, by striking "PENALTIES" and inserting "CORRECTIVE ACTIONS";

(B) by striking "or" at the end of subparagraph (B);

(C) by striking the period at the end of subparagraph (C) and inserting "; or"; and

(D) by adding at the end the following:

"(D) required redesignation of the lead agency designated under section 102(d), after notice and an opportunity for comment, in order to continue to receive funds through a grant made under section 102 or 103."; and

(2) in paragraph (3), by striking "subsection (a)(4)" and inserting "subsection (a)(5)".

(c) ADDITIONAL ADMINISTRATIVE PROVISIONS.—Section 105 is amended by adding at the end the following:

"(d) CHANGE OF PROTECTION AND ADVOCACY SERVICES PROVIDER.—

"(1) DETERMINATION.—The Governor of a State, based on input from individuals with disabilities, or the parents, family members, guardians, advocates, or authorized representatives of such individuals, may determine that the entity providing protection and advocacy services required by section 102(e)(18) has not met the protection and advocacy service needs of the individuals with disabilities, or the parents, family members, guardians, advocates, or authorized representatives of such individuals for securing funding for and access to assistive technology devices and assistive technology services, and that there is good cause to provide the required services for the State through a contract with another nonprofit agency, organization or institution of higher education.

"(2) NOTICE AND OPPORTUNITY TO BE HEARD.—On making such a determination, the Governor shall—

"(A) give the agency providing protection and advocacy services—

"(i) 30 days notice of the intention of the Governor to change the agency providing such services, including specification of the good cause for such a change; and

"(ii) an opportunity to respond to the determination that good cause has been shown;

"(B) provide individuals with disabilities, or the parents, family members, guardians, advocates, or authorized representatives of such individuals, with timely notice of the proposed change and an opportunity for public comment; and

"(C) provide the agency with the opportunity to appeal the determination on the basis that the change was not for good cause.

"(3) REVIEW.—At the request of the agency, the Secretary shall review the protection and advocacy services provided by the entity pursuant to section 102(e)(18), based on the criteria for such services set out in the grant or contract to support such services that is described in such section.

"(4) REVIEW.—Based on such review, the Secretary may refuse to change the agency providing the protection and advocacy services.

"(e) ANNUAL REPORT.—

"(1) IN GENERAL.—Not later than December 31 of each year, the Secretary shall prepare, and submit to the President and to the Congress, a report on Federal initiatives, including the initiatives funded under this Act, to improve the access of individuals with disabilities to assistive technology devices and assistive technology services.

"(2) CONTENTS.—Such report shall include information on—

"(A) the demonstrated successes of such Federal initiatives at the Federal and State levels in improving interagency coordination, streamlining access to funding for assistive technology, and producing beneficial outcomes for users of assistive technology;

"(B) the demonstration activities carried out through the Federal initiatives to—

"(i) promote access to such funding in public programs that were in existence on the date of the initiation of the demonstration activities; and

"(ii) establish additional options for obtaining such funding;

"(C) the education and training activities carried out through the Federal initiatives to promote such access in public programs and the health care system and the efforts carried out through such activities to train professionals in a variety of relevant disciplines, and increase the competencies of the professionals with respect to technology-related assistance;

"(D) the education and training activities carried out through the Federal initiatives to train individuals with disabilities, the parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities, individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities, educators and related services personnel, employers, and other appropriate individuals, about technology-related assistance;

"(E) the research activities carried out through the Federal initiatives to improve understanding of the cost-benefit results of access to assistive technology for individuals with disabilities who represent a variety of ages and types of disabilities;

"(F) the program outreach activities to rural and inner-city areas that are carried out through the Federal initiatives;

"(G) the activities carried out through the Federal initiatives that are targeted to reach underserved groups; and

"(H) the consumer involvement activities in the programs carried out under this Act.

"(3) AVAILABILITY OF ASSISTIVE TECHNOLOGY DEVICES AND ASSISTIVE TECHNOLOGY SERVICES.—As soon as practicable, and to the extent that a national classification system for assistive technology devices and assistive technology services is developed pursuant to section 201, the Secretary shall include in the annual report required by this subsection information on the availability of assistive technology devices and assistive technology services for individuals with disabilities, and shall report such information in a manner consistent with such national classification system.

"(f) INTERAGENCY DISABILITY COORDINATING COUNCIL.—

"(1) CONTENTS.—On or before October 1, 1995, the Interagency Disability Coordinating Council established under section 507 of the Rehabilitation Act of 1973 (29 U.S.C. 794c) shall prepare and submit to the President and to the Congress a report containing—

"(A) the response of the Interagency Disability Coordinating Council to—

"(i) the findings of the National Council on Disability resulting from the study entitled 'Study on the Financing of Assistive Technology Devices and Services for Individuals with Disabilities', carried out in accordance with section 201 of this Act, as in effect on the day before the date of enactment of this subsection; and

"(ii) the recommendations of the National Council on Disability for legislative and administrative change, resulting from such study; and

"(B) information on any other activities of the Interagency Disability Coordinating Council that facilitate the accomplishment of section 2(b)(2) with respect to the Federal Government.

"(2) COMMENTS.—The report shall include any comments submitted by the National Council on Disability as to the appropriateness of the response described in paragraph (1)(A) and the effectiveness of the activities described in paragraph (1)(B) in meeting the needs of individuals with disabilities for assistive technology devices and assistive technology services.".

**SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 106(a) (29 U.S.C. 2216(a)) is amended by striking "$9,000,000" and all that follows and inserting "such sums as may be necessary for each of the fiscal years 1994 through 1996.".

(b) RESERVATIONS.—Section 106(b) (29 U.S.C. 2216(b)) is amended to read as follows:

"(b) RESERVATIONS.—

"(1) PROVISION OF INFORMATION AND TECHNICAL ASSISTANCE.—

"(A) IN GENERAL.—Of the funds appropriated for any fiscal year under subsection (a), the Secretary shall reserve 2 percent or $1,500,000, whichever is greater, of such funds, for the purpose of providing information and technical assistance as described in subparagraphs (B) and (C) to States, individuals with disabilities, the parents, family members, guardians, advocates, or authorized representatives of such individuals, community-based organizations, and protection and advocacy agencies.

"(B) TECHNICAL ASSISTANCE TO STATES.—In providing such information and technical assistance to States the Secretary shall consider the input of the directors of consumer-responsive comprehensive statewide programs of technology-related assistance, and shall provide information and technical assistance that—

"(i) facilitate service delivery capacity building, training of personnel from a variety of disciplines, and improvement of evaluation strategies, research, and data collection;

"(ii) foster the development and replication of effective approaches to information referral, interagency coordination of training and service delivery, outreach to underserved groups, and public awareness activities;

"(iii) improve the awareness and adoption of successful approaches to increasing the availability of public and private funding for and access to the provision of assistive technology devices and assistive technology services by appropriate State agencies;

"(iv) assist in planning, developing, implementing, and evaluating appropriate activities to further extend consumer-responsive comprehensive statewide programs of technology-related assistance for individuals with disabilities; and

"(v) promote effective approaches to the development of consumer-controlled systems that increase access to, funding for, and awareness of assistive technology devices and assistive technology services.

"(C) INFORMATION AND TECHNICAL ASSISTANCE TO INDIVIDUALS WITH DISABILITIES AND OTHER PERSONS.—The Secretary shall provide such information and technical assistance to individuals with disabilities, the parents, family members, guardians, advocates, or authorized representatives of such individuals, community-based organizations, and protection and advocacy agencies, on a nationwide basis, to—

"(i) foster awareness and understanding of Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for and access to assistive technology devices and assistive technology services, to promote fuller independence, productivity, and inclusion for individuals of all ages who are individuals with disabilities;

"(ii) facilitate effective systemic change activities;

"(iii) improve the understanding and use of assistive technology funding decisions made as a result of policies, practices, and procedures, or through regulations, administrative hearings, or legal actions, that enhance access to funding for assistive technology devices and assistive technology services for individuals with disabilities;

"(iv) promote effective approaches to Federal-State coordination of programs for individuals with disabilities, through information dissemination and technical assistance activities in response to funding policy issues identified on a nationwide basis by organizations, and individuals, that improve funding for or access to assistive technology devices and assistive technology services for individuals of all ages who are individuals with disabilities; and

"(v) promote effective approaches to the development of consumer-controlled systems that increase access to, funding for, and awareness of assistive technology devices and assistive technology services, including the identification and description of mechanisms and means that successfully support self-help and peer mentoring groups for individuals with disabilities.

"(D) COORDINATION.—The Secretary shall coordinate the information and technical assistance activities carried out under subparagraph (B) or (C) with other activities funded under this Act.

"(E) GRANTS, CONTRACTS, OR COOPERATIVE AGREEMENTS.—

"(i) IN GENERAL.—The Secretary shall provide the technical assistance and information described in subparagraphs (B) and (C) through grants, contracts, or cooperative agreements with public or private agencies and organizations, including institutions of higher education, with documented experience, expertise, and capacity to carry out identified activities related to the provision of such technical assistance and information.

"(ii) ENTITIES WITH EXPERTISE IN ASSISTIVE TECHNOLOGY SERVICE DELIVERY, INTERAGENCY COORDINATION, AND SYSTEMIC CHANGE ACTIVITIES.—For the purpose of achieving the objectives described in paragraph (1)(B), the Secretary shall reserve not less than 45 percent and not more than 55 percent of the funds reserved under subparagraph (A) for each fiscal year for grants to, or contracts or cooperative agreements with, public or private agencies or organizations with documented experience with and expertise in assistive technology service delivery, interagency coordination, and systemic change activities.

"(iii) ENTITIES WITH EXPERTISE IN ASSISTIVE TECHNOLOGY SYSTEMIC CHANGE, PUBLIC FUNDING OPTIONS, AND OTHER SERVICES.—For the purpose of achieving the objectives described in paragraph (1)(C), the Secretary shall reserve not less than 45 percent and not more than 55 percent of the funds reserved under subparagraph (A) for each fiscal year for grants to, or contracts or cooperative agreements with, public or private agencies or organizations with documented experience with and expertise in—

"(I) assistive technology systemic change;

"(II) public funding options; and

"(III) services to increase nationwide the availability of funding for assistive technology devices and assistive technology services.

"(iv) ENTITY WITH EXPERTISE IN FUNDING.—The Secretary may reserve funds equally from the amounts reserved under clauses (ii) and (iii) for a fiscal year in an amount up to $300,000 for an additional grant to, or contract or cooperative agreement with, a public or private organization with demonstrated expertise in funding. An organization that receives funding through such a grant, contract, or agreement shall use the funding to provide information and technical assistance specifically related to funding to assist the agencies, and organizations described in clauses (ii) and (iii) in carrying out activities under this paragraph.

"(v) APPLICATION.—The Secretary shall make any grants, and enter into any contracts or cooperative agreements, under this subsection on a competitive basis. To be eligible to receive funds under this subsection an agency, organization, or institution shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(2) ONSITE VISITS.—The Secretary may reserve, from amounts appropriated for any fiscal year under subsection (a), such sums as the Secretary considers to be necessary for the purposes of conducting onsite visits as required by section 105(a)(2).".

**SEC. 107. REPEALS.**

Section 107 (29 U.S.C. 2217) is repealed.

## TITLE II—PROGRAMS OF NATIONAL SIGNIFICANCE

**SEC. 201. NATIONAL CLASSIFICATION SYSTEM.**

Part A of title II (29 U.S.C. 2231 et seq.) is amended to read as follows:

### "PART A—NATIONAL CLASSIFICATION SYSTEM

**"SEC. 201. CLASSIFICATION SYSTEM.**

"(a) PILOT PROJECT.—

"(1) IN GENERAL.—The Secretary shall conduct a pilot project to develop and test a national classification system for assistive technology devices and assistive technology services, with the goal of obtaining uniform data through such a system on such devices and services across public programs and information and referral networks.

"(2) CONTRACTS AND COOPERATIVE AGREEMENTS.—The Secretary may carry out this section directly, or, if necessary, by entering into contracts or cooperative agreements with appropriate entities.

"(b) SINGLE TAXONOMY.—In conducting the pilot project, the Secretary shall develop a national classification system that includes a single taxonomy and nomenclature for assistive technology devices and assistive technology services.

"(c) DATA COLLECTION INSTRUMENT.—In conducting the pilot project, the Secretary shall develop a data collection instrument to—

"(1) collect data regarding funding for assistive technology devices and assistive technology services; and

"(2) collect such data from public programs, including, at a minimum, programs carried out under—

"(A) title I, VI, or VII of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq., 795 et seq., or 796 et seq.);

"(B) part B or H of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq. or 1471 et seq.);

"(C) title V or XIX of the Social Security Act (42 U.S.C. 701 et seq. or 1396 et seq.);

"(D) the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.); or

"(E) the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.).

"(d) CONSULTATION AND COORDINATION.—

"(1) CONSULTATION.—The Secretary shall conduct the pilot project in consultation with the Interagency Disability Coordinating Council established under section 507 of the Rehabilitation Act of 1973 (29 U.S.C. 794c) and the National Council on Disability established under section 400 of such Act (29 U.S.C. 780).

"(2) COORDINATION.—The Secretary shall coordinate activities related to conducting the pilot project with—

"(A) activities carried out through State programs funded under title I;

"(B) the provision of technical assistance under section 106(b);

"(C) data collection activities that are being carried out on the date on which the Secretary initiates the pilot project;

"(D) activities being carried out through data collection systems in existence on such date; and

"(E) activities of appropriate entities, including entities involved in the information and referral field.

"(e) TIMING.—The Secretary shall complete the pilot project not later than 24 months after the date of enactment of this section.

"(f) REPORT TO CONGRESS ON IMPLEMENTATION OF UNIFORM DATA COLLECTION SYSTEM.—Not later than January 1, 1996, the Secretary shall prepare and submit to the appropriate committees of Congress a report containing—

"(1) the results of the pilot project; and

"(2) the recommendations of the Secretary concerning the feasibility of implementing a uniform data collection system based on such a national classification system.

"(g) RESERVATION.—From the amounts appropriated under part D, the Secretary shall reserve $200,000 to carry out this part.".

**SEC. 202. TRAINING AND PUBLIC AWARENESS PROJECTS.**

Section 221 (29 U.S.C. 2251) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking "institutions of higher education" and inserting "institutions of higher education and community-based organizations";

(ii) in subparagraph (A), by striking "and" at the end;

(iii) by striking the period at the end of subparagraph (B), and inserting the following: ", to enhance opportunities for independence, productivity, and inclusion of individuals with disabilities; and"; and

(iv) by adding at the end the following:

"(C) providing training to develop awareness, skills, and competencies of service providers, consumers, and volunteers, who are located in rural areas, to increase the availability of technology-related assistance in community-based settings for rural residents who are individuals with disabilities.";

(B) in paragraph (2)—

(i) by striking "needs of individuals with disabilities" and all that follows and inserting the following: "needs of individuals with disabilities, the parents, family members, guardians, advocates, and authorized representatives of the individuals, individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities, educators and related services personnel, employers, and other appropriate individuals."; and

(C) by adding at the end the following new paragraphs:

"(3) USES OF FUNDS.—An agency or organization that receives a grant under paragraph (1) may use amounts made available through the grant to—

"(A) pay for a portion of the cost of courses of training or study related to technology-related assistance; and

"(B) establish and maintain scholarships related to such courses of training or study, with such stipends and allowances as the Secretary may determine to be appropriate.

"(4) APPLICATION.—

"(A) IN GENERAL.—To be eligible to receive a grant under this section, an agency or organization shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(B) STRATEGIES.—At a minimum, any such application shall include a detailed description of the strategies that the agency or organization will use to recruit and train persons to provide technology-related assistance, in order to—

"(i) increase the extent to which such persons reflect the diverse populations of the United States; and

"(ii) increase the number of individuals with disabilities, and individuals who are members of minority groups, who are available to provide such assistance."; and

(2) in subsection (b)—

(A) in paragraph (1), by inserting "public and private agencies and organizations, including" before "institutions of higher education";

(B) in paragraph (2), by striking "preparation of personnel" and all that follows and inserting the following: "interdisciplinary preparation of personnel who provide or who will provide technical assistance, who administer programs, or who prepare other personnel, in order to—

"(A) support the development and implementation of consumer-responsive comprehensive statewide programs of technology-related assistance to individuals with disabilities; and

"(B) enhance the skills and competencies of individuals involved in the provision of technology-related assistance, including assistive technology devices and assistive technology services, to individuals with disabilities.";

(C) in paragraph (3), to read as follows:

"(3) USES OF FUNDS.—An agency or organization that receives a grant under paragraph (1) may use amounts made available through the grant to—

"(A) pay for a portion of the cost of courses of training or study related to technology-related assistance; and

"(B) establish and maintain scholarships related to such courses of training or study, with such stipends and allowances as the Secretary may determine to be appropriate."; and

(D) by adding at the end the following:

"(4) APPLICATION.—

"(A) IN GENERAL.—To be eligible to receive a grant under this section, an agency or organization shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(B) STRATEGIES.—At a minimum, any such application shall include a detailed description of the strategies that the agency or organization will use to recruit and train persons to provide technology-related assistance, in order to—

"(i) increase the extent to which such persons reflect the diverse populations of the United States; and

"(ii) increase the number of individuals with disabilities, and individuals who are members of minority groups, who are available to provide such assistance.".

**SEC. 203. DEMONSTRATION AND INNOVATION PROJECTS.**

Section 231(b)(3) (29 U.S.C. 2261(b)(3)) is amended to read as follows:

"(3) DIRECT LOAN PROJECTS.—Demonstration projects carried out in accordance with regulations issued by the Secretary (which may include a requirement that the Secretary provide not more than 90 percent of the costs of carrying out any such project under this section) to—

"(A) examine alternative direct loan programs, including—

"(i) programs involving low-interest loan funds;

"(ii) programs involving revolving loan funds; and

"(iii) loan insurance programs,

that would provide loans to individuals with disabilities, the parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities, or employers of individuals with disabilities; and

"(B) evaluate the efficacy of the particular loan systems involved.".

**SEC. 204. AUTHORIZATION OF APPROPRIATIONS.**

Section 241 (29 U.S.C. 2271) is amended to read as follows:

**"SEC. 241. AUTHORIZATION OF APPROPRIATIONS.**

"There are authorized to be appropriated to carry out this title such sums as may be necessary for each of the fiscal years 1994, 1995, and 1996.".

**SEC. 205. REPEALS AND REDESIGNATIONS.**

Title II (29 U.S.C. 2231 et seq.) is amended—

(1) by repealing part B;

(2) by redesignating parts C, D, and E as parts B, C, and D, respectively;

(3) by repealing section 222;

(4) by redesignating sections 221 and 223 as sections 211 and 212, respectively; and

(5) by redesignating sections 231 and 241 as sections 221 and 231, respectively.

**TITLE III—REQUIREMENTS UNDER HEAD START ACT**

**SEC. 301. ADMINISTRATIVE REQUIREMENTS UNDER THE HEAD START ACT.**

Section 644(f) of the Head Start Act (42 U.S.C. 9839(f)) is amended—

(1) in paragraph (1)—

(A) by inserting ", or to approve a prior purchase of" after "to purchase,"; and

(B) by inserting before the period at the end thereof the following: ", and shall suspend any proceedings pending against any Head Start agency to claim costs incurred in purchasing such facilities until the agency has been afforded an opportunity to apply for approval of the purchase and the Secretary has determined whether the purchase will be approved. The Secretary shall not be required to repay claims previously satisfied by Head Start agencies for costs incurred in the purchase of facilities"; and

(2) in paragraph (2)—

(A) in subparagraph (A), by inserting "or that was previously purchased" before the semicolon; and

(B) in subparagraph (C)—

(i) by inserting ", or the previous purchase has resulted," after "purchase will result" in clause (i); and

(ii) by inserting ", or would have prevented," after "will prevent" in clause (ii).

(The text of H.R. 2339 EAS is identical to S. 1283 ES, as passed by the Senate on August 5, 1993, is identical to the text of S. 1283 as printed in today's RECORD.)

## STATEMENT ON THE NOMINATION OF JAMES HALL

Mr. PRESSLER. Mr. President, I would like to take a few minutes to explain my concerns regarding the President's nominee to serve on the National Transportation Safety Board [NTSB].

Mr. President, many of my colleagues have asked my why I urged the Commerce Committee to postpone the confirmation of James Hall for membership to the NTSB. It is not my practice to needlessly hold up a nomination. In this case, my concerns with this nomination are valid. There are some serious issues that need to be resolved with respect to Mr. Hall's confirmation.

The Federal law governing the NTSB addresses the qualifications of NTSB members. Specifically, the law's provision regarding these qualifications reads:

> At any given time, no less than three members of the Board shall be individuals who have been appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.

Given the law's specific professional requirements for NTSB membership, as well as the fact that the NTSB is one of the most critical agencies effecting transportation safety, I believe it is essential that the qualifications of any NTSB nominee—Democratic or Republican—receive a thorough examination by the Senate prior to confirmation. That is why I have asked the Commerce Committee not to "rubber stamp" this nomination.

Mr. President, let me explain my specific concerns with Mr. Hall's confirmation. First, by his own admission, Mr. Hall does not have the professional qualifications as defined by law. Therefore, in my view, we must consider the qualifications of all members currently serving on the NTSB, when they were appointed. Furthermore, I have serious concerns with the responses Mr. Hall gave during his nomination hearing. I ask him numerous questions relating to transportation safety and policy. Unfortunately, I found Mr. Hall's responses to be extremely vague at best. As a result, I do not have a clear understanding of Mr. Hall's general philosophy regarding transportation safety. That troubles me. I should trouble my colleagues, too. In fact, I encourage my colleagues to examine thoroughly the hearing record.

Mr. President, it is the responsibility of each Member to determine whether, in their judgment, a nominee should be confirmed for the position that he or she has been nominated. Hastily confirming any nominee who is to fill a critical position in the administration is wrong. We have a duty and a responsibility to scrutinize each nominee's qualifications.

In this case, we are asked to confirm a nominee who will affect greatly our Nation's transportation safety agenda. That is why the law provides a minimum standard of qualifications for NTSB membership. In my opinion, that nominee should be held to the highest standards of hands-on transportation experience and working knowledge.

Let me make myself perfectly clear. Mr. Hall's personal character and reputation are admirable. My sole concerns are based principally on the law's requirement that no less than three members of the National Transportation Safety Board be appointed on the basis of specific professional qualifications. Again, I urge my colleagues to read the nomination hearing transcript and also to scrutinize carefully the nominee's professional expertise in relation to the qualifications of the other NTSB members.

Mr. President, I also should point out that I am not alone in holding deep concern over Mr. Hall's lack of transportation-related knowledge and professional experience. While I am one of the few Senators voicing those concerns, others beyond the beltway also have recognized the seriousness of this matter. I ask unanimous consent that articles from Aviation Week & Space Technology, the Chattanooga News-Free Press, the Nashville Banner, and the Washington Post be printed in the RECORD immediately following my remarks.

In closing, Mr. President, I urge my colleagues to review the law. I encourage my colleagues to review Mr. Hall's qualifications as they relate to the other members of the NTSB. And I recommend that my colleagues examine the hearing record. That is our responsibility. Only then can each of us come to our own conclusions on whether or not Mr. Hall has the qualifications that will further the safety of the traveling public. I myself have not come to any conclusions. I merely suggest we be given the time to make sound conclusions

[From Aviation Week and Space Technology, June 7, 1993]

CLINTON DID A DISSERVICE TO NTSB

President Bill Clinton has taken the political—and wrong—road in nominating Tennessee's Jim Hall for membership on the National Transportation Safety Board. Hall, a lawyer with nearly 20 years of state and congressional staff experience, may be well qualified for many federal posts, but the safety board is not one of them.

He lacks the aviation safety and technical experience needed to handle the technical challenges intrinsic to the job. Worse, Hall was nominated to succeed fellow Democrat Christopher Hart, a board member for more than two years, who is an aerospace engineer and licensed pilot. The White House both overlooked Hart's service and treated him shabbily. He learned of Hall's nomination from a White House press release.

The Administration also overlooked the technical expertise emphasized in the public law governing NTSB appointments. The law says three of the five board members must be technically qualified or experienced in accident investigation or in safety-related fields. The law leaves a gaping loophone for political appointments, but stresses the importance of technical experience to the board, which is a key guardian of public safety. Political connections will not boost board members skills in directing accident investigations.

The paramount interest in safety board appintments should be an individual's qualifications. Serving on the NTSB is more akin to occupying a judicial seat than one on most federal regulatory commissions. In the crucial role of investigations, the job cries out for expertise.

The Hall nomination smacks of political cronyism. Weak on the technical side, Hall is strong on connections high in the Administration, such as Bruce R. Lindsey, head of the White House personnel office and a friend of Clinton. U.S. Sen. Wendell H. Ford (D.-Ky.), chairman of the aviation subcommittee, knows Hall and has approved him, probably cinching his confirmation. Political friendship should not negate Hall's appointment, but the Administration would have served the NTSB better by nominating someone with Christopher Hart's background.

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[From the Chattanooga News-Free Press, Aug. 3, 1993]

HOUSE PANEL QUIZZES HALL ON SAFETY

Members of a U.S. Senate committee spent Monday quizzing Signal Mountain's Jim Hall in what the National Transportation Safety Board nominee called a "long and involved" confirmation hearing.

The Commerce, Science and Transportation Committee could take action on Hall's nomination later this week. If the panel approves Hall, the full Senate could vote on his nomination by the end of the week or in September.

"It was long and involved, but it's over," Hall said after the hearing.

Hall, 52, of Signal Mountain is a former top aide to Gov. Ned McWherter and currently chief of staff to U.S. Sen. Harlan Mathews.

Mathews introduced Hall to committee members, saying that in his own 40-year public career, "I have known few people in public service who can boast a record of innovation and success equal to that of Jim Hall.

"Specifically, Jim Hall would bring to the National Transportation Safety Board a level of creative thought too rarely seen in government service," Matthews said. "While particular skills are an asset to any such position, the ability to provide the board innovative ideas and strategies will ultimately be the critical standard by which we measure this nomination."

Mathews said that while he was serving as deputy Gov. Ned McWherter and Mr. Hall was the governor's executive assistant three years ago, "I watched in wonder as he undertook the task of developing a solid waste plan for the state of Tennessee.

"After dozens of meeting with local officials, environmentalists and business interests, Jim Hall surprised the doubters by quietly fashioning a compromise out of controversy," Mathews said.

One House Republican criticized President Clinton's nomination of Hall several weeks ago. The following day, a Washington Post columnist described Hall as a "politically connected white male Democrat whose only transportation experience apparently is a driver's license."

But Hall said he believe he is "well-qualified" for the NTSB post, noting he would be the only member with experience at the state and local level in implementing federal policies.

"I feel very comfortable with the process," Hall said of the committee hearings,

"Right now, unless you're willing to submit yourself to very careful analysis and scrutiny, you shouldn't be looking for a federal job."

Hall, who has served at senior levels in state and federal government for over two decades, began his political career with Sen. Albert Gore Sr., in 1979, ran then-candidate Jimmy Carter's Tennessee campaign, as well as the successful Volunteer state campaigns of Gov. McWherter and President Bill Clinton.

Hall has been nominated for a term on the five-member board that expires Dec. 31, 1997.

The NTBS investigates accidents, conducts studies and makes recommendations to government agencies on the safety of measures and practices within the transportation industry.

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[From the Nashville Banner]

TENNESSEAN'S NOMINATION HITS SNAG

Washington—The Clinton administration's nomination of a long-time Tennessee political insider to the National Transportation and Safety Board hit a snag today.

Jim Hall a former aide in the Tennessee governor's office who now serves as Sen. Harlan Mathews' chief of staff, had been expected to get the nod from a Senate committee today.

Instead, a Republican senator who pelted him with questions at a confirmation hearing on Monday placed a hold on the nomination, pending written response to further queries.

Two other transportation nominees were approved by the committee.

On Monday, Sen. Larry Pressler, R-SD., hammered Hall with technical questions relating to the work of the NTSB, which Hall said he was unprepared to answer. Pressler charged that Hall lacked qualifications for the job, while the nominee maintained otherwise.

A spokesman for the Senate Commerce, Science and Transportation Committee said Pressler's hold would delay any Senate action on Hall's nomination until September, after Congress returns from a month-long recess.

In a prepared statement, Hall called the hold "routine" and pledged to continue to work with the committee, as requested.

Mathews offered a statement on his top aide's behalf, saying he felt "confident Mr. Hall will be confirmed at this first committee mark-up (meeting) following the recess." That meeting has not yet been scheduled.

Hall has been nominated to a job as an investigator of the causes of plane crashes, oil spills, train derailments and major highway accidents.

As one of the NTSB's five members, Hall would serve a five-year term and get a $112,100 annual salary to oversee an agency with 350 employees and an annual budget of $36 million.

At the opening of Monday's confirmation hearing, Hall was flanked by Tennessee Sens. Jim Sasser and Mathews, who both praised Hall as a dedicated public servant.

"In 40 years, I have known few people in public service who can boast a record of innovation and success equal to that of Jim Hall," Mathews told the committee. Sasser said he "could not have been more pleased" with Hall's nomination.

The mood of Monday's hearing shifted considerably when Pressler began a relentless series of questions in what appeared to be an attempt to illustrate, Hall's lack of qualifications.

Pressler prefaced his questions by citing federal law, which says that at least three of the five members of the board must be appointed on the basis of "technical qualification, professional standing and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, transportation or safety, or transportation regulation."

Fressler claims that only two standing members of the board have such qualifications, which would designate the need for a so-qualified member. The Republican senator asked Hall if he has such technical qualifications.

The nominee replied, "No senator, I don't think I am an expert in any of those areas. . . . I do not profess to have that experience."

Pressler said Hall's lack of technical expertise was a cause of "serious concern" for him, to which Hall countered he believed himself "equal to the job."

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[From the Washington Post, May 28, 1993]

ROUTE TO NTSB RUNS THROUGH TENNESSEE

(By Al Kamen)

The Clinton administration is dedicated to diversity. But it apparently doesn't want to be accused of reverse discrimination either. That may be why it is replacing a black Democratic member of the National Transportation Safety Board who has a background in transportation with a politically connected white male Democrat whose only transportation experience apparently is a driver's license.

The nomination, if approved, would return the five-member board to all-white status, its only claim to diversity being a woman, Vice Chairman Susan M. Coughlin.

The board is the country's major investigative agency for transportation disasters. It has never been completely immune to politics, but aviation professionals and the board's staff are upset about the seemingly total political nature of the nomination of Jim Hall.

The brief White House announcement of Hall's appointment, which mentions no transportation or safety-related experience, said Hall "has previous experience in real estate development, management and law, and on the staffs of former senators Albert Gore Sr. and Edmund Muskie." Currently, Hall

has been a "top aide" to Sen. Harlan Mathews (D-Tenn.), who succeeded Vice President Gore in the Senate.

The Tennessee connection ain't the half of it. Hall also is well-acquainted with Senate Majority Leader George J. Mitchell (D-Maine). And there's an important connection in Kentucky, home state of Sen. Wendell H. Ford (D), who will chair Hall's confirmation hearings: Hall's brother is chief executive officer of Ashland Oil Inc. of Kentucky.

Hall said that he feels "well qualified" because while working in the Tennessee governor's office, he cooperated with the safety board in accident investigations. An activist in controlling teenage drug abuse, Hall said one of his main interests on the board would be teenage drinking and driving.

Hall would replace Christopher A. Hart, a private pilot and aviation lawyer, with a master's degree in aeronautical engineering from Princeton. Hart gained a reputation as a dogged questioner at board meetings. There are reports he may get another administration job—Hart is one of several candidates to head the National Highway Traffic Safety Administration.

## ON THE NOMINATION OF MORTON HALPERIN

Mr. WARNER. Mr. President, the Clinton administration has indicated that it intends to nominate for Assistant Secretary of Defense, Morton Halperin. He is currently working at the Department of Defense as a consultant. The position Mr. Halperin will reportedly be nominated for is a new position in the Office of the Secretary of Defense which I understand has been designated as the Assistant Secretary of Defense for Democratization and Peacekeeping.

Mr. President, I am extremely concerned about some of the allegations that have been made against Mr. Halperin and some of the statements that have been attributed to him.

The purpose of my remarks today is to give notice that, as a senior member of the Armed Services Committee, I will intensely examine Mr. Halperin's complete record in the course of the Senate's consideration of this nomination.

Mr. President, I want to make it clear that I do not intend to prejudge any nominee of this or future administrations. However, the allegations that have already emerged on Mr. Halperin cause me great concern.

Mr. President, I ask consent to submit for the RECORD an editorial entitled "Who is Mort Halperin" which appeared in the Washington Times on June 28, 1993, and an article which appeared in the July 16, 1993, edition of the New York Post concerning Mr. Halperin and entitled "More Shocking Than Guinier." In addition, I ask consent to include in the RECORD a summary of some of Mr. Halperin's most controversial writings on national security matters during the last 25 years, which was compelled by the Center for Security Policy. The director of the center, Frank Gaffney, Jr. submitted this summary of writings to President Clinton on August 2, 1993.

I believe the President and the Secretary of Defense should carefully reconsider the advisability of making this nomination and how Mr. Halperin's record would compare with the high standards established thus far by the outstanding group of Presidential appointees now serving in the Department of Defense.

[From the Washington Times, June 28, 1993]

He is a former Nixon administration official who had his phone tapped by the FBI because he was suspected of leaking information to the press about the secret U.S. bombing of Cambodia in 1969. He is a former American Civil Liberties Union lawyer who defended the right of the ultraradical Progressive magazine in 1979 to publish a recipe for the hydrogen bomb; who aided and abetted ex-CIA agent Philip Agee in his campaign during the '70s to expose the identities of CIA agents overseas, which is believed to have resulted in the murder of the CIA's Athens station chief; who unabashedly avowed, in print and in congressional testimony, his opposition to any and all covert intelligence operations; who, just before the Persian Gulf war, urged federal employees to come forward with any information indicating the Bush administration was withholding the full truth about its action in the Gulf. He is a former member of the Carnegie Endowment for International Peace who believes the United States should never intervene militarily anywhere without an invitation from the United Nations.

Morton Halperin is also President Clinton's choice to fill the Defense Department position—a position created just for him—of assistant defense secretary for democratization and peacekeeping.

Some illuminating quotations from his writings:

"Surely, at this point in time it is not necessary to remind ourselves of the certainty that the techniques that we apply to others will inevitably be turned on the American people by our own intelligence services. Whether that extends to assassination has sadly become an open question but little else."

"Groups and individuals concerned about preventing nuclear war must recognize that the fight to prevent greater secrecy and to restrain the threat of draconian measures against public debate in a nuclear crisis is their battle. Only an informed public free to engage in open debates and armed with adequate information, can keep the Administration from pursuing dangerous policies."

"It is time for Congress to draw the line and abolish covert operations."

"Wars, which are conducted in the name of protecting the liberty of Americans, have always resulted in limitations on the freedoms Americans properly cherished."

"The United States should explicitly surrender the right to intervene unilaterally in the internal affairs of other countries by overt military means or by covert operations."

Mr. Halperin's appointment is by no means a done deal. His nomination has not been formally forwarded to the Senate, and there is every indication that if it is, it will be subjected to the most intense scrutiny. Sen. John McCain, ranking Republican on the Senate Armed Services Committee, who was himself languishing in a Vietnamese prisoner-of-war camp even as Mr. Halperin was formulating his radical views on military intervention and covert operations, is, he says, "very concerned about the nominee's writings and statement." Mr. Halperin may well turn out to be the next Lani Guinier. In the meantime, he is ensconced in the Pentagon, working as a "consultant" to the Department of Defense.

As for the man who put him there, Bill Clinton's actions over the past 25 years have done little to inspire confidence in him as commander in chief of the armed services. From his very vocal opposition to the Vietnam War from the safe haven of Oxford, England, to his very first act as commander in chief to attempt to lift the ban on homosexuals in the services, his record is one that raises serious doubts.

Whether the president has learned a lesson from the resistance that has met his effort to lift the ban on homosexuals, however, remains to be seen.

Going forward with the nomination of Morton Halperin, an avowed enemy of military intervention, intelligence operations and nuclear weapons—the very things that have safeguarded democracy and kept the peace for the past 50 years—would surely send another message of contempt for the military and its mission.

Withdrawing that nomination would be a step toward reassuring the nation of Mr. Clinton's willingness to act responsibly as commander in chief.

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[From the New York Post, July 16, 1993]

President Clinton has produced his share of ideologically controversial nominees—from Lani Guinier to Sheldon Hackney. But Morton Halperin, Clinton's prospective assistant secretary of defense for democracy and peacekeeping (a newly created post), plainly tops the list.

Halperin, to be sure, hasn't yet formally been nominated. And the Washington based weekly Human Events reports that a number of GOP senators—including Trent Lott (R-Miss.) * * * P.O.W. John McCain (R-Ariz.), mean to fight the Halperin appointment.

Indeed, the president himself is said to be having second thoughts about Halperin. But with Defense Secretary Les Aspin urging Clinton to stand by his man, there's still every reason to expect that the president will press forward with the nomination, provoking a bruising confirmation battle on Capitol Hill.

The impending battle is altogether appropriate—naming Halperin to a national security post is as bizarre as anything this administration's done in the appointments sphere.

Hackney, after all, will likely survive the confirmation process—despite his embrace of a Politically Correct campus "speech code" at the University of Pennsylvania; in the end, it's hard to get anyone excited about the chairmanship of the National Endowment for the Humanities. Hackney's transparent confirmation conversion—he proved willing to denounce both speech codes and Political Correctness in order to get the job—didn't fool anyone who'd actually followed his misguided tenure as Penn's president. Still, no one much cares about the emergence of yet another guilty, white Southern "progressive" in a comparatively insignificant job.

Guinier, of course, failed to make the cut because her written euvre left her too vulnerable to charges that she's a racial reductionist who favors quotas and questions the very principle of "one man, one vote." Clinton was wise to withdraw her name, not just for the country's sake, but simply because

she wouldn't have been confirmed as assistant attorney general for civil rights.

Morton Halperin, however, is an even more insidious proposition. A National Security Council aide who became a virulent foe of American policy in Vietnam, Halperin left government in 1989 and made a quasi-profession out of suing Nixon administration officials for wiretapping his telephone. In his spare time, he devoted himself to fighting America's ostensibly evil national security apparatus.

Halperin ran a hard-left outfit called the Center for National Security Studies which dedicated itself—by its own account—ensuring that U.S. intelligence agencies operated within the framework of the Constitution.

Subsequently, he headed the Washington office of the American Civil Liberties Union, where he turned his new employer's energies and resources toward a series of left-wing causes.

The CIA was a particular Halperin target. He demanded the elimination of the agency's covert operations division, called the CIA "the subverter of everyone else's democracy" and defended a pro-communist ex-CIA agent, Philip Agee, after Agee drew national notoriety for publishing the names of active-duty CIA officers, thereby endangering their lives. While Halperin's ostensible purpose was to defend Agee's constitutional right to free speech, it became difficult to discern ideological differences between the ACLU activist and his pro-Castro client.

Halperin has also devoted himself to attacking the FBI. In 1976, he charged the bureau with "murdering" Black Panther Fred Hampton. The following year, Halperin—together with the National Lawyers Guild, a longtime Communist Party front, and various other radical-left groups—helped form a legal resources center to combat "police spying."

Actually, Halperin scarcely believes in the government's right to keep any secrets at all. He favors full public disclosure by both the CIA and the FBI of all budgetary allocations; of weapons research, and of ties to academic institutions.

Halperin, moreover, opposes virtually all FBI efforts to gather domestic intelligence—even including legal, court-ordered wiretapping. It would be interesting to know how he thinks the bureau should deal with the threat posed by Islamic fundamentalist terror cells (assuming, of course, that he recognizes the existence of such a threat).

Needless to say, all of this makes Halperin a decidedly unusual candidate for a high-level Pentagon post—one which carries with it a first-echelon security clearance. At the Defense Department, Halperin would have access to highly classified information—information he believes should be in the public domain.

Perhaps that best summary of Morton Halperin's worldview is one he himself provided. A 1977 book he co-authored is entitled: "The Lawless State: The Crimes of the U.S. Intelligence Agencies."

Now Halperin is poised to go to work for the very state he's long deemed lawless—unless, of course, the senators on the Armed Services Committee decide that this time Clinton has gone too far.

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THE CENTER FOR SECURITY POLICY,
*Washington, DC, August 2, 1993.*

Hon. BILL CLINTON,
*President of the United States, The White House, Washington, DC.*

DEAR MR. PRESIDENT: Press reports indicate that you have decided personally to review some of Morton Halperin's more controversial writings before deciding whether to proceed with his nomination to the position of Assistant Secretary of Defense for Democracy and Human Rights. I commend you for this prudent step and am confident that it will spare your Administration unnecessary anguish and political costs.

The reason for this confidence is that my colleagues at the Center for Security Policy and I find it inconceivable that you would willingly associate yourself with the highly controversial views Mr. Halperin has held and publicly advocated for many years. These include positions on: national security policy, the U.S. intelligence community, American commitments to our allies, the classification of information, and the conduct of counter-terrorist activities, among many others—positions that can only be described as extreme.

Mr. Halperin's recorded policy attitudes are, in short, ones we believe you will not easily be able to defend, nor should you have to. In the hope that we might assist you in reaching a similar conclusion, we have prepared the attached compendium of a number of Mr. Halperin's writings for your review—and that of Members of the U.S. Senate who would have to consider his nomination should it to go forward.

Sincerely,

FRANK J. GAFFNEY, Jr.
*Director.*

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THE CASE AGAINST THE HALPERIN NOMINATION: SELECTED READINGS FROM MORTON HALPERIN'S COLLECTED WORKS

INTRODUCTION

On 31 March 1993, the White House announced that President Clinton intended to nominate Morton Halperin to a new position in the Department of Defense, apparently created expressly for him. This post—the Assistant Secretary of Defense for Democracy and Human Rights—would be at the cutting edge of many of the United States' most pressing national security problems; its occupant would be well situated to shape American policy in every region of the world.

Consequently, many in the national security community reacted to this appointment first with astonishment, then with horror. After all, Halperin had for decades been an assiduous and vociferous critic of security policy and institutions under both Democratic and Republican administrations. He had, in particular, made a career of denouncing U.S. intelligence—accusing it of systematic criminal and anti-constitutional behavior, encouraging moves to hamstring or dismantle its operations and defending those who deliberately exposed American agents operating undercover. In his new position, Halperin would have daily dealings with the intelligence community and access to many of its most sensitive secrets.

The Halperin appointment, in short, seemed to offer early confirmation of fears that President Clinton's campaign rhetoric about being a "New Democrat"—one who would be responsible and tough-minded about national security matters—would prove to be little more than that, empty rhetoric.

And yet, four months have now passed since the President stated his intention to nominate Halperin to this key Pentagon position and the nomination has still not been submitted to the Senate. While that step has been said to be imminent for several weeks, the trade publication Defense Daily recently reported that—in the wake of the fiasco over the written record of another nominee, Prof. Lani Guinier—Mr. Clinton had decided to review personally "some of [Halperin's] most controversial writings before forwarding his nomination to the Senate."

The Center for Security Policy welcomes the President's decision to take a first-hand look at the Halperin record of advocacy of policies that are extremely hostile to U.S. defense and intelligence capabilities. Had they been adopted during the Cold War, these policies would have done incalculable harm to the national interest. Were they (or comparable prescriptions) to be adopted now—in what is, according to Mr. Clinton's own Director of Central Intelligence James Woolsey, in some ways an even more dangerous world—the consequences could be no less grave.

The following pages document these policy views in Mort Halperin's own words. While but a small sampling of his voluminous writings and public statements, the cited quotes exemplify the larger body of work which can only be enumerated here. Like Lani Guinier's controversial writings about "authentic Afro-Americans" and "equal outcomes," they are not isolated or ill-considered comments. Rather, they reflect decades of serious and extraordinarily consistent, if wrong-headed, thinking about and advocacy of extreme national security policies.

And, as with Prof. Guinier's record, President Clinton will be inextricably associated with—and obliged to defend—such fringe sentiments should he seek Morton Halperin's confirmation by the Senate. Consequently, Mr. Clinton's decision whether to withdraw this bizarre nomination, as the Center strongly recommends, will be more than just a test of the attention he pays to Halperin's writings. It will also, inescapably, be a test of his judgment and the credibility of any claim he might yet make to credentials as a "New Democrat" with responsible views on defense and foreign policy.

FRANK J. GAFFNEY, Jr.,
*Director,*
*The Center for Security Policy.*

II. NOTABLE HALPERIN QUOTES ON SELECTED TOPICS

*On the Fundamental Nature of the Cold War*

"The Soviet Union apparently never even contemplated the overt use of military force against Western Europe * * *. The Soviet posture toward Western Europe has been, and continues to be, a defensive and deterrent one. The positioning of Soviet ground forces in Eastern Europe and the limited logistical capability of these forces suggests an orientation primarily toward defense against a Western attack." (Defense Strategies for the Seventies, 1971)

"* * * Every action which the Soviet Union and Cuba have taken in Africa has been consistent with the principles of international law. The Cubans have come in only when invited by a government and have remained only at their request * * *. The American public needs to understand that Soviet conduct in Africa violates no Soviet-American agreements nor any accepted principles of international behavior. It reflects simply a different Soviet estimate of what should happen in the African continent and a genuine conflict between the United States and the Soviet Union." ("American Military Intervention: Is It Ever Justified?", The Nation, June 9, 1979)

*On U.S. International Commitments*

"One of the great disappointments of the Carter Administration is that it has failed to give any systematic reconsideration to the

security commitments of the United States. [For example, President Carter's] decision to withdraw [U.S. ground forces from Korea] was accompanied by a commitment to keep air and naval units in and around Korea—a strong reaffirmation by the United States of its security commitment to Korea. This action prevented a careful consideration of whether the United States wished to remain committed to the security of Korea * * *. Even if a commitment is maintained, a request for American military intervention should not be routinely honored." (The Nation, June 9, 1979)

*On the Use of U.S. Military Power Abroad*

"All of the genuine security needs of the United States can be met by a simple rule which permits us to intervene [only] when invited to do so by a foreign government * * *. The principle of proportion would require that American intervention be no greater than the intervention by other outside powers in the local conflict. We should not assume that once we intervene we are free to commit whatever destruction is necessary in order to secure our objectives." (The Nation, June 9, 1979)

*On the U.S. Defense Establishment*

Referring to the Reagan defense buildup: "Are we now buying the forces to meet the real threats to our security? Unfortunately, there is little reason to be confident that we are." (New York Times, June 7, 1981)

"In the name of protecting liberty from communism, a massive undemocratic national security structure was erected during the Cold War, which continues to exist even though the Cold War is over. Now, with the Gulf War having commenced, we are seeing further unjustified limitations of constitutional rights using the powers granted to the executive branch during the Cold War." (United Press International, January 28, 1991)

*On the U.S. Intelligence Establishment*

"Using secret intelligence agencies to defend a constitutional republic is akin to the ancient medical practice of employing leeches to take blood from feverish patients. The intent is therapeutic, but in the long run the cure is more deadly than the disease. Secret intelligence agencies are designed to act routinely in ways that violate the laws or standards of society." (The Lawless State: The Crimes of the U.S. Intelligence Agencies, 1976)

"You can never preclude abuses by intelligence agencies and, therefore, that is a risk that you run if you decide to have intelligence agencies. I think there is a very real tension between a clandestine intelligence agency and a free society. I think we accepted it for the first time during the Cold War period and I think in light of the end of the Cold War we need to assess a variety of things at home, including secret intelligence agencies, and make sure that we end the Cold War at home as we end it abroad." (MacNeil/Lehrer Newshour, July 23, 1991)

"Generally, secrecy has been used more to disguise government policy from American citizens than to protect information from the prying eyes of the KGB * * *. U.S. government officials admit that experts in the Soviet Union know more about American policies abroad than American citizens do." (The Lawless State)

"* * * The intelligence [service's] * * * monastic training prepared officials not for saintliness, but for crime, for acts transgressing the limits of accepted law and morality * * *. The abuses of the intelligence agencies are one of the symptoms of the amassing of power in the postwar presidency; the only way to safeguard against future crimes is to alter that balance of power * * *.

"Clandestine government means that Americans give up something for nothing—they give up their right to participation in the political process and to informed consent in exchange for grave assaults on basic rights and a long record of serious policy failures abroad." (The Lawless State)

"Secrecy * * * does not serve national security * * * . Covert operations are incompatible with constitutional government and should be abolished." ("Just Say No: The Case Against Covert Action," The Nation, March 21, 1987)

"The primary function of the [intelligence] agencies is to undertake disreputable activities that presidents do not wish to reveal to the public or expose to congressional debate." (The Lawless State)

"CIA defenders offer us the specter of Soviet power, the KGB, and the Chinese hordes. What they fail to mention is more significant: they have never been able successfully to use espionage or covert action techniques against the USSR or China, which are the only two nations that could conceivably threaten the United States * * * . The 'successes' of covert action and espionage, of which the CIA is so proud, have taken place in countries that are no threat to the security of the United States." (The Lawless State)

"Spies and covert action are counterproductive as tools in international relations. The costs are too high; the returns too meager. Covert action and spies should be banned and the CIA's Clandestine Services Branch disbanded." (The Lawless State)

*On Behalf of Extreme Interpretations of the First Amendment*

Under the First Amendment, "Americans have every right to seek to 'impede or impair' the functions of any federal agency, whether it is the FTC or the CIA, by publishing information acquired from unclassified sources." ("The CIA's Distemper: How Can We Unleash the Agency When It Hasn't Yet Been Leashed?", The New Republic, February 9, 1980)

"Lawful dissent and opposition to a government should not call down upon an individual any surveillance at all and certainly not surveillance as intrusive as a wiretap." ("National Security and Civil Liberties," Foreign Policy, Winter 1975–76)

In opposition to draft legislation setting heavy criminal penalties for Americans who deliberately identify undercover U.S. intelligence agents: "[Such legislation] will chill public debate on important intelligence issues and is unconstitutional * * * . What we have is a bill which is merely symbolic in its protection of agents but which does violence to the principles of the First Amendment." (UPI, April 8, 1981)

In criticizing scientists who "refused to help the lawyers representing The Progressive and its editors" in fighting government efforts to halt the magazine's publication of detailed information about the design and manufacturing of nuclear weapons: "They failed to understand that the question of whether publishing the 'secret of the H-bomb' would help or hinder non-proliferation efforts was beside the point. The real question was whether the government had the right to decide what information should be published. If the government could stop publication of [this] article, it could, in theory, prevent publication of any other material that it thought would stimulate proliferation." ("Secrecy and National Security," The Bulletin of the Atomic Scientists, August 1985)

In response to government attempts to close down the Washington offices of the PLO: "It is clearly a violation of the rights of free speech and association to bar American citizens from acting as agents seeking to advance the political ideology of any organization, even if that organization is based abroad. Notwithstanding criminal acts in which the PLO may have been involved, a ban on advocacy of all components of the PLO'S efforts will not withstand constitutional scrutiny." (The Nation, October 10, 1987)

In arguing that the random use of polygraph tests to find spies was unconstitutional: "Congress should strip these measures from the bill and start attacking the genuine problems, such as over-classification of information." (Associated Press, July 8, 1985)

*On U.S. Aid to Foreign Pro-Democratic Movements*

Regarding President Reagan's veto of a bill tying U.S. military aid to El Salvador to improved human rights, "[This action] makes clear that the administration has reconciled itself to unqualified support for those engaged in the systematic practice of political murder." (Washington Post, December 1, 1983)

Halperin called U.S. aid to the pro-democracy Contra rebels "ineffective and immoral." (Associated Press, October 2, 1983)

*On Nuclear Strategy and Arms Control*

As reported by the New York Times on November 23, 1983: "Mr. Halperin said the most important contribution American officials could make to stability would be 'to renounce the notion that nuclear weapons can be used for any other purpose than to deter nuclear attack.' He also argued that the United States should abandon plans to attack Soviet missile silos in responding to a nuclear attack. For one thing, he said, the missiles would probably have already been fired. Also, he said, a high degree of accuracy would be required."

As reported by the Chicago Tribune on December 11, 1987: "Halperin explained the NATO deterrent strategy known as coupling, whereby a Soviet conventional attack in Europe would be met with Allied tactical, and if the Soviets persisted, strategic nuclear weapons, in this way: 'First, we fight conventionally until we're losing. Then we fight with tactical nuclear weapons until we're losing; then we blow up the world.'"

Referring to the Nuclear Freeze proposal: "Sounds like good arms control to me." (Bulletin of the Atomic Scientists, March 1983)

*On Classification of Sensitive Information*

"While the most flagrant abuses of the rights of Americans associated with the Cold War are thankfully gone from the scene, we have been left behind with a legacy of secrecy that continues to undermine democratic principles." (Boston Globe, July 26, 1992)

Halperin called the government's prosecution of Samuel Loring Morison, who was convicted of disclosing classified satellite photos of a Soviet aircraft carrier under construction "an extraordinary threat to the First Amendment." (Washington Post, October 8, 1985).

ABSTRACTS AND QUOTES FROM SELECTED PUBLISHED WORKS BY MORTION HALPERIN

"American Military Intervention: Is It Ever Justified?"—The Nation (June 9, 1979)

Abstract:

Halperin believes that the United States possesses the right to intervene abroad only when three conditions are met: First, the United States must be invited to intervene by a foreign government. Second, intervention must be debated thoroughly and openly in the public and approved by both houses of Congress before being realized. Third, and U.S. military intervention must be in accordance with both international law and the United Nations charter.

According to Halperin, the United States is justified in its intervention if, and only if, these principles have been met. But the United States still needs to be certain that it does not use more force than is necessary to accomplish its objectives; that is, the U.S. is not free to use whatever force it deems necessary during that intervention.

Pertinent Quotes:

"The principle of proportion would require that American intervention be no greater than the intervention by other outside powers in the local conflict."

"We should not assume that once we intervene we are free to commit whatever destruction is necessary in order to secure our objectives."

"The American public needs to understand that Soviet conduct in Africa violates no Soviet-American agreements nor any accepted principles of international behavior. It reflects simply a different Soviet estimate of what should happen in the African continent and a genuine conflict between the United States and the Soviet Union."

"The kind of secret commitments that the United States in the past made to countries such as Thailand or Spain to intervene with military force when necessary should be clearly prohibited."

"The United States should never contemplate intervention unless that intervention is consistent with principles embodied in the United Nations Charter, international law, and bilateral agreements including the Soviet-American agreement."

"Moreover, all the genuine security needs of the United States can be met by a simple rule which permits us to intervene when invited to do so by a foreign government * * *. In my judgment, there are no circumstances that would justify the United States using nuclear weapons unless those weapons were used first by an opposing power."

"One of the great disappointments of the Carter Administration is that it has failed to give any systematic reconsideration to the security commitments of the United States. In several cases it has in fact changed some aspects of American policy but done it in ways which appear to reinforce the commitment rather than to move away from it."

"The Carter Administration's actions in Korea provide a classic example of this. The President made a decision that the United States would withdraw some forces from Korea not because he had concluded that the United States would not use military force to defend those interests but rather because he concluded that those commitments could be met without the continued stationing of American ground forces in Korea. Thus, the decision to withdraw the forces was accompanied by a commitment to keep air and naval units in and around Korea—a strong reaffirmation by the United States of its security commitment to Korea. This action prevented a careful consideration of whether the United States wished to remain committed to the security of Korea * * *. Even if a commitment is maintained, a request for American military intervention should not be routinely honored."

"All of the genuine security needs of the United States can be met by a simple rule which permits us to intervene when invited to do so by a foreign government * * *. I would argue that a necessary condition of any American intervention, including military intervention, is that it be consistent with a reasonable interpretation of the standards of the United Nations Charter, of international law and of any bilateral agreements that we may have negotiated."

"I would add a second prerequisite for any evaluation of a particular situation to determine whether the United States should intervene, i.e., that the intervention decisions must be made in a way which is consistent with American constitutional process. If the decision has to be made in ways which violate these procedures, then it should not be made. The procedures include public discussion of alternatives and public debate on the relevant facts * * *. These arguments, briefly summarized, constitute, in my view, an overwhelming case against covert operations since such operations must by definition be carried on in secret and cannot be evaluated even on a post hoc basis."

"Ending The Cold War At Home"—Foreign Policy, Winter 1990–91 (with Jeanne Wood)

Abstract:

Halperin contends that the Cold War brought about numerous limitations on our constitutional liberties and with its conclusion should come the curtailment of government's intrusion upon the liberties of its citizens. Policies such as the denying or revoking of security clearances based on basis of political beliefs or sexual orientation, control of "sensitive" information, restrictions on travel abroad and immigration policies aimed at keeping "terrorists" out of the U.S. should be eradicated. He urges Congress to take steps to ensure that new "threats" do not replace the Cold War as justifications for infringing on constitutional rights.

Pertinent Quotes:

"The national security apparatus that was put in place to wage the Cold War is now a burgeoning bureaucracy in search of a new mission."

"Another way the government circumvents the recent legal reforms is by labeling foreigners 'terrorists' based on their political support for guerrilla movements Washington disapproves of, such as the Irish Republican Army."

"[Needed] legislation should, among other things, reaffirm Congress' constitutional mandate authority in the conduct of foreign affairs; make the information available to Congress (and to the public) that is necessary for it to exercise its authority; end restrictions on the free flow of information and ideas across U.S. borders; and restore the First Amendment, due process, and privacy rights that have been circumscribed in the name of national security."

"President George Bush's act of putting U.S. troops in a position where conflict could erupt at any moment (Operation Desert Shield), violated an unambiguous constitutional principle. * * *

"Standard Form 86 (questionnaire for applicants to sensitive or critical government positions) asks intrusive and irrelevant questions regarding Communist party membership, prior arrests (whether or not they resulted in a conviction), drug and alcohol abuse, and private medical information, including mental health history."

"International terrorism is rapidly supplanting the communist threat as the primary justification for wholesale deprivations of civil liberties and distortions of the democratic process."

"The constitutional rights of Americans have also been major casualties in the 'war on drugs'. * * * Gross invasions of privacy such as urine testing, excessive property forfeitures and seizures without due process of law, the circulation of extensive government files on suspected drug offenders, and border patrols and checkpoints that inhibit free travel, all are among the draconian actions deemed necessary to wage the war on drugs."

"The elimination of these impediments to democratic decision-making should be given a high priority by the administration, Congress, and the public. This will require a massive public education campaign, because the perceived need for such limitations on domestic freedom has become so ingrained in the American psyche that most Americans are either not conscious of them or unaware that these are relatively new restrictions permitted only during the Cold War."

"Just Say No: The Case Against Covert Action"—The Nation, March 21, 1987

Abstract:

Halperin maintains in this article—as in many of his other published works—that covert operations have not contributed to the national security and instead threaten America's democracy. He argues that the findings of the Senate Intelligence Committee's 1975–76 investigation led by Sen. Frank Church (D–ID) and the debacle of the Iran/Contra affair demonstrate the illegality and negative consequences of clandestine policy, which should be prohibited under the dictates of the First Amendment. Covert operations breed a disrespect for the truth and the rule of law. Congress should not limit itself to restraining America's capability to conduct covert operations, but enact a total ban.

Pertinent Quotes:

"If the Church Committee report didn't make it clear enough, there can no longer be any doubt that covert operations are incompatible with constitutional government and should be abolished."

"Covert operations involve breaking the laws of other nations, and those who conduct them come to believe that they can also break U.S. law and get away with it * * *. Covert operations breed a disrespect for the truth."

"Lawful Wars"—Foreign Policy, Fall 1988

Abstract:

Halperin believes that the system of checks and balances has been malfunctioning with regards to the implementation of American foreign policy. It has gradually been distorted from the original implied powers in the Constitution. A system of prior consultation is needed. He also contends that a system of "overt covert" actions, approved by Congress and the president, should replace traditional covert actions. The Congress would debate the operation as a whole but not the essential details. This would ensure a democratic consensus prior to the operation itself so as to avoid potential political problems later.

Halperin believes there should, in addition, be a permanent consultative body that the President must consult with prior to using force. They should be consulted prior to any covert military action, hostage rescue or military assistance to allies engaged in a military conflict.

Pertinent Quotes:

"Restoring Congress' constitutional role demands that Congress activate its full share of authority over paramilitary operations by taking the 'covert' out of covert action."

"The only way to stop this pattern [of abuse] is to impose an absolute requirement

of public approval to bar paramilitary operations that are covert."

"National Security and Civil Liberties"—Foreign Policy, Winter 1975–76

Abstract:

According to Halperin, there is, during wartime and times of crisis, frequently an untoward erosion of basic civil rights. Until Watergate this was accepted by most as a necessary evil to safeguard the nation's security. The Watergate affair, however, highlighted the need to strike a balance between national security concerns and American's civil liberties. To achieve this balance there needs to be input from national security experts outside and inside of the government.

Halperin obviously feels a special passion born of personal experience about wiretapping. He argues that this practice is a good example of how civil liberties can be compromised under the guise of national security. The Fourth Amendment guarantees against general searches and searches without a warrant. Wiretaps are, by nature, general. Wiretaps are not vital and have proven less effective than other intelligence gathering methods.

Pertinent Quote:

"Wiretapping and other electronic surveillance may also affect the First Amendment right to free speech, free press, and free association in that it interferes with the exercise of those rights and may cast a chilling effect on them by raising the fear that the government is monitoring those activities * * * Congress should resist any proposal to give the government power to wiretap with or without a warrant on any standard less than probable cause to believe that a crime is being committed."

"Oversight is Irrelevant if C.I.A. Director Can Waive the Rules"—The Center [for National Security Studies] Magazine, March/April 1979.

Abstract:

Halperin believes that procedures and regulations which provide oversight of the intelligence community are inadequate and lead to activity which violates the fundamental rights of the American system, and abuses the Constitution. The Director of Central Intelligence should not have the power to wave constraints when he feels they interfere with the job he has to do. It is the domain of Congress and the public to grant such authority. Intelligence collection must then operate within those limits, even if they reduce effectiveness. The Intelligence community does not need broad capability to conduct covert operations, the most useful intelligence comes from good analysis of information from public sources.

Pertinent Quotes:

"We should not let the CIA decide what are acceptable constraints on their activities. We must recognize that the goal is not the most efficient intelligence service imaginable."

"The problem of bad intelligence is not due to not having enough spies. The problem of bad intelligence is poor analysis and not drawing on public sources of information."

"Secrecy and National Security"—The Bulletin of the Atomic Scientists, August 1985.

Abstract:

Halperin contends that the first amendment supersedes national security. In order to conduct an informed public debate on national security issues, the gathering of intelligence and its dissemination must adhere to the First Amendment. Even information pertaining to the construction of nuclear weapons can not be protected at the expense of the public debate. Through successive cases (e.g., the Pentagon Papers), the Executive branch has used the Courts to violate the First Amendment in order to gag individuals in the name of national security.

Pertinent Quotes:

"[U.S. scientists] failed to understand that the question of whether publishing the 'Secret of the H-Bomb' would help or hinder nonproliferation effort was beside the point. The real question was whether the government had the right to decide what information should be published."

"This involvement of the Judiciary in the enforcement of the executive branch's decisions about what national security information must be kept secret is an extraordinarily ominous development."

"The CIA's Distemper"—The New Republic, February 9, 1980.

Abstract:

In this article, Halperin contends that severe limitations and restrictions on the CIA put into place after the Church committee investigation are both desirable and effective and should be preserved. He criticizes President Carter for attempting to remove or modify a number of these restrictions. In particular, he opposes any reduction in the number of congressional oversight committees and, consequently, the number of people who are briefed on covert intelligence matters due to the potential for leaks. Halperin contends that the Hughes/Ryan amendment of 1974—which stipulated that before the CIA undertakes any covert activity for any purpose other than intelligence gathering it must report to the president and the appropriate committees—has not resulted in a significant number of leaks.

In keeping with his radical views on the desirability of making public information about CIA covert operatives and intelligence sources and methods, Halperin also defends the right to publicize such information as long as it is acquired through unclassified channels.

Pertinent Quotes:

"The [Freedom of Information Act] does require the CIA to respond to requests from people it may not like, such as this writer or Philip Agee, and even to answer queries that it suspects emanate from the KGB—The FOIA is expensive, but that seems a price well worth paying."

"* * * under the First Amendment, Americans have every right to seek to 'impede or impair' the functions of any federal agency, whether it is the FTC or the CIA, by publishing information acquired from unclassified sources."

"The Freeze is Arms Control"—The Bulletin of the Atomic Scientists, March 1983

Abstract:

Halperin argues that the House of Representatives and the Senate would be wise to give serious thought and consideration to the nuclear freeze resolution awaiting congressional action. He takes to task particularly those advocates of arms control who dismiss the freeze on the grounds that is neither possible nor verifiable, arguing that these "arms controllers" will "provide the most effective arguments" against the freeze.

Pertinent Quotes:

"No one who takes the trouble to study the freeze can * * * conclude that it is not a serious, well-thought-out proposal which may or may not acceptable to either the Administration or the Soviet Union. If arms controllers would concede just that much they would do much to increase support for the freeze in Congress."

"Can anyone really believe that the Administration would be in the START talks or be discussing substantial reductions of not for the freeze movement? If the freeze is seen to be losing support in Congress then no arms control will be possible under this Administration. In the longer run the viability of the freeze movement is what will make possible the ratification of any agreement which the next Administration might reach with the Soviet Union."

"* * * Is the freeze not the best possible arms control agreement? The danger now is not so much threat of a first strike but the danger that both sides will come to believe that nuclear war can be limited, won and survived. By heading off the next generation of controlled weapons, the freeze would do much to dispel that dangerous belief. * * * Sounds like good arms control to me."

"We Need New Intelligence Charters"—The Center [for National Security Studies] Magazine, May/June 1985

Abstract:

In this article, Halperin returns to a favorite theme: The intelligence community is not to be trusted and must be subjected to new limitations and additional congressional oversight in order to achieve the proper balance between our interest in national security and our interest in civil liberties.

Pertinent Quote:

"The Federal Bureau of Investigation's counter-intelligence program (COINTELPRO), for example, was as serious a threat to individual freedom in the United States as one can imagine."

A CHRONOLOGY OF RELEVANT ASPECTS OF MORTON HALPERIN'S CAREER

Present: On 31 March 1993, the White House announced the President's intention to nominate Halperin to the newly created position of Assistant Secretary of Defense for Democracy and Human Rights. Since that time, he has been working in the Pentagon nominally as a consultant but on an essentially full time basis in a manner that appears to exceed congressional and departmental restrictions on the involvement of nominees in policy-making prior to their confirmation.

Halperin is formally still listed as a Senior Associate of the Carnegie Endowment for International Peace and the Baker Professor at George Washington University's Elliott School of International Affairs.

1984–1992: Director of the Center for National Security Studies (CNSS), originally an offshoot of the hard left-wing Institute for Policy Studies (IPS). Halperin was also the director of the Washington Office of the American Civil Liberties Union (ACLU), with responsibility for the national legislative program of the ACLU.

1977: One of the founders and the director of the Campaign to Stop Government Spying, which changed its name the following year to the more benign Campaign for Political Rights. Like CNSS, the Campaign was populated with personnel associated with the Institute for Policy Studies and dozens of other dubious organizations (e.g., the National Committee Against Repressive Legislation, reportedly a Communist Party front).

Also in 1977, while serving as the deputy director of the Center for National Security Studies, Halperin went to London to help in the defense of Philip Agee. At the time, Agee was in the process of being deported from Great Britain as a security risk for collaborating with Cuban and Soviet intelligence.

1969–1973: Senior Fellow associated with the Foreign Policy Division of the Brookings Institution.

1969: Member of senior staff of the National Security Council during the Nixon Administration with responsibility for program analysis and planning. During this period, the information concerning secret U.S. bombings of targets in Cambodia was leaked to the New York Times. Then NSC Advisor suspected Halperin and colleague Anthony Lake of the leak and authorized FBI wiretaps on their office and home phones.

1966–1969: Deputy Assistant Secretary of Defense for International Security Affairs, with responsibility for political-military planning and arms control.

RELEVANT PUBLICATIONS BY MORTON HALPERIN

*Books*

*A Proposal for a Ban on the Use of Nuclear Weapons*, Special Studies Group, Study Memorandum Number 4, Washington, 1961.

*Strategy and Arms Control*, with Thomas C. Schelling, The Twentieth Century Fund, New York, 1961.

*Limited War: An Essay on the Development of the Theory*, Center for International Affairs, Harvard University, Cambridge, 1962.

*China and the Bomb*, Frederick A. Praeger Publishers, Washington, 1965.

*Communist China and Arms Control*, with Dwight H. Perkins, East Asian Research Center—Center for International Affairs, Harvard University, Cambridge, 1965.

*Is China Turning In?* Center for International Affairs, Harvard University, Cambridge, 1965.

*China and Nuclear Proliferation*, Center for Policy Studies, University of Chicago, Chicago, 1966.

*Contemporary Military Strategy*, Little, Brown and Company, Boston, 1967.

*Defense Strategies for the Seventies*. University Press of America, Washington, 1971.

*The Lawless State: The Crimes of the U.S. Intelligence Agencies*, with Jerry J. Berman, Robert L. Borosage and Christine M. Marwick, Center for National Security Studies, Washington, 1976.

*Freedom Versus National Security*, with Daniel N. Hoffman, Chelsea House Publishers, New York, 1977.

*Top Secret: National Security and the Right to Know*, with Daniel N. Hoffman, New Republic Books, Washington, 1977.

*Nuclear Fallacy: Dispelling the Myth of Nuclear Strategy*, Ballinger Publishing Company, Cambridge, 1987.

*Self-Determination in the New World Order*, with David J. Scheffer and Patricia L. Small, Carnegie Endowment for International Peace, Washington, 1992.

*Articles*

"Nuclear Weapons and Limited War," *Journal of Conflict Resolution*, June 1961.

"On Resuming Tests: Lessons the Moratorium Should Have Taught Us," *The New Republic*, April 30, 1962.

"The President and the Military," *Foreign Affairs*, January 1972.

"Led Astray by the CIA," *The New Republic*, June 28, 1975.

"The Most Secret Agents," *The New Republic*, July 26, 1975.

"CIA: Denying What's Not in Writing," *The New Republic*, October 4, 1975.

"The Cult of Incompetence," *The New Republic*, November 8, 1975.

"National Security and Civil Liberties," *Foreign Policy*, Winter 1975–1976.

"Secrecy and the Right to Know," with Daniel N. Hoffman, *Law and Contemporary Problems*, Summer 1976.

"Oversight is Irrelevant if CIA Director Can Waive the Rules," *The Center [for National Security Studies] Magazine*, March/April 1979.

"American Military Intervention: Is It Ever Justified?", *The Nation*, June 9, 1979.

"The CIA's Distemper," *The New Republic*, February 9, 1980.

"NATO and the TNF Controversy: Threats to the Alliance," *Orbis*, Spring 1982.

"The Freeze is Arms Control," *Bulletin of the Atomic Scientists*, March 1983.

"The Key West Key," with David Halperin, *Foreign Policy*, Winter 1983–1984.

"We Need New Intelligence Charters," *The Center [for National Security Studies] Magazine*, May/June 1985.

"Secrecy and National Security," *Bulletin of the Atomic Scientists*, August 1985.

"The Case Against Covert Action," *The Nation*, March 2, 1987.

"The Nuclear Fallacy," *Bulletin of the Atomic Scientists*, January/February 1988.

"Lawful Wars," with Gary M. Stein, *Foreign Policy*, Fall 1988.

"Ending the Cold War at Home," with Jeanne M. Woods, *Foreign Policy*, Winter 1990–1991.

## ADJOURNMENT OR RECESS OF CONGRESS UNTIL SEPTEMBER 7, 1993

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 136, a concurrent resolution providing for a recess or adjournment of the House and Senate just received from the House; that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

The VICE PRESIDENT. Without objection, it is so ordered.

So the concurrent resolution (H. Con. Res. 136) was agreed to, as follows:

H. CON. RES. 136

Concurrent resolution providing for an adjournment of the House from Friday, August 6, 1993, Saturday, August 7, 1993, Monday, August 9, 1993, or Tuesday, August 10, 1993, to Wednesday, September 8, 1993, and a recess or adjournment of the Senate from Friday, August 6, 1993, Saturday, August 7, 1993, or Sunday, August 8, 1993, to Tuesday, September 7, 1993.

## ORDER OF PROCEDURE

Mr. DOLE. Mr. President, may I ask the majority leader, will there be any more votes?

The VICE PRESIDENT. The majority leader.

Mr. MITCHELL. Mr. President, There will be no further rollcall votes. I wish each of my colleagues a very healthy and happy recess, and I look forward to our reconvening in September.

## CONFERENCE REPORT ON NATIONAL SERVICE

Mr. KENNEDY. Mr. President, we passed the national service conference report. It passed the House of Representatives. And we were wondering whether we could at least at this time have an opportunity to pass the conference report. I understand that Senator KASSEBAUM last reviewed the material and has I understand no objections to that consideration even though that she had expressed reservations about the concept earlier.

I was just wondering if we would have an opportunity to implement the President's program on national service.

Mr. DOLE. If the Senator would yield, I am advised on this side that there would be no objection. There were 100 new pages added to the bill, and nobody has had a chance to read it. Most of the amendments were stricken out that were added by Republican Members, and someone needs to take a look at some of those to see what was stricken out. There were a number of Stevens amendments and others.

So I am not prepared to take it up at this time.

Mr. KENNEDY. Mr. President, I just want the RECORD to show the conference that we had with the House which the Republican Members attended was less than 15 minutes. There was no objection at that time with the Republican conferees. I just think if there would be objection to it, we want to have that out in the open because I know that the Senator perhaps is not familiar with the details of the program. But in effect it is the Senate's bill; the House, administration program, and organization. But the rest of it is the $300 million, $500 million, $700 million, the Kassebaum amendments on the simplification of the program.

All the Republican amendments effectively that we accepted here on the floor including the Senator's own amendment. And we have effectively in terms of the administrative costs reduced them to what passed the U.S. Senate.

So I find it difficult to understand why we cannot move ahead and at least have the acceptance of the conference report. We are prepared to stay here tonight and to take any time to go into it and to debate it and discuss it. But I just do think it is a real disservice to object to the conference report which basically incorporates the majority of the Senate recommendations.

The Senator is quite within his rights to object. The majority leader said there would be no further votes. I would hope that perhaps the minority leader would consult with the members of our committee that were the conferees, and if they have particular difficulties in terms of what was actually conferenced, we would be glad to try and discuss those further.

I want the RECORD to show my colleague and friend, Senator WOFFORD, is here; others who have been committed to this. We are hopeful that at least we would be able to get the acceptance of the conference report so that this program could be actually implemented. It passed without objection in the House of Representatives.

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

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

## IMMIGRATION: THE PROBLEM, GUIDING PRINCIPLES, AND REFORM PROPOSALS

Mr. SIMPSON. Mr. President, since we are awaiting conference activity, and I see no one else wanting to speak—I will certainly respect the leadership of the assistant majority leader, Senator FORD, if there is some intervening official business—I shall yield the floor for that purpose.

At this point I want to speak on an issue which is of critical importance, and that is illegal immigration and a bill that I will be introducing after the summer recess.

As I say, I do have a few minutes of remarks, and at any point, if an official entry of business needs to be reviewed, I will yield.

Mr. President, I have been working on the issue of illegal and legal immigration for many years, as has a colleagues on this floor, Senator KENNEDY of Massachusetts. We may not agree on all the issues that confront us with regard to this burning issue, but we have worked closely together for many years in the spirit of friendship and accommodation. There will be issues here that we will not agree on once again.

I served as a member of the Select Commission on Immigration and Refugee Policy, as chairman of the Subcommittee on Immigration and Refugee Policy—serving under Senator STROM THURMOND, the former chairman of Judiciary—and now as ranking member on the Subcommittee on Immigration and Refugee Policy. In those capacities I see that we have come to the point where now we see large scale illegal immigration into the United States, fueling an anti-immigration mood in this country.

The American people believe that our immigration laws and policy are ineffective, and this feeling of helplessness about immigration will soon have a most detrimental affect on legal immigration and on legal immigrants. I know this is so, Mr. President, because our constituents make this so very clear to us whenever we return to our districts. Mail to my office from persons concerned about immigration is at its highest level since I have been on the Immigration and Refugee Subcommittee. Some will say this is the result of a recession, and as the economy improves, so will the feelings we have about immigration. But this is not so, Mr. President—not this time. This antiimmigration mood was virtually nonexistent during the depths of the recession. Efforts to make it a political issue during the last Presidential campaign failed miserably and completely. But today the mood is changed, and we had best be prepared to respond—and in our best as a Nation.

Newspapers and television have given wide coverage to those aliens who destroy their passports upon arrival at our airports, and then inform the immigration authorities that they want to stay to pursue an asylum claim. They well know that the system is so overwhelmed that it will be a year or more before their claim can be heard. They should be detained, yet they also know that there is limited detention space, and they will be released to live and work in the United States. In many cases, the authorities never hear from them again.

We have also vividly seen the rusty freighters loaded with mainland Chinese intending to enter the country illegally. If stopped, these aliens, too, will claim asylum, often alleging fear of punishment for violation of China's family planning laws. This alien smuggling operation, carried out by Asian organized crime gangs in the United States, has been called a modern-day "slave trade" by the United Nations High Commissioner for Refugees.

We cannot let CNN or the networks drive our immigration policy. What makes good television does not make good immigration policy, nor does it necessarily reflect the serious problems that we do have with immigration today.

However, although tens of thousands of illegal aliens enter our country because of asylum abuse at our airports and through organized smuggling operations, they are but a drop in the bucket compared to the number of aliens who walk, swim, and drive across our borders, illegally—every single day.

Each night, thousands of persons enter illegally to seek jobs in the United States, and the Immigration Service apprehends over 3,000 of them daily but twice as many slip through. More than 1.2 million persons attempting to enter illegally were apprehended and were required to leave in 1992. Many of these aliens attempt to reenter the same day. Thousands of other aliens enter the country legally with temporary visas and simply stay on illegally, after their visas have expired. The illegal population in the United States is in the millions, and growing.

This illegal population is a heavy financial burden on State and local governments. The costs for education and medical care are particularly high, and it is not only a school budget problem, but the quality of education is affected. The growing number of students who have difficulty with English causes tremendous problems for native-born students, as teachers attempt to accommodate the limitations of the newcomers.

County officials tell us that 70 percent of the babies born in the Los Angeles County hospitals are born to illegal alien mothers. Under current law, these children become citizens at birth and are eligible for welfare assistance, which their families seek and accept.

In Los Angeles County, 11 percent of the prison population is illegal, and over 40 percent of those illegal aliens are rearrested within a year after their release. In the Federal prison system, 25 percent of all prisoners are aliens.

Millions of illegal aliens are working in the United States, most in jobs that pay in excess of the minimum wage. Although the knowing employment of illegal aliens is prohibited by law, illegal aliens purchase fraudulent documents, or craft them, to prove their legality to employers. The widespread sale and use of fraudulent documents has serious consequences for the United States, not only with illegal immigration, but also with regard to access to welfare assistance—and what will be access to our health care systems when we complete any kind of health care reform—particularly health care—firearms purchases, a tremendous gimmickry regarding fraudulent documentation, and even voter registration.

The growing illegal population in the United States is causing still further problems. Debates have arisen in the Congress and elsewhere regarding the counting of illegal aliens in the census for apportionment purposes, and some studies indicate that many aliens, legal and illegal, are voting in State and local elections. Some localities have even passed legislation permitting such voting by aliens.

Illegal aliens live and work in the United States for years without being detected. If detected, may claim political asylum as a defense to deportation, despite the fact that the alien may have been in the United States for years. Our asylum process is burdened with so many layers of appeal and opportunities for delay. Any alien fleeing to the United States to avoid persecution should make his claim of asylum at the time he enters, rather than violating the laws of the country in which he seeks protection. This practice of not claiming asylum until the illegal status is detected, combined with the built-in opportunities for delay in our asylum procedures, has created an enormous backlog of more than 300,000 asylum claims. The United States has only half as many asylum officers as Sweden, and our asylum system is completely overwhelmed.

There are also hundreds of thousands of aliens in the country who entered illegally, and then asked for "temporary safe haven" here—until conditions improved in their home country. El Salvadorans constitute one of the largest such groups. More recent arrivals include the more than 10,000 Haitian boat

people brought here from our refugee processing camp in Cuba after claiming fear of persecution following the coup against President Aristide. We have allowed temporary safe haven to become permanent residence as these groups remain here months and years after conditions have changed for the better at home. They cannot be returned unless things have changed for the better at their home—none would want that. Legal immigration to the United States is at its highest level ever. Approximately 700,000 immigrants are admitted legally each year. In addition, we have been admitting more than 120,000 refugees annually in recent years. On top of that we grant temporary protective status to hundreds of thousands of persons, many, if not most, of whom stay on permanently. Finally another 10,000 were given "humanitarian parole" into the country in the past year.

Mr. President, I believe I am being very conservative when I say that, in addition to those that have been admitted legally, another 250,000 persons enter illegally and then stay on permanently every year. Altogether, well over 1 million new persons are added to our permanent population every year from immigration. Most Americans, and many of my colleagues, will be surprised to know that there is no firm limit on the number of immigrants that can be admitted to the United States each year. For the past 15 years, the number of immigrants admitted for permanent residence has increased in all but 3 years. In effect, Mr. President, the number of immigrants coming to the United States each year is governed, not by the laws of the United States, but by the desires of the immigrants themselves. We should have an overall limit on immigration which can be increased or decreased by the Congress. If it is true that the United States was once a nation of immigrants, it is also true that it is one no longer, nor can it become a land of unlimited immigration—a quote from the work of the Select Commission on Immigration and Refugee Policy. The Statue of Liberty always enters this debate, but Emma Lazarus did not say "everyone you've got, legal or illegal."

If we are willing to act to control illegal immigration. If we establish a firm limit on the growth of legal immigration. Then I believe the Congress and the American people will continue to support our traditional generous immigration and refugee policy.

The Immigration and Naturalization Service [INS], which enforces our immigration laws, has long been underfunded and understaffed by the Congress and by successive administrations, Democratic and Republican. The INS is expected to administer the world's largest immigration and refugee programs, as well as enforce the immigration laws in a country with nearly 4,000 miles of land borders. It has the duty of guarding the world's only border between a still-developing country to our south and our neighbor to our north. Job opportunities in the United States create a powerful magnet to illegal immigration. We must give more than lip service to the needs of the INS. We must provide the personnel, the equipment, and the other resources necessary to do the job we expect of them.

Mr. President, let me note here that we have a splendid new Attorney General, Janet Reno, who has an acute sense of the importance of enforcing our immigration laws. She is also well aware of the importance of providing the resources required to enforce those laws. And most important, Mr. President, she has chosen a gifted person to be Commissioner of Immigration who is better prepared for the job than any Commissioner in our history. I believe we are going to see sweeping and important changes at INS and great improvement in the amount of support that agency receives from the Department of Justice. I am absolutely heartened by the promise and the performance that will come from the Attorney General, Janet Reno and Doris Meissnet, who I hope will be confirmed, and the sooner the better, as Commissioner of Immigration. It is time to reasonably tighten and seriously enforce our immigration laws. The first duty of a sovereign nation is to control its borders, and we are unable to do that today. We must reform our immigration laws, and the basis for that reform must be in our national interest, not the interest of any particular individual or group. My view of the national interest is that which will increase the well-being of the majority of American citizens. No individual alien or group of aliens has a right to enter or remain in the United States contrary to the will of the American people. With these principles in mind, I propose to introduce the following reforms in our immigration laws:

1. ASYLUM FRAUD

To address the problem of aliens arriving at ports of entry with either fraudulent or no documents, and then claiming asylum, the bill will provide for an expedited exclusion procedure with a prompt deportation of illegal aliens, but with adequate safeguards for those who demonstrate a credible claim of persecution at home.

This provision incorporates S. 667, which I introduced on March 29, 1993.

2. ALIEN SMUGGLING

To address the problem of organized criminal smuggling of aliens into the United States, the bill will increase penalties for such smuggling, including the death penalty if death occurs during the course of a smuggling operation, allow racketeering [RICO] charges to be brought against organized smuggling groups, and extend the expedited exclusion procedures to aliens intercepted on the high seas. The provision will bring the penalties for human trafficking in line with those for drug trafficking.

This provision incorporates S. 1196, which I introduced on July 1, 1993.

3. DETENTION OF ILLEGAL ALIENS

To address the problem of illegal aliens being released into society pending asylum hearings, the bill will provide for the reprogramming of funds from other Department of Justice accounts to the detention and deportation account of the INS to be used to provide adequate facilities to detain those aliens entering illegally and claiming asylum. The bill will express the sense of the Senate that the administration should explore carefully the use of military bases which become available through the base closure program.

4. BORDER SECURITY

To address the problem of millions of illegal aliens crossing our borders annually, the bill will provide authorization for substantial increases in appropriations for hiring and equipping additional officers for border enforcement, and additional investigators for employer sanctions enforcement. The bill will require the INS to install additional structures at the border to deter unauthorized crossings in areas of high illegal entry. A recommended source of funding is the Department of Justice forfeiture fund. The bill will also provide that illegal aliens who are forced to return to a country contiguous to the United States are to be repatriated to an interior point in the country, instead of being returned to the border where they may immediately seek to reenter.

5. PUBLIC BENEFITS ABUSE

To address the financial burden on the Federal, State, and local governments from the improper use of welfare benefits by illegal aliens, the bill will allow the provision of federally funded benefits only to those aliens who are lawfully admitted as permanent residents, as refugees, or who are granted asylum—except for emergency medical care which will always remain available to all aliens. The bill will also prohibited illegal aliens from living in federally funded public housing, and will provide for the deportation of all aliens who become public charges, a definition under current law.

6. BIRTHRIGHT CITIZENSHIP

To address the problem of illegal aliens entering the United States solely for childbirth in order that their children will become U.S. Citizens, to eliminate the use of the welfare system by newborn-citizen children of illegal aliens, and to conform our law to the intention of the drafters of the 14th amendment the bill will deny automatic birthright citizenship to children of unauthorized immigrants.

7. WORK AUTHORIZATION VERIFICATION

To address the widespread manufacture and use of fraudulent documents by illegal aliens to obtain employment and other benefits, the bill will require the administration to develop and implement a secure system to verify the work authorization, and the welfare authorization, of every person who works, or who applies for public benefits in the United States. The bill will further provide that such a secure verification document shall be presented by every worker at the time of new hire employment, and by every applicant for federally funded public benefits, but shall not be required to be carried on the person, may not be requested by law enforcement officials for identification purposes, and shall not be used as a national identification document for any purpose other than at the time of the seeking of the employment, or the welfare application.

8. ASYLUM REFORM

To address the problem of illegal aliens using the asylum system as a defense to deportation and making asylum claims months or years after entry, the bill would require asylum claims to be filed within 30 days of arrival, and will provide time limits and deadlines in the asylum processing. Frivolous applications and failure to appear from asylum hearings will render aliens ineligible for future immigration benefits.

9. TERMINATION OF TEMPORARY STATUS WHEN CONDITIONS CHANGE

To address the problem of groups of aliens, who have been granted a temporary status, remaining here after conditions improve in their home country, the bill will terminate the temporary protected status for persons whose country is now at peace and has a democratically elected government. It will also provide for the return of the screened-in Haitians within 6 months after the return of the duly elected President to Haiti.

10. OVERALL LIMITATION ON IMMIGRATION

To address the problem of growing legal immigration, occurring without congressional approval or action, the bill will set an overall ceiling on all legal immigration—except for immediate relatives of U.S. citizens who will continue to be exempt from any numerical limitations.

11. IMMIGRATION AND NATURALIZATION SERVICE FUNDING

To address the problem of underfunding and understaffing the enforcement activities of the INS, the bill will direct the Attorney General to impose land-border user fees to be deposited into a special account in the general fund of the Treasury to be used exclusively for border enforcement and employer sanctions enforcement.

The Senator from California [Mrs. FEINSTEIN] has courageously proposed a border user fee. I have proposed that in the past. I would like to join her in this effort to provide for land-border user fees. I commend Senator FEINSTEIN for her interest in this issue.

I think this country needs these measures—they are not nativist, not mean, not xenophobic. They are reasonable and practical. Unless we close the back door to illegals and those who gimmick our systems, we will see that ever hospitable and open front door—the Golden Door of our heritage—slowly swing shut. That we do not want. That we can and must avoid. Here is a start.

As I see my friend from Kentucky, I think of his colleague, the senior Senator at one time, from Kentucky, Senator Dee Huddleston, who worked probably in the most lonely capacity on this floor speaking of immigration and refugee matters when no one in America was really paying attention.

It seems only appropriate that his former colleague is on the floor and serves with me as assistant majority leader and I as assistant minority leader. I know that Senator Dee Huddleston would be here cheering us on with his remarkable background that he had on this issue.

At the time of introduction of the bill after the summer recess, I ask unanimous consent that Senator ROBERT BYRD be added as an original cosponsor.

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

## ORDER OF PROCEDURE

Mr. FORD. Mr. President, I ask unanimous consent that the Senator from Michigan be recognized for up to 2 minutes; that the Senator from Massachusetts [Mr. KENNEDY] be recognized for up to 10 minutes; and that the Senator from Delaware [Mr. BIDEN] be recognized for up to 15 minutes.

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

Mr. FORD. I thank the Chair.

Mr. RIEGLE. I thank the Chair, and I thank the Senator from Kentucky.

## TRULY MAGNIFICENT WORK ON THE BUDGET RECONCILITATION

Mr. RIEGLE. Mr. President, I want to pay a tribute tonight to several people with respect to the legislation that we have enacted today. It is clearly one of the marvels of the legislative process to watch a package of this complexity come together in a government of divided powers and functioning as a democracy. It truly was an extraordinary piece of work.

I want to particularly salute Senator Moynihan, the new chairman of the Senate Finance Committee. This was an enormous initial test of his capacity as the chairman of that committee. I had the chance on that committee to watch it firsthand. It was a magnificent job that deserves recognition.

Majority Leader Mitchell, I just almost cannot say enough about the extraordinary job that he has done in bringing this bill through. I do not think there is anybody in the country, let alone in Washington, that has worked harder the last 2 months or so on this than he.

And Chairman SASSER, of the Budget Committee, managing the bill on the floor today, did a magnificent job, as he does so many times.

I want to thank and acknowledge also my colleagues on the Senate Finance Committee on the Democratic side, and those that I served with on the conference committee for their work and for their collaborative efforts in finding the golden mean, if you will.

Last, but not least, I want to acknowledge the members of my staff that assisted me on the legislation. Sharon Heaton, Debbie Chang, David Krawitz, and Joan Huffer worked as a team with others above and beyond the call of duty to try to make sure in every way that we did what we could to improve this bill, tried to get rid of the defects, and put in positive thoughts.

Let me also say to President Clinton how much I appreciate the fact that he has led the charge on this issue. He and those around him were willing to try to bring about the change in terms of a new balance in our economic strategy.

I will not go into the details. We talked about it earlier. But without him out front breaking the way, the work here would not have been possible.

The people I have mentioned, I think, have really done truly magnificent work and it should be recognized.

I thank the Chair.

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

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

## NATIONAL AND COMMUNITY SERVICE TRUST ACT CONFERENCE REPORT

Mr. KENNEDY. Mr. President, I had hoped that we would be able to move, after the conclusion of the earlier vote of reconciliation, on the conference report on the National Service Program. I will just take a few moments of the Senate's time just to outline briefly what was agreed to in the conference and still hope we might be able to find some way or means of adopting the conference so the program, which has had strong bipartisan support here in the Senate as well in the House, and passed overwhelmingly in the House and I believe would in the Senate as

well, would be able to be passed and signed by the President so the program could be initiated and put into place.

The conferees have worked diligently to preserve the most important features of the Senate and House bills.

It preserves many of the important elements that Republicans and Democrats have worked together to approve. If the recent vote on the economic legislation symbolizes partisanship at its worst, this legislation on national and community service shows bipartisanship at its best.

The conference report retains the key compromises in the Senate bill. The spending levels for new national service spending are set at $300 million in 1994, $500 million in 1995, and $700 million in 1996. We have also reduced the amount which can be spent on administrative costs below the level in the Senate bill.

The final bill preserves the studies by the Corporation, proposed by Senator DURENBERGER, and endorsed by Senator KASSEBAUM, to test such fundamental principles of national service such as whether educational benefits are needed to attract participants, whether programs should be economically targeted or diverse, and what outcomes we should expect from service programs.

The conference report contains provisions advocated by Senator JEFFORDS to ensure that actual programs dovetail with National and State priorities. Given the cost of national and community service, it is vital that participants are performing needed services.

We have retained provisions to address concerns that national service participants not engage in lobbying.

We have retained provisions regarding the Serve America Program, leaving more discretion to the Corporation and to State educational agencies to set application requirements for the programs.

To ensure that qualified individuals were selected, Republicans wanted programs to provide descriptions of the service that participants would perform, and the minimum qualifications needed for such service. We have retained this language.

Republicans had voiced concern that the national Corporation had too strong a role in administration. This measure retains a larger role for State commissions to set their own priorities. The Corporation's representative on State commissions will be an ex-officio, nonvoting member, to ensure that Federal oversight is not intrusive.

We have kept language developed by Senator KASSEBAUM on child care, so that it will be available only to those who demonstrate that such care is needed to enable them to participate.

The conference report retains Republican language clarifying that the National Service Program is not an entitlement program. The living allowance and postservice educational benefit will be subject to tax. Participation in the stipend program is limited to 2 years.

To ensure that this program does not interfere with military recruiting, the postservice educational benefit is reduced to 90 percent of the GI bill, and a report to the Department of Defense is required on the impact of national service on military recruiting.

Senator KASSEBAUM also proposed to ensure that national service educational awards do not have the unintended consequence of raising tuition at educational institutions. We have retained her provision limiting the percentage of students at any one institution who can pay for their education with national service educational awards to accomplish his goal.

In addition, we have retained provisions of the Senate Governmental Affairs Committee on the structure of the Corporation. These provisions are designed to be as strict as those for any other agency of Government. They will protect against financial mismanagement, ensure effective audits of operations, and require grant accountability systems.

Our goal in this legislation is to help the country do a better job of meeting its challenges by drawing on our best resources: The Nation's men, women, and children. Our goal is to make every citizen a more active participant in our democracy. Our goal, in sum, is to restore the sense of community we have lost in recent years, and revitalize the sense of common purpose that has served America so well from the beginning of our history.

So I am hopeful we can pass this conference report now, and start a new direction for our Nation.

I would be very hopeful that any of those who had offered amendments, if they do have concerns, would inquire of us here on the Senate floor. We will attempt to review with them what changes were made in the conference.

Our good friend and colleague from the State of Alaska inquired of us about the various seven amendments of the Senator from Alaska. We were able to show where in the legislation they were actually included.

We have done the best to maintain the Senate's position. I believe we have, although it is a conference and there were minor changes. But I would think any review, laying the Senate bill next to the House bill, would lead you to believe that any characterization of the conference report would say that it reflects the Senate legislation by an overwhelming preponderance.

I hope we could still find a way, before we adjourn this evening, to take action on the conference report.

Again, I am grateful to Senator WOFFORD and to Senator KASSEBAUM, who has pursued this issue with great diligence. We have had some differences in some of the approaches, but she has offered amendments which made it a stronger bill.

I see on the floor Senator JEFFORDS and Senator DURENBERGER, who have been two of our key cosponsors as we address this issue.

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

## NATIONAL AND COMMUNITY SERVICE TRUST ACT CONFERENCE REPORT

Mrs. KASSEBAUM. Mr. President, I want to respond for just a moment to the Senator from Massachusetts, who is chairman of the Human Resources Committee, who has, of course, provided the leadership along with Senator WOFFORD for the National and Community Service Trust Act.

Earlier in the evening, the Senator from Massachusetts said the conference lasted only 15 minutes and there were no Republican objections.

I know there was one, Mr. President, and that was myself. But I have not been supporting the legislation, although I have been very supportive of the desire, on both sides of the aisle, to work together to shape what I felt would be a stronger bill. However, when the Senator from Massachusetts said the conference only lasted 15 minutes, it is illustrative of some of the problems that have occurred.

With a complex bill, 300-some pages long and with 100 extra pages added in the conference, I would just like to point out two examples of some uncertainty. And there is much, I think, to be pointed out.

For one thing the final language of the conference report, and the manager's statement, was not received by my office—and as ranking member, I would have logically had that report—until 10:30 this morning.

And there are examples of a couple of mistakes.

The manager's report, for instance, states the House receded to the Senate on the Dole amendment, which would place the Secretary of Veterans Affairs on the board of the corporation as an ex officio member. Yet the conference bill does not reflect that change.

The same amendment by Senator DOLE would have added "individuals with experience in veterans' programs" to the long list of suggested members of the State commissions. And that provision is not included in the conference bill.

Second—and perhaps this could be clarified—Senator JEFFORDS, a cosponsor of the bill, requested and was assured that language would be included which would strengthen the program accountability by requiring that programs funded on a competitive basis by the corporation be consistent with its programs' priorities. Yet, on page 34 of the conference report, that requirement is clearly gone.

Mr. President, perhaps the Senator from Massachusetts could respond to that and help. Or perhaps Senator JEFFORDS has an answer. But it shows some confusion in what we had assumed was there and yet does not appear to be there.

I think before there can be approval of this conference report, we have to get some of these things clarified.

I will be happy to yield to the Senator from Vermont for perhaps an answer to the question.

The PRESIDING OFFICER. Under the unanimous-consent agreement, the Senator from Delaware is to be recognized for 15 minutes.

Mr. BIDEN. I will be happy to withhold to allow this colloquy to continue.

Mr. JEFFORDS. Mr. President, I would like to respond. I was assured at the conference that the language establishing priority language, so-called, was to be in the conference report. However, as of this moment, we have not been able to locate it in the report.

So I am hopeful that our search will bring forth what I understand is in the report. But I can understand the confusion and concern of some Members here who are trying to ascertain exactly what is in that conference report.

(Ms. MOSELEY-BRAUN assumed the chair.)

Mrs. KASSEBAUM. Madam President, I think both of us, from both sides of the aisle, have been involved with the best of intentions. But think a conference is designed to work out differences between House and Senate legislation, and be a deliberative and thoughtful process.

In this case, I think expediency overtook the thoughtful and deliberative process. A conference was raced through without the ability to make certain that we had in thoughtful language exactly what was meant.

For that reason, I am disappointed that we find ourselves in this position at this point on an important piece of legislation—whether one agrees with it or not.

It would be my hope, Madam President, that this can be clarified in some of the questions answered if, indeed, there will be any opportunity to approve the bill tonight. I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I am somewhat troubled by the comments of the Senator from Kansas because I have various provisions that she stated that are not in the bill that are in the bill. Maybe we can review very briefly the provisions that she described earlier in the conference report about not being in the legislation. I have them referenced here. I would be glad to have an opportunity—I see the Senator from Delaware and others on the floor—to have a chance to review these measures with the Senator.

There is no question, there was a great deal of activity. We had important responsibilities on the reconciliation, on the education provision, and then we came right into that from reconciling the House and the Senate. Unlike our reconciliation provisions, we really did not have differences which were strongly held on issues of direct loan and guaranteed loans. We are basically working closely together with the House. There are some differences, and we have attempted to preserve the Senate provisions.

I welcome, during the time of a quorum call, the chance to go through what is in the managers' statements and what is actually in the bill and point those out. Hopefully if we are able to do that satisfactorily, we will be able to move together. If we are not, then we will have to recognize the schedule realities. But I appreciate the courtesy of the Senator from Delaware in permitting us to have this exchange.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I thank the Chair.

(The remarks of Mr. BIDEN pertaining to the introduction of S. 1441 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

## LAWRENCE WALSH

Mr. DOLE. Madam President, it used to be said that death and taxes were the only two certainties in life. But after nearly 7 years on the job, we can now officially add independent counsel, Lawrence Walsh, to this list.

Since December 1986, Mr. Walsh and his army of lawyers have destroyed reputations, harassed families, run up a tab of more than $40 million, even left top-secret documents behind at an airport taxi stand.

But like the Energizer bunny, Lawrence Walsh keeps going and going and going, apparently, without any sense of remorse for the mean-spirited witch hunt he has led for nearly 7 years and counting.

Since last December, when President Bush pardoned former Defense Secretary Cap Weinberger, Lawrence Walsh has spent nearly 8 months drafting his so-called final report. According to press accounts, this report has now been filed with the court of appeals here in Washington.

Although not yet publicly available, the Walsh report is no doubt a self-serving testimonial to the heroics of the Independent Counsel's Office, and even worse, it has been paid for by the American taxpayer.

Over and over again, Lawrence Walsh has failed in the courtroom of law. And now, desperate to revive his own sullied reputation, he is apparently seeking success in another venue—the courtroom of public opinion.

It is never easy for a prosecutor when he loses a case. But when the not guilty verdict is read, a prosecutor normally picks up his briefcase, hopefully learns from his mistakes, and moves on to the next file.

He does not spend 8 months, at taxpayer expense, writing a report, memorializing his own efforts and blasting the very people he failed to convict, an approach I suspect Mr. Walsh takes in his just-completed, but still secret, final report.

And Lawrence Walsh is not the only culprit. Much of the blame lies with the independent counsel statute itself, which requires the IC to submit a final report—without any limitations on time or expense, and with few restrictions on the permissible scope of the report.

Madam President, the Senate will have the opportunity to fix the independent counsel statute when we consider its reauthorization, probably in September.

But these fixes will be little consolation for the good men and women who have fallen victim to Lawrence Walsh's selfish crusade to enhance his own professional reputation.

## GET NAFTA MOVING NOW

Mr. DOLE. Madam President, Leon Panetta, the Director of the Office of Management and Budget, was quoted in the press some time ago saying that the NAFTA—the North American Free-Trade Agreement—"is resurrecting itself" and that ultimately the administration expects to see it passed.

I am hopeful that Leon Panetta, the Director of the Office of Management and Budget, is correct when he said the North American Free-Trade Agreement is resurrecting itself and that the administration expects to see it pass the Congress.

I think this is going to be an area where there will be strong support on this side of the aisle for the President, unless the so-called side agreements so complicate the process that much support on this side will be lost.

So we think that is good news. Some of us intend to visit Mexico later this month to visit with President Salinas, and see what we can do to help keep the process going and support the President when NAFTA comes to the floor.

It seems to me that we need to get out front, and to try to help the American people understand what is at stake and what should be done.

The optimism on Mr. Panetta's part is good news, Mr. President, since he had proclaimed NAFTA dead just a short time before. While this talk of resurrection comes too late for Easter time, I hope it means that the administration is getting religion on a historic agreement with the potential for significant economic benefit for the United States and our two closest neighbors.

No doubt about it, NAFTA is having its share of problems. While the pro-NAFTA lobby has been relatively quiet, an anti-NAFTA lobby has grown up and it's prospering. While the administration was occupied first with the transition and then with charting a course on NAFTA, the anti-trade lobby took advantage of the vacuum and seized the initiative. The isolationists, the professional trade critics and the fear mongers have discovered that bad news is good business and they are cashing in with op-ed pieces, television appearances, reports, and studies all delivering the message of their anti-NAFTA patrons.

A recent court ruling, which holds that NAFTA legislation cannot be sent to Congress without an environmental impact statement, threatens this and any other trade agreement and, could apply to many pieces of legislation sent to Congress from the executive branch. I disagree with the court's decision, Madam President, and share the administration's hope that it will be overturned.

Now it is time for the administration to take back the initiative and make the case for a NAFTA which will create jobs in America and secure for American manufacturing, agriculture, and services an important and growing market.

It is time for President Clinton to put together the coalition that got NAFTA moving in the first place—a bipartisan group of political leaders, farm and manufacturing groups who understand the long-term benefits of a United States-Canadian-Mexican trade agreement and have the ability to see beyond the next election.

It is important to remember, Madam President, that it was a strong bipartisan effort that got NAFTA where it is today. In seeking fast-track negotiating authority to conclude NAFTA 2 years ago, President Bush would not have been successful without the active support of leaders in both parties, particularly the distinguished chairman of the Committee on Ways and Means and the distinguished chairman of the Committee on Finance, our former colleague, Senator Lloyd Bentsen.

The potential for a strong, bipartisan NAFTA coalition is out there. State Governors have as good a handle on NAFTA's prospects for their constituents as anyone. The Heritage Foundation recently surveyed the 50 Governors and found that 40 of them actively support NAFTA and none has come out against it. Even the 10 not in active support still stand behind the National Governors' Association February 1993 statement backing NAFTA.

The Governors have seen trade negotiations at work and know the real benefits that good trade agreements can bring in terms of export and job growth. For the past 5 years, virtually every State has seen a sharp rise in exports to Mexico. The reason is simple: In that time, since Mexico joined the GATT, it has had to lower its once formidable trade barriers and that gave our farmers and manufacturers their chance to turn Mexico into our third largest trading partner and a trade deficit into a growing trade surplus.

The Governors also know that eliminating those remaining tariff barriers and doing away with Mexican quotas and licensing systems will send even more exports South and keep more jobs North.

There are solid arguments to make to get NAFTA back on track:

The NAFTA debate shouldn't revolve around comparative wages because if low wages were the key, Haiti would be a major manufacturing center.

The fact is our domestic auto industry gets most of its competition from Japan and Germany, two of the highest wage nations in the world.

The fact is that defeating a NAFTA will not do anything to keep companies from relocating, will not do anything to improve the environment in Mexico or along the border and will not do anything to improve labor standards for Mexican workers.

The fact is that defeating a NAFTA will almost certainly hand our trade competitors in Europe and Asia a windfall profit at the expense of our own workers and exporters.

Time is running out for NAFTA. There are only a few months left in the schedule in which the administration wants to put the agreement into effect. In that time, the side agreement negotiations must be completed, the implementing legislation must be written and delivered to Congress for debate and voting when appropriations, health care and other important legislation remain before us.

I also believe that leaders in both parties should provide some measure of assurance to the Mexican people that the debate will be conducted on the merits of the agreement itself and to categorically reject any element of derogatory comments directed at the Mexican people or the Hispanic-American community in the United States.

I raise this issue, Madam President, because of a letter I recently received from the president and chief executive officer of the U.S. Hispanic Chamber of Commerce. This organization, which strongly supports NAFTA, represents more than 650,000 businesses employing a majority of Hispanics.

The letter makes a strong case for the political and economic benefits that NAFTA would bring to both the United States and Mexico but it goes on to deplore derogatory and offensive remarks about the Hispanic community which apparently have been made in the course of the debate. That kind of remark has no place in this discussion, Madam President, and I intend to do my part to see that Hispanic workers, businessmen, and businesswomen get the enormous respect that they deserve as we debate NAFTA.

NAFTA needs leadership now—from both parties and from all sectors of the economy. I want to say again that President Clinton knows he has my support and the support of a solid majority of Republican Senators for the basic NAFTA agreement.

But if we do not get out front now and make a strong case to the American people for NAFTA, an extraordinary opportunity for economic progress will be lost, certainly for this year and maybe forever.

## TRAVELGATE

Mr. DOLE. Madam President, we have been hearing a lot these days about retroactive tax increases, but for five of the former employees of the White House Travel Office, there is another type of retroactivity—retroactive innocence.

Last May, the White House smeared the good reputations of the travel office employees, charging them with gross mismanagement. The White House subsequently released a statement indicating that the travel office employees were under criminal investigation, even though the employees themselves had no notice of the charges against them, nor an opportunity to respond.

The travel office employees were fired, then unfired, placed on administrative leave, and subjected to a Justice Department probe.

Now, it appears that the probe came up empty, as news reports suggest that the White House is seeking to employ the travel office workers elsewhere in the Federal Government.

More than 3 weeks ago, on July 13, I wrote to Attorney General Reno requesting the appointment of a special counsel to look into the entire Travelgate affair.

Although I have not received a response from the AG, I have read troubling news accounts that the Justice Department has rejected other requests for an independent review of the travel office antics.

Whether it's a special counsel, or an independent counsel, or a congressional committee hearing, the bottom line is that the American people deserve to get a complete accounting of Travelgate—not with internal reviews and sanitized reports, but with a full, independent investigation.

And there's plenty to investigate. The political manipulation of the FBI. The possibility that the IRS was misused for political purposes. And the very real chance that Federal ethics laws were violated.

While the White House was quick to slander, and then fire, the travel office employees who now have apparently been cleared of any wrongdoing, they

opted for the slap-on-the-wrist approach for their own political appointees, the people—by the White House's own admission—who are the real Travelgate culprits.

Madam President, I am pleased to learn that the travel office employees are no longer the subject of a Justice Department probe. But, when all is said and done, it appears that the probe was directed at the wrong people. The spotlight should be focused not on the travel office employees, but on those who tried—unsuccessfully—to convert garden-variety political cronyism into good government.

So we hope this matter can still get a complete investigation.

Again, I extend my sympathy to the five fired employees whose reputations have been smeared for no good reason.

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. FORD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. FORD. Madam President, are we in morning business?

The PRESIDING OFFICER. The Senator is correct.

## THE NOMINATION OF M. JOYCELYN ELDERS TO BE SURGEON GENERAL OF THE UNITED STATES

Mr. FORD. Madam President, as in executive session, I ask unanimous consent that at 10:30 a.m. on Tuesday, September 7, the Senate turn to the consideration of the nomination of M. Joycelyn Elders to be Surgeon General, Executive Calendar 309, that there be 8 hours of debate divided and controlled in the usual form between the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Kansas [Mrs. KASSEBAUM]; that when all time is used or yielded back, the Senate vote without any intervening action on the nomination; that upon the confirmation, the motion to reconsider be laid upon the table; and that the President be notified of the Senate's action.

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

## REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 103–10

Mr. FORD. Madam President, as in executive session, Madam President, I ask unanimous consent that the injunction of secrecy be removed from the Convention on the Limitation Period in the International Sale of Goods, with Protocol Treaty Document No. 103–10 transmitted to the Senate by the President today; and I ask that the treaty be considered as having been read the first time; that it be referred with accompanying papers to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

*To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to accession, I transmit herewith the United Nations Convention on the Limitation Period in the International Sale of Goods done at New York on June 14, 1974, and the Protocol amending the Convention done at Vienna on April 11, 1980. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention.

This is the second Convention in the field of international sales of goods law produced by the United Nations Commission on International Trade Law (UNCITRAL) that has been transmitted to the Senate for its advice and consent. The first, the 1980 United Nations Convention on Contracts for the International Sale of Goods, was ratified by the United States and entered into force for this country on January 1, 1988. Both of these Conventions establish uniform international standards in the commercial law of sales of goods in order to facilitate commerce and trade. Both benefit the United States by removing artificial impediments to commerce that arise from differences between the national legal systems that govern international sales of goods.

The Secretary of State's Advisory Committee on Private International Law, on which 11 national legal organizations are represented, in May 1989, and the House of Delegates of the American Bar Association, in August 1989, endorsed U.S. accession to the Convention and amending Protocol, subject to a U.S. declaration permitted under Article XII of the Protocol. The declaration is set forth with reasons in the accompanying report of the Department of State.

I recommend that the Senate promptly give its advice and consent to accession to this Convention together with its amending Protocol.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *August 6, 1993.*

## EXECUTIVE CALENDAR

### EXECUTIVE SESSION

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the executive session to consider the following nominations reported today:

ARMY, AIR FORCE, NAVY, AND MARINES

The nominations and promotions in the Army, Air Force, Navy, and Marines, reported by the Committee on Armed Services;

DEPARTMENT OF ENERGY

Victor H. Reis to be an Assistant Secretary of Energy, reported by the Committee on Armed Services;

PERSONNEL MANAGEMENT

Lorraine Green to be a Deputy Director of the Office of Personnel Management, reported by the Committee on Governmental Affairs;

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Susan Gaffney, to be inspector general of the Department of Housing and Urban Affairs, reported by the Committee on Governmental Affairs.

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

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

The nominations, considered and confirmed, are as follows:

ARMY, AIR FORCE, NAVY, AND MARINES

The nominations and promotions in the Army, Air Force, Navy, and Marines, reported by the Committee on Armed Services;

DEPARTMENT OF ENERGY

Victor H. Reis to be an Assistant Secretary of Energy, reported by the Committee on Armed Services;

PERSONNEL MANAGEMENT

Lorraine Green to be a Deputy Director of the Office of Personnel Management, reported by the Committee on Governmental Affairs;

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Susan Gaffney, to be inspector general of the Department of Housing and Urban Affairs, reported by the Committee on Governmental Affairs.

### THE PROMOTION OF THAD A. WOLFE TO THE RANK OF LIEUTENANT GENERAL, U.S. AIR FORCE

Mr. SIMPSON. Madam President, I rise today in support of the promotion of Thad Wolfe, a truly fine man, to the rank of lieutenant general in the U.S. Air Force.

Thad is the brother of my friend, Al Wolfe, who is the chairman of the board of the University of Wyoming Art Museum and who serves on the board of the University of Wyoming Foundation. My wife, Ann, and I are privileged to have Al and his lovely wife, Cari, as our very special friends. They have both given so much to our State and our special university. They, too, are justly proud of Thad Wolfe for attaining this high honor which he so richly deserves.

Thad Wolfe was born in October 1942, in Coulee Dam, Washington. He earned a military science degree from the U.S. Air Force Academy in 1964 and a master's degree in electrical engineering

from the University of Wyoming in 1969.

Thad has had a distinguished career in the Air Force. After graduating from the Air Force Academy, he served in a variety of operational and command-and-staff positions—in locations ranging from England to Vietnam—which earned him well-deserved recognition.

He received his pilots wings in May 1971, and subsequently served as an instructor pilot, flight commander, B–52 aircraft commander, and operations officer—to name but a few of his many command assignments.

He attended air command and staff college at Maxwell Air Force Base, Alabama and then he was assigned to headquarters, U.S. Air Force, Washington, DC, where he filled a number of readiness, personnel and operational positions with great distinction.

He continued on to command the 9th Bombardment Squadron in Texas, and the 509th Bombardment Wing in New Hampshire. He then served in the strategic air command headquarters as special assistant to the commander in chief.

He also commanded the Strategic Warfare Center in South Dakota and assumed his present duty as assistant deputy director for operations of the National Security Agency in January 1992.

He is a superb command pilot with more than 3,885 flying hours. He has been awarded the Defense Superior Service Medal, the Legion of Merit, the Bronze Star Medal, the Meritorious Service Medal with three Oak Leaf Clusters, and myriad other awards and decorations.

His wife, Jill, and his children—Thori, Christian, and Molly—have contributed to his success and surely must excitedly share in this latest achievement.

Madam President, on behalf of the people of Wyoming, it is with a great sense of pride and admiration that I vote to confirm Maj. Gen. Thad A. Wolfe's nomination to the rank of lieutenant general.

## EXECUTIVE SESSION

### TREATY ON OPEN SKIES

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the Executive Calendar 1, the Treaty on Open Skies.

I further ask unanimous consent that the treaty be considered as having been advanced through the various parliamentary stages up to and including presentation of the resolution of ratification, that the two conditions and one declaration recommended by the Committee on Foreign Relations be agreed to; that no additional amendments, conditions, declarations, provisos, understandings, or reservations be in order; that any statement appear, as if read, in the RECORD, and that the Senate vote on the resolution of ratification without intervening action or debate; that after the vote the motion to reconsider the vote be tabled, and that the President be notified of the Senate's action.

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

The treaty will be considered to have passed through their various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

### TREATY ON OPEN SKIES

The resolution of ratification was read as follows:

VIII. RESOLUTION OF RATIFICATION

SENATE OF THE UNITED STATES IN EXECUTIVE SESSION

*Resolved (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of the Treaty on Open Skies signed at Helsinki on March 24, 1992, including annexes on Quotas and Maximum Flight Distances; Information on Sensors, with an Appendix on Annotation of Data Collected During an Observation Flight; Information on Observation Aircraft; Certification of Observation Aircraft and Sensors, with an Appendix on Methodologies for the Verification of the Performance of Sensors Installed on an Observation Aircraft; Procedures for Arrivals and Departures, with an Appendix on Designation of Sites; Pre-Flight Inspections and Demonstration Flights; Flight Monitors, Flight Representatives, and Representatives; Co-ordination of Planned Observation Flights; Information on Airspace and Flights in Hazardous Airspace; Montreux Convention; Information on Film Processors, Duplicators and Photographic Films, and Procedures for Monitoring the Processing of Photographic Film; and Open Skies Consultative Commission (all transmitted within Treaty Doc. 102–37); all such documents being integral parts of and collectively referred to as the "Open Skies Treaty", subject to the following:

(a) CONDITIONS.—The Senate's advice and consent to the ratification of the Open Skies Treaty is subject to the following conditions, which shall be binding upon the President:

(1) CHANGES TO SENSORS.—In the event that a State Party or States Parties seeks to obtain agreement, within the framework of the Open Skies Consultative Commission in accordance with Article IV, paragraph 3, and Article X, paragraph 5, of the Open Skies Treaty, to the introduction of additional categories of sensors, or to additions to the capabilities of existing sensors provided for pursuant to the Treaty, as an improvement to the viability and effectiveness of the Treaty not requiring an amendment to the Treaty, and the United States intends to agree to such proposed improvement, the President—

(A) shall provide prompt notification to the President of the Senate of each such proposed improvement, to include an analysis of the legal, cost, and national security implications of such proposed improvement; and

(B) shall not provide United States agreement to each such proposed improvement, or otherwise permit adoption of each such proposed improvement by consensus within the framework of the Open Skies Consultative Commission, until at least 30 days have elapsed from the date of notification to the Senate of the intention of the President to agree to such proposed improvement.

(2) NUMBER OF UNITED STATES OBSERVATION AIRCRAFT.—The Senate finds that United States interests may not require the utilization of the full quota of allowed observation flights or the procurement of more than one or two observation aircraft. Accordingly, within 60 days following completion of the first year after entry into force of the Open Skies Treaty, the President shall submit to the Senate a report setting forth:

(A) an analysis of the first year of operation of the Treaty, highlighting any ambiguities, differences, or problems that arose in the course of implementation, as well as any benefits that have accrued to the United States by its participation in the Open Skies regime;

(B) a determination of the estimated number of observation flights to be conducted annually by the United States for the duration of the Treaty; and

(C) an assessment of the number of United States observation aircraft required to carry out the observation flights described in subparagraph (B) above, taking into consideration the potential utilization of non-United States aircraft.

(b) DECLARATION.—The Senate's advice and consent to ratification of Open Skies Treaty is subject to the following declaration, which expresses the intent of the Senate:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the Resolution of Ratification with respect to the INF Treaty, approved by the Senate on May 27, 1988.

Mr. PELL. Mr. President, on behalf of the Committee on Foreign Relations, I am pleased that the Open Skies Treaty is now being taken up by the Senate.

The treaty was signed at Helsinki on March 24, 1992, and submitted to the Senate by President Bush on August 12, 1992.

Mr. President, the principal purpose of the Open Skies Treaty is to enhance military openness and transparency by providing each state party with the right to overfly the territory of other states parties using unarmed observation aircraft. The premise underlying the treaty is that if there is greater military openness and transparency, then regional tensions will be reduced, thereby decreasing the probability of conflict. Because the United States already possesses high-quality national technical means of verification, the treaty is expected to be largely of value to European states parties, particularly for those nations that do not have access to sophisticated reconnaissance satellites. For such states, the treaty may serve as a useful confidence- and security-building measure.

The original 25 signatories of the treaty were the 16 members of the North Atlantic Treaty Organization [NATO], the 5 Eastern European members of the former Warsaw Pact, and 4 former Soviet Republics, Russia, Ukraine, Belarus, and Georgia. Because

the treaty was signed after the dissolution of the Soviet Union, issues concerning state succession did not arise, as in the case of the 1990 Conventional Armed Forces in Europe Treaty [CFE] and the 1991 Strategic Arms Reduction Treaty [START]. The Kyrgyz Republic, another former Soviet Republic, subsequently signed the treaty on February 16, 1993. The Czech and Slovak Republic, an original signatory, separated into two countries on January 1, 1993, and both joined the treaty. Thus, to date, there are 27 participants in the Open Skies regime. It is generally expected that the Open Skies regime will be expanded to the rest of the CSCE nations, and may well be adopted by countries in other regions of the world.

President Eisenhower proposed the first Open Skies initiative in 1955, before reconnaissance satellites were available. The purpose of Eisenhower's Open Skies was to allow for wide-ranging aerial inspections with optical cameras between the superpowers. These aerial inspections would have allowed each side to examine some military facilities in order to give early warning on military buildups. These inspections would probably have had a deterrent effect, could have reduced worse-case analysis assumptions about the other party, and could have established a mutual confidence building measure. First Secretary of the Communist Party Nikita Khrushchev strongly rejected Eisenhower's proposal because the Soviets feared that it was a way for Westerners to spy on the closed Soviet society.

With the advent of high-quality satellite reconnaissance in the early 1960's, the idea of Open Skies was overtaken by technological progress. However, today only the United States and Russia have extensive capabilities to photograph with satellites. Other nations of Europe do not have any significant ability to observe threatening military facilities or activities of their neighbors. Because of these multinational concerns, President Bush proposed a multilateral, rather than a bilateral, Open Skies initiative on May 12, 1989, in a speech at Texas A&M University.

The nations of Europe, and in particular, the new nations of Eastern Europe, appear to support the Open Skies Treaty as a measure to build mutual confidences at this time of transition. Canada has been a leader in the Open Skies negotiations, hosting Open Skies conferences and carrying out trial aerial inspections. In 1991, Hungary and Romania adopted a bilateral Open Skies Treaty which is consistent with the Open Skies multilateral treaty.

Mr. President, I chaired the first hearing on the treaty on September 22, 1992. Witnesses included Ambassador John Hawes, U.S. Representative to the Open Skies Conference, Department of State; the Honorable William Inglee, Deputy Assistant Secretary, Conventional Forces and Arms Control Policy, Office of Secretary of Defense; Maj. Gen. Robert Parker, U.S. Air Force, Director, On-Site Inspection Agency; Thomas Karas, Ph.D., senior associate, International Security and Commerce Program, Office of Technology Assessment; Mr. Michael Krepon, president, Henry L. Stimson Center, Washington, DC; Mr. Michael Moodie, Assistant Director, Bureau of Multilateral Affairs, U.S. Arms Control and Disarmament Agency; and Brig. Gen. Teddy E. Rinebarger, U.S. Air Force, Assistant Deputy Director for International Negotiations, Joint Chiefs of Staff.

On March 4, Secretary of State Warren Christopher wrote me to express his "strong support" for Open Skies. He wrote that:

> The Treaty on Open Skies represents the broadest international effort to date to promote openness and transparency of military forces and activities. The Treaty covers all the territory of its signatories, which include all NATO Allies, the East European members of the former Warsaw Pact, Russia, Ukraine, Belarus, Georgia, and Kyrgyzstan. Additional states have indicated their interest in becoming parties in the near future.

Moreover, the Secretary wrote:

> It will contribute to mutual understanding and confidence-building by giving all States Parties, regardless of size, a direct role in gathering information about military forces and activities of concern to them. The Treaty responds to the desire of many states for innovative means of strengthening security and stability, especially throughout Europe, including the states of the former Soviet Union. The basic principles and modalities of Open Skies could be used to contribute to the reduction of tensions in other regions of the world as well.

A second hearing was held on March 11, 1993, with representatives of the Clinton administration. Witnesses included the Honorable Robert L. Gallucci, Assistant Secretary for Politico-Military Affairs, Department of State; Mr. Thomas Graham, Acting Director and general counsel, U.S. Arms Control and Disarmament Agency; Ambassador John Hawes; and Brig. Gen. Teddy E. Rinebarger.

The final hearing was held in closed session on March 24, 1993, with Mr. Craig Chellis, special assistant to the Director of Central Intelligence for Arms Control.

Mr. President, on Thursday, May 20, 1993, the committee considered in markup a resolution of ratification recommending that the Senate advise and consent to ratification of the Treaty on Open Skies. The resolution includes a condition regarding sensor changes and a condition requiring a report by the President, following a year's experience with the treaty, providing his assessment of the need for additional aircraft and the necessity to carry out the full quota of inspections allocated to the United States. By voice vote, the committee voted unanimously, with a majority of the members present, to report the resolution favorably.

The condition on sensor changes was approved by the Committee on Foreign Relations, at the recommendation of the Select Committee on Intelligence. The committee was subsequently informed that the Committee on Armed Services also favors such a condition. The condition provides that, in the event states parties propose in the Open Skies Consultative Commission to adopt additional categories of sensors or additions to the capabilities of existing sensors, and the United States intends to agree to such improvements, the President shall give the Senate 30 days' notice, together with an analysis of the legal, cost, and national security implications of such proposed improvements. The cost estimates are also of interest to the Senate Committee on Armed Services.

The Foreign Relations Committee was concerned regarding potential costs of the treaty as contrasted with potential benefits. The committee noted that the Defense Department plans to procure three aircraft at considerable cost. In the committee's view, it was not clear that the number of observation flights allowed would be advisable, nor was it clear that more than one or two aircraft would be necessary to monitor this treaty.

The committee, therefore, approved a condition requiring a report by the President, following a year's experience with the treaty, providing his assessment of the need for additional aircraft and of the necessity to carry out the full quota of inspections permitted to the United States. A decision to forego the third WC-135 would save the United States approximately $30 million, not including costs associated with aircraft operations and maintenance and crew training and support.

Mr. President, I agree with the Secretary of State and the Open Skies Treaty is in the national interest of the United States and should be approved by this body. The primary benefits will be seen by the European partners in this venture and it could serve to provide reassurance in a period of continued uncertainty following the disintegration of the Soviet Union. It should be seen as a modest step forward in the continuum of modern arms control in which we do our best to move away from the mistrust and fears that characterized the bleak period of the cold war.

Mr. DECONCINI. Mr. President, I will vote in favor of ratification of the Treaty on Open Skies. This treaty was negotiated by the Bush administration and has been endorsed by President Clinton as well. While it will not provide many tangible benefits to the United States, officials in the executive branch have assured us that it will

have a positive impact on European security. And that, in turn, is surely a benefit to the United States.

I speak today, however, not as an Open Skies supporter, but as chairman of the Select Committee on Intelligence. As a service to the Foreign Relations Committee and the Senate as a whole, the Intelligence Committee supports the treaty ratification process by providing its assessment of the monitoring and counterintelligence issues raised by each arms control treaty submitted to the Senate for advice and consent to ratification.

On Wednesday, May 19, we issued both classified and unclassified reports to the Senate on "Intelligence and Security Implications of the Treaty on Open Skies." The unclassified report was published in the CONGRESSIONAL RECORD for that day and is reprinted in the report of the Committee on Foreign Relations. We also have additional copies available for interested members or staff.

Members of the Senate are also invited to examine that select committee's more detailed, classified report, and I would be pleased if any colleague wished to examine that report today. We can bring a copy to the Vice President's office, if any Member wishes to examine it here, or show it to the Member in his or her own office.

The Intelligence Committee followed the Open Skies talks closely since their inception in 1989 and held a series of three briefings for staff in late 1992. On March 4, 1993, the committee held a closed hearing on the treaty at which it took testimony from Ambassador John H. Hawes, chief U.S. negotiator; Mr. Craig Chellis, Acting Chief of the DCI's Arms Control Intelligence Staff; Mr. Leo Hazlewood, Director of the National Photographic Interpretation Center; Maj. Gen. Robert W. Parker, USAF, Director, DOD On-Site Inspection Agency; Mr. Ray W. Pollari, Acting Deputy Assistant Secretary of Defense/Counterintelligence and Security Countermeasures; and Brig. Gen. Teddy E. Rinebarger, USAF, Assistant Deputy Director for International Negotiations, Strategic Plans and Policy, the Joint Staff.

The Intelligence Committee sought and obtained from the intelligence community an interagency assessment of the likely information gains and losses resulting from the treaty. The committee also obtained an interagency assessment of the treaty's counterintelligence and security countermeasures implications. Finally, the committee submitted and received answers to a series of questions for the record.

The Open Skies Treaty is not an arms control treaty in the traditional sense. It does not require the destruction or limit the capabilities of any weapons or other military equipment. It does not require, therefore, the same sort of monitoring through national technical means to determine other countries' compliance that one finds in, for example, the START Treaty.

The observation flights that would be conducted pursuant to the Open Skies Treaty are very similar, however, to cooperative measures for verification that have grown out of arms control treaties. Thus, they would be implemented by many of the same U.S. Government agencies that implement arms control verification; the information collected by these flights would have to be analyzed by the U.S. intelligence community; and the issues of counterintelligence and security protection for U.S. personnel and for sensitive or proprietary information are similar to those faced in various on-site inspections for arms control purposes.

It is these issues of implementation costs and benefits and of security concerns and costs that warranted the Intelligence Committee's attention and are the focus of its report, which is organized around the following questions:

Does the treaty contain ambiguities or present monitoring difficulties that are likely to lead to compliance questions?

What information gains will the United States obtain from this treaty?

What sensitive or proprietary information might the United States lose as a result of other countries' observation of U.S. territory or overseas bases?

How effectively will U.S. security precautions limit the potential loss of such sensitive or proprietary information?

What costs will be incurred in order to implement the treaty, analyze the information that is obtained, and protect U.S. security?

WILL TREATY AMBIGUITIES LEAD TO COMPLIANCE QUESTIONS?

Because the Open Skies Treaty is not a traditional arms control agreement with arms destruction requirements or limitations on weapons capabilities, there are few specific injunctions to obey and, therefore, few areas in which compliance questions could arise. The committee's report noted, however, that some difficulties could arise in such areas as the conduct of overflights. The provision in article VI of the treaty that limits observation flight paths was one example.

One area in which a decision mechanism is not specified is what to do if representatives of the observed party believe that the observing party has used a sensor improperly. The observed party controls both the airspace and the ground, so it can always bring force to bear. But no other means is set forth in the treaty for preventing the observing party from leaving the country with improperly gathered data.

WHAT INFORMATION IS THE UNITED STATES LIKELY TO GAIN?

The Intelligence Committee found that, at least initially, the Open Skies Treaty will offer the United States little of value in terms of information. If improved sensors or an environmental sensing package were to be approved in the future, this calculation could change. The chief U.S. representative to the Open Skies negotiations testified to the committee that the United States does not expect to be the primary direct beneficiary, in terms of information gains, of the openness that the treaty will provide. Rather, he stated, the greatest information gains resulting from the treaty will go to the great majority of participants who do not operate national technical means.

Article X of the treaty permits the Open Skies Consultative Commission to make decisions regarding both improvements in the resolution of existing sensors and even wholly new categories of sensors. Such decisions may be made without submitting them to the parties as amendments to the treaty. Thus, new or improved sensors could be authorized without Senate review or approval, even if the executive branch were to give insufficient attention to security concerns or preparedness.

While there has been no such unwise action in the Open Skies context thus far, the potential exists for problems in the future. New security concepts and capabilities could well be needed to meet the challenges posed by new sensors. Environmental sensing packages could also significantly increase the chances of Open Skies flights developing evidence of illegal activity, such as violations of environmental laws or international agreements, by companies in the United States, using sensors that could raise fourth amendment concerns.

The select committee therefore recommended as follows:

The Senate should add a condition to the resolution of ratification to the effect that the United States shall not agree to Open Skies Consultative Commission approval of any new Open Skies sensor or of one with improved resolution until at least thirty days after notifying interested Committees of the Senate of its intention to do so; such notification shall include an analysis of the legal and security implications of the proposed change or changes.

This recommendation was accepted by both the Committee on Foreign Relations and the administration. It is incorporated in the resolution of ratification that is before us today. I want to thank the chairman and ranking minority member of the Foreign Relations Committee for the professional manner in which our committee's suggestion was turned into useful legislative language.

If Russia exercises its option to require United States use of a Russian aircraft and sensors, then little or no wide-area coverage may be obtained from United States flights over that country during the initial years of the treaty. If Russian film is not compatible with United States exploitation

equipment, moreover, the requirement to use a Russian aircraft and sensors could severely complicate the exploitation of Open Skies data. The Intelligence Committee therefore recommended as follows:

The United States should make every effort to use a U.S. observation aircraft and sensors in its Open Skies observation flights.

For example, since the United States observation aircraft and sensors are likely to provide better coverage during the transitional period than will the Russian aircraft and sensors, Russia/Belarus might agree to let United States overflights use the United States equipment in return for some arrangement that enabled them to use the same United States equipment in overflights of the United States.

WHAT SENSITIVE OR PROPRIETARY INFORMATION MAY BE COMPROMISED?

The basic theory of Open Skies observation is that the medium-resolution sensors permitted by the treaty will enable parties to monitor the size and disposition of each other's military forces. Russia and Belarus, the group of states parties that was the only requester for rights to overfly the United States, may gain new insights only from some of the sensors, since Russia already has imaging satellites. But countries with no national technical means could purchase the Russian data and/or, in later years, request their own flights over United States territory.

Open Skies surveillance could provide a country useful information about U.S. defense systems and manufacturing capabilities, as well as radar signature data for targeting purposes. Having said this, however, the intelligence value of each sensor would be limited—for other countries, just as for the United States. This is true largely because U.S. security countermeasures should be able to deny access to sensitive information that goes beyond what the U.S. Government is prepared to disclose for confidence-building purposes.

HOW EFFECTIVELY WILL THE GOVERNMENT SAFEGUARD U.S. PERSONNEL AND SENSITIVE AND PROPRIETARY INFORMATION?

U.S. personnel and potentially hostile security services will be in contact only for relatively short periods of time in connection with any given overflight, unlike the situation with some onsite inspection or portal monitoring teams pursuant to arms control treaties. Thus, even though Russian observers and escorts are expected to consist largely of air force and military intelligence personnel, the potential vulnerability of United States personnel to hostile intelligence approaches will be relatively limited.

The Open Skies Treaty specifically limits the types and capabilities of sensors to be employed in overflights, and several treaty provisions are designed to guard against the clandestine use of illegal or overly powerful sensors. Thus, the treaty provides for the certification of observation aircraft and sensors, a process that may involve both on-the-ground inspection and in-flight tests to demonstrate the resolution of the sensors. The observed party may also inspect the observing aircraft and sensors before each observation flight. And the treaty provides for the use and inspection of external covers on sensors before and after each observation flight.

Executive branch security officials assured the committee that they can adequately guard against the use of illegal sensors. This does not mean, however, that one can ever have absolute certainty that no illegal intelligence collection is occurring.

Even the observation that is permitted under the Open Skies Treaty could result in the compromise of sensitive information. Aerial observation of military movements or exercises, industrial plant configurations or activities, and outdoor testing, development or storage of equipment could give foreign countries direct or indirect insight into U.S. military capabilities and readiness beyond that which the U.S. Government is prepared to disclose for the purpose of confidence-building. It is also conceivable—although perhaps not likely, given the low resolution of Open Skies sensors—that proprietary industrial information could be compromised.

To help U.S. facilities and defense contractors prepare for treaty-related inspection or monitoring, including Open Skies observation flights, the Defense Department has created the Defense Treaty Inspection Readiness Program (DTIRP), an interagency program that is administered by the On-Site Inspection Agency. The uncertain vulnerability of nondefense proprietary information to disclosure through Open Skies observation led the executive branch to concentrate upon the security of U.S. military facilities and defense industry. The Intelligence Committee pressed the issue of nondefense trade secrets both in its March 4 hearing and in a question for the record, however, believing that the U.S. Government should not ignore even a slight risk that its arms control actions could affect the security of private information.

The Assistant to the President for National Security Affairs, in letters to the chairman and vice chairman of the Intelligence Committee, informed the committee of steps that the executive branch is taking to address this question:

An interagency working group has begun to explore steps that might be taken to notify private, nondefense companies about the Open Skies Treaty and possible flights over the United States. The Commerce Department, with other appropriate agencies, will work to devise options for such notification.

The Executive Branch will (a) develop a strategy for notifying private, non-defense companies of the nature and extent of Open Skies missions; (b) consider how private, non-defense companies might be able to take advantage of the DTIRP system managed by the Department of Defense; and (c) explore any other possible low-cost means of better informing private, non-defense companies whose proprietary information might be disclosed through Open Skies missions, about the Treaty.

The Intelligence Committee is pleased that the executive branch has begun to develop a policy regarding the protection of proprietary nondefense information and is tasking the Commerce Department and other agencies to develop cost-effective measures to inform and assist non-defense industry. In its report, the committee recommended as follows:

The Executive branch should institute an outreach program to inform industry about the likely impact of the Open Skies Treaty and to offer appropriate assistance in safeguarding proprietary information that may be put at risk. Such assistance need not incur major costs to the government and could, if necessary, be user-funded.

Article IX of the treaty requires that Open Skies data be "used exclusively for the attainment of the purposes of this Treaty." While the risk of Open Skies imagery or other data being used for purposes inconsistent with the treaty is probably remote, such an outcome is not impossible if the data are made freely available to the public. It would be prudent to take action to guard against improper use of such data. At the same time, however, it would seem out of keeping with the confidence-building objectives of the Open Skies Treaty either to classify this information or to enact a statute penalizing its improper use. The select committee therefore recommended a more limited step, as follows:

Congress should consider legislation to create a new b(3) exemption to the Freedom of Information Act that would permit the Government to withhold information collected pursuant to the treaty from public disclosure.

We understand that the Foreign Relations Committee has been asked by the administration to take the initiative on this matter, and we look forward to their drafting of an appropriately narrow FOIA exemption.

CAN WE JUSTIFY THE COSTS OF IMPLEMENTING OPEN SKIES?

At least for the time being, all of the resources needed to exploit Open Skies imagery will come from existing funds and personnel. This means that any exploitation and analysis resources—people or dollars—expended in support of the Open Skies Treaty will have to be diverted from other efforts in this field. Executive branch managers recognize the distinct possibility that the costs of Open Skies exploitation will exceed the expected value of the data.

Roughly $93.7 million in Defense Department funds was appropriated in fiscal years 1992 and 1993 for implementation of the Open Skies Treaty. The

bulk of this figure is for the modification of three aircraft and the short-term lease and modification of a fourth. The Department of Defense has budgeted over $120 million through fiscal year 1997 to continue implementation of the treaty.

These projected costs are based upon planning assumptions that include nine observation flights the first year, increasing to 15 flights in fiscal year 1995 and fiscal year 1996, and some higher figure in later years. The assumptions also see overflights of U.S. territory rising to 15 flights in fiscal year 1995 and fiscal year 1996, and more thereafter. If those assumptions were relaxed to a level of no more than 15 flights in the out-years, then it might well be possible to forego one of the three observation aircraft, as well as the operations and maintenance costs of the extra flights. This could save $25 to $30 million in fiscal years 1996 and 1997 alone.

In light of the low expectations and high costs associated with this treaty, the committee recommended as follows:

After the first 1–2 years, the United States should not use its full active observation flight quota unless there is a clear likelihood of obtaining significant information through those flights. Unless an environmental sensing package is adopted under Open Skies, only two aircraft should be used for Open Skies flights after the transitional period.

The Armed Services Committee and the Foreign Relations Committee have made similar recommendations. I trust that the executive branch will take those recommendations seriously and work to minimize expenditures unless there is some truly tangible benefit to be gained.

Mr. President, while the committee did not take a stand regarding the wisdom of ratifying this treaty, clearly many of our concerns have been addressed to some degree. Thus, there will be a prior notice provision for decisions to permit new or improved sensors; there is an ongoing interagency process to deal with the risk of compromise to proprietary nondefense information; there will likely be proposed a narrow FOIA exemption for Open Skies data; and all the concerned committees of the Senate agree that implementation costs should be reduced by having fewer observation flights than we can demand under the treaty, unless we expect to get something useful from those flights.

From the Intelligence Committee's standpoint, therefore, the process has been a useful one. We hope that our work and recommendations will also prove useful to our colleagues in the Senate.

Mr. President, I ask unanimous consent that the text of a letter from the National Security Advisor be reprinted after my remarks in the RECORD.

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

THE WHITE HOUSE,
*Washington, May 12, 1993.*

Hon. DENNIS DECONCINI,
*Chairman, Select Committee on Intelligence, United States Senate, Washington, DC.*

DEAR MR. CHAIRMAN: During the March 4, 1993 SSCI hearing on the Treaty on Open Skies, and in a subsequent question for the record, Committee members raised the question how the U.S. government could help protect proprietary information of private, non-defense companies which might be disclosed through Open Skies observation flights.

This is to inform you that since the hearing the Executive Branch has taken additional steps to address this question. An interagency working group has begun to explore steps that might be taken to notify private, non-defense companies about the Open Skies Treaty and possible flights over the United States. The Commerce Department, with other appropriate agencies, will work to devise options for such notification.

The Executive Branch will (a) develop a strategy for notifying private, non-defense companies of the nature and extent of Open Skies missions; (b) consider how private, non-defense companies might be able to take advantage of the DTIRP system managed by the Department of Defense and; (c) explore any other possible low-cost means of better informing private, non-defense companies whose proprietary information might be disclosed through Open Skies missions, about the Treaty.

I hope that this supplementary information will be useful to the Committee as it prepares its final report on the Open Skies Treaty. I have sent a similar letter to Senator Warner.

Sincerely,

ANTHONY LAKE,
*Assistant to the President for National Security Affairs.*

Mr. FORD. Madam President, I ask for a division vote.

The PRESIDING OFFICER. A division is requested.

Senators in favor of the resolution of ratification stand and be counted. (After a pause.) Those opposed to the resolution of ratification, stand and be counted.

So it was

*Resolved (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of the Treaty on Open Skies signed at Helsinki on March 24, 1992, including annexes on Quotas and Maximum Flight Distances Information on Sensors, with an Appendix on Annotation of Data Collected During an Observation Flight; Information on Observation Aircraft; Certification of Observation Aircraft and Sensors, with an Appendix on methodologies for the Verification of the Performance of Sensors Installed on an Observation Aircraft; Procedures for Arrivals and Departures, with an Appendix on Designation of Sites; Pre-Flight Inspections and Demonstration Flights; Flight Monitors, Flight Representatives, and Representatives; Co-ordination of Planned Observation Flights; Information on Airspace and Flights in Hazardous Airspace; Montreux Convention; Information on Film Processors, Duplicators and Photographic Films, and Procedures for Monitoring the Processing of Photographic Film; and Open Skies Consultative Commission (all transmitted within Treaty Doc. 102–37); all such documents being integral parts of and collectively referred to as the "Open Skies Treaty", subject to the following:

(a) CONDITIONS.—The Senate's advice and consent to the ratification of the Open Skies Treaty is subject to the following conditions, which shall be binding upon the President:

(1) CHANGES TO SENSORS.—In the event that a State Party or States Parties seeks to obtain agreement, within the framework of the Open Skies Consultative Commission in accordance with Article IV, paragraph 3, and Article X, paragraph 5, of the Open Skies Treaty, to the introduction of additional categories of sensors, or to additions to the capabilities of existing sensors provided for pursuant to the Treaty, as an improvement to the viability and effectiveness of the Treaty not requiring an amendment to the Treaty, and the United States intends to agree to such proposed improvement, the President—

(A) shall provide prompt notification to the President of the Senate of each such proposed improvement, to include an analysis of the legal, cost, and national security implications of such proposed improvement; and

(B) shall not provide United States agreement to each such proposed improvement, or otherwise permit adoption of each such proposed improvement by consensus within the framework of the Open skies Consultative Commission, until at least 30 days have elapsed from the date of notification to the Senate of the intention of the President to agree to such proposed improvement.

(2) NUMBER OF UNITED STATES OBSERVATION AIRCRAFT.—The Senate finds that United States interests may not require the utilization of the full quota of allowed observation flights or the procurement of more than one or two observation aircraft. Accordingly, within 60 days following completion of the first year after entry into force of the Open Skies Treaty, the President shall submit to the Senate a report setting forth:

(A) an analysis of the first year of operation of the Treaty, highlighting any ambiguities, differences, or problems that arose in the course of implementation, as well as any benefits that have accrued to the United States by its participation in the Open Skies regime;

(B) a determination of the estimated number of observation flights to be conducted annually by the United States for the duration of the Treaty; and

(C) an assessment of the number of United States observation aircraft required to carry out the observation flights described in subparagraph (B) above, taking into consideration the potential of non-United States aircraft.

(b) DECLARATION.—The Senate's advice and consent to ratification of the Open Skies Treaty is subject to the following declaration, which expresses the intent of the Senate:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionaly based principles of treaty interpretation set forth in Condition (1) of the Resolution of Ratification with respect to the INF Treaty, approved by the Senate on May 27, 1988.

## EXECUTIVE CALENDAR

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the following nominations:

Calendar Nos. 315, 319, 327, 328, 329, 330, 331, 332, 333, 334, and 335.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the

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RECORD as if read; that upon the confirmation, the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

DEPARTMENT OF JUSTICE

Louis J. Freeh, of New York, to be Director of the Federal Bureau of Investigation for the term of 10 years.

DEPARTMENT OF TRANSPORTATION

David Russell Hinson, of Illinois, to be Administrator of the Federal Aviation Administration.

DEPARTMENT OF STATE

John T. Sprott, of Virginia, a career member of the Senior Executive Service, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Swaziland.

Roland Karl Kuchel, of Florida, a career member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Zambia.

Walter C. Carrington, of Maryland, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal Republic of Nigeria.

Aurelia Erskine Brazeal, of Georgia, a career member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Kenya.

John S. Davison, of Maryland, a career member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Niger.

James Robert Jones, of Oklahoma, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mexico.

Donald J. McConnell, of Ohio, a career member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Burkina Faso.

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

J. Joseph Grandmaison, of New Hampshire, to be Director of the Trade and Development Agency, vice Jose E. Martinez, resigned.

THE JUDICIARY

Russell F. Canan, of the District of Columbia, to be an associate judge of the Superior Court of the District of Columbia for the term of 15 years.

STATEMENT ON THE NOMINATION OF LOUIS J. FREEH

Mr. BIDEN. Mr. President, I am pleased to speak in support of the nomination of Louis Freeh to be the Director of the Federal Bureau of Investigation. He is an individual of great character, who has proven himself as a prosecutor, a Federal judge, and an agent of the FBI.

His personal qualities and experience will serve him well as Director of the Nation's chief law enforcement agency.

Of great importance to me was Judge Freeh's commitment to maintain the independence of the FBI.

He testified that he sought and received assurances from the President and the Attorney General that the FBI would remain free from political interference.

Judge Freeh also indicated his commitment to respecting individual rights and the Constitution, and promised that the FBI would not lose sight of these principles while pursuing its law enforcement goals.

Judge Freeh's integrity, independence, commitment to the law, and extensive experience in law enforcement will serve him well as Director of the Federal Bureau of Investigation.

I strongly urge all Members of the Senate to support his nomination.

STATEMENT ON THE NOMINATION OF JUDGE LOUIS FREEH TO BE DIRECTOR OF FBI

Mr. LAUTENBERG. Madam President, I rise in strong and enthusiastic support of the nomination of Judge Louis Freeh to be the next Director of the Federal Bureau of Investigation.

Judge Freeh has the personal and professional qualities necessary to become a truly outstanding Director. His background as a successful FBI agent, prosecutor, and judge provides a broad-based perspective so important for an FBI Director. It has given him a thorough understanding of the responsibilities and the limits of the FBI's power and mission.

But his qualifications for the job go beyond his résumé. His integrity and character will enable him to handle the difficult challenges of his demanding job with skill, tact, and persistence. And, as his service as an FBI agent demonstrates, he is genuinely committed to the mission of the Bureau and knowledgeable about its operations. Of course, the fact that he hails from my home State of New Jersey is an added qualification that only increases my certainty of his success.

Filling the position of FBI Director is no small matter. The work of the FBI is critical to the safety and well-being of Americans in their homes, their streets, their workplaces, and their communities. The FBI plays a key role in protecting Americans against terrorism, violence, and crime.

The Bureau has won the respect and praise of Americans across our land because of its leadership in protecting Americans from these threats. In New Jersey, the local FBI office in Newark, headed by Jim Esposito, has done a superlative job in dealing with the recent terrorist threats in our area. And for many years, the FBI has worked hard to earn its well-deserved reputation for excellence.

Judge Louis Freeh personifies that reputation of excellence. His whole life has been characterized by achievement, commitment to excellence, determination to produce results, and dedication to his community. I predict that these qualifies will help him take on the daunting challenges that face the FBI today and in the future.

From the threats of international terrorism, to drug dealing, gangs, and growing violence throughout our Nation, the safety of all Americans is at risk every day. Meeting this challenge, while remaining true to America's ideals of individual freedom, will not be easy.

Nor will it be easy to deal with some of the management issues that will confront the new Director, such as ensuring fair treatment for all employees, regardless of gender or color.

The challenges are real and difficult. But I know of no person who is better qualified for the job than Judge Louis Freeh.

I want to congratulate President Clinton on his selection. And on behalf of a lot of very proud New Jerseyans, I would urge the Senate to approve Judge Louis Freeh to be the next Director of the FBI.

STATEMENT ON THE NOMINATION OF LOUIS J. FREEH TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

Mr. HATCH. Madam President, I will vote to confirm Judge Louis J. Freeh to be the Director of the Federal Bureau of Investigation. Judge Freeh brings to his position significant experience in law enforcement and an impeccable reputation.

Before being appointed to the Federal bench by President Bush in 1991, he spent nearly 10 years as an assistant U.S. attorney in New York prosecuting complex organized crime and drug trafficking cases. Judge Freeh will bring to the job of Director the investigative instincts of an FBI agent, the prosecutorial savvy of an assistant U.S. attorney, and the temperament of a Federal judge. Standing alone, each of these qualities might be sufficient to confirm a nominee for Director. Taken together, they demonstrate why Judge Freeh is so qualified for this position.

Judge Freeh will take over the world's preeminent law enforcement agency. He will need to lead the FBI in meeting new challenges. Additional resources will have to be committed to the ever emerging threat of domestic terrorism. Health care fraud, telemarketing fraud, and other emerging corruption will command greater attention in coming years. I believe Judge Freeh is well qualified to take on these challenges.

Judge Freeh also recognizes the need to enhance the FBI's efforts in rural States like my home State of Utah. All too often, Federal agencies here in Washington fail to respond adequately to the rising crime problem in rural America. Judge Freeh has pledged to work to insure that the crime problems of rural states like Utah are adequately addressed.

Finally, I want to comment on the politicization of the FBI. The FBI is one of our Nation's most cherished institutions. That is why it is very important that the FBI be insulated from

even the slightest appearance of politics. Judge Freeh has committed to insuring that the FBI will remain neutral on all political issues.

For these reasons, I urge my colleagues to support the nomination of Louis Freeh.

STATEMENT ON THE NOMINATION OF JUDGE LOUIS J. FREEH TO BE DIRECTOR OF THE FBI

Mr. PRESSLER. Madam President, I rise today to speak on the President's nomination of Judge Louis J. Freeh to be the next Director of the FBI. Judge Freeh's record is most impressive. He has accomplished a great deal in his career to date. Five years with the FBI as an agent, 10 years as an assistant U.S. attorney, and the last 2 as a Federal judge, appointed by President Bush. It is a commendable record in itself, and particularly well suited for the position he has been nominated.

The FBI is the principal investigative agency of the U.S. Government. It is charged with investigating all federal crimes and crimes occurring on federal properties. In my State of South Dakota, the FBI operates in the usual areas—investigating bank robberies, embezzlements, interstate flights to avoid prosecution, and the like. But in my state, the FBI also has the additional responsibility of investigating crimes on the Indian reservations. With seven reservations in my State, covering vast amounts of territory, and populated by tens of thousands, the activity of the FBI on the reservations is of great interest to me.

Government's foremost responsibility is to protect its citizens from the life-threatening, aggressive, and violent actions of those operating outside the bounds of international and domestic law. Traditionally, the military has protected Americans from enemy nations that sought to deprive Americans of life and property. But in today's world, the threat of foreign government aggression has dissipated. The threat of international and domestic terrorists now dominates the agenda of our national security apparatus. I see the FBI playing a key role in the years ahead in eradicating terrorist threats to the security of American people, both at home and abroad.

I believe Judge Freeh is up to the challenge. In the testimony he presented at his confirmation hearing, he demonstrated fresh and vigorous ideas for preparing the FBI for the challenges facing it and law enforcement in the future. I look forward to seeing the FBI, under Judge Freeh's leadership, serving the desire of all Americans to be free from fear of violent crime, whether perpetrated by home-grown thugs or foreign-trained terrorists. Judge Freeh has a great challenge ahead of him. I am convinced he is up to it.

Judge Freeh is a remarkable nominee. The American people are fortunate to have this man heading the Nation's foremost law enforcement agency. We owe to him and his family more thanks than we can ever adequately extend for the service and sacrifice they are about to perform. I am proud to support this confirmation. I wish Judge Freeh and his family all the best.

STATEMENT ON THE NOMINATION OF JUDGE LOUIS FREEH TO SERVE AS DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

Mr. THURMOND. Madam President we are now considering the nomination of Judge Louis Freeh to serve as Director of the FBI.

I recall favorably when Judge Freeh was before this committee as President Bush's nomination to serve as U.S. district court judge for the Southern District of New York. He is to be commended for moving from the security of a life-tenured position to serve his country in fighting crime.

The responsibility facing Judge Freeh is immense. As Director of the FBI, he will be in charge of this Nation's premier law enforcement agency with a budget of over $2 billion.

As a former FBI agent, Judge Freeh will bring a keen insight to the operation of the Bureau and will be uniquely positioned to respond to concerns of agents in the field. Additionally, Judge Freeh enjoyed a successful career as a Federal prosecutor where he specialized in organized crime. His credentials for this important position are impressive and will serve him well as Director of the FBI. I have great confidence that he will lead the FBI in a capable and aggressive manner.

The challenges posed by the criminal element in this country demand a vigilant FBI committed to maintaining law and order. It is imperative that the FBI cooperate with State and local law enforcement in our work to combat crime. Additionally, the FBI must work in concert with other Federal law enforcement agencies to protect the law-abiding citizens from sinister criminal activity.

Here in the Congress, we must commit to providing the FBI with the resources it needs to meet the challenges of terrorism, violent crime and white collar crime.

Judge Freeh will have a formidable task as Director of the FBI. He brings with him a proven track record of dedication, tenacity, and a sense of responsibility to get the job done.

Madam President, I am pleased to support Judge Freeh and I look forward to working with him in the years ahead.

STATEMENT ON THE NOMINATION OF JUDGE LOUIS FREEH TO BE DIRECTOR OF FBI

Mr. DOLE. Madam President, I will vote to confirm Judge Louis Freeh as the next Director of the Federal Bureau of Investigation.

This is a crucial time for the FBI, as the chief threat to the security of the United States is no longer an expansionist Soviet Union, but the escalating levels of violence in our cities and towns and the threat posed by international terrorism. As we head into the 21st century, the FBI must be prepared to confront these challenges.

To be effective, the FBI must also have the confidence to the American people. Charges that the White House improperly used the FBI in the so-called Travelgate affair raise troubling questions about the FBI's independence.

And for the first time in history, an FBI Director was removed by a President prior to the completion of his 10-year term. The reason given for the dismissal was also novel in the annals of the FBI history—an alleged "deficiency in judgment."

Now, Judge Sessions may have shown some poor judgment along the way. But the independence of the FBI suffers when its Director can be removed simply by alleging "deficiency in judgment." It is my hope that this precedent will remain simply that—precedent—and will not be repeated in future administrations.

No doubt about it, the American people have a right to expect that their top law enforcement agencies will make decisions free of political considerations.

I am pleased that Judge Freeh himself has pledged his commitment to ensure that the FBI is immune to political influence. And he has specifically pledged to me his willingness to cooperate fully with the General Accounting Office's own travelgate investigation.

As a former FBI agent, an assistant U.S. attorney, and a Federal district court judge, Judge Freeh is certainly qualified to take over the reins of the FBI.

His experience as a prosecutor, spearheading the famous "Pizza Connection" case and leading the investigation into the mail-bombing murders of Judge Robert Vance and N.A.A.C.P official Robbie Robinsons, should serve him well. His record suggests that he is someone who knows how to get things done, working with criminal investigators and prosecutors at all levels of Government.

With his background as a field agent, I suspect that Judge Freeh will also command the respect of the FBI rank-and-file, which is essential to any FBI director who desires a successful tenure.

Madam President, I wish Judge Freeh the very best as he assumes the considerable responsibility of heading up our Nation's top law enforcement agency.

STATEMENT ON THE NOMINATION OF LOUIS FREEH AS FBI DIRECTOR

Mr. D'AMATO. Madam President, I rise today to enthusiastically support the nomination of Louis J. Freeh to become Director of the Federal Bureau of Investigation. I support this nominee with particular pleasure: not only is

Louis Freeh extremely well-qualified to serve as head of the FBI, but for his entire career he has used his exceptional abilities to enforce the laws of the United States vigorously and fairly.

Few citizens can match Louis Freeh's record of public service. In 1975, as a young lawyer, he joined the FBI. Five years later, he received its special commendation for his investigative work in cases involving organized crime and labor racketeering. In 1981, he was assigned to assist Senator NUNN and former Senator Rudman in preparation for hearings into labor racketeering conducted by the Permanent Investigation Subcommittee. Those hearings led to significant amendments to the United States Code.

Also in 1981, Louis Freeh became an assistant U.S. attorney for the Southern District of New York, where he served three U.S. attorneys as chief of the organized crime unit, deputy U.S. attorney, and associate U.S. attorney. In 1983, he was appointed the national coordinating prosecutor for the so-called "Pizza Connection Case." That appointment culminated 4 years later in the successful prosecution of 18 members of the Sicilian La Cosa Nostra. The trial, which lasted 17 months—the longest criminal jury trial in the history of the Southern District—put an end to an international drug cartel that generated more than $60 million from the sale of heroin and cocaine in this country. Recognizing Louis Freeh's unparalleled dedication and genius in case management, the Department of Justice awarded him the John Marshall Award for Preparation of Litigation in 1984, and the Attorney General's Distinguished Service Award in 1987.

Louis Freeh successfully investigated the mail-bombing deaths of Judge Robert Vance and Savannah, GA attorney Robert Robinson and subsequently obtained convictions in those murders; even though when he was assigned them, the cases had languished. Since 1991, he has served as U.S. district court judge in the Southern District of New York, where, had he not been picked by President Clinton to be Director of the FBI, I believe he would have led an exemplary career.

Judge Louis Freeh, quite simply, is a person of great judgement, wisdom and integrity. It is for these reasons that I am pleased and privileged to support his nomination to be the next Director of the Federal Bureau of Investigation.

STATEMENT ON THE NOMINATION OF DAVID R. HINSON

Mr. HOLLINGS. Madam President, today the Senate is considering the nomination of David R. Hinson to the important post of Administrator of the Federal Aviation Administration [FAA]. Much work needs to be done concerning the future of our aviation system, and the FAA Administrator will have a challenging responsibility in this regard.

The FAA Administrator has two primary responsibilities: to ensure a safe aviation system and to spend the taxpayer's dollars wisely. The air transportation system was constructed with taxpayer dollars, and further expenditures must build appropriately upon those initial investments. Furthermore, Federal funds should be used for those purposes for which they were intended. Over the years, the aviation trust fund has had a significant surplus, which now amounts to about $4.4 billion. These funds are collected for specific aviation uses and should be expended accordingly.

As the Nation's top aviation safety official, the FAA Administrator is responsible for ensuring that the system is safe and efficient. There is no higher priority than the safety of the traveling public. The FAA Administrator must work closely with the National Transportation Safety Board, the general and commercial aviation communities, labor, and airports to ensure that this goal is met.

Many promises have been made by former FAA Administrators. I have heard grandiose plans to modernize the air traffic control system, among others, but all too often those promises have not been kept. As an example, the air traffic control modernization effort continues to be over budget and behind schedule. Important projects like this one cannot continue to be mismanaged. We have an obligation to ensure the most efficient aviation system possible.

If confirmed, Mr. Hinson will face a difficult task, but I am convinced he has the experience needed to move the FAA into the next century. He has worked in the aviation industry for a long time, both as a pilot and as an airline and aircraft manufacturing executive. Mr. Hinson has been involved in the aviation industry for 37 years.

He was most recently executive vice president for marketing and business development of McDonnell Douglas. Prior to this position, he served as chairman and chief executive officer of Midway Airlines from 1985 to 1991. From 1973 to 1985, he was President and CEO of Hinson-Mennella, Inc., a firm based in Portland, OR, that managed various aviation-related businesses.

Mr. Hinson also served in the U.S. Navy as a carrier pilot from 1954 to 1959. For the next 14 years after that, he was employed by two U.S. airlines as a pilot and flight instructor.

Mr. President, Mr. Hinson's qualifications speak for themselves. I urge my colleagues to support this nominee.

STATEMENT ON THE NOMINATION OF DAVID HINSON

Mr. PRESSLER. Madam President, I rise today to comment on the Senate's confirmation of David Hinson to be Administrator of the Federal Aviation Administration [FAA]. As my colleagues know, over the past months. I have been voicing my deep concerns with Federal bureaucracy and its devastating effect on the safety of our Nation's transportation industry. In my view, lack of Federal responsiveness was a contributing factor in the April 19 plane crash that claimed the lives of South Dakota's Governor and seven prominent citizens. Now is the time to tackle bureaucratic ineffectiveness.

In my effort to bring needed attention to the issue of transportation safety—particularly the issue of aviation safety—I have been accused of political grandstanding. Such accusations do not—and will not—affect my relentless mission. In fact, such statements only fuel my fire. I will not apologize for demanding for a Federal Government that vigorously enforces aviation safety. I will continue fighting for the safety of our traveling public.

I believe it is imperative that Presidential appointees—Democratic or Republican—who will influence our Nation's transportation agenda, be held to the highest standards of transportation safety. These provisions should be filled by individuals with proven expertise, proven qualifications, and proven leadership in the transportation field. David Hinson is one of those individuals.

I have conducted exhaustive and thorough examination of David Hinson's qualifications for Administrator of the FAA. Prior to Mr. Hinson's nomination hearing before the Senate Commerce, Science, and Transportation Committee, I asked him to respond to a number of my questions and concerns—particularly in the area of aviation safety. I had the opportunity to meet with Mr. Hinson in my office to discuss his qualifications and views on aviation issues. I was impressed with Mr. Hinson's firsthand knowledge of the complexities of aviation, as both an industry and a mode of transportation.

At this nomination hearing, I questioned Mr. Hinson extensively about the FAA's responsiveness to safety concerns, especially toward the National Transportation Safety Board [NTSB]. I also asked Mr. Hinson what he thought of the FAA's regulatory process. Frankly, I was not satisfied with several of Mr. Hinson's responses during the hearing. Therefore, I submitted additional post-hearing questions for Mr. Hinson so that I could understand more fully his position and views with respect to the FAA.

Also, during the hearing, I asked Mr. Hinson a number of questions that required further review before he could provide an adequate response. I certainly respected Mr. Hinson's need for additional time to respond to my hearing questions and appreciated his written responses.

I have reviewed carefully Mr. Hinson's stated professional experiences and qualifications for the position of FAA Administrator. I also have reviewed his oral and written responses to the numerous questions I have raised, and I believe he more than demonstrated his commitment to the safety of the air traveling public. Indeed, Mr. Hinson stated that he recognizes the importance of timely FAA action on safety initiatives.

If confirmed, Mr. Hinson pledged to consider carefully methods that would improve the FAA's responsiveness, particularly to NTSB recommendations. Finally, Mr. Hinson pledged to seek creative solutions to streamline the FAA's rulemaking process.

I am confident that Mr. Hinson has the needed leadership skills—as well as the professional expertise—to serve effectively as the next FAA Administrator.

Let me reiterate that I am troubled deeply by previous agency gridlock and lack of responsiveness to safety concerns. Strong leadership is needed at the FAA. I am encouraged that Mr. Hinson is committed to providing that leadership. I am generally satisfied that Mr. Hinson will do his utmost to ensure our skies and our aircraft are safe.

David Hinson is about to meet one of the challenges of a lifetime. As ranking member of the Senate Aviation Subcommittee, I stand ready to work with Mr. Hinson to assist him in his efforts to promote a safe and sound aviation industry. At the same time, I will hold Mr. Hinson to carry out his pledges and to make aviation safety a top FAA priority. I extend to him my support and my best wishes for continued professional success.

STATEMENT ON THE NOMINATION OF JAMES R. JONES

Mr. BOREN. Madam President, I rise today to support the nomination of James R. Jones to the post of Ambassador to Mexico. His expertise and knowledge will serve this country well as we define our new economic relationship with our neighbor to the South. His strong support for the North American Free-Trade Agreement will be crucial to opening doors in this enormous new market for our goods and services. he is committed to ensuring that Americans are able to obtain accurate information about the economic and trade effects of this agreement as we continue to debate its ratification.

Jim Jones will also be sensitive in handling the inherent difficulties in our close relationship. For example, in his confirmation hearing, he addressed the environmental hazards along the 2,000-mile border separating our two countries. He is convinced that we are committed to solving this pollution problem and will play a role in implementing a workable and effective solution.

As the chairman of the American Stock Exchange and chairman of the American Business Conference, he has become knowledgeable about and been impressed with the economic reforms that have recently occurred in Mexico and will encourage the expansion of these crucial changes. His expertise in trade, honed through his work with the Overseas Development Council and the United States-Japan Leadership Council, will serve him well in negotiations. But his vision will be broader than the economic and trade issues involving our countries.

Jim Jones served the State of Oklahoma with ability and distinction as its Representative from the First Congressional District for 14 years. From 1981 through 1985, he was the Chairman of the House Budget Committee; and he served for over 10 years as a member of the Ways and Means Committee. In these posts he demonstrated a farsighted grasp of economic issues. If his advice about ways to bring the deficit under control had been heeded, we would be in a much stronger position as a nation today.

Jim Jones was one of the most able and effective Members of Congress with whom I have had the opportunity to work. The President could not have appointed a better person to be Ambassador of Mexico at this crucial time. I wholeheartedly support this nomination.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

## S. CON. RES. 38—REPRINTING OF "U.S. CAPITOL: A BRIEF ARCHITECTURAL HISTORY"; S. CON. RES. 39—PRINTING OF "HISTORY OF U.S. CAPITOL"; S. CON. RES. 40—PRINTING OF "CONSTANTINO BRUMIDI: ARTIST OF CAPITOL"; S. CON. RES. 41—PRINTING OF "THE CORNERSTONES OF U.S. CAPITOL"

Mr. FORD. Madam President, I send to the desk four concurrent resolutions on behalf of the majority leader and Republican leader, and I ask unanimous consent that it be in order for the Senate to proceed to their immediate consideration, en bloc; that the concurrent resolutions be agreed to, the motion to reconsider laid upon the table, en bloc, and that the majority leader's statement and related documents be printed in the RECORD at the appropriate place.

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

So the concurrent resolutions (S. Con. Res. 38, 39, 40, and 41) were considered and agreed to.

Mr. MITCHELL. Madam President, the purpose of these routine concurrent resolutions is to authorize the printing of four important publications prepared under the auspices of the Office of the Architect of the Capitol in cooperation with the U.S. Capitol Preservation Commission and the Commission on the Bicentennial of the U.S. Capitol.

Because September 1993, marks the 200th anniversary of the laying of the first cornerstone of the Capitol, it would be helpful for the Senate to agree to these resolutions prior to the August recess.

The titles of these publications are: "The U.S. Capitol: A Brief Architectural History"; "Glenn Brown's History of the U.S. Capitol"; "Constantino Brumidi: Artist of the Capitol"; and "The Cornerstones of the U.S. Capitol."

Three of these publications focus on the architectural history of the Capitol, while the fourth examines the life and work of the artist of the Capitol, Constantino Brumidi.

Among the three books that examine the architectural history of the building, one is a reprint of a popular brief history of the Capitol, the second is an updated, annotated version of the complete 2-volume treatise on the Capitol published in 1900 and 1983, and the third is a brief study of the architectural phases of the Capitol begun with each of its cornerstones.

Madam President, I ask unanimous consent that three explanatory statements prepared by the Office of the Architect of the Capitol on these publications be printed in the CONGRESSIONAL RECORD.

There being no objection, the statements were ordered to be printed in the RECORD as follows:

GLENN BROWN'S "HISTORY OF THE U.S. CAPITOL"

To date, the most important publication on the United States Capitol is the one written by Glenn Brown and published by the Government Printing Office in two volumes in 1900 and 1903. The book still provides important information on the development of the Capitol and is a visual record of the building and the art collection at the turn of the century. The book set a new standard for architectural history and was well received in this country as well as abroad. The book also played a role in the revival of Pierre Charles L'Enfant's plan for the city of Washington through the 1901 McMillan plan, and thus it had significant effect on the shape the city took in the twentieth century. The History was reprinted in a smaller one-volume facsimile version in 1970, but this book is no longer in print.

The new annotated history will provide historical context and contemporary perspective on Glenn Brown and his philosophy and achievements in the introductory biographical profile. The text will be annotated to correct errors, to identify issues that are controversial, and to point readers to both newly discovered documentation and recent sources. The volume will also include an updated bibliography. The publication will be illustrated with high-quality photographs, based on Glenn Brown's selection. Color will be introduced where most important to show architectural renderings and paintings.

The publication will be of interest to the Congress, the public, libraries, and scholars interested in the U.S. Capitol and its history. The publication is not intended to substitute for the new history of the Capitol that is being planned as a long-term bicentennial project.

CONSTANTINO BRUMIDI: ARTIST OF THE CAPITOL

Constantino Brumidi, who described himself as the "artist of the Capitol," painted in the meeting place of the Congress between 1855 and 1880. He contributed greatly to the beauty and unique symbolic character of the Rotunda and many of the rooms and corridors in the wings. Since 1984, attention has been devoted to the conservation of many of his important frescoes and decorative murals. The strength of his forms and delicacy of his colors have been revealed by the removal of grime and unsightly overpaint, leading to a new appreciation of his mastery as an artist. The fresco conservation program was begun with the areas most in need of preservation and is on-going. The difference made by the cleaning and restoration is as dramatic as that seen on the Sistine Chapel ceiling. Because of this opportunity to see Brumidi's work as he intended for the first time in many decades and because of the importance of his work in the Capitol, it seems appropriate to focus on his contributions in this bicentennial period.

There is a clear need for a publication on Brumidi's work in the Capitol. Myrtle Cheney Murdock published the first book on Brumidi in 1950, which was an important pioneering effort. While the information she gathered is still useful, her research was incomplete and lacking art historical analysis or perspective. Compiling a full chronology and explaining the complete story of Brumidi's work in the Capitol have required new and comprehensive research. The new publication being prepared by the Office of the Architect of the Capitol will include a central essay on Brumidi's work at the Capitol supplemented by essays on the architectural context, his Italian background, and his iconography. New information and photographs resulting from the conservation program will also be highlighted. Contributors include the Curator and Architectural Historian for the Architect of the Capitol, the conservators of the frieze and canopy in the Rotunda, and two distinguished outside scholars.

The book is being written to be comprehensible to the general public, appropriate for distribution by Members of Congress and sale to the public through the United States Capitol Historical Society and the Government Printing Office. It will also be of interest to art and museum bookstores. It is being written in clear language and will present striking photographic comparisons and diagrams. Enough specialized and technical information will be included to make the book a valuable resource for art historians, preservationists, and conservators.

The proposed format is a book manageable in size for visitors to the Capitol to carry with them, 8 x 11 or 7 x 10 inches, and approximately 175 pages in length. Half of the space would be devoted to photographs and approximately 100 illustrations, most of them in color. Captions will provide detailed information about each subject.

CORNERSTONES OF THE U.S. CAPITOL

The history of the Capitol's cornerstones will be presented in a size and format similar to The United States Capitol: A Brief Architectural History. It will focus on the architectural evolution of the Capitol through its four cornerstones as part of the commemoration of the bicentennial of the building.

The first cornerstone was laid by President George Washington on September 18, 1793. Workmen laid the second cornerstone without ceremony on August 14, 1818, four years after the Capitol was damaged by the fire set by invading British troops. President Millard Fillmore laid the cornerstone of the Capitol extension on July 4, 1851. One hundred and seven years later, Dwight D. Eisenhower laid the cornerstone of the East Front Extension.

Through an examination of the architectural phases begun by each cornerstone, the public will gain an appreciation of the Capitol's two hundred years of history.

## CONVEYANCE OF LAND TO COLUMBIA HOSPITAL FOR WOMEN

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar 184, H.R. 490, a bill to provide for the conveyance of land to Columbia Hospital for Women, that the bill be deemed read a third time, passed and the motion to reconsider be laid upon the table; that any statements relating to this measure appear in the RECORD as if given.

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

So, the bill (H.R. 490) was deemed read a third time and passed.

Mr. THURMOND. Madam President, I am pleased that the Senate is considering H.R. 490, a bill to authorize the sale of property located in Washington, DC, from the Federal Government to the Columbia Hospital for Women. This legislation is identical to S. 91, a bill I introduced earlier this year which is cosponsored by Senators FEINSTEIN, HEFLIN, DOMENICI, CONRAD, BUMPERS, MOSELEY-BRAUN, SIMON, HATCH, MIKULSKI, and DURENBERGER.

This property will be used for the construction of a facility to house the National Women's Health Resource Center. The mission of the resource center is to provide information to professionals and consumers about women's health issues, including menopause, hormone replacement therapy, breast cancer, cardiovascular disease, osteoporosis, and domestic violence. When constructed, the resource center will be a multidisciplinary facility, emphasizing educational and clinical research facilities, and including space for specialty clinical services, such as the Betty Ford Comprehensive Breast Center and the Incontinence Center. This will be the only center in the Nation dedicated solely to women's health services.

Madam President, there is a critical need for greater research of women's health concerns. American women need this center to identify health problems, and to promote education and research of these problems. I am very supportive of women's health issues, and I am pleased that the Senate is today acting on this measure.

## WORLD CAPITAL OF AEROBATICS

Mr. FORD. Madam President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of House Joint Resolution 110, regarding the "World Capital of Aerobatics," and that the Senate then proceed to its immediate consideration; that the joint resolution be deemed read a third time, passed, and the motion to reconsider be laid upon the table, and the preamble agreed to; that any statements relating to this measure appear in the RECORD as if given.

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

So, the joint resolution (H.J. Res. 110) was deemed read a third time and passed.

## MENOMINEES INDIANS

Mr. FORD. Madam President, I ask unanimous consent that the Judiciary Committee be discharged, en bloc, from further consideration of S. 1335 and Senate Resolution 137, both relating to the Menominees Indians, and that the Senate then proceed, en bloc, to their immediate consideration; that the bill be deemed read three times, and passed, that the resolution be agreed to, and the motion to reconsider laid upon the table, en bloc, that the consideration of these items appear individually in the RECORD and any statements related thereto appear in the appropriate place.

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

So, the bill (S. 1335) was deemed read three times and passed, as follows:

S. 1335

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. The Secretary of the Treasury is authorized and directed to pay to the Menominee Indian Tribe of Wisconsin, out of any money in the Treasury of the United States not otherwise appropriated, a sum equal to the damages sustained by the Menominee Indian Tribe of Wisconsin by reason of—

(a) the enactment and implementation of the Act of June 17, 1954 (68 Stat. 250), as amended, and

(b) the mismanagement by the United States of Menominee assets held in trust by the United States prior to April 30, 1961, the effective date of termination of Federal supervision of the Menominee Indian Tribe of Wisconsin.

SEC. 2. Payment of the sum referred to in section 1 shall be in full satisfaction of any claims that the Menominee Indian Tribe of Wisconsin may have against the United States with respect to the damages referred to in such section.

So, the resolution (S. Res. 137) was agreed to, as follows:

S. RES. 137

*Resolved,* That S. 1335 entitled "A bill for the relief of the Menominee Indian Tribe of Wisconsin" now pending in the Senate, together with all the accompanying papers, is

referred to the Chief Judge of the United States Claims Court. The Chief Judge shall proceed according to the provisions of sections 1492 and 2509 of title 28, United States Code, and report back to the Senate, at the earliest practicable date, providing such findings of fact and conclusions that are sufficient to inform the Congress of the nature, extent, and character of the damages referred to in such bill as a legal or equitable claim against the United States or a gratuity, and the amount, if any, legally or equitably due from the United States to the Menominee Indian Tribe of Wisconsin by reason of such damages.

## THE CATAWBA TRIBE OF SOUTH CAROLINA

Mr. FORD. Madam President, I now ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 182, S. 1156, relating to the Catawba Tribe of South Carolina.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1156) to provide for the settlement of land claims of the Catawba Tribe of Indians in the State of South Carolina and the Restoration of the Federal trust relationship with the Tribe, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to the consideration of the bill.

Mr. HOLLINGS. Madam President, I rise today to thank my friend and colleague, Senator INOUYE, along with his able staff, for all their hard work in prompting passage of S. 1156. It is my firm belief that Senate passage of this legislation puts us one step closer to settling this dispute and ending the threat of over 67,000 individual suits against landowners in South Carolina.

Among the most important issues negotiated in this bill were the provisions concerning the creation of an expanded reservation. Like other provisions of the settlement agreement and this bill, those provisions are the result of hard bargaining and are designed to accommodate the needs of the Catawbas and their neighbors in the surrounding community. To achieve this balance of the Catawbas' need for flexibility and their neighbors' need for certainty, we have set up a very precise mechanism for the purchase of lands to be added to the existing reservation.

This bill and the settlement agreement provide the maximum amount of flexibility in the acquisition of lands contiguous to the existing reservation. So long as the land being acquired is contiguous to the reservation and in a defined expansion zone, the Catawbas are free to select and acquire any land they wish, up to the maximum acreage provided in the settlement agreement.

The negotiators recognized that there might be obstacles in assembling a sufficient amount of land under those conditions, and built in some additional flexibility for the Catawbas, together with some additional protection for the surrounding community. If the area set aside as the primary area for expansion did not yield enough land, the Catawbas could move to a second area after securing the approvals established by the agreement. If they cannot acquire sufficient contiguous parcels, they have the flexibility to acquire noncontiguous parcels under specified procedures and subject to certain approval provisions. In short, the bargain reached was to provide the Catawbas with additional flexibility in the assembly of their reservation, but to involve the surrounding community in the decisionmaking if the Catawbas elect to use that flexibility and depart from the goal of a contiguous reservation in the primary expansion zone. Chief Blue has repeatedly said that he expects that the Catawbas will work as partners with the surrounding community. This bill and the settlement agreement adopt that model in the acquisition of lands for the reservation.

The bill and settlement agreement also provide for flexibility and certainty in the acquisition and treatment of nonreservation lands. The Catawbas are permitted to use their trust funds to acquire as much nonreservation land as they wish. In return for that flexibility, the bill provides that those lands, however acquired, shall be owned in fee simple, and be subject to the same laws, regulations, and jurisdiction as other land in South Carolina. Thus, the bill permits only two types of lands. First, the land held in trust by the United States as the expanded reservation. Any other land not qualifying for reservation status will be held in fee simple and have all the jurisdictional attributes of any other land in South Carolina.

Mr. THURMOND. Madam President, I rise today in support of S. 1156, the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993. This bill addresses an urgent matter in my State. I am pleased the Senate is taking action on this measure in such a timely manner.

Mr. President, this bill is required to implement a settlement agreement which resolves a long-standing issue between the Catawba Indians, the State of South Carolina, and the Federal Government. That issue relates to the status of property ceded to the State by treaty in 1840. The tribe alleges that treaty was void under the Indian Non-Intercourse Act because it was never ratified by Congress. Today, Mr. President, thousands of residents in my State are threatened with lawsuits, with resulting clouds on title to real estate if the settlement agreement is not ratified.

This legislation will complete the ratification of the settlement agreement, which has already been approved by the State and the tribe. This bill restores the trust relationship between the United States and Catawbas. It authorizes the Federal share of the settlement funds and establishes the trust funds. It ratifies prior land transfers and extinguishes future claims by the tribe.

Madam President, I thank the Indian Affairs Committee for their expeditious handling of this legislation. Again, I am pleased the Senate is taking action on this matter of great importance to my State.

AMENDMENT NO. 774

(Purpose: To provide for tax treatment of income and transactions)

Mr. FORD. Madam President, I send an amendment to the desk on behalf of Senator MOYNIHAN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. MOYNIHAN proposes an amendment numbered 774.

Mr. FORD. 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:

After section 15 of the committee amendment insert the following new section.

**SEC. 15A. TAX TREATMENT OF INCOME AND TRANSACTIONS.**

Notwithstanding any provision of the State Act, Settlement Agreement or this Act (including any amendment made under section 15(f)) any income or transaction otherwise taxable shall remain taxable under the general principles of the Internal Revenue Code of 1986.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

So, the amendment (No. 774) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1156

*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 "Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993".

**SEC. 2. DECLARATION OF POLICY, CONGRESSIONAL FINDINGS AND PURPOSE.**

(a) FINDINGS.—The Congress declares and finds that:

(1) It is the policy of the United States to promote tribal self-determination and economic self-sufficiency and to support the resolution of disputes over historical claims through settlements mutually agreed to by Indian and non-Indian parties.

(2) There is pending before the United States District Court for the District of South Carolina a lawsuit disputing ownership of approximately 140,000 acres of land in the State of South Carolina and other rights of the Catawba Indian Tribe under Federal law.

(3) The Catawba Indian Tribe initiated a related lawsuit against the United States in the United States Court of Federal Claims seeking monetary damages.

(4) Some of the significant historical events which have led to the present situation include:

(A) In treaties with the Crown in 1760 and 1763, the Tribe ceded vast portions of its aboriginal territory in the present States of North and South Carolina in return for guarantees of being quietly settled on a 144,000-acre reservation.

(B) The Tribe's district court suit contended that in 1840 the Tribe and the State entered into an agreement without Federal approval or participation whereby the Tribe ceded its treaty reservation to the State, thereby giving rise to the Tribe's claim that it was dispossessed of its lands in violation of Federal law.

(C) In 1943, the United States entered into an agreement with the Tribe and the State to provide services to the Tribe and its members. The State purchased 3,434 acres of land and conveyed it to the Secretary in trust for the Tribe and the Tribe organized under the Indian Reorganization Act.

(D) In 1959, when Congress enacted the Catawba Tribe of South Carolina Division of Assets Act (25 U.S.C. 931–938), Federal agents assured the Tribe that if the Tribe would release the Government from its obligation under the 1943 agreement and agree to Federal legislation terminating the Federal trust relationship and liquidating the 1943 reservation, the status of the Tribe's land claim would not be jeopardized by termination.

(E) In 1980, the Tribe initiated Federal court litigation to regain possession of its treaty lands and in 1986, the United States Supreme Court ruled in South Carolina against Catawba Indian Tribe that the 1959 Act resulted in the application of State statutes of limitations to the Tribe's land claim. Two subsequent decisions of the United States Court of Appeals for the Fourth Circuit have held that some portion of the Tribe's claim is barred by State statutes of limitations and that some portion is not barred.

(5) The pendency of these lawsuits has led to substantial economic and social hardship for a large number of landowners, citizens and communities in the State of South Carolina, including the Catawba Indian Tribe. Congress recognizes that if these claims are not resolved, further litigation against tens of thousands of landowners would be likely; that any final resolution of pending disputes through a process of litigation would take many years and entail great expenses to all parties; continue economically and socially damaging controversies; prolong uncertainty as to the ownership of property; and seriously impair long-term economic planning and development for all parties.

(6) The 102d Congress has enacted legislation suspending until October 1, 1993, the running of any unexpired statute of limitation applicable to the Tribe's land claim in order to provide additional time to negotiate settlement of these claims.

(7) It is recognized that both Indian and non-Indian parties enter into this settlement to resolve the disputes raised in these lawsuits and to derive certain benefits. The parties' Settlement Agreement constitutes a good faith effort to resolve these lawsuits and other claims and requires implementing legislation by the Congress of the United States, the General Assembly of the State of South Carolina, and the governing bodies of the South Carolina counties of York and Lancaster.

(8) To advance the goals of the Federal policy of Indian self-determination and restoration of terminated Indian Tribes, and in recognition of the United States obligation to the Tribe and the Federal policy of settling historical Indian claims through comprehensive settlement agreements, it is appropriate that the United States participate in the funding and implementation of the Settlement Agreement.

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

(1) to approve, ratify, and confirm the Settlement Agreement entered into by the non-Indian settlement parties and the Tribe;

(2) to authorize and direct the Secretary to implement the terms of such Settlement Agreement;

(3) to authorize the actions and appropriations necessary to implement the provisions of the Settlement Agreement and this Act;

(4) to remove the cloud on titles in the State of South Carolina resulting from the Tribe's land claim; and

(5) to restore the trust relationship between the Tribe and the United States.

**SEC. 3. DEFINITIONS.**

For purposes of this Act:

(1) The term "Tribe" means the Catawba Indian Tribe of South Carolina as constituted in aboriginal times, which was party to the Treaty of Pine Tree Hill in 1760 as confirmed by the Treaty of Augusta in 1763, which was party also to the Treaty of Nation Ford in 1840, and which was the subject of the Termination Act, and all predecessors and successors in interest, including the Catawba Indian Tribe of South Carolina, Inc.

(2) The term "claim" or "claims" means any claim which was asserted by the Tribe in either Suit, and any other claim which could have been asserted by the Tribe or any Catawba Indian of a right, title or interest in property, to trespass or property damages, or of hunting, fishing or other rights to natural resources, if such claim is based upon aboriginal title, recognized title, or title by grant, patent, or treaty including the Treaty of Pine Tree Hill of 1760, the Treaty of Augusta of 1763, or the Treaty of Nation Ford of 1840.

(3) The term "Executive Committee" means the body of the Tribe composed of the Tribe's executive officers as selected by the Tribe in accordance with its constitution.

(4) The term "Existing Reservation" means that tract of approximately 630 acres conveyed to the State in trust for the Tribe by J.M. Doby on December 24, 1842, by deed recorded in York County Deed Book N, pp. 340–341.

(5) The term "General Council" means the membership of the Tribe convened as the Tribe's governing body for the purpose of conducting tribal business pursuant to the Tribe's constitution.

(6) The term "Member" means individuals who are currently members of the Tribe or who are enrolled in accordance with this Act.

(7) The term "Reservation" or "Expanded Reservation" means the Existing Reservation and the lands added to the Existing Reservation in accordance with section 12 of this Act, which are to be held in trust by the Secretary in accordance with this Act.

(8) The term "Secretary" means the Secretary of the Interior.

(8A) The term "service area" means the area composed of the State of South Carolina and Cabarrus, Cleveland, Gaston, Mecklenburg, Rutherford, and Union counties in the State of North Carolina.

(9) The term "Settlement Agreement" means the document entitled "Agreement in Principle " between the Tribe and the State of South Carolina and attached to the copy of the State implementing legislation and filed with the Secretary of State of the State of South Carolina, as amended to conform to this Act and printed in the Congressional Record on the date of the enactment of this Act.

(10) The term "State" means, except for section 6 (a) through (f), the State of South Carolina.

(11) The term "State Act" means the Act enacted into law by the State of South Carolina on June 14, 1993, and codified as S.C. Code Ann., sections 27–16–10 through 27–16–140, to implement the Settlement Agreement.

(12) The term "Suit" or "Suits" means Catawba Indian Tribe of South Carolina v. State of South Carolina, et al., docketed as Civil Action No. 80–2050 and filed in the United States District Court for the District of South Carolina; and Catawba Indian Tribe of South Carolina v. The United States of America, docketed as Civil Action No. 90–553L and filed in the United States Court of Federal Claims.

(13) The term "Termination Act" means the Act entitled "An Act to provide for the division of the tribal assets of the Catawba Indian Tribe of South Carolina among the members of the Tribe and for other purposes", approved September 21, 1959 (73 Stat. 592; 25 U.S.C. 931–938).

(14) The term "transfer" includes (but is not limited to) any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event or circumstance that resulted in a change in title to, possession of, dominion over, or control of land, water, minerals, timber, or other natural resources.

(15) The term "Trust Funds" means the trust funds established by section 11 of this Act.

**SEC. 4. RESTORATION OF FEDERAL TRUST RELATIONSHIP.**

(a) RESTORATION OF THE FEDERAL TRUST RELATIONSHIP AND APPROVAL, RATIFICATION, AND CONFIRMATION OF THE SETTLEMENT AGREEMENT.—On the effective date of this Act—

(1) the trust relationship between the Tribe and the United States is restored; and

(2) the Settlement Agreement and the State Act are approved, ratified, and confirmed by the United States to effectuate the purposes of this Act, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.

(b) ELIGIBILITY FOR FEDERAL BENEFITS AND SERVICES.—Notwithstanding any other provision of law, on the effective date of this Act, the Tribe and the Members shall be eligible for all benefits and services furnished to federally recognized Indian Tribes and their

members because of their status as Indians. On the effective date of this Act, the Secretary shall enter the Tribe on the list of federally recognized bands and Tribes maintained by the Department of the Interior; and its members shall be entitled to special services, educational benefits, medical care, and welfare assistance provided by the United States to Indians because of their status as Indians, and the Tribe shall be entitled to the special services performed by the United States for Tribes because of their status as Indian Tribes. For the purpose of eligibility for Federal services made available to members of federally recognized Indian Tribes because of their status as Indian tribal members, Members of the Tribe in the Tribe's service area shall be deemed to be residing on or near a reservation.

(c) REPEAL OF TERMINATION ACT.—The Termination Act is repealed.

(d) EFFECT ON PROPERTY RIGHTS AND OTHER OBLIGATIONS.—Except as otherwise specifically provided in this Act, this Act shall not affect any property right or obligation or any contractual right or obligation in existence before the effective date of this Act, or any obligation for taxes levied before that date.

(e) EXTENT OF JURISDICTION.—This Act shall not be construed to empower the Tribe with special jurisdiction or to deprive the State of jurisdiction other than as expressly provided by this Act or by the State Act. The jurisdiction and governmental powers of the Tribe shall be solely those set forth in this Act and the State Act.

**SEC. 5. SETTLEMENT FUNDS.**

(a) AUTHORIZATION FOR APPROPRIATION.—There is hereby authorized to be appropriated $32,000,000 for the Federal share which shall be deposited in the trust funds established pursuant to section 11 of this Act or paid pursuant to section 6(g).

(b) DISBURSEMENT IN ACCORDANCE WITH SETTLEMENT AGREEMENT.—The Federal funds appropriated pursuant to this Act shall be disbursed in four equal annual installments of $8,000,000 beginning in the fiscal year following enactment of this Act. Funds transferred to the Secretary from other sources shall be deposited in the trust funds established pursuant to section 11 of this Act or paid pursuant to section 6(g) within 30 days of receipt by the Secretary.

(c) PRIVATE FUNDS.—Any private payments made to settle the claims may be treated, at the election of the taxpayer, as either a payment in settlement of litigation or a charitable contribution for Federal income tax purposes.

(d) FEDERAL, STATE, LOCAL AND PRIVATE CONTRIBUTIONS HELD IN TRUST BY SECRETARY.—The Secretary shall, on behalf of the Tribe, collect those contributions toward settlement appropriated or received by the State pursuant to section 5.2 of the Settlement Agreement and shall either hold such funds totalling $18,000,000, together with the Federal funds appropriated pursuant to this Act, in trust for the Tribe pursuant to the provisions of section 11 of this Act or pay such funds pursuant to section 6(g) of this Act.

(e) NONPAYMENT OF STATE, LOCAL, OR PRIVATE CONTRIBUTIONS.—The Secretary shall not be accountable or incur any liability under this Act for the collection, deposit, or management of the non-Federal contributions made pursuant to section 5.2 of the Settlement Agreement, or payment of such funds pursuant to section 6(g) of this Act, until such time as such funds are received by the Secretary.

**SEC. 6. RATIFICATION OF PRIOR TRANSFERS; EXTINGUISHMENT OF ABORIGINAL TITLE, RIGHTS AND CLAIMS.**

(a) RATIFICATION OF TRANSFERS.—Any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Tribe, any one or more of its Members, or anyone purporting to be a Member, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, and Congress hereby approves and ratifies any such transfer effective as of the date of such transfer. Nothing in this section shall be construed to affect or eliminate the personal claim of any individual Member (except for any Federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(b) ABORIGINAL TITLE.—To the extent that any transfer of land or natural resources described in subsection (a) of this section may involve land or natural resources to which the Tribe, any of its Members, or anyone purporting to be a Member, or any other Indian, Indian nation, or Tribe or band of Indians had aboriginal title, subsection (a) of this section shall be regarded as an extinguishment of aboriginal title as of the date of such transfer.

(c) EXTINGUISHMENT OF CLAIMS.—By virtue of the approval and ratification of any transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Tribe, any of its Members, or anyone purporting to be a Member, or any predecessors or successors in interest thereof or any other Indian, Indian Nation, or Tribe or band of Indians, arising at the time of or subsequent to the transfer and based on any interest in or right involving such land or natural resources, including without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of the transfer.

(d) EXTINGUISHMENT OF TITLE.—(1) All claims and all right, title, and interest that the Tribe, its Members, or any person or group of persons purporting to be Catawba Indians may have to aboriginal title, recognized title, or title by grant, patent, or treaty to the lands located anywhere in the United States are hereby extinguished.

(2) This extinguishment of claims shall also extinguish title to any hunting, fishing, or water rights or rights to any other natural resource claimed by the Tribe or a Member based on aboriginal or treaty recognized title, and all trespass damages and other damages associated with use, occupancy or possession, or entry upon such lands.

(e) BAR TO FUTURE CLAIMS.—The United States is hereby barred from asserting by or on behalf of the Tribe or any of its Members, or anyone purporting to be a Member, any claim arising before the effective date of this Act from the transfer of any land or natural resources by deed or other grant, or by treaty, compact, or act of law, on the grounds that such transfer was not made in accordance with the laws of South Carolina or the Constitution or laws of the United States.

(f) NO DEROGATION OF FEE SIMPLE IN EXISTING RESERVATION, OR EFFECT ON MEMBERS' FEE INTERESTS.—Nothing in this Act shall be construed to diminish or derogate from the Tribe's estate in the Existing Reservation; or to divest or disturb title in any land conveyed to any person or entity as a result of the Termination Act and the liquidation and partition of tribal lands; or to divest or disturb the right, title and interest of any member in any fee simple, leasehold or remainder estate or any equitable or beneficial right or interest any such member may own individually and not as a member of the Tribe.

(g) COSTS AND ATTORNEYS' FEES.—The parties to the Suits shall bear their own costs and attorneys' fees. As provided by section 6.4 of the Settlement Agreement, the Secretary shall pay to the Tribe's attorney in the Suits attorneys' fees, and expenses not to exceed 10 percent of the $50,000,000 obligated for payment to the Tribe by Federal, State, local, and private parties pursuant to section 5 of the Settlement Agreement.

(h) PERSONAL CLAIMS NOT AFFECTED.—Nothing in this section shall be deemed to affect, diminish, or eliminate the personal claim of any individual Indian which is pursued under any law of general applicability (other than Federal common law fraud) that protects non-Indians as well as Indians.

(i) FEDERAL PAYMENT.—In the event any of the Federal payments are not paid as set forth in section 5, such failure to pay shall give rise to a cause of action by the Tribe against the United States for money damages for the amount authorized to be paid to the Tribe in section 5(a) in settlement of the Tribe's claim, and the Tribe is authorized to bring an action in the United States Court of Claims for such funds plus applicable interest. The United States hereby waives any affirmative defense to such action.

(j) STATE PAYMENT.—In the event any of the State payments are not paid as set forth in section 5, such failure to pay shall give rise to a cause of action in the United States District Court for the District of South Carolina by the Tribe against the State of South Carolina for money damages for the amount authorized to be paid to the Tribe in section 5(d) in settlement of the Tribe's claim. Pursuant to §27–16–50 (E) of the State Act, the State of South Carolina waives any Eleventh Amendment immunity to such action.

**SEC. 7. BASE MEMBERSHIP ROLL.**

(a) BASE MEMBERSHIP ROLL CRITERIA.—Within one year after enactment of this section, the Tribe shall submit to the Secretary, for approval, its base membership roll. An individual is eligible for inclusion on the base membership roll if that individual is living on the date of enactment of this Act and—

(1) is listed on the membership roll published by the Secretary in the Federal Register on February 25, 1961 (26 FR 1680–1688, "Notice of Final Membership Roll"), and is not excluded under the provisions of subsection (c);

(2) the Executive Committee determines, based on the criteria used to compile the roll referred to in paragraph (1), that the individual should have been included on the membership roll at that time, but was not; or

(3) is a lineal descendant of a Member whose name appeared or should have appeared on the membership roll referred to in paragraph (1).

(b) BASE MEMBERSHIP ROLL NOTICE.—Within 90 days after the enactment of this Act, the Secretary shall publish in the Federal Register, and in three newspapers of general circulation in the Tribe's service area, a notice stating—

(1) that a base membership roll is being prepared by the Tribe and that the current membership roll is open and will remain open for a period of 90 days;

(2) the requirements for inclusion on the base membership roll;

(3) the final membership roll published by the Secretary in the Federal Register on February 25, 1961;

(4) the current membership roll as prepared by the Executive Committee and approved by the General Council; and

(5) the name and address of the tribal or Federal official to whom inquiries should be made.

(c) COMPLETION OF BASE MEMBERSHIP ROLL.—Within 120 days after publication of notice under subsection (b), the Secretary, after consultation with the Tribe, shall prepare and publish in the Federal Register, and in three newspapers of general circulation in the Tribe's service area, a proposed final base membership roll of the Tribe. Within 60 days from the date of publication of the proposed final base membership roll, an appeal may be filed with the Executive Committee under rules made by the Executive Committee in consultation with the Secretary. Such an appeal may be filed by a Member with respect to the inclusion of any name on the proposed final base membership roll and by any person with respect to the exclusion of his or her name from the final base membership roll. The Executive Committee shall review such appeals and render a decision, subject to the Secretary's approval. If the Executive Committee and the Secretary disagree, the Secretary's decision will be final. All such appeals shall be resolved within 90 days following publication of the proposed roll. The final base membership roll of the Tribe shall then be published in the Federal Register, and in three newspapers of general circulation in the Tribe's service area, and shall be final for purposes of the distribution of funds from the Per Capita Trust Fund.

(e) FUTURE MEMBERSHIP IN THE TRIBE.—The Tribe shall have the right to determine future membership in the Tribe; however, in no event may an individual be enrolled as a tribal member unless the individual is a lineal descendant of a person on the base membership roll and has continued to maintain political relations with the Tribe.

**SEC. 8. TRANSITIONAL AND PROVISIONAL GOVERNMENT.**

(a) FUTURE TRIBAL GOVERNMENT.—The Tribe shall adopt a new constitution within 24 months after the effective date of this Act.

(b) EXECUTIVE COMMITTEE AS TRANSITIONAL BODY.—(1) Until the Tribe has adopted a constitution, the existing tribal constitution shall remain in effect and the Executive Committee is recognized as the provisional and transitional governing body of the Tribe. Until an election of tribal officers under the new constitution, the Executive Committee shall—

(A) represent the Tribe and its Members in the implementation of this Act; and

(B) during such period—

(i) have full authority to enter into contracts, grant agreements and other arrangements with any Federal department or agency; and

(ii) have full authority to administer or operate any program under such contracts or agreements.

(2) Until the initial election of tribal officers under a new constitution and by-laws, the Executive Committee shall—

(A) determine tribal membership in accordance with the provisions of section 7; and

(B) oversee and implement the revision and proposal to the Tribe of a new constitution and conduct such tribal meetings and elections as are required by this Act.

**SEC. 9. TRIBAL CONSTITUTION AND GOVERNANCE.**

(a) INDIAN REORGANIZATION ACT.—If the Tribe so elects, it may organize under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act"). The Tribe shall be subject to such Act except to the extent such sections are inconsistent with this Act.

(b) ADOPTION OF NEW TRIBAL CONSTITUTION.—Within 180 days after the effective date of this Act, the Executive Committee shall draft and distribute to each Member eligible to vote under the tribal constitution in effect on the effective date of this Act, a proposed constitution and bylaws for the Tribe together with a brief, impartial description of the proposed constitution and bylaws and a notice of the date, time and location of the election under this subsection. Not sooner than 30 days or later than 90 days after the distribution of the proposed constitution, the Executive Committee shall conduct a secret-ballot election to adopt a new constitution and bylaws.

(c) MAJORITY VOTE FOR ADOPTION; PROCEDURE IN EVENT OF FAILURE TO ADOPT PROPOSED CONSTITUTION.—(1) The tribal constitution and bylaws shall be ratified and adopted if—

(A) not less than 30 percent of those entitled to vote do vote; and

(B) approved by a majority of those actually voting.

(2) If in any such election such majority does not approve the adoption of the proposed constitution and bylaws, the Executive Committee shall prepare another proposed constitution and bylaws and present it to the Tribe in the same manner provided in this section for the first constitution and bylaws. Such new proposed constitution and bylaws shall be distributed to the eligible voters of the Tribe no later than 180 days after the date of the election in which the first proposed constitution and bylaws failed of adoption. An election on the question of the adoption of the new proposal of the Executive Committee shall be conducted in the same manner provided in subsection (b) for the election on the first proposed constitution and bylaws.

(d) ELECTION OF TRIBAL OFFICERS.—Within 120 days after the Tribe ratifies and adopts a constitution and bylaws, the Executive Committee shall conduct an election by secret ballot for the purpose of electing tribal officials as provided in the constitution and bylaws. Subsequent elections shall be held in accordance with the Tribe's constitution and bylaws.

(e) EXTENSION OF TIME.—Any time periods prescribed in subsections (b) and (c) may be altered by written agreement between the Executive Committee and the Secretary.

**SEC. 10. ADMINISTRATIVE PROVISIONS RELATING TO JURISDICTION, TAXATION, AND OTHER MATTERS.**

In the administration of this Act:

(1) All matters involving tribal powers, immunities, and jurisdiction, whether criminal, civil, or regulatory, shall be governed by the terms and provisions of the Settlement Agreement and the State Act, unless otherwise provided in this Act.

(2) All matters relating to taxation involving the Tribe, its Members, and any property owned by or held in trust for the Tribe or its Members, shall be governed by the terms and provisions of the Settlement Agreement and the State Act, unless otherwise provided in this Act.

(3) All matters pertaining to governance and regulation of the reservation (including environmental regulation and riparian rights) shall be governed by the terms and provisions of the Settlement Agreement and the State Act, including, but not limited to, section 17 of the Settlement Agreement and section 27-16-120 of the State Act, unless otherwise provided in this Act.

(4) The Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.) shall apply to Catawba Indian children except as provided in the Settlement Agreement.

(5) Whether or not the Tribe, under section 9(a), elects to organize under the Act of June 18, 1934, the Tribe, in any constitution adopted by the Tribe, may be authorized to exercise such authority as is consistent with the Settlement Agreement and the State Act.

(6) Section 7871 of the Internal Revenue Code of 1986 (26 U.S.C. 7871, commonly referred to as the "Indian Tribal Government Tax Status Act) shall apply to the Tribe and its Reservation. In no event, however, may the Tribe pledge or hypothecate the income or principal of the Catawba Education or Social Services and Elderly Trust Funds or otherwise use them as security or a source of payment for bonds the Tribe may issue.

(7) The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall apply to the Tribe except to the extent that such application may be inconsistent with this Act or the Settlement Agreement.

**SEC. 11. TRIBAL TRUST FUNDS.**

(a) PURPOSES OF TRUST FUNDS.—All funds paid pursuant to section 5 of this Act, except for payments made pursuant to section 6(g), shall be deposited with the Secretary in trust for the benefit of the Tribe. Separate trust funds shall be established for the following purposes: economic development, land acquisition, education, social services and elderly assistance, and per capita payments. Except as provided in this section, the Tribe, in consultation with the Secretary, shall determine the share of settlement payments to be deposited in each Trust Fund, and define, consistently with the provisions of this section, the purposes of each Trust Fund and provisions for administering each, specifically including provisions for periodic distribution of current and accumulated income, and for invasion and restoration of principal.

(b) OUTSIDE MANAGEMENT OPTION.—(1) The Tribe, in consultation with and subject to the approval of the Secretary, as set forth in this section, is authorized to place any of the Trust Funds under professional management, outside the Department of the Interior.

(2) If the Tribe elects to place any of the Trust Funds under professional management outside the Department of the Interior, it may engage a consulting or advisory firm to assist in the selection of an independent professional investment management firm, and it shall engage, with the approval of the Secretary, an independent investment management firm of proven competence and experience established in the business of counseling large endowments, trusts, or pension funds.

(3) The Secretary shall have 45 days to approve or reject any independent investment management firm selected by the Tribe. If the Secretary fails to approve or reject the firm selected by the Tribe within 45 days, the investment management firm selected by the Tribe shall be deemed to have been approved by the Secretary.

(4) Secretarial approval of an investment management firm shall not be unreasonably withheld, and any Secretarial disapproval of an investment management firm shall be accompanied by a detailed explanation setting

forth the Secretary's reasons for such disapproval.

(5)(A) For funds placed under professional management, the Tribe, in consultation with the Secretary and its investment manager, shall develop—

(i) current operating and long-term capital budgets; and

(ii) a plan for managing, investing, and distributing income and principal from the Trust Funds to match the requirements of the Tribe's operating and capital budgets.

(B) For each Trust Fund which the Tribe elects to place under outside professional management, the investment plan shall provide for investment of Trust Fund assets so as to serve the purposes described in this section and in the Trust Fund provisions which the Tribe shall establish in consultation with the Secretary and the independent investment management firm.

(C) Distributions from each Trust Fund shall not exceed the limits on the use of principal and income imposed by the applicable provisions of this Act for that particular Trust Fund.

(D)(i) The Tribe's investment management plan shall not become effective until approved by the Secretary.

(ii) Upon submission of the plan by the Tribe to the Secretary for approval, the Secretary shall have 45 days to approve or reject the plan. If the Secretary fails to approve or disapprove the plan within 45 days, the plan shall be deemed to have been approved by the Secretary and shall become effective immediately.

(iii) Secretarial approval of the plan shall not be unreasonably withheld and any secretarial rejection of the plan shall be accompanied by a detailed explanation setting forth the Secretary's reasons for rejecting the plan.

(E) Until the selection of an established investment management firm of proven competence and experience, the Tribe shall rely on the management, investment, and administration of the Trust Funds by the Secretary pursuant to the provisions of this section.

(c) TRANSFER OF TRUST FUNDS; EXCULPATION OF SECRETARY.—Upon the Secretary's approval of the Tribe's investment management firm and an investment management plan, all funds previously deposited in trust funds held by the Secretary and all funds subsequently paid into the trust funds, which are chosen for outside management, shall be transferred to the accounts established by an investment management firm in accordance with the approved investment management plan. The Secretary shall be exculpated by the Tribe from liability for any loss of principal or interest resulting from investment decisions made by the investment management firm. Any Trust Fund transferred to an investment management firm shall be returned to the Secretary upon written request of the Tribe, and the Secretary shall manage such funds for the benefit of the Tribe.

(d) LAND ACQUISITION TRUST.—(1) The Secretary shall establish and maintain a Catawba Land Acquisition Trust Fund, and until the Tribe engages an outside firm for investment management of this trust fund, the Secretary shall manage, invest, and administer this trust fund. The original principal amount of the Land Acquisition Trust Fund shall be determined by the Tribe in consultation with the Secretary.

(2) The principal and income of the Land Acquisition Trust Fund may be used for the purchase and development of Reservation and non-Reservation land pursuant to the Settlement Agreement, costs related to land acquisition, and costs of construction of infrastructure and development of the Reservation and non-Reservation land.

(3)(A) Upon acquisition of the maximum amount of land allowed for expansion of the Reservation, or upon request of the Tribe and approval of the Secretary pursuant to the Secretarial approval provisions set forth in subsection (b)(5)(D) of this section, all or part of the balance of this trust fund may be merged into one or more of the Economic Development Trust Fund, the Education Trust Fund, or the Social Services and Elderly Assistance Trust Fund.

(B) Alternatively, at the Tribe's election, the Land Acquisition Trust Fund may remain in existence after all the Reservation land is purchased in order to pay for the purchase of non-Reservation land.

(4)(A) The Tribe may pledge or hypothecate the income and principal of the Land Acquisition Trust Fund to secure loans for the purchase of Reservation and non-Reservation lands.

(B) Following the effective date of this Act and before the final annual disbursement is made as provided in section 5 of this Act, the Tribe may pledge or hypothecate up to 50 percent of the unpaid annual installments required to be paid to this Trust Fund, the Economic Development Trust Fund and the Social Services and Elderly Assistance Trust Fund by section 5 of this Act and by section 5 of the Settlement Agreement, to secure loans to finance the acquisition of Reservation or non-Reservation land or infrastructure improvements on such lands.

(e) ECONOMIC DEVELOPMENT TRUST.—(1) The Secretary shall establish and maintain a Catawba Economic Development Trust Fund, and until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer this Trust Fund. The original principal amount of the Economic Development Trust Fund shall be determined by the Tribe in consultation with the Secretary. The principal and income of this Trust Fund may be used to support tribal economic development activities, including but not limited to infrastructure improvements and tribal business ventures and commercial investments benefiting the Tribe.

(2) The Tribe, in consultation with the Secretary, may pledge or hypothecate future income and up to 50 percent of the principal of this Trust Fund to secure loans for economic development. In defining the provisions for administration of this Trust Fund, and before pledging or hypothecating future income or principal, the Tribe and the Secretary shall agree on rules and standards for the invasion of principal and for repayment or restoration of principal, which shall encourage preservation of principal, and provide that, if feasible, a portion of all profits derived from activities funded by principal be applied to repayment of the Trust Fund.

(3) Following the effective date of this Act and before the final annual disbursement is made as provided in section 5 of this Act, the Tribe may pledge or hypothecate up to 50 percent of the unpaid annual installments required to be paid by section 5 of this Act and by section 5 of the Settlement Agreement to secure loans to finance economic development activities of the Tribe, including (but not limited to) infrastructure improvements on Reservation and non-Reservation lands.

(4) If the Tribe develops sound lending guidelines approved by the Secretary, a portion of the income from this Trust Fund may also be used to fund a revolving credit account for loans to support tribal businesses or business enterprises of tribal members.

(f) EDUCATION TRUST.—The Secretary shall establish and maintain a Catawba Education Trust Fund, and until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer this Trust Fund. The original principal amount of this Trust Fund shall be determined by the Tribe in consultation with the Secretary; subject to the requirement that upon completion of all payments into the Trust Funds, an amount equal to at least ⅓ of all State, local, and private contributions made pursuant to the Settlement Agreement shall have been paid into the Education Trust Fund. Income from this Trust Fund shall be distributed in a manner consistent with the terms of the Settlement Agreement. The principal of this Trust Fund shall not be invaded or transferred to any other Trust Fund, nor shall it be pledged or encumbered as security.

(g) SOCIAL SERVICES AND ELDERLY ASSISTANCE TRUST.—(1) The Secretary shall establish and maintain a Catawba Social Services and Elderly Assistance Trust Fund and, until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer the Social Services and Elderly Assistance Trust Fund. The original principal amount of this Trust Fund shall be determined by the Tribe in consultation with the Secretary.

(2) The income of this Trust Fund shall be periodically distributed to the Tribe to support social services programs, including (but not limited to) housing, care of elderly, or physically or mentally disabled Members, child care, supplemental health care, education, cultural preservation, burial and cemetery maintenance, and operation of tribal government.

(3) The Tribe, in consultation with the Secretary, shall establish eligibility criteria and procedures to carry out this subsection.

(h) PER CAPITA PAYMENT TRUST FUND.—(1) The Secretary shall establish and maintain a Catawba Per Capita Payment Trust Fund in an amount equal to 15 percent of the settlement funds paid pursuant to section 5 of the Settlement Agreement. Until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer the Catawba Per Capita Payment Trust Fund.

(2) Each person (or their estate) whose name appears on the final base membership roll of the Tribe published by the Secretary pursuant to section 7(c) of this Act will receive a one-time, non-recurring payment from this Trust Fund.

(3) The amount payable to each member shall be determined by dividing the trust principal and any accrued interest thereon by the number of Members on the final base membership roll.

(4)(A) Subject to the provisions of this paragraph, each enrolled member who has reached the age of 21 years on the date the final roll is published shall receive the payment on the date of distribution, which shall be as soon as practicable after date of publication of the final base membership roll. Adult Members shall be paid their pro rata share of this Trust Fund on the date of distribution unless they elect in writing to leave their pro rata share in the Trust Fund, in which case such share shall not be distributed.

(B) The pro rata share of adult Members who elect not to withdraw their payment

from this Trust Fund shall be managed, invested and administered, together with the funds of Members who have not attained the age of 21 years on the date the final base membership roll is published, until such Member requests in writing that their pro rata share be distributed, at which time such Member's pro rata share shall be paid, together with the net income of the Trust Fund allocable to such Member's share as of the date of distribution.

(C) No member may elect to have their pro rata share managed by this Trust Fund for a period of more than 21 years after the date of publication of the final base membership roll.

(5)(A) Subject to the provisions of this paragraph, the pro rata share of any Member who has not attained the age of 21 years on the date the final base membership roll is published shall be managed, invested and administered pursuant to the provisions of this section until such Member has attained the age of 21 years, at which time such Member's pro rata share shall be paid, together with the net income of the Trust Fund allocable to such Member's share as of the date of payment. Such Members shall be paid their pro rata share of this Trust Fund on the date they attain 21 years of age unless they elect in writing to leave their pro rata share in the Trust Fund, in which case such share shall not be distributed.

(B) The pro rata share of such Members who elect not to withdraw their payment from this trust fund shall be managed, invested and administered, together with the funds of members who have not attained the age of 21 years on the date the final base membership roll is published, until such Member requests in writing that their pro rata share be distributed, at which time such Member's pro rata share shall be paid, together with the net income of the Trust Fund allocable to such Member's share as of the date of distribution.

(C) No Member may elect to have their pro rata share retained and managed by this Trust Fund beyond the expiration of the period of 21 years after the date of publication of the final base membership roll.

(6) After payments have been made to all Members entitled to receive payments, this Trust Fund shall terminate, and any balance remaining in this Trust Fund shall be merged into the Economic Development Trust Fund, the Education Trust Fund, or the Social Services and Elderly Assistance Trust Fund, as the Tribe may determine.

(i) DURATION OF TRUST FUNDS.—Subject to the provisions of this section and with the exception of the Catawba Per Capita Payment Trust Fund, the Trust Funds established in accordance with this section shall continue in existence so long as the Tribe exists and is recognized by the United States. The principal of these Trust Funds shall not be invaded or distributed except as expressly authorized in this Act or in the Settlement Agreement.

(j) TRANSFER OF MONEY AMONG TRUST FUNDS.—The Tribe, in consultation with the Secretary, shall have the authority to transfer principal and accumulated income between Trust Funds only as follows:

(1) Funds may be transferred among the Catawba Economic Development Trust Fund, the Catawba Land Acquisition Trust Fund and the Catawba Social Services and Elderly Assistance Trust Fund, and from any of those three Trust Funds into the Catawba Education Trust Fund; except, that the mandatory share of State, local, and private sector funds invested in the original corpus of the Catawba Education Trust Fund shall not be transferred to any other Trust Fund.

(2) Any Trust Fund, except for the Catawba Education Trust Fund, may be dissolved by a vote of two-thirds of those Members eligible to vote, and the assets in such Trust Fund shall be transferred to the remaining Trust Funds; except, that (A) no assets shall be transferred from any of the Trust Funds into the Catawba Per Capita Payment Trust Fund, and (B) the mandatory share of State, local and private funds invested in the original corpus of the Catawba Education Trust Fund may not be transferred or used for any non-educational purposes.

(3) The dissolution of any Trust Fund shall require the approval of the Secretary pursuant to the Secretarial approval provisions set forth in subsection (b)(5)(D) of this section.

(k) TRUST FUND ACCOUNTING.—(1) The Secretary shall account to the Tribe periodically, and at least annually, for all Catawba Trust Funds being managed and administered by the Secretary. The accounting shall—

(A) identify the assets in which the Trust Funds have been invested during the relevant period;

(B) report income earned during the period, distinguishing current income and capital gains;

(C) indicate dates and amounts of distributions to the Tribe, separately distinguishing current income, accumulated income, and distributions of principal; and

(D) identify any invasions or repayments of principal during the relevant period and record provisions the Tribe has made for repayment or restoration of principal.

(2)(A) Any outside investment management firm engaged by the Tribe shall account to the Tribe and separately to the Secretary at periodic intervals, at least quarterly. Its accounting shall—

(i) identify the assets in which the Trust Funds have been invested during the relevant period;

(ii) report income earned during the period, separating current income and capital gains;

(iii) indicate dates and amounts of distributions to the Tribe, distinguishing current income, accumulated income, and distributions of principal; and

(iv) identify any invasions or repayments of principal during the relevant period and record provisions the Tribe has made for repayment or restoration of principal.

(B) Prior to distributing principal from any Trust Fund, the investment management firm shall notify the Secretary of the proposed distribution and the Tribe's proposed use of such funds, following procedures to be agreed upon by the investment management firm, the Secretary, and the Tribe. The Secretary shall have 15 days within which to object in writing to any such invasion of principal. Failure to object will be deemed approval of the distribution.

(C) All Trust Funds held and managed by any investment management firm shall be audited annually by a certified public accounting firm approved by the Secretary, and a copy of the annual audit shall be submitted to the Tribe and to the Secretary within four months following the close of the Trust Funds's fiscal year.

(l) REPLACEMENT OF INVESTMENT MANAGEMENT FIRM AND MODIFICATION OF INVESTMENT MANAGEMENT PLAN.—The Tribe shall not replace the investment management firm approved by the Secretary without prior written notification to the Secretary and approval by the Secretary of any investment management firm chosen by the Tribe as a replacement. Such Secretarial approval shall be given or denied in accordance with the Secretarial approval provisions contained in subsection (b)(5)(D) of this section. The Tribe and its investment management firm shall also notify the Secretary in writing of any revisions in the investment management plan which materially increase investment risk or significantly change the investment management plan, or the agreement, made in consultation with the Secretary pursuant to which the outside management firm was retained.

(m) TRUST FUNDS NOT COUNTED FOR CERTAIN PURPOSES; USE AS MATCHING FUNDS.—None of the funds, assets, income, payments, or distributions from the trust funds established pursuant to this section shall at any time affect the eligibility of the Tribe or its Members for, or be used as a basis for denying or reducing funds to the Tribe or its Members under any Federal, State, or local program. Distributions from these Trust Funds may be used as matching funds, where appropriate, for Federal grants or loans.

**SEC. 12. ESTABLISHMENT OF EXPANDED RESERVATION.**

(a) EXISTING RESERVATION.—The Secretary is authorized to receive from the State, by such transfer document as the Secretary and the State shall approve, all rights, title, and interests of the State in and to the Existing Reservation to be held by the United States as trustee for the Tribe, and, effective on the date of such transfer, the obligation of the State as trustee for the Tribe with respect to such land shall cease.

(b) EXPANDED RESERVATION.—(1) The Existing Reservation shall be expanded in the manner prescribed by the Settlement Agreement.

(2) Within 180 days following the date of the enactment of this Act, the Secretary, after consulting with the Tribe, shall ascertain the boundaries and area of the existing reservation. In addition, the Secretary, after consulting with the Tribe, shall engage a professional land planning firm as provided in the Settlement Agreement. The Secretary shall bear the cost of all services rendered pursuant to this section.

(3) The Tribe may identify, purchase and request that the Secretary place into reservation status, tracts of lands in the manner prescribed by the Settlement Agreement. The Tribe may not request that any land be placed in reservation status, unless those lands were acquired by the Tribe and qualify for reservation status in full compliance with the Settlement Agreement, including section 14 thereof.

(4) The Secretary shall bear the cost of all title examinations, preliminary subsurface soil investigations, and level one environmental audits to be performed on each parcel contemplated for purchase by the Tribe or the Secretary for the Expanded Reservation, and shall report the results to the Tribe. The Secretary's or the Tribe's payment of any option fee and the purchase price may be drawn from the Catawba Land Acquisition Trust Fund.

(5) The total area of the Expanded Reservation shall be limited to 3,000 acres, including the Existing Reservation, but the Tribe may exclude from this limit up to 600 acres of additional land under the conditions set forth in the Settlement Agreement. The Tribe may seek to have the permissible area of the Expanded Reservation enlarged by an additional 600 acres as set forth in the Settlement Agreement.

(6) All lands acquired for the Expanded Reservation shall be held in trust together with the Existing Reservation which the State is to convey to the United States.

(7) Nothing in this Act shall prohibit the Secretary from providing technical and financial assistance to the Tribe to fulfill the purposes of this section.

(c) EXPANSION ZONES.—(1) Subject to the conditions, criteria, and procedures set forth in the Settlement Agreement, the Tribe shall endeavor at the outset to acquire contiguous tracts for the Expanded Reservation in the "Catawba Reservation Primary Expansion Zone", as defined in the Settlement Agreement.

(2) Subject to the conditions, criteria, and procedures set forth in the Settlement Agreement, the Tribe may elect to purchase contiguous tracts in an alternative area, the "Catawba Reservation Secondary Expansion Zone", as defined in the Settlement Agreement.

(3) The Tribe may propose different or additional expansion zones subject to the authorizations required in the Settlement Agreement and the State implementing legislation.

(d) NON-CONTIGUOUS TRACTS.—The Tribe, in consultation with the Secretary, shall take such actions as are reasonable to expand the Existing Reservation by assembling a composite tract of contiguous parcels that border and surround the Existing Reservation. Before requesting that any non-contiguous tract be placed in Reservation status, the Tribe shall comply with section 14 of the Settlement Agreement. Upon the approval of the Tribe's application under and in accordance with section 14 of the Settlement Agreement, the Secretary, in consultation with the Tribe, may proceed to place non-contiguous tracts in Reservation status. No purchases of non-contiguous tracts shall be made for the Reservation except as set forth in the Settlement Agreement and the State implementing legislation.

(e) VOLUNTARY LAND PURCHASES.—(1) The power of eminent domain shall not be used by the Secretary or any governmental authority in acquiring parcels of land for the benefit of the Tribe, whether or not the parcels are to be part of the Reservation. All such purchases shall be made only from willing sellers by voluntary conveyances subject to the terms of the Settlement Agreement.

(2) Conveyances by private land owners to the Secretary or to the Tribe for the Expanded Reservation will be deemed, however, to be involuntary conversions within the meaning of section 1033 of the Internal Revenue Code of 1986.

(3) Notwithstanding any other provision of this section and the provisions of the first section of the Act of August 1, 1888 (ch. 728, 25 Stat. 357; 40 U.S.C. 257), and the first section of the Act of February 26, 1931 (ch. 307, 46 Stat. 1421; 40 U.S.C. 258a), the Secretary or the Tribe may acquire a less than complete interest in land otherwise qualifying under section 14 of the Settlement Agreement for treatment as Reservation land for the benefit of the Tribe from the ostensible owner of the land if the Secretary or the Tribe and the ostensible owner have agreed upon the identity of the land to be sold and upon the purchase price and other terms of sale. If the ostensible owner agrees to the sale, the Secretary may use condemnation proceedings to perfect or clear title and to acquire any interests of putative co-tenants whose address is unknown or the interests of unknown or unborn heirs or persons subject to mental disability.

(f) TERMS AND CONDITIONS OF ACQUISITION.—All properties acquired by the Secretary for the Tribe or acquired by the Tribe shall be acquired subject to the terms and conditions set forth in the Settlement Agreement. The Tribe and the Secretary, acting on behalf of the Tribe and with its consent, are also authorized to acquire Reservation and non-Reservation lands using the methods of financing described in the Settlement Agreement.

(g) AUTHORITY TO ERECT PERMANENT IMPROVEMENTS ON EXISTING AND EXPANDED RESERVATION LAND AND NON-RESERVATION LAND HELD IN TRUST.—Notwithstanding any other provision of law or regulation, the Attorney General of the United States may approve any deed or other instrument which conveys to the United States lands purchased pursuant to the provisions of this section and the Settlement Agreement. The Secretary or the Tribe may erect permanent improvements of a substantial value, or any other improvements authorized by law on such land after such land is conveyed to the United States.

(h) EASEMENTS OVER RESERVATION.—(1) The acquisition of lands for the Expanded Reservation shall not extinguish any easements or rights-of-way then encumbering such lands unless the Secretary or the Tribe enters into a written agreement with the owners terminating such easements or rights-of-way.

(2)(A) The Tribe, with the approval of the Secretary, shall have the power to grant or convey easements and rights-of-way, in a manner consistent with the Settlement Agreement.

(B) Unless the Tribe and the State agree upon a valuation formula for pricing easements over the Reservation, the Secretary shall be subject to proceedings for condemnation and eminent domain to acquire easements and rights of way for public purposes through the Reservation under the laws of the State in circumstances where no other reasonable access is available.

(C) With the approval of the Tribe, the Secretary may grant easements or rights-of-way over the Reservation for private purposes, and implied easements of necessity shall apply to all lands acquired by the Tribe, unless expressly excluded by the parties.

(i) JURISDICTIONAL STATUS.—Only land made part of the Reservation shall be governed by the special jurisdictional provisions set forth in the Settlement Agreement and the State Act.

(j) SALE AND TRANSFER OF RESERVATION LANDS.—With the approval of the Secretary, the Tribe may sell, exchange, or lease lands within the Reservation, and sell timber or other natural resources on the Reservation under circumstances and in the manner prescribed by the Settlement Agreement and the State Act.

(k) TIME LIMIT ON ACQUISITIONS.—All acquisitions of contiguous land to expand the Reservation or of non-contiguous lands to be placed in Reservation status shall be completed or under contract of purchase within 10 years from the date the last payment is made into the Land Acquisition Trust; except that for a period of 20 years after the date the last payment is made into the Catawba Land Acquisition Trust Fund, the Tribe may, subject to the limitation on the total size of the Reservation, continue to add parcels to up to two Reservation areas so long as the parcels acquired are contiguous to one of those two Reservation areas.

(l) LEASES OF RESERVATION LANDS.—The provisions of the first section of the Act of August 9, 1955 (ch. 615, 69 Stat. 539; 25 U.S.C. 415) shall not apply to the Tribe and its Reservation. The Tribe, with the approval of the Secretary, shall be authorized to lease its Reservation lands for terms up to but not exceeding 99 years.

(m) NON-APPLICABILITY OF BIA LAND ACQUISITION REGULATIONS.—The general land acquisition regulations of the Bureau of Indian Affairs, contained in part 151 of title 25, Code of Federal Regulations, shall not apply to the acquisition of lands authorized by this section.

**SEC. 13. NON-RESERVATION PROPERTIES.**

(a) ACQUISITION OF NON-RESERVATION PROPERTIES.—The Tribe may draw upon the corpus or accumulated income of the Catawba Land Acquisition Trust Fund or the Catawba Economic Development Trust Fund to acquire and hold parcels of real estate outside the Reservation for the purposes and in the manner delineated in the Settlement Agreement. Jurisdiction and status of all non-Reservation lands shall be governed by section 15 of the Settlement Agreement.

(b) AUTHORITY TO DISPOSE OF LANDS.—Notwithstanding any other provision of law, the Tribe may lease, sell, mortgage, restrict, encumber, or otherwise dispose of such non-Reservation lands in the same manner as other persons and entities under State law, and the Tribe as land owner shall be subject to the same obligations and responsibilities as other persons and entities under State, Federal, and local law.

(c) RESTRICTIONS.—Ownership and transfer of non-Reservation parcels shall not be subject to Federal law restrictions on alienation, including (but not limited to) the restrictions imposed by Federal common law and the provisions of the section 2116 of the Revised Statutes (25 U.S.C. 177).

**SEC. 14. GAMES OF CHANCE.**

(a) INAPPLICABILITY OF INDIAN GAMING REGULATORY ACT.—The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not apply to the Tribe.

(b) GAMES OF CHANCE GENERALLY.—The Tribe shall have the rights and responsibilities set forth in the Settlement Agreement and the State Act with respect to the conduct of games of chance. Except as specifically set forth in the Settlement Agreement and the State Act, all laws, ordinances, and regulations of the State, and its political subdivisions, shall govern the regulation of gambling devices and the conduct of gambling or wagering by the Tribe on and off the Reservation.

**SEC. 15. GENERAL PROVISIONS.**

(a) SEVERABILITY.—If any provision of section 4(a), 5, or 6 of this Act is rendered invalid by the final action of a court, then all of this Act is invalid. Should any other section of this Act be rendered invalid by the final action of a court, the remaining sections of this Act shall remain in full force and effect.

(b) INTERPRETATION CONSISTENT WITH SETTLEMENT AGREEMENT.—To the extent possible, this Act shall be construed in a manner consistent with the Settlement Agreement and the State Act. In the event of a conflict between the provisions of this Act and the Settlement Agreement or the State Act, the terms of this Act shall govern. In the event of a conflict between the State Act and the Settlement Agreement, the terms of the State Act shall govern. The Settlement Agreement and the State Act shall be maintained on file and available for public inspection at the Department of the Interior.

(c) IMPACT OF SUBSEQUENTLY ENACTED LAWS.—The provisions of any Federal law enacted after the date of enactment of this

Act shall not apply in the State if such provision would materially affect or preempt the application of the laws of the State, including application of the laws of the State applicable to lands owned by or held in trust for Indians, or Indian Nations, Tribes or bands of Indians. However, such Federal law shall apply within the State if the State grants its approval by a law or joint resolution enacted by the General Assembly of South Carolina and signed by the Governor.

(d) ELIGIBILITY FOR CONSIDERATION TO BECOME AN ENTERPRISE ZONE OR GENERAL PURPOSE FOREIGN TRADE ZONE.—Notwithstanding the provisions of any other law or regulation, the Tribe shall be eligible to become, sponsor and operate (1) an "enterprise zone" pursuant to title VII of the Housing and Community Development Act of 1987 (42 U.S.C. 11501–11505) or any other applicable Federal (or State) laws or regulations; or (2) a "foreign-trade zone" or "subzone" pursuant to the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u) and the regulations thereunder, to the same extent as other federally recognized Indian Tribes.

(e) GENERAL APPLICABILITY OF STATE LAW.—Consistent with the provisions of section 4(a)(2), the provisions of South Carolina Code Annotated, section 27–16–40, and section 19.1 of the Settlement Agreement are approved, ratified, and confirmed by the United States, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.

(f) SUBSEQUENT AMENDMENTS TO THE SETTLEMENT AGREEMENT OR STATE ACT.—Consent is hereby given to the Tribe and the State to amend the Settlement Agreement and the State Act if consent to such amendment is given by both the State and the Tribe, and if such amendment relates to—

(1) the jurisdiction, enforcement, or application of civil, criminal, regulatory, or tax laws of the Tribe and the State;

(2) the allocation or determination of governmental responsibility of the State and the Tribe over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the Tribe;

(3) the allocation of jurisdiction between the tribal courts and the State courts; or

(4) technical and other corrections and revisions to conform the State Act and the Agreement in Principle attached to the State Act to the Settlement Agreement.

**SEC. 16. TAX TREATMENT OF INCOME AND TRANSACTIONS.**

Notwithstanding any provision of the State Act, Settlement Agreement or this Act (including any amendment made under section 15(f)) any income or transaction otherwise taxable shall remain taxable under the general principles of the Internal Revenue Code of 1986.

**SEC. 17. EFFECTIVE DATE.**

Except for section 12, the provisions of this Act shall become effective upon the transfer of the Existing Reservation under section 12 to the Secretary.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mrs. KASSEBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## LEGISLATIVE BRANCH APPROPRIATIONS, FISCAL YEAR 1994—CONFERENCE REPORT

Mr. FORD. Madam President, I submit a report of the committee of conference on H.R. 2348 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. 2348) making appropriations for the legislative branch for the fiscal year ending September 30, 1994, 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 August 5, 1993.)

Mr. REID. Madam President, I am pleased to recommend to the Senate the conference report on H.R. 2348, making appropriations for the legislative branch for fiscal year 1994, and for other purposes.

The conference report and joint explanatory statement provide a detailed description of the agreements we are recommending.

The conference agreement provides a total of $2,269,557,946 in budget authority for the legislative branch in fiscal 1994. This is $33,365,754, or 1.4 percent below the enacted levels of funding for the current fiscal year and is almost $4 million lower than the amount recommended in the bill that was passed by the Senate on July 23, 1993.

More significantly, the amounts in this bill are $74 million dollars less than the conference agreement reached 2 years ago for fiscal year 1992. And this difference, of course, ignores the effects of inflation and other uncontrollable costs on the real purchasing power of the funding provided in this conference report. In real terms, the budgets of the agencies of the legislative branch have been reduced by $302 million, or 11.7 percent in the span of two years. With the possible exception of Defense, no other component of the Federal government can match that rate of contraction.

I should also point out that this bill includes two provisions, sections 307 and 308, designed to assure further reduction in personnel and administrative expenses in conformity with the joint leadership commitment to match the savings announced by President Clinton for the executive branch last spring.

Section 307 will require the number of employee positions, on a full-time equivalent basis, to be reduced by at least 4 percent by September 30, 1995. Section 308 requires a 14-percent reduction in administrative expenses by fiscal year 1997.

In closing, let me once again recognize Chairman FAZIO, the ranking member, Mr. YOUNG, and the other House conferees. Meeting these gentlemen in conference is always a pleasurable experience. I think we are usually able to work out a package of compromises that resolves our disagreements in a fair and responsible fashion. My thanks to them and their capable staff.

Much of the credit for what we have accomplished in this bill belongs to my ranking members, Senator MACK and the other Senate conferees. The Senate is particularly fortunate that Senator MACK serves as ranking member of this subcommittee. He is committed to the welfare of this institution and of the legislative branch in general. His ideas and advice are invariably sensible and constructive.

The Senate delegation on the legislative bill, of course, always includes our full committee chairman, Senator BYRD, and his colleague and ranking member, Senator HATFIELD. Both personify what it means to be a Senator. Their guidance and assistance are invaluable.

Finally, I wish to acknowledge the work of our committee staff: Jerry Bonham, the majority clerk on the subcommittee, and Keith Kennedy, the minority staff director for the full committee who, fortunately, is also assigned to this subcommittee.

I urge the Senate to approve the conference report and I yield the floor.

Mr. HATFIELD. Madam President, in its initial action on the fiscal year 1994 legislative branch appropriations act, the other body deleted funding for administrative support for the Librarian of Congress Emeritus, and directed in report language that costs for this support not be provided from other sources. In my view, this action violated the provisions of Public Law 100–83, which conferred the status of Librarian of Congress Emeritus upon Dr. Daniel J. Boorstin, and authorized administrative and clerical support. Accordingly, when the Senate considered H.R. 2348 I offered an amendment restoring the funding for this purpose.

The conference agreement, as I read it on page 5 of House Report No. 103–210, restates the language of Public Law 100–83 that the Librarian Emeritus "may receive incidental administrative and clerical support through the Library of Congress," and further stipulates that funds for this staff assistance "should be taken from available funds."

Clearly, the conference agreement enables the Library to provide administrative support for the Librarian Emeritus just as it has for the past 6 years. I ask the chairman of the subcommittee, Senator REID, if that is his view of the agreement as well.

Mr. REID. Yes, Madam President, that is indeed the case. The Library has provided support to the Librarian Emeritus for the past 6 years in accordance with Public Law 100–83, and the

conference agreement on the fiscal year 1994 legislative branch appropriations act clearly provides for that support to continue. I thank the Senator from Oregon for the opportunity to emphasize this part of our conference agreement.

Mr. HATFIELD. Madam President, I thank the chairman for his assistance on this matter and many others, and commend him for his work on this difficult appropriations bill.

Mr. MACK. Madam President, the subcommittee on legislative branch appropriations met in conference with our counterparts from the other body last Monday, August 2, and reached agreement on all items. The conference report Senator REID and I bring to the Senate today embodies that agreement.

Total funding for all legislative branch entities funded in this conference agreement totals $2,269,557,946, a reduction of $3,983,595 from the Senate-passed level, $33,365,754 from fiscal year 1993 enacted amounts, and $372,387,554 from the fiscal year 1994 request. In addition, the conference agreement includes general provisions requiring future reductions in both personnel and expenses in all legislative branch agencies. As I said when this bill was debated on the Senate floor, Mr. President, we are making good progress in reducing spending for the legislative branch of our Government. We are setting an example in this bill that I hope other Appropriations subcommittees will follow.

Mr. President, our conference agreement has been available since Tuesday, and was printed in full in the CONGRESSIONAL RECORD of Monday's date, so there is no need for a lengthy description. I urge the adoption of the conference report.

The PRESIDING OFFICER. Without objection, the conference report is agreed to.

So, the conference report was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mrs. KASSEBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## NUTRITION LABELING AND EDUCATION ACT AMENDMENTS OF 1993

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2900, the Nutrition Labeling and Education Act Amendments of 1993, just received from the House, that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; further that any statements relating to the passage of this measure be printed in the RECORD at the appropriate place.

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

So, the bill (H.R. 2900) was deemed read three times and passed.

Mr. KENNEDY. Madam President, I rise to support the passage of H.R. 2900, the Nutrition Labeling and Education Act Amendments of 1993. The bill amends the 1990 Nutrition Labeling and Education Act [NLEA] to provide a broader exemption for small businesses with respect to certain labeling requirements of that act.

The Food and Drug Administration [FDA] has published regulations implementing NLEA, and its requirements are now being met by many large food companies. I commend the food industry for its responsiveness to this act and for its cooperation. By May 1994, we can expect that labels on most of the food products in the American grocery basket will provide consumers with clear, accurate information about the nutrition content of their food. This information will be invaluable to their decisions about their food purchases, diets, and daily nutrition. The act is clearly an important piece of legislation, and its implementation is proceeding effectively.

In the course of deliberations over implementing regulations, however, FDA recognized that NLEA's original small business exemption was so narrow that few existing food companies could qualify. FDA held a series of regional meetings with small businesses and determined, based on information provided during and after those meetings, that the small business community had legitimate concerns about their ability to implement NLEA, particularly in the allotted time frame. These concerns were brought to our attention, and we believe they have merit. Congress should act expeditiously to address them.

The bill I support broadens the current small business exemption, while still maintaining the integrity of the NLEA. The bill does three things. First, it bases the small business exemption on the number of units of products sold and the number of employees, rather than on the current narrow definition of net earnings or profits. Second, it allows more time for compliance with the act. Third, it provides a straightforward system under which a company simply notifies the FDA that one or more of its products qualify for an exemption.

For the year ending May 8, 1995, the exemption will apply to products for which sales are fewer than 600,000 units sold by companies with fewer than an average of 300 full-time employees. For the year ending May 8, 1996, the exemption applies to products with sales of fewer than 400,000 units sold by companies with fewer than 300 employees. For the year ending May 8, 1997, the exemption will apply to products with fewer than 200,000 units sold by companies with fewer than 200 employees. Finally, after May 8, 1997, the exemption will apply to products with sales of fewer than 100,000 units sold by companies with fewer than 100 employees.

These amendments give small companies more time to absorb the costs of complying with the NLEA. A small business may notify the FDA of its intention to claim an exemption for one or more products. No action or response by the FDA is required for the exemption to be in place. Businesses with fewer than 10 employees, which sell fewer than 10,000 units of products, are required to file any notice with the FDA.

Finally, for products introduced after May 8, 2002, the FDA may tighten this exemption by regulation, if the change does not place an undue burden on small businesses affected by it.

This bill responses to the legitimate concerns of small food businesses. These include small firms whose primary business, for example, is the manufacture and sale of specialty foods such as mustards, sauces, and jellies. It will help small bakers and small confectioners whose source of income may rest on the manufacture and sale of seasonal products such as chocolate Santas and candy canes.

At the same time, this bill is compatible with NLEA's central goal of giving consumers more complete information about the nutritional content of their food.

This proposal has been extensively discussed in both the House and Senate, with our colleagues who were principally involved in the enactment of the NLEA, and with others who have a strong interest in that legislation.

I urge my colleagues to support this bill.

Mr. BUMPERS. Madam President, I am pleased that the House and Senate have passed a measure to help small food producers as they come into compliance with the Nutrition Labeling and Education Act. Without the amendments we have approved today, small specialty food and confectionery companies across the country were faced with a deadline that most simply could not meet. The cost of labeling small numbers of a product is far costlier per item than the labeling of grater numbers of products, and the profit margins among these companies is razor thin. Without the relief this measure provides, many would undoubtedly have been forced to close their doors. At best, many would have been forced to reduce the variety of products they offer. I hope this bill will give the small businesses sufficient time to comply with the labeling regulations.

It is estimated that a retail confectioner must offer a minimum of 70 or 80 different items. New products are vital to their survival, and they frequently modify products to satisfy consumer

demands. Their competitive advantage over large companies rests on their ability to continually develop novel, specialty items that are packaged in a variety of ways. One small company may produce jams, sauces, cakes, cookies, seasonings, and even cookie mixes. In addition, the products in demand may change with the seasons.

I understand that analytical testing of one product can cost $500. Multiply that by the large number of products these confectioners and specialty foods companies offer and it is clear that with the additional cost of label printing, they would face prohibitive costs.

It is difficult enough for a small company to get a loan to expand or modernize. A loan for an activity that would not generate additional income or increased productivity would be nearly impossible for a small company.

The effort to enact this measure has been bipartisan, and the result is a responsible approach to ensure that small companies that produce the specialty items many of us cannot resist remain in business.

Mrs. KASSEBAUM. Madam President, I am pleased to support the passage of H.R. 2900, the Nutrition Labeling and Education Act Amendments of 1993. This legislation substitutes a more reasonable small business exemption from the nutrition labeling requirements than that provided in the Nutrition Labeling and Education Act of 1990. If the original exemption remains unchanged, a number of small specialty food and confectionery manufacturing and retail businesses may be forced to reduce their product lines or go out of business, and it will be very difficult to establish new businesses. Many of these businesses are family-owned and started by women working out of their homes.

The Nutrition Labeling and Education Act requires that most products be labeled for nutritional content according to Federal guidelines, effective May 1994. The act exempts small businesses, but defines small businesses as those having gross revenues or sales—not profits—of not more than $500,000. Only the smallest of businesses would be exempt under this definition.

The cost of complying with the Nutrition Labeling and Education Act requirements will be prohibitive for small businesses which sell a low volume of products at low profits and often make a wide variety of products. Estimates of per-product costs range from $3,000 to $6,000. The legislation we are introducing provides an exemption that phases down over a 3-year period the number of people a business could employ and product units it could sell and qualify for an exemption. When fully phased down, only businesses employing fewer than 100 full-time equivalent employees and selling fewer than 100,000 product units would qualify. This phase-down period will allow businesses to accumulate the resources they will need to come into compliance with the labeling requirements.

I am pleased that our colleagues have allowed us to move quickly on this legislation because time is of the essence. To come into compliance with the May 1994, effective date of the Nutrition Labeling and Education Act requirements, small businesses must in the very near future begin to incur the costs of initiating product analysis and labeling redesign.

In order to ensure the timely passage, it was essential that this legislation be confined only to the provision of this very modest small business exemption from the labeling requirements. I know that there are other problems with the Nutrition Labeling and Education Act statute and regulations that must be addressed, such as one brought to my attention by my distinguished colleague from Vermont, Senator JEFFORDS, relating to the standards for maple syrup. I share his concern about the need to strengthen the regulatory standards for maple syrup, and I pledge that I will work hard to address this issue, which is of great importance to thousands of his constituents.

I urge my colleagues to agree to approve this small business exemption measure under unanimous consent.

Mr. HATCH. Madam President, I rise in support of H.R. 2900, the Nutrition Labeling and Education Act Amendments of 1993, and urge its expeditious consideration.

As my colleagues are aware, almost 3 years ago, we implemented the Nutrition Labeling and Education Act [NLEA], a landmark piece of legislation with only the best of intentions: to provide consumers with the information needed to improve their health through good nutrition.

Unfortunately, the act engendered some unintended consequences, among them an overly narrow exemption of small business which proved extremely onerous. We have all heard complaints from small manufacturers, packers, or distributors who cannot meet the act's labeling requirements.

H.R. 2900 will address these problems through its three major provisions. The bill: First, bases the exemption for small business on the number of units of products sold and the number of employees. The current narrow definition which has proven unworkable is based on net earnings or profits; second, extends the timeframe for compliance to May 8, 1995; and third, simplifies the process for compliance by allowing companies simply to notify the FDA that one or more of their products qualify for exemption.

I am pleased that we are able to move this amendment to the NLEA forward tonight. Although a minor change in the law, this bill shows that Congress is willing to examine problems which arise with the NLEA and resolve them in a straightforward fashion. I hope this process will continue and that my colleagues will recognize we can fine tune the NLEA without undermining its fundamental intent.

The Nutrition Labeling and Education Act Amendments of 1993 is a minor but much-needed improvement on the NLEA, and it deserves our full support.

I thank Chairman KENNEDY and Senator KASSEBAUM for their leadership in developing this legislation with our House colleagues, Chairmen DINGELL and WAXMAN, and ranking minority members MOORHEAD and BLILEY. I worked closely with them during this process and am confident that the legislation we are considering today deserves our full support.

## DESIGNATING "TRY AMERICAN DAY"

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Joint Resolution 124, introduced earlier today by the Republican leader and others, that the joint resolution be deemed read three times and passed, the motion to reconsider laid upon the table; that the preamble be agreed to, and that any statements relating to this measure appear in the RECORD at the appropriate place.

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

So, the joint resolution (S.J. Res. 124) was deemed read three times and passed, as follows:

S.J. RES. 124

Whereas the creativity and ingenuity of American working men and women in the United States have provided a host of new products and services which improve the quality of life in the United States and the world;

Whereas American workers should be recognized as one of our Nation's most valuable resources;

Whereas the American spirit of entrepreneurship, pride of craftsmanship, and commitment to quality are hallmarks recognized throughout the world;

Whereas the United States and its citizens have reason to celebrate the strength and quality of American products and services;

Whereas the quality and abundance of American goods are a tribute to the productivity and ability of American workers;

Whereas the ability of American companies to export, even in the face of strong trade barriers in many countries, is a sign of the true competitiveness of American products;

Whereas American farmers and ranchers provide this country and the world with a wide variety of high quality food and fiber products and consistently create annual agricultural trade surpluses of more than $20,000,000,000;

Whereas the energy and perseverance of American business serves as a beacon for other nations that strive to ensure prosperity for their people; and

Whereas American small business provides a basis for economic progress and for the creation of jobs and opportunities for people

from every corner of America: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That September 6, 1993, Labor Day, is designated as "Try American Day". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities and to honor the day through the purchase of American-made goods and services.

Mr. DOLE. Madam President, in the frequent debates we have in the Senate over the trade deficit, we pay a great deal of attention to the reasons for that deficit: The competitiveness of our producers, the trade barriers erected by some of our competitors, and the relative openness of the American market in comparison with other countries to name a few.

The debate often overlooks one reason for the trade deficit which is the tremendous appetite Americans have for products made outside the United States. That appetite helps make us the largest importing nation in the world.

Being the largest importer shouldn't be a problem for us. In fact, it should serve as an argument for other countries to open their markets to American-made products.

I believe it would be constructive, however, if we, as Americans, all gave more thought to selecting American-made products whenever we can. It would be good if every American looked at products made here in the United States as not just a consumer's choice but as a job in their locality, a paycheck for their neighbor and a direct economic benefit to their community.

This idea should not just occur to the individual consumer but to corporate purchasers as well. Those corporations who come to Washington seeking some sort of protection from imported products might do well to survey their machine tools, their corporate vehicles, and their capital equipment to see where they were produced and how the purchasing choice was made.

To try and promote the idea of considering American-made products, I am introducing today a joint resolution designating September 6, 1993, Labor Day, as "Try American Day." I am pleased to say that this resolution is supported by USA-Owned USA-Made, an organization which promotes American quality, services and products.

This resolution is very similar to Senate Joint Resolution 262 which was introduced last year with 33 Senators as cosponsors. There are three substantive changes in this resolution from the original bill. First, the designation has been changed from "Buy American Day" to "Try American Day" to avoid any confusion with "Buy American" legislation or any Federal Government mandate. This should be a personal choice for the American buyer.

Second, Labor Day has been chosen this year instead of July 4 as a more appropriate day to honor the American worker. Finally, a paragraph on agriculture has been added to salute the productivity of that important sector of American life.

The resolution also authorizes the President to issue a proclamation calling on Americans to observe the day with appropriate activities and the purchase of American-made goods and services. But I would hope, Madam President, that the resolution would have a positive effect on the purchase of American-made goods and services for the other 364 days of the year as well.

Madam President, I am pleased to be joined in sponsoring this resolution by Senators MURKOWSKI, BOND, DOMENICI, MATHEWS, and SHELBY. To date, Try America resolutions similar to this one have been passed by State governments in Arizona, Nevada, and Utah and by counties and cities in California, Arizona, and Washington State and are expected to pass in a number of other States and localities.

I want to make it clear to all my colleagues that this resolution is not intended as any sort of government—imposed mandate or any criticism of goods produced in other countries. It is simply intended as a modest effort to make consumers more aware of the skills and hard efforts of the millions of American men and women working in large companies, small businesses, agriculture, the food industry, and the service sector.

## CHILDHOOD CANCER MONTH

Mr. FORD. Madam President, on behalf of the majority leader, I ask unanimous consent the Senate proceed to the immediate consideration of House Joint Resolution 125, a joint resolution introduced earlier today by Senator MITCHELL, and others, to designate "Childhood Cancer Month"; that the joint resolution be read three times, passed, and the motion to reconsider laid upon the table; that the preamble be agreed to, and any statements relating to the measure appear in the RECORD at the appropriate place.

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

So the joint resolution (H.J. Res. 125), with its preamble, was deemed read a third time, and passed.

## LIMITED PARTNERSHIP ROLLUP REFORM ACT OF 1993

Mr. FORD. Madam President, on behalf of the majority leader, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 179, S. 425, a bill to amend the Securities Exchange Act of 1934 with respect to limited partnership rollup.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 424) to amend the Securities Exchange Act of 1934 with respect to limited partnership rollup.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Limited Partnership Rollup Reform Act of 1993".*

***SEC. 2. REVISION OF PROXY SOLICITATION RULES WITH RESPECT TO LIMITED PARTNERSHIP ROLLUP TRANSACTIONS.***

*(a) AMENDMENT.—Section 14 of the Securities and Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:*

*"(h) PROXY SOLICITATIONS AND TENDER OFFERS IN CONNECTION WITH LIMITED PARTNERSHIP ROLLUP TRANSACTIONS.—*

*"(1) PROXY RULES TO CONTAIN SPECIAL PROVISIONS.—It shall be unlawful for any person to solicit any proxy, consent, or authorization concerning a limited partnership rollup transaction, or to make any tender offer in furtherance of a limited partnership rollup transaction, unless such transaction is conducted in accordance with rules prescribed by the Commission under subsections (a) and (d). Such rules shall—*

*"(A) permit any holder of a security that is the subject of the proposed limited partnership rollup transaction to engage in preliminary communications for the purpose of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed transaction, without regard to whether any such communication would otherwise be considered a solicitation of proxies, and without being required to file soliciting material with the Commission prior to making that determination, except that—*

*"(i) nothing in this subparagraph shall be construed to limit the application of any provision of this title prohibiting, or reasonably designed to prevent, fraudulent, deceptive, or manipulative acts or practices under this title; and*

*"(ii) any holder of not less than 5 percent of the outstanding securities that are the subject of the proposed limited partnership rollup transaction who engages in the business of buying and selling limited partnership interests in the secondary market shall be required to disclose such ownership interests and any potential conflicts of interests in such preliminary communications;*

*"(B) require the issuer to provide to holders of the securities that are the subject of the transaction such list of the holders of the issuer's securities as the Commission may determine in such form and subject to such terms and conditions as the Commission may specify;*

*"(C) prohibit compensating any person soliciting proxies, consents, or authorizations directly from security holders concerning such a transaction—*

*"(i) on the basis of whether the solicited proxy, consent, or authorization either approves or disapproves the proposed limited partnership rollup transaction; or*

*"(ii) contingent on the approval, disapproval, or completion of the limited partnership rollup transaction;*

"(D) set forth disclosure requirements for soliciting material distributed in connection with a limited partnership rollup transaction, including requirements for clear, concise, and comprehensible disclosure, with respect to—

"(i) any changes in the business plan, voting rights, form of ownership interest, or the compensation of the general partner in the proposed limited partnership rollup transaction from each of the original limited partnerships;

"(ii) the conflicts of interest, if any, of the general partner;

"(iii) whether it is expected that there will be a significant difference between the exchange values of the limited partnerships and the trading price of the securities to be issued in the limited partnership rollup transaction;

"(iv) the valuation of the limited partnerships and the method used to determine the value of the interests of the limited partners to be exchanged for the securities in the limited partnership rollup transaction;

"(v) the differing risks and effects of the transaction for investors in different limited partnerships proposed to be included, and the risks and effects of completing the transaction with less than all limited partnerships;

"(vi) the statement by the general partner required under subparagraph (E);

"(vii) any opinion (other than an opinion of counsel), appraisal, or report received by the general partner or sponsor that is prepared by an outside party and that is materially related to the limited partnership rollup transaction and the identity and qualifications of the party who prepared the opinion, appraisal, or report, the method of selection of such party, material past, existing, or contemplated relationships between the party or any of its affiliates and the general partner, sponsor, successor, or any other affiliate, compensation arrangements, and the basis for rendering and methods used in developing the opinion, appraisal, or report; and

"(viii) such other matters deemed necessary or appropriate by the Commission;

"(E) require a statement by the general partner as to whether the proposed limited partnership rollup transaction is fair or unfair to investors in each limited partnership, a discussion of the basis for that conclusion, and an evaluation and a description by the general partner of alternatives to the limited partnership rollup transaction, such as liquidation;

"(F) provide that any solicitation or offering period with respect to any proxy solicitation, tender offer, or information statement in a limited partnership rollup transaction shall be for not less than the lesser of 60 calendar days or the maximum number of days permitted under applicable State law; and

"(G) contain such other provisions as the Commission determines to be necessary or appropriate for the protection of investors in limited partnership rollup transactions.

"(2) SUMMARY.—Disclosure requirements established under paragraph (1)(D) shall require that soliciting material include a clear and concise summary of the limited partnership rollup transaction (including a summary of the matters referred to in clauses (i) through (viii) of that subparagraph) with the risks of the limited partnership rollup transaction set forth prominently in the forepart thereof.

"(3) EXEMPTIONS.—The Commission may, consistent with the public interest, the protection of investors, and the purposes of this title, exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the requirements imposed pursuant to paragraphs (1) and (2) or, from the definition contained in paragraph (5).

"(4) EFFECT ON COMMISSION AUTHORITY.—Nothing in this subsection limits the authority of the Commission under subsection (a) or (d) or any other provision of this title or precludes the Commission from imposing, under subsection (a) or (d) or any other provision of this title, a remedy or procedure required to be imposed under this subsection.

"(5) DEFINITION.—As used in this subsection the term 'limited partnership rollup transaction' means a transaction involving—

"(A) the combination or reorganization of limited partnerships, directly or indirectly, in which some or all investors in the limited partnerships receive new securities or securities in another entity, other than a transaction—

"(i) in which—

"(I) the investors' limited partnership securities are reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A; and

"(II) the investors receive new securities or securities in another entity that are reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A;

"(ii) involving only issuers that are not required to register or report under section 12 both before and after the transaction;

"(iii) in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act of 1933;

"(iv) which will result in no significant adverse change to investors in any of the limited partnerships with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; or

"(v) where each investor is provided an option to receive or retain a security under substantially the same terms and conditions as the original issue; or

"(B) the reorganization of a single limited partnership, directly or indirectly, in which some or all investors in the limited partnership receive new securities or securities in another entity, and—

"(i) transactions in the security issued are reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A;

"(ii) the investors' limited partnership securities are not reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A;

"(iii) the issuer is required to register or report under section 12, both before and after the transaction, or the securities to be issued or exchanged are required to be or are registered under the Securities Act of 1933;

"(iv) there are significant adverse changes to security holders in voting rights, the term of existence of the entity, management compensation, or investment objectives; and

"(v) investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

"(6) EXCLUSIONS.—For purposes of this subsection, a limited partnership rollup transaction does not include—

"(A) a transaction that involves only a limited partnership or partnerships having an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets in accordance with such criteria as the Commission determines appropriate;

"(B) the combination or reorganization of limited partnerships or the reorganization of a single limited partnership—

"(i) in which a non-affiliated party succeeds to the interests of a general partner or sponsor, if—

"(I) such action is approved by not less than 66⅔ percent of the outstanding units of each of the participating limited partnerships; and

"(II) as a result of the transaction, the existing general partners are entitled to receive only compensation expressly provided for in the preexisting limited partnership agreements; or

"(ii) involving only limited partnerships wherein the interests of the limited partners are repurchased, recalled, or exchanged pursuant to the terms of the preexisting limited partnership agreements for securities in an operating company specifically identified at the time of the formation of the original limited partnership; or

"(C) a transaction in which the securities offered to investors are securities of another entity that are reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A, if—

"(i) such other entity was formed, and such class of securities was reported, not less than 12 months before the date on which soliciting material is mailed to investors; and

"(ii) the securities of that entity issued to investors in the transaction do not exceed 20 percent of the total outstanding securities of the entity.".

(b) SCHEDULE FOR REGULATIONS.—The Securities and Exchange Commission shall promulgate final regulations under the Securities Act of 1933 and the Securities Exchange Act of 1934 which shall become effective not later than 12 months after the date of enactment of this Act to implement the requirements of section 14(h) of the Securities Exchange Act of 1934, as added by subsection (a).

**SEC. 3. RULES OF FAIR PRACTICE IN ROLLUP TRANSACTIONS.**

(a) REGISTERED SECURITIES ASSOCIATION RULE.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(b)) is amended by adding at the end the following new paragraph:

"(12) The rules of the association to promote just and equitable principles of trade, as required by paragraph (6), include rules to prevent members of the association from participating in any limited partnership rollup transaction (as such term is defined in paragraphs (5) and (6) of section 14(h)) unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to one of the following—

"(i) an appraisal and compensation;

"(ii) retention of a security under substantially the same terms and conditions as the original issue;

"(iii) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding units of each of the participating limited partnerships; or

"(iv) other rights designed to protect dissenting limited partners;

"(B) the right not to have their voting power unfairly reduced or abridged;

"(C) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

As used in this paragraph, the term 'dissenting limited partner' means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or

*tender offer, such person shall file an objection in writing under the rules of the association during the period in which the offer is outstanding.".*

*(b) LISTING STANDARDS OF NATIONAL SECURITIES EXCHANGES.—Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following:*

*"(9) The rules of the exchange prohibit the listing of any security issued in a limited partnership rollup transaction (as such term is defined in paragraphs (5) and (6) of section 14(h)), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—*

*"(A) the right of dissenting limited partners to one of the following—*

*"(i) an appraisal and compensation;*

*"(ii) retention of a security under substantially the same terms and conditions as the original issue;*

*"(iii) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding units of each of the participating limited partnerships; or*

*"(iv) other rights designed to protect dissenting limited partners;*

*"(B) the right not to have their voting power unfairly reduced or abridged;*

*"(C) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and*

*"(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.*

*As used in this paragraph, the term 'dissenting limited partner' means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the exchange, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the exchange during the period in which the offer is outstanding.".*

*(c) STANDARDS FOR AUTOMATED QUOTATION SYSTEMS.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the end the following new paragraph:*

*"(13) The rules of the association prohibit the authorization for quotation on an automated interdealer quotation system sponsored by the association of any security designated by the Commission as a national market system security resulting from a limited partnership rollup transaction (as such term is defined in paragraphs (5) and (6) of section 14(h)), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—*

*"(A) the right of dissenting limited partners to one of the following—*

*"(i) an appraisal and compensation;*

*"(ii) retention of a security under substantially the same terms and conditions as the original issue;*

*"(iii) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding units of each of the participating limited partnerships; or*

*"(iv) other rights designed to protect dissenting limited partners;*

*"(B) the right not to have their voting power unfairly reduced or abridged;*

*"(C) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and*

*"(D) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.*

*As used in this paragraph, the term 'dissenting limited partner' means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the association, except that for purposes of an exchange or tender offer such person shall file an objection in writing under the rules of the association during the period during which the offer is outstanding.".*

*(d) EFFECT ON EXISTING AUTHORITY.—The amendments made by this section shall not limit the authority of the Securities and Exchange Commission, a registered securities association, or a national securities exchange under any provision of the Securities Exchange Act of 1934, or preclude the Commission or such association or exchange from imposing, under any other such provision, a remedy or procedure required to be imposed under such amendments.*

*(e) EFFECTIVE DATE.—The amendments made by this section shall become effective 12 months after the date of enactment of this Act.*

***SEC. 4. REVIEW OF FILINGS PRIOR TO EFFECTIVE DATE.***

*Prior to the effective date of regulations adopted pursuant to this Act, the Securities and Exchange Commission shall continue to review and declare effective registration statements and amendments thereto relating to limited partnership rollup transactions in accordance with applicable regulations then in effect.*

The PRESIDING OFFICER. Are there amendments?

If not, the question is on agreeing to the committee substitute.

The committee substitute was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the committee substitute was agreed to.

Mrs. KASSEBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Madam President, I rise in support of S.424, The Limited Partnership Rollup Reform Act. Passage of this legislation is absolutely critical in order to protect millions of investors in limited partnerships from abusive partnership rollups.

This legislation has been before the Senate for more than 2 years. There have been numerous hearings. An earlier version of this bill passed the Senate last year with the support of 87 Senators. Forty-two Senators have cosponsored the legislation this year, and it was reported by the Banking Committee by a unanimous vote. Legislation on this subject passed the House of Representatives in March by a vote of 408 to 6.

As I have said in the past, there is a reason why so many Members of Congress support this bill. Our constituents—primarily small investors with an average investment of about $10,000—have documented a long record of abuses in limited partnership rollups.

Rollups generally are transactions in which investors in an existing limited partnership are solicited to approve a reorganization of their partnership, or a combination of their partnership with other partnerships. In the transactions covered by the legislation, the reorganization or combination results in an exchange of the existing limited partnership securities for securities in a new publicly traded entity, in which the investors' rights are substantially different.

In these transactions, investors have received misleading and confusing disclosure documents. Many investors have been pressured to vote in favor of rollup transactions by brokers who were being paid only if they produced yes votes. In addition, general partners have structured deals to award themselves abusively high fees in the rolled up entities and to pay high fees to affiliates.

Investors who have voted against a rollup have been forced to accept shares in a new corporation, often with substantial reductions in their voting rights, while the voting rights of managements have increased. Thus, investors have been forced to accept shares in a new entity they did not want, with a management fee structure that ensured that management would be paid first, and investors last. No one has disputed the extent of these abuses.

In many of these transactions, the price of securities issued in the rollup have declined 40 percent or more on the first day of trading.

Of course, other economic factors have contributed to losses in real estate and oil and gas partnerships. But when we have seen managements lining their pockets first—making sure they get paid first, and investors last—then we have to question whether some of these deals were structured for the benefit of investors, or for the benefit of general partners.

Having said that, I want to emphasize that limited partnerships have been an excellent capital-raising tool for business, as well as an excellent investment vehicle for many individuals. And, today, the restructuring of real estate partnerships, research and development partnerships, and drilling programs in the oil and gas industry, is healthy, and offers the potential for businesses to conserve capital and for investors to realize greater values.

Therefore, in developing the legislation, our goal has been to take the steps necessary to curb the abusive transactions but to permit fair deals that are good for investors to go forward.

Since we started this legislative process over 2 years ago, the SEC, the NASD, and the State of California have taken steps to address abusive rollup transactions. These have been very

constructive actions, but gaps in investor protection still remain. Moreover, if we do not act, other States may feel they have to act, and the result could be a patchwork of different rules that would inhibit even the best transactions.

Prior to the committee's markup, Senator GRAMM and I developed an amendment that furthers our objective of placing limits on abusive transactions, while giving businesses the flexibility to carry out good transactions.

In the amendment, we exclude from the bill's requirements: certain arms-length acquisitions; certain transactions in which investors are offered seasoned, exchange-traded securities, whose value is readily ascertainable; and other transactions in which the original partnership documents clearly state that a reorganization in the future was planned. We also provide greater flexibility for certain transaction that receive the wide approval of limited partners. In addition, we provide greater certainty for investors and for businesses with respect to the effective date of the legislation.

All of these provisions make it clear that we certainly are not banning transactions—but banning abuses. So, where investor rights are protected, these transactions may go forward.

Let me thank my colleague, Senator GRAMM, for his hard work on this legislation. In my view, we took a very good bill and made it even better.

Let me also thank Chairman RIEGLE for his support on this issue over the past 2 years. Senator D'AMATO played a very constructive role in working out the final amendment, and I want to thank him. Senator BOND, as always, has been one of the strongest supporters of this legislation.

I also want to thank the staff who have worked so hard on the legislation: Wayne Abernathy of Senator GRAMM's staff; Laura Unger and Ira Paull of Senator D'AMATO's staff; and Mitchell Feuer of Chairman RIEGLE's staff. Let me also thank my two staff members who have shaped this legislation: Michael Stein, the deputy staff director of the Securities Subcommittee, and Marti Cochran, chief counsel and staff director of the subcommittee. These same staff, majority and Republican, also were responsible for the securities legislation passing the Senate last week, the Government Securities Act Amendments of 1993.

We have been assisted in our efforts on both bills by the hard-working staff of the SEC and, on the Government securities legislation, the hard work of the Treasury staff as well. I want to thank all of them.

Finally, let me say, Madam President, I look forward to working with our House colleagues to iron out the differences between the House and Senate bills. The House initiated this legislative effort, both in the last Congress and in this one. Chairman MARKEY of the Subcommittee on Telecommunications and Finance and Chairman DINGELL of the Energy and Commerce Committee have worked tirelessly to ensure that investors in limited partnerships are protected from abusive rollup transactions. I applaud their efforts and greatly respect their leadership on this issue.

I believe the Senate has taken a very good House bill and improved upon it. We have had the benefit of more time, and, as a result of the efforts of my colleague from Texas, we have had the benefit of perhaps a sharper debate over the kinds of transactions that should be covered by the bill, and those that should be excluded.

Senator GRAMM has asked that we not go to conference on this bill yet, but that we attempt to work out differences with the House with the goal of passing an agreed-upon bill in both Houses in September. I urge my House colleagues to look carefully at our bill, and I hope they will accept it, particularly as it provides greater specificity as to the types of transactions in which investor rights are adequately protected. I look forward to working with Chairman MARKEY and Chairman DINGELL, and I am confident we will have a bill to send to the President in the near future.

Mr. RIEGLE. Madam President, I am pleased that the Senate has today passed an important piece of investor protection legislation, the Limited Partnership Rollup Reform Act. This bill has garnered broad bipartisan support in the Congress. It also is supported by the State securities regulators, by investor groups, and by the organization representing general partners.

Limited partnerships were an important investment vehicle in the 1980's; roughly $150 billion of interests were sold, in average investments of $10,000. It has been estimated there are over 317,000 limited partner investors in Michigan alone. Most partnerships invested in oil and gas properties and commercial real estate.

As those sectors have experienced difficulties, many general partners have rolled up partnerships into new, publicly traded entities. Typically, limited partners no longer receive their investment back at a fixed time; the general partner's compensation is increased; and it is often more difficult to remove the general partner.

What do the limited partners receive in return? A publicly traded security, instead of an illiquid partnership interest. Unfortunately for them, the market values the securities based on cash flow, rather than asset value. The limited partners lose a great deal of their equity.

The bill improves disclosure to limited partners. Recent SEC rules address the bill's requirements for clear and concise disclosure of the items of most importance to investors. The bill further requires that limited partners be provided with a list of other limited partners, and permits them to engage in preliminary communications without filing with the SEC. The bill also prohibits any person soliciting proxies in a rollup from being paid only for yes votes or only if the transaction is completed.

It further protects investors by prohibiting broker-dealers from participating in a rollup, and the stock exchanges from listing a security issued in a rollup, unless the transaction meets certain requirements of fairness. These include the right of dissenting limited partners to an appraisal and compensation, or other rights designed to protect them. While this legislation does not require that any appraisals be performed, investor interests would be served by the development of consistent industry standards, such as the Uniform Standards of Professional Appraisal Practice.

The bill passed by the Senate today was amended at committee markup by a provision developed by Securities Subcommittee Chairman CHRIS DODD and ranking member PHIL GRAMM. They deserve credit for fashioning a compromise that has allowed this legislation to proceed by unanimous vote. This amendment excludes from the scope of the legislation certain transactions that do not present the potential for abuse that motivated the legislation. As amended, the bill continues to provide significant investor protections in transactions that potentially pose conflicts of interest. The legislation is not intended to restrict the use of any method of reorganization that is permitted under state law.

In addition, the legislation grants the SEC broad authority to exempt securities and transactions from the provisions of the bill. The SEC should use this authority to exempt transactions that do not raise substantial investor protection concerns. For example, transactions involving diagnostic and medical service centers entered into to comply with certain Medicare and Medicaid antifraud regulations may not involve passive investors, and so may not raise investor protection concerns.

This bill preserves the integrity of our securities markets by preventing rollup securities from trading on the exchanges unless investors were protected. By protecting average investors, it promotes investor confidence and capital formation. I look forward to resolving the differences between the House and Senate versions, so the measure may be enacted.

Mr. ROTH. Madam President, since on this day there has been considerable discussion of the issue of retroactivity with respect to the budget reconciliation legislation, I would like to raise

a similar type of question with respect to S. 424, the Limited Partnership Rollup Reform Act.

This legislation provides that the rules of securities exchanges prohibit the listing of any security issued in a limited partnership rollup transaction unless that transaction was conducted in accordance with certain standards laid out in the bill. The legislation further provides that this provision shall become effective 12 months after the date of enactment of this act. In spite of the language of the effective date, I am concerned that the legislation has retroactive effect. Therefore, I would like to address the following questions to the distinguished chairman of the Subcommittee on Securities, and the lead sponsor of the legislation.

Senator DODD, does the legislation require the delisting of a listed security resulting from a rollup not conducted according to the bill's standards, even if the rollup occurred several years ago? And, further, would the bill prohibit the listing of such a security on a different exchange from the one on which it is currently listed, after the effective date of these provisions?

Mr. DODD. The answer to both of your questions is no. The bill applies to limited partnership rollup transactions, which is a defined term in the legislation and involves the issuance of securities. If the rollup transaction occurred prior to the effective date of the bill, the securities have already been issued and are already listed on an exchange. The bill does not require a delisting based on transactions that occurred prior to the effective date. The term listing in the provision you cited refers to the listing of securities as part of the rollup transaction and is not intended to embrace the continuance of the listing of a security of an exchange.

Moreover, the whole purpose of the new listing standard in the bill is to affect rollup transactions in the future. It would be potentially disruptive to businesses and harmful to shareholders if the legislation were interpreted to require delisting or to prohibit new listings with respect to rollup transactions that have already been consummated.

Mr. ROTH. I thank the Senator from Connecticut for his clarification. I would also note that I have filed dissenting views with respect to the committee's report, but I will not repeat those reservatons at this time. I am satisfied with the Senator's explanation of the retroactivity issue that I have raised, and I agree that the legislation would be disruptive and harmful if it sought to police limited partnership rollup transactions which have already occurred.

The PRESIDING OFFICER. Is there further debate? If not, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and deemed read the third time.

The PRESIDING OFFICER. The bill having been deemed read the third time, the question is, Shall the bill pass?

So the bill (S. 424), as amended, was passed.

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

Mrs. KASSEBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## UTAH SCHOOLS AND LANDS IMPROVEMENT ACT OF 1993

Mr. FORD. Madam President, on behalf of the majority leader, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 184.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 184) entitled "An Act to provide for the exchange of certain lands within the State of Utah, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Utah Schools and Lands Improvement Act of 1993".*

***SEC. 2. UTAH-NAVAJO LAND EXCHANGE.***

*(a) ADDITIONS TO RESERVATION.—For the purpose of securing in trust for the Navajo Nation certain lands belonging to the State of Utah, which comprise approximately thirty-eight thousand five hundred acres of surface and subsurface estate, and approximately an additional nine thousand five hundred acres of subsurface estate, as generally depicted on the map entitled "Utah-Navajo Land Exchange", dated May 18, 1992, such lands are hereby declared to be part of the Navajo Indian Reservation in the State of Utah effective upon the completion of conveyance from the State of Utah and acceptance of title by the United States.*

*(b) AUTHORIZATION.—The Secretary of the Interior is authorized to acquire through exchange those lands and interests in land described in subsection (a) which are owned by the State of Utah, subject to valid existing rights.*

***SEC. 3. STATE LANDS WITHIN THE GOSHUTE INDIAN RESERVATION.***

*(a) ADDITIONS TO RESERVATION.—For the purpose of securing in trust for the Goshute Indian Tribe certain lands belonging to the State of Utah, which comprise approximately nine hundred eighty acres of surface and subsurface estate, and an additional four hundred and eighty acres of subsurface estate, as generally depicted on the map entitled "Utah-Goshute Land Exchange", dated May 18, 1992, such lands are hereby declared to be part of the Goshute Indian Reservation in the State of Utah effective upon the completion of conveyance from the State of Utah and acceptance of title by the United States.*

*(b) AUTHORIZATION.—The Secretary of the Interior is authorized to acquire through exchange those lands and interests in land described in subsection (a) which are owned by the State of Utah, subject to valid existing rights.*

*(c) OTHER LAND.—(1) The following tract of Federal land located in the State of Nevada, comprising approximately five acres more or less, together with all improvements thereon, is hereby declared to be part of the Goshute Indian Reservation, and shall be held in trust for the Goshute Indian Tribe: Township 30 North, Range 69 East, lots 5, 6, 7, 9, 11, and 14 of section 34.*

*(2) No part of the lands referred to in paragraph (1) shall be used for gaming or any related purpose.*

***SEC. 4. IMPLEMENTATION.***

*The exchanges authorized by sections 2 and 3 of this Act shall be conducted without cost to the Navajo Nation and the Goshute Indian Tribe.*

***SEC. 5. STATE LANDS WITHIN THE NATIONAL FOREST SYSTEM.***

*(a) AUTHORIZATION.—The Secretary of Agriculture is authorized to accept on behalf of the United States title to the school and institutional trust lands by the State of Utah within units of the National Forest System, comprising approximately seventy-six thousand acres as depicted on a map entitled "Utah Forest Land Exchange", dated May 18, 1992.*

*(b) STATUS.—Any lands acquired by the United States pursuant to this section shall become a part of the national forest within which such lands are located and shall be subject to all the laws and regulations applicable to the National Forest System.*

***SEC. 6. STATE LANDS WITHIN THE NATIONAL PARK SYSTEM.***

*(a) AUTHORIZATION.—The Secretary of the Interior is hereby authorized to accept on behalf of the United States title to all school and institutional trust lands owned by the State of Utah located within all units of the National Park System, comprising approximately eighty thousand acres, located within the State of Utah on the date of enactment of this Act.*

*(b) STATUS.—(1) Notwithstanding any other provision of law, all lands of the State of Utah within units of the National Park System that are conveyed to the United States pursuant to this section shall become a part of the appropriate unit of the National Park System, and shall be subject to all laws and regulations applicable to that unit of the National Park System.*

*(2) The Secretary of the Interior shall, as a part of the exchange process of this Act, compensate the State of Utah for the fair market value of five hundred eighty and sixty-four one-hundredths acres within Capitol Reef National Park that were conveyed by the State of Utah to the United States on July 2, 1971, for which the State has never been compensated. The fair market value of these lands shall be established pursuant to section 8 of this Act.*

***SEC. 7. OFFER TO STATE.***

*(a) SPECIFIC OFFERS.—Within thirty days after enactment of this Act, the Secretary of the Interior shall transmit to the State of Utah a list of lands, or interests in lands, within the State of Utah for transfer to the State of Utah in exchange for the state lands and interests described in sections 2, 3, 5, and 6 of this Act. Such list shall include only the following Federal lands, or interests therein:*

*(1) Blue Mountain Telecommunications Site, fee estate, approximately six hundred and forty acres.*

*(2) Beaver Mountain Ski Resort site, fee estate, approximately three thousand acres, as generally depicted on the map entitled "Beaver Mountain Ski Resort" dated September 16, 1992.*

*(3) The unleased coal located in the Winter Quarters Tract.*

*(4) The unleased coal located in the Crandall Canyon Tract.*

*(5) All royalties receivable by the United States with respect to coal leases in the Quitchupah (Convulsion Canyon) Tract.*

*(6) The unleased coal located in the Cottonwood Canyon Tract.*

*(7) The unleased coal located in the Soldier Creek Tract.*

*(b) ADDITIONAL OFFERS.—(1) In addition to the lands and interests specified in subsection (a), the Secretary of the Interior shall offer to the State of Utah a portion of the royalties receivable by the United States with respect to Federal geothermal, oil, gas, or other mineral interests in Utah which on December 31, 1992, were under lease and covered by an approved permit to drill or plan of development and plan of reclamation, were in production, and were not under administrative or judicial appeal.*

*(2) No offer under this subsection shall be for royalties aggregating more than 50 per centum of the total appraised value of the State lands described in sections 2, 3, 5, and 6.*

*(3) The Secretary shall make no offer under this subsection which would enable the State of Utah to receive royalties under this section exceeding $25,000,000.*

*(4) If the total value of lands and interests therein and royalties offered to the State pursuant to subsections (a) and (b) is less than the total value of the State lands described in sections 2, 3, 5, and 6, the Secretary shall provide the State a list of all public lands in Utah that as of December 31, 1992, the Secretary, in resource management plans prepared pursuant to the Federal Land Policy and Management Act of 1976, had identified as suitable for disposal by exchange or otherwise, and shall offer to transfer to the State any or all of such lands, as selected by the State, in partial exchange for such State lands, to the extent consistent with other applicable laws and regulations.*

***SEC. 8. APPRAISAL OF LANDS TO BE EXCHANGED.***

*(a) EQUAL VALUE.—All exchanges authorized under this Act shall be for equal value. No later than ninety days after enactment of this Act, the Secretary of the Interior, the Secretary of Agriculture, and the Governor of the State of Utah shall provide for an appraisal of the lands or interests therein involved in the exchanges authorized by this Act. A detailed appraisal report shall utilize nationally recognized appraisal standards including, to the extent appropriate, the uniform appraisal standards for Federal land acquisition.*

*(b) DEADLINE AND DISPUTE RESOLUTION.—(1) If after two years from the date of enactment of this Act, the parties have not agreed upon the final terms of some or all of the exchanges authorized by this Act, including the value of the lands involved in some or all of such exchanges, notwithstanding any other provisions of law, any appropriate United States District Court, including but not limited to the United States District Court for the District of Utah, Central Division, shall have jurisdiction to hear, determine, and render judgment on the value of any and all lands, or interests therein, involved in the exchange.*

*(2) No action provided for in this subsection may be filed with the Court sooner than two years and later than five years after the date of enactment of this Act. Any decision of a District Court under this Act may be appealed in accordance with the applicable laws and rules.*

*(c) ADJUSTMENT.—If the State shares revenue from the selected Federal properties, the value of such properties shall be the value otherwise established under this section, less the percentage which represents the Federal revenue sharing obligation, but such adjustment shall not be considered as reflecting a property right of the State of Utah.*

*(d) INTEREST.—Any royalty offer by the Secretary pursuant to subsection 7(b) shall be adjusted to reflect net present value as of the effective date of the exchange. The State shall be entitled to receive a reasonable rate of interest at a rate equivalent to a five-year Treasury note on the balance of the value owed by the United States from the effective date of the exchange until full value is received by the State and mineral rights revert to the United States as prescribed by subsection 9(a)(3).*

***SEC. 9. TRANSFER OF TITLE.***

*(a) TERMS.—(1) The State of Utah shall be entitled to receive so much of those lands or interests in lands and additional royalties described in section 7 that are offered by the Secretary of the Interior and accepted by the State as are equal in value to the State lands and interests described in sections 2, 3, 5, and 6.*

*(2) For those properties where fee simple title is to be conveyed to the State of Utah, the Secretary of the Interior shall convey, subject to valid existing rights, all right, title, and interest, subject to the provisions of subsection (b). For those properties where less than fee simple is to be conveyed to the State of Utah, the Secretary shall reserve to the United States all remaining right, title, and interest of the United States.*

*(3) All right, title, and interest in any mineral rights described in section 7 that are conveyed to the State of Utah pursuant to this Act shall revert to the United States upon removal of minerals equal in value to the value attributed to such rights in connection with an exchange under this Act.*

*(4) If the State of Utah accepts the offers provided for in this Act, the State shall convey to the United States, subject to valid existing rights, all right, title, and interest of the State to all school and institutional trust lands described in sections 2, 3, 5, and 6 of this Act. Except as provided in section 7(b), conveyance of all lands or interests in lands shall take place within sixty days following agreement by the Secretary of the Interior and the Governor of the State of Utah, or entry of an appropriate order of judgment by the District Court.*

*(b) INSPECTIONS.—Both parties shall inspect all pertinent records and shall conduct a physical inspection of the lands to be exchanged pursuant to this Act for the presence of any hazardous materials as presently defined by applicable law. The results of those inspections shall be made available to the parties. Responsibility for costs of remedial action related to materials identified by such inspections shall be borne by those entities responsible under existing law.*

*(c) CONDITIONS.—(1) With respect to the lands and interests described in section 7(a), enactment of this Act shall be construed as satisfying the provisions of section 206(a) of the Federal Land Policy and Management Act of 1976 requiring that exchanges of lands be in the public interest.*

*(2) Development of any mineral interest transferred to the State of Utah pursuant to this Act shall be subject to all laws, rules, and regulations applicable to development of non-Federal mineral interests, including, where appropriate, laws, rules, and regulations applicable to such development within National Forests. Extraction of any coal resources described in section 7(a) shall occur only through underground coal mining operations.*

***SEC. 10. LEGAL DESCRIPTIONS.***

*(a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, a map and legal description of the lands added to the Navajo and Goshute Indian Reservations and all lands exchanged under this Act shall be filed by the appropriate Secretary with the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, and each such map and description shall have the same force and effect as if included in this Act, except that the appropriate Secretary may correct clerical and typographical errors in each such legal description and map. Each such map and legal description shall be on file and available for public inspection in the offices of the Secretary of Agriculture and the Secretary of the Interior and the Utah offices of the appropriate agencies of the Department of the Interior and Department of Agriculture.*

*(b) PILT.—Section 6902(b) of title 31, United States Code, is amended by striking "acquisition." and inserting in lieu thereof "acquisition, nor does this subsection apply to payments for lands in Utah acquired by the United States if at the time of such acquisition units, under applicable State law, were entitled to receive payments from the State for such lands, but in such case no payment under this chapter with respect to such acquired lands shall exceed the payment that would have been made under State law if such lands had not been acquired.".*

*(c) INTENT.—The lands and interests described in section 7 are an offer related only to the State lands and interests described in this Act, and nothing in this Act shall be construed as precluding conveyance of other lands or interests to the State of Utah pursuant to other exchanges under applicable existing law or subsequent act of Congress. It is the intent of Congress that the State should establish a funding mechanism, or some other mechanism, to assure that counties within the State are treated equitably as a result of this exchange.*

*(d) COSTS.—The United States and the State of Utah shall each bear its own respective costs incurred in the implementation of this Act.*

*(e) DEFINITION.—As used in this Act, the term (1) "School and Institutional Trust Lands" means those properties granted by the United States in the Utah Enabling Act to the State of Utah in trust and other lands which under State law must be managed for the benefit of the public school system or the institutions of the State which are designated by the Utah Enabling Act; and (2) "Secretary" means the Secretary of the Interior; unless specifically defined otherwise.*

***SEC. 11. AUTHORIZATION OF APPROPRIATIONS.***

*There are authorized to be appropriated such sums as are necessary to carry out this Act.*

AMENDMENT NO. 775

(Purpose: To increase the amount of royalties the State of Utah may receive for mineral interests and to require due diligence by the State of Utah with respect to coal tracts received by the State)

Mrs. KASSEBAUM. Madam President, I move that the Senate concur in the amendments of the House, with the following amendment that I now send to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mrs. KASSEBAUM] on behalf of Mr. HATCH, for himself and Mr. BENNETT, proposes an amendment numbered 775.

Mrs. KASSEBAUM. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

In paragraph (3) of section 7(b), strike "$25,000,000" and insert "$50,000,000".

In section 9, at the end of subsection (c), add the following new paragraph:

(3) Transfer of any mineral interests to the State of Utah shall be subject to such conditions as the Secretary shall prescribe to ensure due diligence on the part of the State of

Utah to achieve the timely development of such resources.

Mr. HATCH. Madam President, I rise this evening to urge the Senate to pass S. 184, the Utah Schools and Lands Improvement Act of 1993, as amended, and to accept two modifications to the House version being offered by Senator BENNETT and myself to the bill. This amendment, which has been cleared by both sides on the Senate Energy and Natural Resources Committee, makes a critical change in the bill as amended by the House of Representatives. As the prime sponsor of this legislation, I believe S. 184, as amended by our amendment, is in the best interests of the State of Utah and deserves the support of my colleagues.

As my colleagues will recall, the effect of S. 184 is to exchange approximately 200,000 acres of State lands located within Utah's national forests, national parks, and the Navajo and Goshute Indian Reservations for Federal lands, or interest in certain Federal lands, which are currently producing a revenue stream or royalty, or have the potential of producing such revenue. The income from these lands will be deposited in the Utah school trust fund.

S. 184 seeks a value for value exchange so that the Federal Government, the State of Utah, and its schoolchildren, are treated fairly. The total amount to be received by Utah from these Federal interests will be determined once the State's lands are appraised and a value established. The bill includes a provision that allows the Federal Government to offer the State a direct payment from royalties now received by the United States from certain Federal geothermal, oil, gas, or other mineral interests. To achieve the remaining balance of the appraised value for the State lands, the State of Utah will develop several unleased coal tracts located on Federal land in central Utah that are identified in S. 184.

Last week, the House amended S. 184 by establishing a ceiling on the amount to be received by the State through a direct payment. The figure in the House bill is $25 million, which is unacceptable to me and the State of Utah. The estimated value of these State lands may be as high as $200 million, and my goal with this legislation has been to ensure that the State of Utah is fully—I repeat, fully—compensated as soon as possible by the Federal Government. A figure as low as $25 million would not achieve this goal, especially when the Senate version would have possibly allowed the State to receive four times this amount in a direct payment.

Our amendment will raise the House's ceiling figure to $50 million. This figure is not as high as I would want it to be, as I stated, but it is a compromise amount that equals half of what might have been obtained in the Senate bill. This means the State will receive royalties from existing mineral leases equal to 50 percent of the total value of the State lands and interests to be transferred to the United States, or $50 million, whichever is less.

Our amendment also includes language that adds a due diligence requirement with respect to the coal tracts. This ensures that the State of Utah will achieve a timely development of the resources, which the State has strongly indicated it intends to do as soon as this legislation is enacted.

The House included language granting jurisdiction to resolve valuation disputes to any appropriate U.S. district court, and prohibiting the strip mining of any coal transferred to the State. I would prefer that each of these items were excluded from the bill. But, in the spirit of compromise and with a desire to see this legislation adopted this year, I am willing to accept them.

Madam President, for my State of Utah, passage of this legislation has been long in coming and highly desired by many Utah, both in and out of Government. I truly appreciate the efforts of all those involved. They understand that this measure is necessary to infuse some badly needed funds into Utah's educational system.

This bill corrects a serious problem that has existed for decades, which has been stated many times on this floor. In brief, the lands set aside for the Utah school trust fund when Utah joined the Union have been enveloped over many years by protected Federal lands, making the trust land less productive as a source of income for our schools.

The failure of our State school lands to produce substantial income, which is the situation now, is a severe hinderance to educational reforms and opportunities for Utah children. S. 184 corrects this situation—not in a way that everyone, including myself, would consider perfect, but in a way that takes into consideration the myriad of concerns that are raised when dealing with public land issues and in a way that gets the job done.

Utah and its school districts are struggling with the financial burden of educating the growing population of schoolage children in the State. Currently, Utah spends more on education as a percent of its total budget than any other State in the Nation. The citizens of Utah are not asking for a handout or for something to which they are not entitled. This bill recognizes Congress' role in helping the State remedy a situation to which it has been a party—and which it helped create in 1896. Under this bill, Utah's school districts—all districts—will reap financial benefits to aid them in meeting Utah's educational needs.

I want to express my sincere appreciation to all the members of the Senate Energy and Natural Resources Committee for their support of this measure. In particular, Senators JOHNSTON, BUMPERS, WALLOP, and, of course, my colleague from Utah, Senator BENNETT, who have shown great understanding on this issue and have helped to expedite its passage. Hearings were scheduled early in the session and accommodated the schedules of many Utahans interested in this issue, including our current Utah Governor, Mike Leavitt. On behalf of all Utahans, I want to thank the Energy Committee for recognizing the importance of this legislation to Utah's schoolchildren and for keeping their commitment to move this legislation expeditiously.

I am also enormously grateful for the assistance of their counterparts in the House, namely Representatives BRUCE VENTO and GEORGE MILLER. Mr. VENTO and Mr. MILLER have recognized the importance of this legislation to Utah and have been willing to work with the Senate to craft this final version of the bill. I appreciate their willingness and commitment to see that Utah is properly compensated for these State lands, which I am confident will occur through the provisions contained in this bill.

Utah Representatives JIM HANSEN and KAREN SHEPHERD carried this legislation through the intricate proceedings in the House. Their work cannot be overlooked or understated. I thank my colleagues for their consideration.

And, on behalf of the State of Utah, and the many public and private individuals who have worked on this concept for many years—including former Utah Governors Scott Matheson and Norm Bangerter, former Senator Jake Garn, and former Representatives Dan Marriott, Dave Monsen, Howard Nielsen, and Wayne Owens—I thank the Congress for passing this legislation which resolves part of the historic problem that surrounds Utah's school trust lands. Congress has addressed its responsibility toward the particular State inholdings located within Federal reservations. I hope that we can work in harmony in the future to address the remaing inholdings that will continue to have an impact on Utah's public lands.

I thank my colleagues and yield the floor.

Mr. BENNETT. Madam President, the Utah School and Lands Improvement Act of 1993, S. 184, will provide the State of Utah with much-needed funding for the elementary and secondary education system in my State. The schoolchildren of Utah have waited a long time for its passage.

This bill will exchange 200,000 acres of State school inholdings for Federal lands and revenues from certain Federal coal leases. Up until now the State of Utah has had difficulty in managing and developing these school lands because they have been scattered

throughout the State. This legislation will allow the State of Utah to generate much-needed funding for Utah schools.

This legislation begins to resolve the question of ownership of State school lands. Although the Federal Government and the State of Utah may continue to disagree on some aspects of the State school land issue, I feel this legislation provides the way for both parties to come to a fair and equitable settlement.

I thank my colleague, Senator HATCH, for his leadership on this legislation. I also would like to express my deep appreciation to the chairman of the Committee on Energy and Natural Resources Committee, Senator JOHNSTON and the ranking minority member, Senator WALLOP, for their willingness to move this legislation. I am grateful for their support.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion is agreed to.

Mrs. KASSEBAUM. Madam President, I move to reconsider the vote by which the motion was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## AUTHORIZATION OF TESTIMONY OF SENATE EMPLOYEES

Mr. FORD. Madam President, on behalf of the majority leader, I ask unanimous consent the Senate proceed to the immediate consideration of Senate Resolution 140, a resolution authorizing testimony of present and former Senate employees, introduced earlier today by Senator MITCHELL and Senator DOLE; that the resolution be agreed to; the preamble be agreed to; that the motion to reconsider be laid upon the table; and that any statements appear in the RECORD at the appropriate place.

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

So the resolution (S. Res. 140) was deemed agreed to, as follows:

S. RES. 140

Whereas, in the case of United States v. Dean, Cr. No. 92-0181, Independent Counsel Arlin M. Adams has requested the trial testimony of Kenneth A. McLean, a former Senate employee on the staff of the Committee on Banking, Housing, and Urban Affairs;

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 may, by the 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 may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §288b(a) and 288c(a)(2) (1988), the Senate may direct its counsel to represent committees, Members, officers and employees of the Senate with respect to subpoenas or orders issued to them in their official capacity: Now, therefore, be it

*Resolved*, That Kenneth A. McLean, and any other present or former Senate employee whose testimony may be required, is authorized to testify in the trial of United States v. Deborah Dean, Cr. No. 92-0181 (D.D.C.), except as to matters for which a privilege should be asserted.

SEC. 2. That the Senate Legal Counsel is directed to represent Kenneth A. McLean, and any other present or former Senate employee, in connection with the testimony authorized under section 1.

Mr. MITCHELL. Madam President, by Senate Resolution 334, 102d Congress, the Senate authorized the production of documents and the testimony of a Senate employee in connection with the case of *United States* v. *Deborah Dean*, Cr. No. 92-0181, pending in the U.S. District Court for the District of Columbia. This case is one of several arising out of the investigation of Independent Counsel Arlin M. Adams, who was appointed in 1990 to investigate allegations that federal officials and others conspired to defraud the United States in connection with the administration of Department of Housing and Urban Development programs.

The Independent Counsel now seeks the trial testimony of additional Senate witnesses, including Kenneth A. McLean, former staff director of the Committee on Banking, Housing, and Urban Development. The following resolution would authorize present and former Senate employees to testify in this case. It also would authorize the Senate legal counsel to represent any present and former Senate employees whose testimony is required in connection with their testimony.

## VETERANS HEALTH PROGRAMS

Mr. FORD. Madam President, on behalf of the majority leader, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2034.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House agree to the amendments of the Senate to the bill (H.R. 2034) entitled "An Act to amend title 38, United States Code, to revise and improve veterans' health programs, and for other purposes," with the following amendments:

In lieu of the matter proposed to be inserted by the amendment of the Senate to the text of the bill, insert:

**SECTION. 1. AUTHORIZATION OF DEPARTMENT OF VETERANS AFFAIRS CONSTRUCTION PROJECTS.**

(a) AUTHORIZED PROJECTS.—The Secretary of Veterans Affairs may carry out the major medical facility leases for the Department of Veterans Affairs for which funds are requested in the budget of the President for fiscal year 1994 and may carry out (or, in the case of the project specified in paragraph (1), participate in) the following major medical facility projects in the amounts specified:

(1) Construction in accordance with an agreement between the Secretary of the Air Force and the Secretary of Veterans Affairs of a medical facility at Elmendorf Air Force Base, Anchorage, Alaska, to be shared by the Air Force and the Department of Veterans Affairs, $11,500,000.

(2) Construction of a psychiatric building at the Department of Veterans Affairs Medical Center in Lyons, New Jersey, $41,700,000.

(3) Modernization and seismic corrections at the Department of Veterans Affairs Medical Center in Memphis, Tennessee, $10,700,000.

(4) Construction of a replacement bed building at the Department of Veterans Affairs Medical Center in Muskogee, Oklahoma, $3,200,000.

(5) Construction of an outpatient care addition and parking garage at the Department of Veterans Affairs Medical Center in San Juan, Puerto Rico, $46,000,000.

(6) Construction or expansion and modernization, of a 120-bed nursing home facility in the area (referred to as the "Chesapeake network") served by the Department of Veterans Affairs medical centers in Baltimore, Maryland; Fort Howard, Maryland; Martinsburg, West Virginia; Perry Point, Maryland; and Washington, District of Columbia, the site for which shall be selected in accordance with subsection (b).

(b) SITE SELECTION.—(1) The Secretary, in selecting a site for the project referred to in subsection (a)(6), shall conduct a study to determine the most appropriate location for that facility. In conducting the study, the Secretary shall determine—

(A) what the specific mission of each medical center operated by the Secretary in the Chesapeake network should be to achieve within that network—

(i) effective planning;

(ii) reduction in duplication of services and programs in the same geographic area;

(iii) realignment of services among facilities within each network;

(iv) improved means of resources distribution; and

(v) more efficient delivery of needed services.

(B) whether there is a need for expansion and modernization of the nursing home care unit at the medical center at Fort Howard, Maryland; and

(C) what effect the construction of nursing home beds in Baltimore, Maryland, as proposed in the President's budget for the Department of Veterans' Affairs for fiscal year 1994, would have for the missions of each of the other medical centers operated by the Secretary in the Chesapeake network.

(2) Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans Affairs of the Senate and House a report on the study under paragraph (1). The Secretary shall include in the report a statement of each determination made by the Secretary under that paragraph.

**SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There is hereby authorized to be appropriated to the Secretary of Veterans Affairs for fiscal year 1994—

(1) $143,100,000 for the major medical facility projects authorized in paragraphs (1) through (5) of section 101(a) and such sums as may be necessary for the projects described in section 101(a)(6), but not to exceed $14,500,000 in the case of construction of nursing home beds in Baltimore, Maryland, as

proposed in the President's budget for the Department of Veterans Affairs in fiscal year 1994; and

(2) $50,123,105 for the major medical facility leases authorized in section 101(a).

(b) LIMITATION.—The projects authorized in section 101 may only be carried out using—

(1) funds appropriated for fiscal year 1994 pursuant to the authorization of appropriations in subsection (a);

(2) funds appropriated for Construction, Major Projects for a fiscal year before fiscal year 1994 that remain available for obligation; and

(3) funds appropriated for Construction, Major Projects for fiscal year 1994 for a category of activities not specific to a project.

**SEC. 3. INCREASE IN AMOUNT OF FACILITY PROJECT THRESHOLD.**

(a) Section 8104(a)(3)(A) of title 38, United States Code, is amended by striking out "$2,000,000" and inserting in lieu thereof $3,000,000".

(b) Section 8109(i)(2) of such title is amended by striking out "$2,000,000" and inserting in lieu thereof "$3,000,000".

**SEC. 4. INCREASED TERM OF LEASE AUTHORITY RELATING TO PERSHING HALL, FRANCE.**

Section 403(c)(1) of the Veterans' Benefits Programs Improvement Act of 1991 (36 U.S.C. 493) is amended by striking out "35 years" and inserting in lieu thereof "99 years".

In lieu of the amendment of the Senate to the title of the bill, amend the title as to read: "An Act to authorize major medical facility construction projects for the Department of Veterans Affairs for fiscal year 1994, and for other purposes.".

Mr. ROCKEFELLER. Madam President, as chairman of the Committee on Veterans' Affairs, I am very pleased that the Senate is about to take final action on legislation to authorize major medical facility projects and leases for the Department of Veterans Affairs, to increase the amount of the major medical facility project threshold, and to revise authority relating to Pershing Hall, France.

The pending measure, H.R. 2034 as amended by a House amendment to the Senate amendment to the bill, represents a compromise agreement that the Veterans' Affairs Committees of the House of Representatives and the Senate have reached on bills relating to the VA construction and facilities program.

Madam President, the House passed this compromise bill on August 6, 1993. I urge the Senate to approve this measure and thus send it to the White House for signature.

Because I will submit for the RECORD an explanatory statement prepared by the two Veterans' Affairs Committees that describes in detail the provisions in this measure, at this point I will briefly summarize the provisions of the compromise agreement and discuss certain provisions in the bill.

SUMMARY OF PROVISIONS

The compromise agreement contains provisions that would:

First, authorize the Secretary of Veterans Affairs to carry out the VA major medical facility leases requested in the fiscal year 1994 budget that the President submitted to Congress.

Second, authorize the Secretary to carry out six named VA major medical projects, including a 120-bed nursing home facility in the area, referred to as the Chesapeake network, served by VA medical centers in Baltimore, MD; Fort Howard, MD; Martinsburg, WV; Perry Point, MD; and Washington, DC, the site to be selected by the Secretary.

Third, authorize to be appropriated to the Secretary for fiscal year 1994, $143,000,000 for five of the authorized VA major medical facility projects and such sums as may be necessary for the project in the Chesapeake network, but not to exceed $14,500,000 in the case of construction of nursing beds in Baltimore, Maryland, as proposed in the President's budget for VA for fiscal year 1994.

Fourth, authorize to be appropriated to the Secretary for fiscal year 1994, $50,123,105 for the authorized major medical facility leases.

Fifth, limit the funds that may be used to funds appropriated for fiscal year 1994; funds appropriated for construction, major projects, for a fiscal year before fiscal year 1994 that remain available for obligation; and funds appropriated for construction, major projects, for fiscal year 1994 for a category of activity not specific to a project.

Sixth, increase the statutory limitation for defining a "major medical facility project" from $2 to $3 million.

Seventh, increase the statutory limitation for treating a parking facility at a VA medical facility as a major medical facility project from $2 to $3 million.

Eighth, extend the Secretary's lease authority for Pershing Hall, France, from 35 years to 99 years as the maximum period of lease.

MAJOR MEDICAL FACILITY PROJECTS AND MAJOR MEDICAL FACILITY LEASES

Madam President, I am pleased that the compromise agreement contains a provision that would authorize the Secretary of Veterans Affairs to carry out all 11 of the major medical facility leases—leases of space for use as a medical facility at an average annual rental of more than $300,000—for which funds were requested in the President's budget submission for fiscal year 1994, and would authorize the appropriation of $50,123,105 for those 11 leases. The leases are in the following communities: Albuquerque, NM; Boston MA; Cleveland, OH; Decatur IL; Las Vegas, NV; Mayaguez, PR; Redding, CA; Rochester, NY; Sacramento, CA; San Jose, CA; and Santa Barbara, CA.

I also am pleased that the compromise agreement contains a provision that would authorize six major medical facility projects—projects for the construction, alteration, or acquisition of a medical facility currently involving a total expenditure of more than $2 million, a threshold the compromise agreement would raise to $3 million. The following four authorized projects, and the amount specified, were requested in the President's budget submission for fiscal year 1994: First, construction in accordance with an agreement between the Secretary of the Air Force and the Secretary of Veterans Affairs of a medical facility at Elmendorf Air Force Base, Anchorage, AK, to be shared by the Air Force and the Department of Veterans Affairs, $11,500,000; second, construction of a psychiatric building at the VA Medical Center in Lyons, NJ, $41,700,000; third, modernization and seismic corrections at the VA Medical Center in Memphis, TN, $10,700,000; and fourth, construction of a replacement bed building at the VA Medical Center in Muskogee, OK, $33,200,000.

The fifth authorized major medical facility project would be the construction of an outpatient care addition and parking garage at the VA Medical Center in San Juan, PR, for $46 million. This project, not included on the President's list of requested projects to Congress, was nevertheless, on the VA's requested list to the Office of Management and Budget and has a VA priority ranking above that of projects in Tuskegee and Baltimore. I am a supporter of the VA priority ranking system and believe that inclusion of the San Juan project maintains the integrity of that system.

The sixth authorized major medical facility project would be the construction, or expansion and modernization, of a 120-bed nursing home facility in the Chesapeake network, the site to be selected by the Secretary of Veterans Affairs. The Chesapeake network is defined in the bill as being that area served by VA medical centers in Baltimore, MD; Fort Howard, MD; Martinsburg, WV; Perry Point, MD; and Washington, DC. In selecting the Chesapeake network site, the Secretary must conduct a study to determine the most appropriate location for that facility and report the findings to the Committee on Veterans' Affairs no later than 90 days from the date of enactment of the Act. The President's budget submission for fiscal year 1994 requested, and the Senate amendment to H.R. 2034 authorized, a 120-bed nursing home facility in Baltimore—Loch Raven—MD. By including in the compromise agreement the authorization of a 120-bed nursing home facility in the Chesapeake network, the Committees on Veterans' Affairs recognize the need for nursing home care in the mid-Atlantic area. By not naming the site location in the bill, but authorizing the Secretary to select that location after conducting a study with specific issues to determine, the committees intend to accept the Secretary's site selection as final. The report to Congress would be only for the information of the committees.

As noted by both committees in the explanatory statement, three major medical facilities projects in the VA fiscal year 1994 budget submission were partially funded in a prior year and therefore do not require authorization under section 8104(a)(2) of title 38, United States Code. These projects are at the VA medical centers in Palo Alto, CA; Tuskegee, AL; and Temple, TX.

I am pleased that the compromise agreement also would include an authorization of $143,100,000 for the first five major medical facility projects I outlined earlier and such sums as may be necessary for the Chesapeake network project, but not exceed $14,500,000 in the case of construction of nursing home beds in Baltimore, MD, as proposed in the President's budget for VA for fiscal year 1994.

It is critical to the VA's mission that it maintain its capital investment and modernize the physical plants where appropriate to ensure that the VA health care system can provide state-of-the-art medical care and respond to the changing needs of our Nation's veterans.

REVISION OF AUTHORITY RELATING TO PERSHING HALL

Madam President, I am pleased that the compromise agreement includes a provision that would extend the Secretary's lease authority for Pershing Hall, a facility in Paris, France, to 99 years as the maximum period of lease.

In 1991, Congress gave VA the responsibility for the rehabilitation, operation, and use of Pershing Hall, an existing building located in Paris, France. Through managing the property over the past 18 months, VA has determined that the authorizing legislation needs to be modified to improve Pershing Hall's value as an asset of the U.S. Government. The VA believes that the Secretary should be able to negotiate a lease for up to 99 years so as to maximize VA's return on a development contract. VA has indicated that the current 35-year lease authority is contrary to the custom and practice in Paris and that financial advisers have advised VA that the value of redevelopment proposals for a 35-year lease will be 30 to 40 percent of what the Department should be able to receive if it follows the Paris custom and practice, which is to provide for a 99-year lease. Because it appears that VA would lose nothing in terms of control over the building if the lease term were extended because of the overall control it would still maintain as lessor, the increased lease authority should provide the Secretary of Veterans Affairs with an additional option to review and compare as VA makes decisions about the facility.

CONCLUSION

Madam President, I express my appreciation to the distinguished ranking Republican member of the Senate committee, Mr. MURKOWSKI, and all other members of the committee, as well as the chairman and ranking minority member of the House Committee on Veterans' Affairs, Mr. MONTGOMERY and Mr. STUMP, for their cooperation on this measure.

Madam President, I also express my deep gratitude to the committee staff members who worked on this legislation—on the minority staff, Chris Yoder and John Moseman, and on the majority staff, Todd Houchins, Chuck Lee, Bill Brew, and Jim Gottlieb—and the House Committee on Veterans' Affairs staff, Ralph Ibson, Pat Ryan, and Mack Fleming for the majority, and for the minority, Carl Commenator.

Madam President, I also note the fine work of the staff of the two Offices of Legislative Counsel, Charlie Armstrong in the Senate and Bob Cover in the House. They provided their usual excellent assistance as we prepared this legislation.

Madam President, I urge the Senate to give its unanimous approval to this measure.

Madam President, I ask unanimous consent that the explanatory statement to which I referred earlier, and which takes the place of a joint explanatory statement in a conference report, be printed in the RECORD at this point.

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

JOINT EXPLANATORY STATEMENT ON H.R. 2034

H.R. 2034, an Act to authorize major facility construction projects for the Department of Veterans Affairs for fiscal year 1994 and for other purposes, reflects a compromise agreement that the Senate and House of Representatives Committees on Veterans' Affairs have reached on certain bills considered in the Senate and the House during the 103rd Congress. These are H.R. 2034 as passed by the House on May 19, 1993 (hereinafter referred to as the "House bill") and S. 1079 as passed by the Senate as a substitute amendment to H.R. 2034 on July 14, 1993 (hereinafter referred to as the "Senate amendment").

The Committees on Veterans' Affairs have prepared the following explanation of H.R. 2034 (hereinafter referred to as "compromise agreement"). Differences between the provisions contained in the compromise agreement and the related provisions in the bills noted above are noted in this document, except for clerical corrections and conforming changes made necessary by the compromise agreement and minor drafting, technical, and clarifying changes.

AUTHORIZATION OF DEPARTMENT OF VETERANS AFFAIRS CONSTRUCTION PROJECTS

Current law: Section 8104(a)(2) of title 38, United States Code, provides that no funds may be appropriated for any fiscal year, and the Secretary of Veterans Affairs may not obligate or expend funds (other than for advance planning and design), for any major medical facility project or any major medical facility lease, unless funds for that project or lease have been specifically authorized by law.

House bill: Section 201(a) would authorize the Secretary, except as provided in section 201(b), to carry out the major medical facility projects and major medical facility leases for the Department of Veterans Affairs for which funds were requested in the President's budget for fiscal year 1994.

Section 201(b) would not authorize the Secretary to carry out the project for the construction of a nursing home facility in Baltimore, Maryland.

Section 201(c) would authorize the Secretary to carry out design of the following medical facility projects (which were not included in the President's budget), in the amounts specified: (1) an outpatient care addition at the VA Medical Center in San Juan, Puerto Rico, $3,970,000; (2) a spinal cord injury unit and energy center at the VA Medical Center in Tampa, Florida, $4,490,000; and (3) an outpatient care addition at the VA Medical Center in West Haven, Connecticut, $4,860,000.

Section 204 required the Secretary to conduct an assessment of the need for nursing home beds operated by the Secretary in the area (referred to as the "Chesapeake network") served by VA Medical Centers in Baltimore, Maryland; Fort Howard, Maryland; Martinsburg, West Virginia; Perry Point, Maryland; and Washington, D.C. The Secretary would determine the specific mission of each medical center in the Chesapeake network; whether there is a need for expansion and modernization of the nursing home care unit at Fort Howard; and what effect the construction of nursing home beds in Baltimore would have for the missions of the other medical centers in the Chesapeake network. The Secretary's report would be submitted to the Committees on Veterans' Affairs no later than 90 days after enactment of the Act.

Senate amendment: Section 1(a) is substantively identical to the House provision in section 201(a), except that it would authorize all of the VA major medical facility projects for which funds are requested in fiscal year 1994, including the nursing home facility in Baltimore.

Compromise agreement: Section 1(a) would authorize the VA to enter into the major medical facility leases for which funds are requested in the President's budget for fiscal year 1994, and authorize the following VA major medical projects, in the amounts specified: (1) construction in accordance with an agreement between the Secretary of the Air Force and the Secretary of Veterans Affairs of a medical facility at Elmendorf Air Force Base, Anchorage, Alaska, to be shared by the Air Force and VA, $11,500,000; (2) construction of a psychiatric building at VA Medical Center in Lyons, New Jersey, $41,700,000; (3) modernization and seismic correction at VA Medical Center in Memphis, Tennessee, $10,700,000; (4) construction of a replacement bed building at VA Medical Center in Muskogee, Oklahoma, $33,200,000; (5) construction of an outpatient care addition and parking garage at the VA Medical Center in San Juan, Puerto Rico, $46,000,000; and (6) construction, or expansion and modernization, of a 120-bed nursing home facility in the Chesapeake network area (the site to be selected in accordance with subsection (b)). The Committees note that three major medical facility projects in the VA fiscal year 1994 budget submission were partially funded in a prior year and therefore do not require authorization under section 8104(a)(2) of title 38. These projects are: (1) a replacement bed tower and seismic corrections at the VA Medical Center in Palo Alto, California; (2) a nursing home care unit at the VA Medical Center in Tuskegee, Alabama; and (3) a replacement bed building at the VA Medical Center in Temple, Texas.

Section 1(b) would require the Secretary, in selecting the site for the VA major medical facility project in the Chesapeake network, to conduct a study to determine the most appropriate location for that facility. The criteria and reporting requirement for the study would be substantively identical to those set forth in section 204 of the House bill.

AUTHORIZATION OF APPROPRIATIONS

Current law: Section 8104(a)(2) of title 38, United States Code, provides that no funds may be appropriated for any fiscal year, and the Secretary of Veterans Affairs may not obligate or expend funds (other than for advance planning and design), for any major medical facility project or any major medical facility lease, unless funds for that project or lease have been specifically authorized by law.

House bill: Section 201(d) would authorize to be appropriated to the Secretary of Veterans Affairs for fiscal year 1994 (1) $110,420,000 for the authorized major medical facility projects; and (2) $50,123,105 for the authorized major medical facility leases.

Section 201(e) would limit the authorized projects to be carried out only using (1) specifically authorized major construction funds appropriated for fiscal year 1994; (2) funds appropriated for Construction, Major Projects, for a fiscal year before fiscal year 1994 that remain available for obligation; and (3) funds appropriated for Construction, Major Projects, for fiscal year 1994 for a category of activity not specific to a project.

Senate amendment: Section 1(b) would authorize to be appropriated for fiscal year 1994 the identical amount to the House provision for the authorized major medical facility leases, but would authorize $ 111,600,000 to be appropriated for the authorized major medical facility projects.

Section 1(c) is substantively identical to the House provision in section 201(e).

Compromise agreement: Section 2(a) follows the House provision, section 201(d), except that it would authorize $143,100,00 for the major medical facility projects authorized in paragraphs (1) through (5) of section 1(a) of the compromise agreement and such sums as may be necessary for the project described in section 1(a)(6) of the compromise agreement, but not to exceed $14,500,000 in the case of construction of nursing home beds in Baltimore, Maryland, as proposed in the President's budget for VA for fiscal year 1994.

Section 2(b) follows the House provision, section 201(e).

INCREASE IN AMOUNT OF FACILITY PROJECT THRESHOLD.

Current law: Section 8104(a)(3)(A) of title 38 provides that the term "major medical facility project" means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than $2,000,000.

Section 8109(i)(2) of title 38 provides that the statutory limitation for treating a parking facility at a medical facility as a major medical facility project is $2,000,000.

House bill: No provision.

Senate amendment: Section 3 would increase the statutory limitation for defining a "major medical facility project" from $2,000,000 to $3,000,000.

Section 5 would increase the statutory limitation for treating a parking facility at a medical facility as a major medical facility project from $2,000,000 to $3,000,000.

Compromise agreement: Sections 3(a) and (b) follow the Senate amendment.

INCREASED TERM OF LEASE AUTHORITY RELATING TO PERSHING HALL, FRANCE

Current law: Section (c)(1) of section 403 of the Veterans' Benefits Programs Improvement Act of 1991 (36 U.S.C. 493) authorizes the Secretary to enter into agreements as the Secretary determines necessary or appropriate for the operation, development, and improvement of Pershing Hall and its site, including the leasing of portions of the Hall for terms not to exceed 35 years in areas that are newly constructed or substantially rehabilitated and for terms not to exceed 20 years in other areas of the Hall.

House bill: No provision.

Senate amendment: Section 6 would extend the Secretary's lease authority for Pershing Hall, France, from 35 years to 99 years as the maximum period of lease in areas that are newly constructed.

Compromise agreement: Sections 4 follows the Senate amendment.

Mr. FORD. Madam President, I move that the Senate concur en bloc in the amendments of the House.

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

The motion was agreed to.

Mr. FORD. Madam President, I move to reconsider the vote by which the motion was agreed to.

Mrs. KASSEBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## AUTHORITY TO CONSIDER H.R. 2520

Mr. FORD. Madam President on behalf of the majority leader I ask unanimous consent that the majority leader may, at any time after consultation with the Republican leader, turn to the consideration of Calendar No. 166, H.R. 2520, the Interior appropriations bill; that when it is considered it be considered under the following limitations:

That all but the following excepted committee amendments be agreed to, en bloc, for purposes of original text, provided that no point of order be considered waived by their adoption; that the only floor amendments in order be the following and that they be in order as either first-degree amendments or as amendments to an excepted committee amendment; that, if they are offered as first-degree amendments, they be subject to relevant second-degree floor amendments and under the same time limitation as the first degree, where applicable:

The excepted committee amendments are as follows: Page 49, lines 6–10 (Section 116); page 87, lines 12–14; page 96, lines 3–13; and page 97, lines 1–4 (Section 319).

The floor amendments are as follows:

Byrd amendment re: relevant.

Nickles amendment re: relevant.

Lautenberg amendment re: Forest Service.

Byrd amendment re: relevant.

Murray amendment re: timber receipts/county payments.

Baucus amendment re: Virginia City preservation study.

Domenici amendment re: prohibiting the use of funds to increase communication sites fees above the levels in effect on January 1, 1993.

Helms amendment re: relevant.

Helms amendment re: relevant.

Helms amendment re: relevant.

Inouye amendment re: Indians—cut BIA travel funds to initiate facility maintenance and rehabilitation program for tribal colleges.

Wellstone amendment re: relevant.

Inouye amendment re: Indians—bill language earmarking $5.15 million within Indian Health Service Hospital and clinic funds, for child abuse programs.

Domenici amendment re: relevant.

Hatch amendment re: wilderness—relevant to BLM.

Bingaman amendment re: Indian Health Service, Bureau of Indian Affairs and Reservation Landfills.

Dole amendment re: shift money from FWS construction at Kirwin, KS to Bureau of Indian Affairs operations for Haskell, KS.

Riegle amendment re: relevant.

Metzenbaum amendment re: relevant.

Metzenbaum amendment re: relevant.

Levin amendment re: North Country Trail.

Byrd/Nickles amendment re: use of funds for cooperation on rural development activities in communities adjacent to National Forest System lands.

Wofford amendment re: relevant.

DeConcini amendment re: relevant.

Hatfield amendment re: Bureau of Land Management—forest ecosystem health and recover (expansion of salvage fund purposes).

Born amendment re: Indian Health Service-Cherokee Tribe.

Stevens amendment re: Bureau of Indian Affairs YK Delta emergency situation.

Stevens amendment re: relevant.

Johnston amendment re: Northern Mariana Islands Covenant Funding.

Hatfield amendment re: relevant.

Hatfield amendment re: relevant.

Stevens amendment re: relevant.

Stevens amendment re: relevant.

Stevens amendment re: relevant.

Stevens amendment re: relevant.

Wallop amendment re: Northern Mariana Islands.

Wallop amendment re: range management.

Wallop amendment re: Bureau of Land Management.

Craig amendment re: communications site fees.

Craig amendment re: Idaho National Engineering Lab.

Craig amendment re: cougar research.

Coats amendment re: relevant.

Cohen amendment re: Indians.

Packwood amendment re: timber.

Packwood amendment re: timber.

Simpson amendment re: relevant.

Brown amendment re: relevant.
Brown amendment re: relevant.
Murkowski amendment re: relevant.
Murkowski amendment re: relevant.
Burns amendment re: relevant.
Mack amendment re: relevant.
Gramm amendment re: relevant.
Dole amendment re: relevant.
Dole amendment re: relevant.
Baucus amendment re: relevant.
Hatch amendment re: relevant.
Bradley amendment re: relevant.
Kerry amendment re: relevant.
Kohl amendment re: relevant.
Bumpers amendment re: communications sites on public lands.
DeConcini amendment re: relevant.
DeConcini amendment re: relevant.
Boxer amendment re: relevant.

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

## THE DEVELOPMENT OF TRIBAL JUDICIAL SYSTEMS

Mr. FORD. Madam President, on behalf of the majority leader, I ask unanimous consent the Indian Affairs Committee be discharged from further consideration of H.R. 1268, a bill to assist the development of tribal judicial systems, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 1268) to assist the development of tribal judicial systems, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 776

(Purpose: To assist the development of tribal judicial systems, and for other purposes)

Mrs. KASSEBAUM. Madam President, I send a substitute amendment on behalf of Senator MCCAIN 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 Kansas [Mrs. KASSEBAUM], for Mr. MCCAIN, proposes an amendment numbered 776.

Mrs. KASSEBAUM. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

### TITLE I—GENERAL PROVISIONS

**SEC. 101. SHORT TITLE.**

This Act may be cited as the "Indian Tribal Justice Systems Act".

**SEC. 102. FINDINGS.**

Congress finds and declares that—

(1) there is a government-to-government relationship between the United States and each Indian tribe;

(2) the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government;

(3) Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes;

(4) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems;

(5) tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments;

(6) Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate forums for the adjudication of disputes affecting personal and property rights;

(7) traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this Act;

(8) tribal justice systems are inadequately funded and the lack of adequate funding impairs their operation; and

(9) tribal government involvement in and commitment to improving tribal justice systems is essential to the accomplishment of the goals of this Act.

**SEC. 103. DEFINITIONS.**

For purposes of this Act:

(1) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(2) The term "Courts of Indian Offenses" means the courts established pursuant to part 11 of title 25, Code of Federal Regulations.

(3) The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native entity, which administers justice under the authority of the United States or the inherent authority of the native entity and which is recognized as eligible for the special programs and services provided by the United States to Indian tribes because of their status as Indians.

(4) The term "judicial personnel" means any judge, magistrate, court counselor, court clerk, court administrator, bailiff, probation officer, officer of the court, dispute resolution facilitator, or other official, employee, or volunteer within the tribal justice system.

(5) The term "Office" means the Office of Tribal Justice Support within the Bureau of Indian Affairs.

(6) The term "Secretary" means the Secretary of the Interior.

(7) The term "tribal organization" means any organization defined in section 4(l) of the Indian Self-Determination and Education Assistance Act.

(8) The term "tribal justice system" means the entire justice system of an Indian tribe, including but not limited to traditional methods and forums for dispute resolution, lower courts, appellate courts (including intertribal appellate courts), alternative dispute resolution systems, and circuit rider systems, established by inherent tribal authority without regard to whether they constitute a court of record.

### TITLE II—TRIBAL JUSTICE SYSTEMS

**SEC. 201. OFFICE OF TRIBAL JUSTICE SUPPORT.**

(a) ESTABLISHMENT.—There is hereby established within the Bureau the Office of Tribal Justice Support. The purpose of the Office shall be to further the development, operation, and enhancement of tribal justice systems and Courts of Indian Offenses.

(b) TRANSFER OF EXISTING FUNCTIONS AND PERSONNEL.—All functions performed before the date of the enactment of this Act by the Branch of Judicial Services of the Bureau and all personnel assigned to such Branch as of the date of the enactment of this Act are hereby transferred to the Office of Tribal Justice Support. Any reference in any law, regulation, executive order, reorganization plan, or delegation of authority to the Branch of Judicial Services is deemed to be a reference to the Office of Tribal Justice Support.

(c) FUNCTIONS.—Except as otherwise provided in title III, in addition to the functions transferred to the Office pursuant to subsection (b), the Office shall perform the following functions:

(1) Provide funds to Indian tribes and tribal organizations for the development, enhancement, and continuing operation of tribal justice systems.

(2) Provide technical assistance and training, including programs of continuing education and training for personnel of Courts of Indian Offenses.

(3) Study and conduct research concerning the operation of tribal justice systems.

(4) Promote cooperation and coordination between tribal justice systems, the Federal judiciary, and State judiciary systems.

(5) Oversee the continuing operations of the Courts of Indian Offenses.

(d) NO IMPOSITION OF STANDARDS.—Nothing in this Act shall be deemed or construed to authorize the Office to impose justice standards on Indian tribes.

(e) ASSISTANCE TO TRIBES.—(1) The Office shall provide training and technical assistance to any Indian tribe or tribal organization upon request. Technical assistance and training which may be provided by the Office shall include, but is not limited to, assistance for the development of—

(A) tribal codes and rules of procedure;

(B) tribal court administrative procedures and court records management systems;

(C) methods of reducing case delays;

(D) methods of alternative dispute resolution;

(E) tribal standards for judicial administration and conduct; and

(F) long-range plans for the enhancement of tribal justice systems.

(2) Technical assistance and training provided pursuant to paragraph (1) may be provided through direct services, by contract with independent entities, or through grants to Indian tribes and tribal organizations.

(f) INFORMATION CLEARINGHOUSE ON TRIBAL JUSTICE SYSTEMS.—The Office shall establish and maintain an information clearinghouse (which shall include an electronic data base) on tribal justice systems, including, but not limited to, information on staffing, funding, model tribal codes, tribal justice activities, and tribal judicial decisions. The Office shall take such action as may be necessary to ensure the confidentiality records, and other matters involving privacy rights.

**SEC. 202. SURVEY OF TRIBAL JUDICIAL SYSTEMS.**

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary, in consultation with Indian tribes, shall enter into a contract with a non-Federal entity to conduct a survey of

conditions of tribal justice systems and Courts of Indian Offenses to determine the resources and funding, including base support funding, needed to provide for expeditious and effective administration of justice. The Secretary, in like manner, shall annually update the information and findings contained in the survey required under this section. Any survey conducted pursuant to this section shall be completed and its findings reported by the Secretary and the Congress not later than 12 months after the date on which the contract for the conduct of the survey is executed.

(b) LOCAL CONDITIONS.—In the course of any annual survey, the non-Federal entity shall document local conditions of each Indian tribe, including, but not limited to—

(1) the geographic area and population to be served;

(2) the levels of functioning and capacity of the tribal justice system;

(3) the volume and complexity of the case loads;

(4) the facilities, including detention facilities, and program resources available;

(5) funding levels and personnel staffing requirements for the tribal justice system; and

(6) the training and technical assistance needs of the tribal justice system.

(c) CONSULTATION WITH INDIAN TRIBES.—The non-Federal entity shall actively consult with Indian tribes and tribal organizations in the development and conduct of the survey, including updates thereof, of conditions of tribal justice systems. Indian tribes and tribal organizations shall have the opportunity to review and make recommendations regarding the findings of the survey, including updates thereof, prior to final publication of the survey, or any update thereof. After Indian tribes and tribal organizations have reviewed and commented on the results of the survey, or any update thereof, the non-Federal entity shall report its findings, together with the comments and recommendations of the Indian tribes and tribal organizations, to the Secretary, the Committee on Indian Affairs of the Senate, and the Subcommittee on Native American Affairs of the Committee on Natural Resources of the House of Representatives.

**SEC. 203. BASE SUPPORT FUNDING FOR TRIBAL JUSTICE SYSTEMS.**

(a) IN GENERAL.—Pursuant to the Indian Self-Determination and Education Assistance Act, the Secretary is authorized to enter into contracts, grants, or agreements with Indian tribes and tribal organizations, for the development, enhancement, and continuing operation of tribal justice systems and traditional tribal judicial practices by Indian tribal governments.

(b) PURPOSES FOR WHICH FINANCIAL ASSISTANCE MAY BE USED.—Financial assistance provided through contracts, grants, or agreements entered into pursuant to this section may be used for—

(1) planning for the development, enhancement, and operation of tribal justice systems;

(2) the employment of judicial personnel;

(3) training programs and continuing education for tribal judicial personnel;

(4) the acquisition, development, and maintenance of a law library or computer assisted legal research capacities;

(5) the development, revision, and publication of tribal codes, rules of practice, rules of procedure, and standards of judicial performance and conduct;

(6) the development and operation of records management systems;

(7) the construction or renovation of facilities for tribal justice systems;

(8) membership and related expenses for participation in national and regional organizations of tribal justice systems and other professional organizations; and

(9) the development and operation of other innovative and culturally relevant programs and projects, including programs and projects for—

(A) alternative dispute resolution;

(B) tribal victims assistance or victims services;

(C) tribal probation services or diversion programs;

(D) juvenile justice services and multidisciplinary investigations of child abuse; and

(E) traditional tribal judicial practices, traditional tribal justice systems and traditional methods of dispute resolution.

(c) FORMULA.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary, with the full participation of Indian tribes, shall establish and promulgate by regulation, a formula which establishes base support funding for tribal justice systems in carrying out this section.

(2) The Secretary shall assess caseload and staffing needs for tribal justice systems and take into account unique geographic and demographic conditions. In the assessment of these needs, the Secretary shall work cooperatively with Indian tribes and tribal organizations and shall refer to any data developed as a result of the surveys conducted pursuant to section 202 and to comparable relevant assessment standards developed by the Judicial Conference of the United States, the National Center for State Courts, and the American Bar Association.

(3) Factors to be considered in the development of the base support funding formula shall include, but are not limited to—

(A) the caseload and staffing needs identified under paragraph (2) of this section;

(B) the geographic area and population to be served;

(C) the volume and complexity of the caseloads;

(D) the projected number of cases per month;

(E) the projected number of persons receiving probation services or participating in diversion programs; and

(F) any special circumstances warranting additional financial assistance.

(4) In developing the formula for base support funding for tribal judicial systems under this section, the Secretary shall ensure equitable distribution of funds.

## TITLE III—TRIBAL JUDICIAL CONFERENCES

**SEC. 301. ESTABLISHMENT; FUNDING.**

(a) ESTABLISHMENT.—In any case in which two or more governing bodies of Indian tribes establish a regional or national judicial conference, such conference shall be considered a tribal organization and eligible to contract for funds under this title, if each member tribe served by the conference has adopted a tribal resolution which authorizes the tribal judicial conference to receive and administer funds under this title. At the written request of any tribal judicial conference, a contract entered into pursuant to this title shall authorize the conference to receive funds and perform any or all of the duties of the Bureau and the Office under sections 201 and 202 of this Act on behalf of the members of such conference.

(b) CONTRACT AUTHORITY.—Pursuant to the Indian Self-Determination and Education Assistance Act, the Secretary is authorized, subject to appropriations, to enter into contracts, grants, or agreements with a tribal judicial conference for the development, enhancement, and continuing operation of tribal justice systems of Indian tribes which are members of such conference.

(c) FUNDING.—The Secretary is authorized to provide funding to tribal judicial conferences pursuant to contracts entered into under the authority of the Indian Self-Determination and Education Assistance Act for administrative expenses incurred by such conferences.

## TITLE IV—STUDY OF TRIBAL/FEDERAL COURT REVIEW

**SEC. 401. STUDY.**

(a) TRIBAL/FEDERAL COURT REVIEW.—A comprehensive study shall be conducted in accordance with subsection (b), of the treatment by tribal justice systems of matters arising under the Indian Civil Rights Act (25 U.S.C. 1301 et seq.) and of other Federal laws for which tribal justice systems have jurisdictional authority and regulations promulgated by Federal agencies pursuant to the Indian Civil Rights Act and other Acts of Congress. The study shall include an analysis of those Indian Civil Rights Act cases that were the subject of Federal court review from 1968 to 1978 and the burden, if any, on tribal governments, tribal justice systems, and Federal courts of such review. The study shall address the circumstances under which Federal court review of actions arising under the Indian Civil Rights Act may be appropriate or warranted.

(b) TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.—The study required in subsection (a) shall be conducted by the Tribal/Federal Court Review Study Panel in consultation with tribal governments.

**SEC. 402. TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.**

(a) COMPOSITION.—The Tribal/Federal Court Review Study Panel shall consist of—

(1) four representatives of tribal governments, including tribal court judges, two of whom shall be appointed by the Speaker of the House of Representatives and two of whom shall be appointed by the President pro tempore of the Senate; and

(2) four members of the United States Courts of Appeal, of whom one shall be appointed by the chief judge of the eighth circuit, one by the chief judge of the ninth circuit, one by the chief judge of the tenth circuit, and one by the chief judge of the Federal circuit.

(b) PERSONNEL.—The Tribal/Federal Court Review Study Panel may employ, on a temporary basis, such personnel as are required to carry out the provisions of this title.

(c) FINDINGS.—The Tribal/Federal Court Review Study Panel, not later than the expiration of the 12-month period following the date on which moneys are first made available to carry out this title, shall submit its findings and recommendations to—

(1) Congress;

(2) the Secretary;

(3) the Director of the Administrative Office of the United States Courts; and

(4) each Indian tribe.

(d) TERMINATION.—Thirty days after the Panel has submitted its findings and recommendations under subsection (c), the Panel shall cease to exist.

## TITLE V—AUTHORIZATIONS

**SEC. 501. TRIBAL JUSTICE SYSTEMS.**

(a) OFFICE.—There are authorized to be appropriated to carry out the provisions of sections 201, 202, and 301(a) of this Act, $7,000,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000. None of the funds provided pursuant to the authorizations

under this subsection may be used for the administrative expenses of the Office.

(b) BASE SUPPORT FUNDING FOR TRIBAL JUSTICE SYSTEMS AND JUDICIAL CONFERENCES.—There are authorized to be appropriated to carry out the provisions of section 203 of this Act, $50,000,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(c) ADMINISTRATIVE EXPENSES FOR OFFICE.—There are authorized to be appropriated, for the administrative expenses of the Office, $500,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(d) ADMINISTRATIVE EXPENSES FOR TRIBAL JUDICIAL CONFERENCES.—There are authorized to be appropriated, for the administrative expenses of tribal judicial conferences, $500,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(e) SURVEY.—For carrying out the survey under section 202, there is authorized to be appropriated, in addition to the amount authorized under subsection (a) of this section, $400,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(f) AUTHORIZATION.—For carrying out the study under section 401, there is authorized to be appropriated such sums as may be necessary.

(g) NO OFFSET.—No Federal agency shall offset funds made available pursuant to this Act for tribal justice systems against funds otherwise available for use in connection with tribal justice systems.

(h) ALLOCATION OF FUNDS.—In allocating funds appropriated pursuant to the authorization contained in subsection (a) of this section among the Bureau, Office, tribal governments, and tribal judicial conferences, the Secretary shall take such action as may be necessary to ensure that such allocation is carried out in a manner that is fair and equitable, and is proportionate to base support funding under section 203 received by the Bureau, Office, tribal governments, and tribal government members comprising a judicial conference.

(i) INDIAN PRIORITY SYSTEM.—Funds appropriated pursuant to the authorizations provided by this section and available for a tribal justice system shall not be subject to the Indian priority system. Nothing in this Act shall preclude a tribal government from supplementing any funds received under this Act with funds received from any other source including the Bureau or any other Federal agency.

**TITLE VI—DISCLAIMERS**

**SEC. 601. TRIBAL AUTHORITY.**

Nothing in this Act shall be construed to—

(1) encroach upon or diminish in any way the inherent sovereign authority of each tribal government to determine the role of the tribal court within the tribal government or to enact and enforce tribal laws;

(2) diminish in any way the authority of tribal governments to appoint personnel;

(3) impair the rights of each tribal government to determine the nature of its own legal system or the apportionment of authority within the tribal government;

(4) alter in any way traditional dispute resolution forums;

(5) imply that any tribal court is an instrumentality of the United States; or

(6) diminish the trust responsibility of the United States to Indian tribal governments and tribal justice systems of such governments.

Mr. MCCAIN. Mr. President, I am offering the text of S. 521, the Indian Tribal Justice Systems Act, as an amendment to H.R. 1268 so that we may proceed to a conference with the House of Representatives in an effort to reconcile differences between these two bills.

S. 521 passed the Senate on July 21 by a unanimous vote. With two exceptions, S. 521 is nearly identical to H.R. 1268 as passed by the House on August 2, 1993. The Senate bill provides an authorization for funding for tribal judicial conferences and for a panel to review the need for Federal judicial review of enforcement of the Indian Civil Rights Act by tribal courts. H.R. 1268 does not contain comparable provisions.

As many of my colleagues know, we have spent almost 6 years in an effort to enact legislation to assist Indian tribal justice systems. With the exception of the two matters now in disagreement between the House and the Senate, we are now in virtual agreement on the necessary legislation. I am hopeful that a conference on these two bills will promptly resolve the remaining differences.

I want to thank all of those who have worked so diligently to bring this legislation this far, particularly those tribal leaders and judges who have devoted years of effort. We all appreciate their hard work. With a little more effort and mutual goodwill these two bills are reconcilable. I look forward to a productive conference after we return from the August recess.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 776) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 1268), as amended, was passed.

Mr. FORD. Madam President, I move to reconsider the vote.

Mrs. KASSEBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Madam President, I move the Senate insist on its amendments, request a conference with the House on the disagreeing votes of the two Houses, that the Chair be authorized to appoint conferees.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kentucky.

The motion was agreed to, and the Presiding Officer (Ms. MOSELEY-BRAUN) appointed Mr. INOUYE, Mr. DECONCINI, Mr. DASCHLE, Mr. CONRAD, Mr. REID, Mr. SIMON, Mr. AKAKA, Mr. WELLSTONE, Mr. DORGAN, Mr. CAMPBELL, Mr. MCCAIN, Mr. MURKOWSKI, Mr. COCHRAN, Mr. GORTON, Mr. DOMENICI, Mrs. KASSEBAUM, Mr. NICKLES, and Mr. HATFIELD conferees on the part of the Senate.

## COMMODORE JOHN BARRY DAY

Mr. FORD. Madam President, on behalf of the majority leader, I ask unanimous consent the Senate proceed to the immediate consideration of House Joint Resolution 157, Commodore John Barry Day, that the joint resolution be read three times and passed, the preamble agreed to, and the motion to reconsider be laid upon the table.

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

The joint resolution (H.J. Res. 157) was deemed read the third time and passed.

The preamble was agreed to.

## NATIONAL POW/MIA RECOGNITION DAY

Mrs. KASSEBAUM. Madam President, I ask unanimous consent the Senate proceed to the immediate consideration of Senate Resolution 126, a joint resolution introduced earlier today by Senators SMITH and DODD, to designate National POW/MIA Recognition Day, that the joint resolution be read three times, passed, and the motion to reconsider laid upon the table, the preamble to be agreed to, and any statements relating to this measure appear in the RECORD at the appropriate place.

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

The joint resolution (S.J. Res. 126) was deemed read the third time and passed.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S.J. RES 126

Whereas the United States has fought in many wars and thousands of Americans who served in those wars were captured by the enemy or listed as missing in action;

Whereas many American prisoners of war were subjected to brutal and inhumane treatment by their enemy captors in violation of international codes and customs for the treatment of prisoners of war, and many such prisoners of war died from such treatment;

Whereas many of these Americans are still listed as missing and unaccounted for, and the uncertainty surrounding their fates has caused their families to suffer tragic and continuing hardships;

Whereas, in Public Law 101-355, the Federal Government officially recognized and designated the National League of Families POW/MIA flag as the symbol of the Nation's concern and commitment to accounting as fully as possible for Americans still prisoner, missing in action, or unaccounted for in Southeast Asia; and

Whereas the sacrifices of Americans still missing and unaccounted for from all our Nation's wars and their families are deserving of national recognition and support for

continued priority efforts to determine the fate of those missing Americans: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DESIGNATION OF NATIONAL POW/MIA RECOGNITION DAY.**

September 10, 1993, is designated as "National POW/MIA Recognition Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

**SEC. 2. REQUIREMENT TO DISPLAY NATIONAL LEAGUE OF FAMILIES POW/MIA FLAG.**

(a) IN GENERAL.—The POW/MIA flag shall be displayed—

(1) at all national cemeteries and the National Vietnam Veterans Memorial on May 31, 1993 (Memorial Day), September 10, 1993 (National POW/MIA Recognition Day), and November 11, 1993 (Veterans Day); and

(2) on, or on the grounds of, the buildings specified in subsection (b) on September 10, 1993;

as the symbol of our Nation's concern and commitment to accounting as fully as possible for Americans still prisoner, missing, and unaccounted for, thus ending the uncertainty for their families and the Nation.

(b) BUILDINGS.—The buildings specified in this subsection are—

(1) the White House; and

(2) the buildings containing the primary offices of—

(A) the Secretary of State;

(B) the Secretary of Defense;

(C) the Secretary of Veterans Affairs; and

(D) the Director of the Selective Service System.

(c) POW/MIA FLAG.—As used in this section, the term "POW/MIA flag" means the National League of Families POW/MIA flag recognized officially and designated by section 2 of Public Law 101-355.

## DIRECTING THE SENATE LEGAL COUNSEL TO APPEAR IN UNITED STATES VERSUS DURENBERGER

Mr. FORD. Madam President, on behalf of Senator MITCHELL and the distinguished Republican leader, Mr. DOLE, I send to the desk a resolution to direct the Senate legal counsel to appear as amicus curiae in the name of the Senate in a case pending in the U.S. District Court for the District of Minnesota, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 141) to direct the Senate Legal Counsel to appear as amicus curiae in the name of the Senate in *United States versus Durenberger, 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 Government has obtained an indictment against Senator DAVE DURENBERGER that charges the Senator with one count of conspiring with Michael Mahoney and Paul Overgaard to submit false claims to the Senate and one count of submitting false claims to the Senate in connection with his requests for reimbursement for lodging in a Minneapolis condominium.

In separate counts, the indictment also charges Mr. Mahoney and Mr. Overgaard with making false statements to the Select Committee on Ethics, not only in depositions taken by the committee's special counsel, but also in affidavits that Senator DURENBERGER submitted to the committee as part of his defense.

Senator DURENBERGER'S counsel has advised the Senate legal counsel of their intention to move to dismiss the indictment on the ground that it violates the Senator's privilege under the speech or debate clause, article I, section 6, and clause 1, of the Constitution. The motion will raise an important question of first impression relating to the scope of the speech or debate clause; namely, whether it protects a Senator's communications to the Ethics Committee in the form of affidavits from witnesses which the Senator places into the committee's record. Senator DURENBERGER was not indicted for submitting the affidavits to the Ethics Committee. Nevertheless, the charges against him relate to the subject matter of the affidavits and the grand jury indicated the Senator's codefendants on the basis of the affidavits.

In a case involving a Senator and the predecessor of the Ethics Committee, *Ray* v. *Proxmire* (581 F.2d 998, 1000 (D.C. Cir.), cert. denied, 439 U.S. 933 (1978)), the court recognized that a Member's communications to a congressional ethics committee are protected under the speech or debate clause. This principle was applied, in *United States* v. *Eilberg* (465 F. Supp. 1080, 1082-83 (E.D. Pa. 1979)), to bar the use of a Member's testimony before the House Committee on Standards of Official Conduct as evidence at a criminal trial. These holdings are consistent with the Supreme Court's teaching that the clause protects Members' participation in committee proceedings with respect to matters the Constitution places within the jurisdiction of the Senate or the House.

The power to discipline its Members is one of the most solemn responsibilities the Constitution places within the jurisdiction of the Senate. The communications of Members to the Ethics Committee are an important component of the committee's deliberative process. Protecting those communications from questioning by the executive or judicial branches helps to preserve the legislative independence guaranteed by the speech or debate clause. Of course, the protection of the clause only applies to being questioned outside of the Member's House. The Members of either House are subject to a disciplinary inquiry within their respective Houses for any allegation that they presented false evidence to a congressional ethics committee.

This resolution would authorize the Senate legal counsel to file a brief as amicus curiae on the Senate's behalf in support of Senator DURENBERGER'S claim that the Government violated the speech or debate clause when it presented the Senator's Ethics Committee submissions to the same grand jury which indicted him on charges related to the events described in those submissions.

Mr. FORD. Madam President, at Senator BRYAN'S request I submit a letter from him to the majority leader and ask unanimous consent it be printed at the appropriate place in the RECORD. It explains the reasons for his disapproval of this resolution.

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

U.S. SENATE,
*Washington, DC, June 30, 1993.*

Hon. GEORGE MITCHELL,
*Majority Leader,*
*The Capitol,*
*Washington, DC.*

DEAR GEORGE: This is in response to a request for Senate support of motions to be filed to dismiss the indictment against Senator Durenberger. I do not believe the Senate should support either motion, and am not prepared to support such a resolution.

With regard to the issue of a statutory bar to an action by the government to redress a fraud upon the Senate, there appears to be ample case and legislative history to show that judicial actions may be brought against Members of Congress to recover disbursements for falsely claimed expenses, and that payment by the Senate Rules Committee does not constitute an action which would bar prosecution for submitting false claims.

On the issue of the application of the speech/debate clause, I do not believe that the protections under the speech/debate clause should apply to affidavits by third parties, even if submitted by counsel to a Senator before the Senate Ethics Committee.

In the two court cases, *Ray* v. *Proxmire* and *United States* v. *Eilberg*, involving information submitted to an ethics committee by a Member, the protection of the speech or debate clause was affirmed for a Member's direct communications to the Ethics Committee, i.e., a letter from the Senator himself (Proxmire) or through the testimony of the Representative himself (Eilberg) to the Ethics Committee.

In the matter now under consideration, the question raised is if the speech/debate clause protection should be applied to affidavits by third parties submitted by a Member to the Ethics Committee. This is a case of first impression. No court has ever extended the protection of this clause beyond direct communications from a Member to the Ethics Committees. I believe it would be an overly board, and not intended, application of the speech/debate clause to apply its protection to third party affidavits submitted by a Senator or Representative to an ethics committee.

I also believe we should look at the varying roles assumed by the Senator in this case. Obviously, if a Senator is appearing on the Senate floor to speak, he is doing so as

a Senator acting in his or her official legislative or representative capacity, and the speech/debate clause should apply. In this case, however, in submitting material to the Senate Ethics Committee, the Senator is appearing in the capacity of a respondent before an ethics proceeding, and his submissions, as well as those of his counsel, should be judged in the Senator's role as a respondent offering testimony of others in the ethics proceeding. He therefore should be judged in this role of respondent providing evidence from third parties.

Additionally, if the speech/debate clause is so broadly interpreted as to provide impunity to a Senator should he present false documents or evidence from others to the Ethics Committee, the integrity of the ethics process is mortally damaged. I do not believe that the authors of our Constitution intended this result. Again, I believe this would be an overly broad application of the speech or debate clause, and one that is not in the best interest of the Ethics Committee, the Senate as an institution, or the public.

Therefore, it is my opinion that the Senate should not support the motions under question if offered to the court by counsel to Senator Durenberger.

Sincerely,

RICHARD H. BRYAN,
*U.S. Senator.*

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 141) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 141

Whereas, in the case of United States v. Durenberger, et al., Cr. No. 3-93-65, pending in the United States District Court for the District of Minnesota, Senator Dave Durenberger is charged with conspiring to submit false claims to the Senate and his codefendants are charge with making false statements to the Select Committee on Ethics in affidavits that Senator Durenberger submitted to the Committee;

Whereas, this case places in issue Senator Durenberger's privilege under the Speech or debate Clause, Article I, Section 6, Clause 1 of the Constitution, to be free from questioning in any other place about his communications to the Ethics Committee;

Whereas, pursuant to sections 703(c), 706(a), 709(1), and 713(a) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(c), 288e(a), 288h(1), and 2881(a) (1988), the Senate may direct its Counsel to appear as amicus curiae in the name of the Senate in any legal action which places in issue the powers and responsibilities of Congress under the Constitution, including the privilege of Members to be free from questioning in any other place about any speech or debate: Now, therefore, be it

*Resolved*, That the Senate Legal Counsel is directed to appear as amicus curiae in the name of the Senate in United States v. Durenberger, et al., to defend the constitutional privilege of Senators under the Speech or debate Clause to be free from questioning in any other place about their communications to the Select Committee on Ethics.

Mr. FORD. Madam President, I move to reconsider the vote.

Mrs. KASSEBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. 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. FORD. Madam President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

## CONGRATULATING ANTI-DEFAMATION LEAGUE

Mr. FORD. Madam President, on behalf of the majority leader, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Concurrent Resolution 30, congratulating the Anti-Defamation League on the celebration of its 80th anniversary; that the Senate then proceed to its immediate consideration; that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table, and the preamble agreed to; that any statements relating to this measure appear in the RECORD as if given.

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

So the concurrent resolution (S. Con. Res. 30) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, is as follows:

S. CON. RES. 30

Whereas in 1993 the Anti-Defamation League celebrates the 80th anniversary of its founding;

Whereas by fighting bias, bigotry, and racism and by promoting understanding and respect among people the league has been at the forefront of the Nation's quest for justice and fair treatment for all individuals;

Whereas the purpose and program of the league is to counter violence through the promotion of tolerance, thereby, thereby espousing and fulfilling the highest ideals and aspirations of people of all faiths, races, and backgrounds;

Whereas the league's activities are a constant reminder to the world community never to forget the Holocaust and to incorporate the lessons learned from the Holocaust into political systems and political decision-making;

Whereas the league has been a leading contributor to the causes relating to democracy, respect for human rights and for the dignity of all peoples, the security of Jewish communities around the world, and the State of Israel;

Whereas the league's record of achievement sets as inspiring example of participation in the struggle for justice and of leadership in that struggle;

Whereas the league continues to grow in strength and broaden the scope of its activities even as it maintains its original purpose of educating the public about anti-Semitism and other manifestations of prejudice; and

Whereas racism and other forms of intolerance persist and lead all too frequently to hate-inspired violence: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That the Congress of the United States congratulates the Anti-Defamation League as it celebrates its 80th anniversary in 1993 and commends the league for pursuing effectively the goal of promoting greater tolerance among people throughout the world.

## EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR FLOOD RELIEF

Mr. FORD. Mr. President, on behalf of the majority leader, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2667.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House agree to the amendments of the Senate numbered 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 to the bill (H.R. 2667), appropriations for relief from the major, widespread flooding in the Midwest for the fiscal year ending September, 30, 1993, and for other purposes.".

*Resolved*, That the House agree to the amendment of the Senate numbered 1 to the aforesaid bill with the following amendments:

(1) Page 1, line 9, of the Senate engrossed amendments, strike all after "1985" down to "$200,000,000," on line 13 and insert in lieu thereof a period after "1985" followed by:

DEPARTMENT OF COMMERCE

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

For an additional amount for emergency expenses resulting from the Midwest floods of 1993 and other disasters,

(2) Page 1, line 13, of the Senate engrossed amendments, after "$200,000,000," insert "to remain available until September 30, 1995, for disaster assistance grants pursuant to the Public Works and Economic Development Act of 1965, as amended,".

(3) Page 2, line 4, of the Senate engrossed amendments, strike all that follows after "Congress" down through "flooding" on page 2, line 19, and insert in lieu thereof a period after "Congress" followed by:

SMALL BUSINESS ADMINISTRATION

DISASTER LOANS PROGRAM ACCOUNT

For an additional amount for "Disaster loans program account" for the cost of direct loans for the Midwest floods and other disasters, $90,000,000 to remain available until September 30, 1995, of which $10,000,000, to remain available until expended, may be transferred to and merged with the appropriations for "Salaries and Expenses", and of which $20,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress: Provided further, That notwithstanding any other provision of law, the $500,000 limitation on the amounts outstanding and committed to a borrower provided in paragraph 7(c)(6) of the Small Business Act shall be increased to $1,500,000 for disasters commencing on or after April 1, 1993.

(4) Page 2, line 19, of the Senate engrossed amendments, strike all after "flooding" down through "for" on line 22 and insert in lieu thereof after "flooding" the following:

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

For an additional amount for disaster relief for the Midwest flood for activities authorized by

(5) Page 2, line 23, of the Senate engrossed amendments, strike [shall be]

(6) Page 2, line 23, of the Senate engrossed amendments, after "54,600,000," insert "to be available for obligation for the period July 1, 1993 through June 30, 1994,".

(7) Page 3, line 4 of the Senate engrossed amendments, strike all after "Congress" down through "activities of the " on line 6 and insert in lieu thereof a period after "Congress" followed by:

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

PROGRAMS AND ACTIVITIES

For an additional amount for "Programs and activities" of the

(8) Page 3, line 7, of the Senate engrossed amendments, strike [shall be]

(9) Page 3, line 7, of the Senate engrossed amendments, after "$4,000,000," insert "for use in carrying out Federal disaster relief programs, activities, and initiatives under subtitles C, E, F, and G of the National and Community Service Act of 1990 (Public Law 101–610), as the Board determines necessary to carry out programs related to the floods in the Midwest, to remain available until September 30, 1994.".

(10) Page 3, line 14, of the Senate engrossed amendments, after "all of the above amounts" insert "in this and the preceding three paragraphs".

(11) Page 3 of the Senate engrossed amendments, strike lines 18 through 20.

(12) Page 5, after line 7 of the Senate engrossed amendments, insert the following center heading: SENSE OF THE SENATE ON BOSNIA

(13) Page 2 of the House engrossed bill, strike line 6 and all that follows down through line 2 on page 4.

(14) Page 5 of the House engrossed bill, strike line 6 and all that follows down through line 22.

(15) Page 7 of the House engrossed bill, strike line 1 and all that follows through line 14.

(16) Page 8 of the House engrossed bill, strike line 20 and all that follows through line 11 on page 9.

(17) Page 15 of the House engrossed bill, strike line 11 and all that follows through line 22.

*Resolved*, That the House agree to the amendment of the Senate numbered 20 to the aforesaid bill with the following amendment:

Restore the matter stricken, amended to read as follows:

Strike "until expended" and insert in lieu thereof "until September 30, 1995".

*Resolved*, That the House agree to the amendment of the Senate numbered 37 to the aforesaid bill with the following amendment:

Insert the following before the period ": *Provided further*, That all of the funds provided under this head in this Act shall be used only to repair, replace, or restore facilities damaged or to continue services interrupted by Midwest floods, high winds, hail and other related weather damages of 1993 and other disasters that are essential to public health or safety as defined by the Secretary.

*Resolved*, That the House agree to the amendment of the Senate numbered 45 to the aforesaid bill with the following amendment:

In lieu of "September 30, 1995" named by said amendment, insert "September 30, 1997".

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*Resolved*, That the House disagree to the amendment of the Senate numbered 2, 3, 16, 17, 21, and 27 to the aforesaid bill.

Mr. BYRD. Madam President, I am pleased to inform the Senate that the House has taken action with regard to the Senate amendments to H.R. 2667, the emergency supplemental for the Midwest floods and other disasters. The changes that the House has proposed restore one item of the House-passed bill we had stricken and makes only technical changes to the Senate bill. I recommend that we agree to the House action. This action will clear the measure for the President and I expect that he will sign it soon.

This means that those victims in the Midwest, the drought in the Southeastern States, and other natural disasters can expect additional aid soon. Once the waters recede, we will be ready to step in and clear farmland, rebuild and repair levees that have been destroyed, and help put peoples' lives back together. I am grateful to our colleagues in the House of Representatives for their consideration of our amendments, particularly to the distinguished chairman of the House Appropriations Committee, Congressman WILLIAM NATCHER, and his ranking member, Congressman JOSEPH MCDADE, for their help and hard work on this bill.

I want to thank all Senators for their help and patience in helping us pass this bill. By holding to only those matters that the administration had requested, Senator HATFIELD and I hoped to avoid a conference on this emergency bill. The House action has proved us right.

Madam President, I want to take this opportunity to review for the information of Senators the status of the regular appropriations bills for fiscal year 1994. The House has passed and sent to the Senate 11 of the 13 bills. They have yet to take final action on the Transportation bill and the Defense bill.

Of the 11 that have been sent to the Senate, the committee has reported 6, and the Senate has passed 5 of those measures. The Interior Subcommittee bill remains on the calendar awaiting floor action. Of the five bills that have been passed, the Commerce-Justice-State appropriations bill, the Treasury-Postal Service appropriations, and the District of Columbia appropriations bill, are expected to go to conference soon after we return in September. The legislative branch bill and the Agriculture appropriations bill have completed conference and we expect to send those bills to the President.

Therefore, Madam President, the Senate has made good progress on appropriations measures and I hope that we will be able to complete final action on all of the bills before the beginning of the fiscal year on October 1, 1993.

This progress would not have been possible without the efforts of committee members on this side, and the cooperation of our colleagues on the other side. I again want to offer a special word of appreciation to the Senator from Oregon, Mr. HATFIELD, for his collaboration and amicable manner in bringing these bills through the committee and the Senate.

Finally, Madam President, I want to thank the staff of the Appropriations Committee on both sides. It is a staff second to none and I applaud them for their excellent work.

Mr. FORD. Madam President, I move that the Senate recede from its amendments numbered 2, 3, 16, 17, 21, 27 and that the Senate concur in the amendments of the House to the Senate amendments numbered 1, 20, 37, and 45; that any statements thereon appear in the RECORD at the appropriate place.

The motion was agreed to.

Mr. FORD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## RETROACTIVE TAX INCREASES

Mr. MITCHELL. Madam President, earlier today, Senator MCCAIN made a constitutional point of order that retroactive tax increases in the conference report which predate April 8, 1993, are in violation of the due process clause of the fifth amendment of the Constitution.

During debate on that point of order, I made the following statement.

There is not a single legal basis, there is not a single constitutional basis that supports the contention of this point of order.

Following my statement, Senator GORTON called to my attention one case in the ninth judicial circuit in which the court found on the specific facts of that case that applying certain retroactive estate tax legislation was unconstitutional.

Thus my statement that "There is not a single legal basis * * *" was in error. There was this one case, of which I was unaware. I regret the error and I thank Senator GORTON for calling the case to my attention.

## PASSAGE OF APPROPRIATIONS BILLS

Mr. MITCHELL. Madam President, just a few moments ago the Senate completed action on the legislative appropriations conference report and on the supplemental appropriations bill for flood relief. I compliment Senators REID and MACK, the managers of the legislative appropriations bill, and

Senators BYRD and HATFIELD, the mangers of the supplemental appropriations bill for flood relief for their diligent work on these important measures.

## THE NOMINATION OF DR. M. JOYCELYN ELDERS TO BE SURGEON GENERAL

Mr. SIMPSON. Madam President, I rise today in support of the nomination of Dr. Joycelyn Elders for Surgeon General. I sincerely believe that she can make a real difference in addressing some of the toughest health care problems which presently face our Nation.

I want to indicate my support of the nomination of Dr. Joycelyn Elders to be Surgeon General.

I have wanted to say those things. I do not want to wait until September, because I think that they are going to try to dig up a lot of things about this woman, if I know Washington, as I do.

Unless they find a lot more things than I know now, I will be supportive. I believe she can make a real difference in addressing some of the toughest health care problems, things to do with passion and determination about teen pregnancy, sexually transmitted diseases, AIDS, infant mortality, and preventive care.

She has an extraordinary record.

Dr. Elders is an innovator and a pioneer in the field of public health. We need a Surgeon General with her passion and determination to tackle issues such as teen pregnancy, sexually transmitted diseases, infant mortality, and preventive care.

She has compiled a distinguished record of achievements as a health professional in Arkansas, and I am confident that she will be able to replicate these achievements on a national level. Under her administration, the infant mortality rate in Arkansas decreased because of policies that ensured that more pregnant women received early and regular prenatal care. She dramatically improved the childhood immunization rate in Arkansas by instituting after-hours clinics, and by initiating a policy to ensure that every child visiting a health clinic received immunizations when necessary.

A primary factor in my decision to support Dr. Elders is her ability to reach an audience of young people that I fear might be lost without the unique skills she possesses. She has demonstrated her talents in getting down into the trenches and communicating with kids in the inner cities, as well as, in poor, rural areas. They might hear her, and listen to her, and talk with her in a more constructive manner than any other possible candidate for this important position might achieve. As one of my colleagues stated yesterday, "she can talk the talk and walk the walk." She can communicate with these kids because she knows who they are and where they come from—she grew up in poor, rural Arkansas and knows about their poverty, and their potential. She lifted herself out of poverty, and I believe that she has the determination to be a great role model in the health care area.

I know that she has said several things that some, including many of my colleagues on this side of the aisle have found to be offensive. I talked with her for nearly an hour on August 5. She has been chastened by her position in this cauldron of controversy. She understands that she can accomplish more by discarding elements of her rhetoric which some find incendiary. I think she is sincere about this.

I am familiar with outspoken people. I come from a whole gene pool of similarly situated folks. Dr. Elders and I talked about some of those common character traits. She has heard the criticisms and I believe that she sincerely understands that she must turn down the volume in order to avoid such problems in the future, and to do the most effective job.

I think her heart is in the right place, and I, for one, am willing to give her the benefit of what she tells me she has learned through this process.

For these reasons, I will be supporting Dr. Elders when her nomination comes to the floor in September.

Where she rung the bell with me and my primary reason to support her is I think she has an ability, a native ability, to reach an audience of people that no one could reach, that I fear will be lost without the unique skills that she possesses.

She has demonstrated those talents in getting right down in the trenches, communicating with kids from the inner cities as well as in poor rural areas. I think they might hear her, especially when they may be pretty smart-alecky—and I am not talking about color. I am talking about white, black, brown, who are going to listen to things like abstinence. She does talk of abstinence. That is something that she in my visit with her—and I spent an hour with her, I am very impressed. Abstinence is not something corny to her. What breaks her heart she says is teenage pregnancy.

She is going to be able to talk to people in a very spirited and energetic manner that I think we will never have seen before or since. One of my colleagues said, "she can talk the talk and walk the walk." I think she can communicate in a way that no one else could who has been presented to us—perhaps Dr. Koop. There were many who voted against Dr. Koop and we found him to be a superb Surgeon General. I think those who will vote against this woman will find the same when she perhaps has come aboard.

But she knows. She lifted herself up. I believe she has all the determination to be a great role model in the health care area. She has a husband of 37 years. She knows the world. She rode in that bus with those high school athletic teams. She knows young men. She knows young women.

And I know that things have been said about her and what she has said that were found to be offensive and alarming. I talked with her for some time.

I think she has been chastened by her position in this cauldron of controversy. She did not know Washington, DC, which is the only city on Earth where we take care of bird, bee, tree, beast of the field, animal, rat, and everything else, and then eat human beings alive.

She has found that. She understands that she can accomplish more by discarding elements of her rhetoric which some might find incendiary. I think she was very sincere about that.

And when she spoke about the church, she is not speaking of the Catholic Church. And if you remember during the war, if you remember during the Holocaust, the National Council of Churches sat absolutely mute and did nothing while that carnage was going on.

Remember your history. So when she talked of the church, that is what she was speaking of. That was my church, the Episcopal Church, nothing in those years, in 1937 and 1940—nothing was said by the National Council of Churches. So I think she was referring to that and her frustration.

I am very familiar with outspoken people. I come from a whole gene pool of similarly situated people. So she and I talked about some of those common character traits. She has heard the criticisms. I believe she sincerely understands that she must perhaps turn down the volume a bit in order to avoid such problems of misinterpretation in this remarkable village where they take every single phrase or grimace out of context.

I think she will do an effective job. I think her heart is in the right place. I for one am certainly willing to give her the benefit of what she has told me she has learned through this process and for that extraordinary ordinary record.

For those reasons, I will be supporting her, and I will have more detailed remarks in debate when her nomination comes to the floor. I appreciate the leader's indulgence. I just wanted to say those things before September.

Mr. MITCHELL. Madam President, I thank my friend and colleague for his comments, and I simply want to repeat to him something that I said following the vote earlier here this evening. I sincerely, with an my heart and soul, hope that when we deal with the next series of major issues coming before us—and I am talking specifically of health care—that it can be in a cooperative and bipartisan way, and that if

everyone is active and gives genuine participation, we can pass it with votes on both sides of the aisle—I say that on other measures as well. That one just came to me.

Mr. SIMPSON. Let me assure our leader—and he is majority leader of all of us, in that sense—that this Republican minority, through Senator JOHN CHAFEE, will be presenting a so-called Republican plan of principles, and we have our hands fully outstretched to work with the first lady and you on that side of the aisle as to health care, which should not be bipartisan, it should be nonpartisan. We are ready to do that, and we will probably bet you that we will rustle up more votes for the North American Free-Trade Agreement on our side than you might on yours. We must get to work on your colleagues there so we can help our President.

Mr. MITCHELL. That is true. I will be pleased to do that after a few weeks in Maine.

Mr. SIMPSON. And Russian aid, we will be there. Health care is a key, and the proof is that we are ready. Senator CHAFEE will be our spokesman, and he is a very deeply respected as a moderate man.

Mr. MITCHELL. We do have that respect for Senator CHAFEE, and I have the privilege of serving on the Senate Health and Finance Subcommittee with Senator CHAFEE and others, and I believe we can do this.

Madam President, before we leave I want to thank my very good friend and closest associate, the majority whip, Senator FORD, who has always been tremendous in his support and assistance and without whom this Senator could not operate as he does.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by David Zaroff, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE

At 12:02 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 2330. An act to authorize appropriations for fiscal year 1994 for the intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

H.J. Res. 157. Joint resolution to designate September 13, 1993, as "Commodore John Barry Day."

H.J. Res. 220. Joint resolution to designate the month of August as "National Scleroderma Awareness Month," and for other purposes.

The message further announced that the House has passed the following joint resolution, without amendment:

S.J. Res. 99. Joint resolution designating September 9, 1993, and April 21, 1994, each as "National D.A.R.E. Day."

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 109. Concurrent resolution expressing the sense of the Congress respecting the 80th anniversary of the Anti-Defamation League.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

S. 1205. An act to amend the Fluid Milk Promotion Act of 1990 to define fluid milk processors to exclude de minimis processors, and for other purposes.

H.R. 631. An act to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore [Mr. BYRD].

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At 3:55 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 amendment of the Senate to the bill (H.R. 2010) to amend the National and Community Service Act of 1990 to establish a Corporation for National Service, enhance opportunities for national service, and provide national service educational awards to persons participating in such service, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate numbered 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 to the bill (H.R. 2667) making emergency supplemental appropriations for relief from the major, widespread flooding in the Midwest for the fiscal year ending September 30, 1993, and for other purposes; it agrees to the amendments of the Senate numbered 1, 20, 37, and 45, each with an amendment, in which it requests the concurrence of the Senate; and it disagrees to the amendments of the Senate numbered 2, 3, 16, 17, 21, and 27.

The message further 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. 2348) making appropriations for the legislative branch for the fiscal year ending September 30, 1994, and for other purposes; and that it recedes from its disagreement to the amendments of the Senate numbered 1, 7, 10, 12, 20, 22, 23, 24, 25, and 27 to the bill and concurs therein.

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At 6:53 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. 2493) making appropriations for Agriculture, Rural Development, Food, and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1994, and for other purposes; it recedes from its disagreement to the amendments of the Senate numbered 8, 19, 21, 42, 47, 50, 54, 110, 138, 152, 153, 154, and 155, and agrees thereto; it recedes from its disagreement to the amendments of the Senate numbered 18, 28, 29, 36, 40, 74, 78, 111, 136, 137, 142, and 164, 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 amendments of the Senate to the bill (H.R. 2034) to amend title 38, United States Code, to revise and improve veterans health programs, and for other purposes, with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2876. An act to promote and support management reorganization of the National Aeronautics and Space Administration.

H.R. 2900. An act to clarify and revise the small business exemption from the nutrition labeling requirements of the Federal Food, Drug and Cosmetic Act and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 136. Concurrent resolution providing for an adjournment of the House from Friday, August 6, 1993, Saturday, August 7, 1993, Monday, August 9, 1993, or Tuesday, August 10, 1993, to Wednesday, September 8, 1993, and a recess or adjournment of the Senate from Friday, August 6, 1993, Saturday, August 7, 1993, or Sunday, August 8, 1993, to Tuesday, September 7, 1993.

ENROLLED BILLS SIGNED

At 9:11 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

S. 1273. An act to facilitate recovery from the recent flooding of the Mississippi River and its tributaries by providing greater flexibility for depository institutions and their regulators, and for other purposes.

S. 1274. An act to reduce the subsidy cost for the Guaranteed Business Loan Program of the Small Business Administration, and for other purposes.

S.J. Res. 99. Joint resolution designating September 9, 1993, and April 21, 1994, each as "National D.A.R.E. Day."

The enrolled bills and joint resolution were subsequently signed by the President of the Senate [Mr. GORE].

## MEASURES REFERRED

The following measures were read the first and second times by unanimous consent, and referred as indicated:

H.R. 2330. An act to authorize appropriations for fiscal year 1994 for the intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; to the Select Committee on Intelligence.

H.R. 2876. An act to promote and support management reorganization of the National Aeronautics and Space Administration; to the Committee on Commerce, Science, and Transportation.

H.J. Res. 220. Joint resolution to designate the month of August as "National Scleroderma Awareness Month", and for other purposes; to the Committee on the Judiciary.

The following measure was received and referred as indicated:

H. Con. Res. 109. Concurrent resolution expressing the sense of the Congress respecting the 80th anniversary of the Anti-Defamation League; to the Committee on the Judiciary.

## 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-1370. A communication from the Assistant Deputy Under Secretary of Defense (Conservation and Installations), transmitting, pursuant to law, a report on the performance of Department of Defense commercial activities for fiscal year 1992; to the Committee on Armed Services.

EC-1371. A communication from the Secretary of Energy, transmitting, pursuant to law, a report for the Strategic Petroleum Reserve for the period January 1, 1993 through March 31, 1993; to the Committee on Energy and Natural Resources.

EC-1372. A communication from the Administrator of the General Services Administration, transmitting, reports of building project surveys; to the Committee on Environment and Public Works.

EC-1373. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on the Surface Transportation Research and Development Plan for fiscal year 1992; to the Committee on Environment and Public Works.

EC-1374. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report entitled "The Role of Ozone Precursors in Tropospheric Ozone Formation and Control"; to the Committee on Environment and Public Works.

EC-1375. A communication from the Assistant Legal Adviser (Treaty Affairs), Department of State, transmitting, pursuant to law, a report of the texts of international agreements and background statements; to the Committee on Foreign Relations.

EC-1376. A communication from the Chair of the Federal Energy Regulatory Commission, transmitting, pursuant to law, the annual report for calendar year 1992; to the Committee on Governmental Affairs.

EC-1377. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the assignment or detail of General Accounting Office employees to congressional committees as of July 9, 1993; to the Committee on Governmental Affairs.

EC-1378. A communication from the President of the American Academy of Arts and Letters, transmitting, pursuant to law, a report of activities during calendar year 1992; to the Committee on the Judiciary.

EC-1379. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report relative to the use of specific service signs; to the Committee on Environment and Public Works.

EC-1380. A communication from the Acting Administrator of the General Services Administration, transmitting, pursuant to law, notice of the awarding of a contract for a telecommuting center; to the Committee on Environment and Public Works.

EC-1381. A communication from the Assistant Secretary (Legislative Affairs), Department of State, transmitting, pursuant to law, a report relative to emergency assistance to Ecuador; to the Committee on Foreign Relations.

EC-1382. A communication from the Secretary of Education, transmitting, pursuant to law, a draft of proposed legislation to establish a national framework for the development of School-to-Work Opportunities systems in all States, and for other purposes; to the Committee on Labor and Human Resources.

## 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-257. A House Joint Resolution adopted by the Legislature of the Commonwealth of the Mariana Islands relative to the establishment of a non-voting Delegate from the Northern Mariana Islands; to the Committee on Energy and Natural Resources.

"HOUSE JOINT RESOLUTION 8-5

"Taking note that the Covenant negotiating history makes it clear that Section 901 does not preclude the Government of the Northern Marianas from requesting that a Delegate from the Northern Mariana Islands be established in the Congress of the United States;

"Finding further that Article V, Section 2, of the Commonwealth Constitution, as amended by Constitutional Amendment 24, provides that the United States may confer the status of non-voting delegate or member in the United States Congress on the Resident Representative;

"Observing that P.L. 3-92, Section 1 (Title 1, CMC, Div. 4, Subsection 4101) provides that the Resident Representative shall function pursuant to Article V of the Constitution and the terms and conditions set forth in Division 4;

"Observing further that P.L. 3-92, Section 2(b) (Title 1, CMC, Div. 4, Subsection 4202(b)) prescribes the following duties for the Resident Representative: "To represent the Commonwealth and the people of the Commonwealth on a full-time basis before the Congress of the United States, its committees and subcommittees. To act as a liaison office in the District of Columbia for other official and unofficial matters pertaining to the public welfare of the Commonwealth. To actively and fully advocate all programs and policies duly adopted by the Commonwealth" and "To coordinate all actions of the Commonwealth Government respecting federal grants and programs in the District of Columbia and appropriate regional and district offices in other states and territories";

"Realizing that many of the functions of the Resident Representative would still be needed if such additional representational status were placed upon that office and would unduly encumber the new Delegate;

"Holding it to be true that providing a separate Delegate for the Northern Mariana Islands while maintaining an Office of the Resident Representative would neither diminish the full force and effect of the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America nor in any sense abrogate, qualify, or modify the right to local self-government contained in Article 1, Section 103 of the Covenant; it is

"Resolved by the House of Representatives of the Eighth Northern Mariana Commonwealth Legislature, the Senate concurring, that the United States of America is hereby requested to:

"(1) Establish a seat of Delegate from the Northern Mariana Islands in the United States Congress;

"(2) Provide that the Delegate from the Northern Mariana Islands receive the same compensation, allowance, and benefits as a Member of the United States House of Representatives, and be entitled to at least those same privileges and immunities granted to the non-voting delegate from the territory of Guam and serve on the same term as the Resident Commissioner from the Commonwealth of Puerto Rico;

"(3) Work closely with the Resident Representative in the drafting of the federal legislation necessary to realize the Delegate from the Northern Mariana Islands; and

"*Resolving further*, That the Speaker of the House and the President of the Senate shall certify and the House Clerk and the Senate Legislative Secretary shall attest to the adoption of this Resolution and thereafter transmit copies to: The Honorable Bill Clinton, President of the United States; the Honorable Lorenzo I. De Leon Guerrero, Governor of the Commonwealth of the Northern Mariana Islands; the Honorable Thomas Foley, Speaker of the U.S. House of Representatives, the Honorable Richard Gephardt, Majority Leader of the U.S. House of Representatives; the Honorable Robert H. Michel, Minority Leader of the U.S. House of Representatives; the Honorable George Miller, U.S. House of Representatives, the Honorable Don Young, U.S. House of Representatives; the Honorable Ron De Lugo, U.S. House of Representatives; the Honorable Elton Gallegly, U.S. House of Representatives; the Honorable Eni F.J. Faleomavaega, U.S. House of Representatives; the Honorable Eleanor Holmes Norton, U.S. House of

Representatives; the Honorable Carlos Romero-Barcelo, U.S. House of Representatives; the Honorable Robert Underwood, U.S. House of Representatives; the Honorable Al Gore, Vice President of the United States and President of the U.S. Senate; the Honorable George Mitchell, Majority Leader of the U.S. Senate; the Honorable Robert Dole, Minority Leader of the U.S. Senate, the Honorable J. Bennett Johnston, U.S. Senate; the Honorable Daniel K. Akaka, U.S. Senate; the Honorable Malcolm Wallop, U.S. Senate; and the Honorable Bruce Babbitt, Secretary of the U.S. Department of Interior."

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POM-258. A House Resolution adopted by the House of Representatives of the Northern Marianas Commonwealth Legislature relative to Ambassador Williams; to the Committee on Energy and Natural Resources.

"H.R. No. 8-103

"With absolute resolve, the people of the Northern Mariana Islands have valiantly struggled to obtain their right of self determination and have triumphantly risen in the face of historical oppression by other nations; and

"Whereas, our self government has evolved through formative years under the administration of the United States Navy, the Trust Territory Government and the Congress of Micronesia; and

"Remembering that the aspirations of the people of the Northern Marianas for an affirmative political status led us toward a closer political association with the United States; and

"Evidenced on March 13, 1971 when President Richard M. Nixon appointed Ambassador Franklin Haydn Williams, the President of the Asia Foundation, as his personal representative for political status negotiations with the Marianas Political Status Commission; and

"Diligently laboring through five rounds of negotiations between 1972 and 1975, Ambassador F. Haydn Williams worked arduously as Chairman of the United States' delegation with the Marianas Political Status Commission to accordantly create the document that would ultimately embody the political desires of the people of the Northern Mariana Islands; and

"Whereas, their cooperative efforts came to fruition in the signing of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America on February 15, 1975; and

"Subsequently the people of the Northern Marianas gave their express endorsement of the covenant by the unanimous approval of the Mariana District Legislature and the overwhelming approval by the public of the plebiscite of June 17, 1975;

"Resulting in Presidential approval by Gerald Ford of the Covenant on March 24, 1976 which effectuated the achievement of Ambassador F. Haydn Williams and the Marianas Political Status Commission into U.S. Public Law 94-241: 90 Stat. 263; and

"Whereas, Ambassador F. Haydn Williams has since continued to support the political endeavors of the Commonwealth through consultations as recently evidenced by his visit to our islands, during which he presented his valuable knowledge and approving opinion to the House Committee on Federal and Foreign Relations on the establishment of a Delegate from the Northern Mariana Islands to the United States Congress: Now, therefore, be it

"*Resolved, by the House of Representatives, Eighth Northern Marianas Commonwealth Legislature*, That the House expresses its heartfelt appreciation to Ambassador Franklin Haydn Williams for his dedication and assistance to the people of the Northern Mariana Islands in the realization of their political destiny; and be it further "*Resolved*, That the Speaker of the House shall certify and the House Clerk shall attest to the adoption of this resolution and thereafter transmit copies to: The Honorable Bill Clinton, President of the United States; Ambassador Franklin Haydn Williams; the Honorable Lorenzo I. De Leon Guerrero, Governor of the Commonwealth of the Northern Mariana Islands; the Honorable Thomas Foley, Speaker of the U.S. House of Representatives; the Honorable Richard Gephardt, Majority Leader of the U.S. House of Representatives; the Honorable Robert H. Michel, Minority Leader of the U.S. House of Representatives; the Honorable George Miller, U.S. House of Representatives; the Honorable Don Young, U.S. House of Representatives; the Honorable Ron De Lugo, U.S. House of Representatives; the Honorable Elton Gallegly, U.S. House of Representatives; the Honorable Eni F.H. Faleomavaega, U.S. House of Representatives; the Honorable Eleanor Holmes Norton, U.S. House of Representatives; the Honorable Carlos Romero-Barcelo, U.S. House of Representatives; the Honorable Robert Underwood, U.S. House of Representatives; the Honorable Al Gore, Vice President of the United States and President of the U.S. Senate; the Honorable George Mitchell, Majority Leader of the U.S. Senate; the Honorable Robert Dole, Minority Leader of the U.S. Senate; the Honorable J. Bennett Johnston, U.S. Senate; the Honorable Malcolm Wallop, U.S. Senate; the Honorable Bruce Babbitt, Secretary of the U.S. Department of the Interior; and the Honorable Leslie M. Turner, Assistant Secretary Designee for Territorial and International Affairs."

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POM-259. A Joint Resolution passed by the Nevada legislature relative to tax-exempt bonds; to the Committee on Finance.

"ASSEMBLY JOINT RESOLUTION No. 36

"Whereas, tax-exempt bonds have been instrumental in promoting economic diversification and expansion in the State of Nevada by assisting qualified business enterprises to finance capital expansion projects within Nevada and by providing a stable source of mortgage loans for residents of Nevada with low and moderate incomes, thereby alleviating the crucial shortage of housing for such persons; and

"Whereas, there is a need to improve the availability of long-term capital for investment in small manufacturing companies to create jobs and promote growth, which the tax-exempt small issue industrial development bond program is designed to address; and

"Whereas, there is a shortage of affordable single-family housing in the State of Nevada for purchase by persons of low or moderate income, which the qualified tax-exempt mortgage revenue bond program is designed to correct; and

"Whereas, these tax-exempt bond programs expired June 30, 1992, and the immediate restoration of these financing tools would have immediate and long-term positive impact on Nevada's economy; and

"Whereas, the continuation of these tax-exempt bonds will assist the State of Nevada in its efforts to diversify the state's economy, to create new jobs, and to achieve many of the goals and objectives of the 1992 State Plan for Economic Diversification and Development; and

"Whereas, the State of Nevada has previously established a process pursuant to chapter 348A of NRS which authorizes the establishment of an allocation program by which the State of Nevada can restrict the number of tax-exempt private activity bonds so that the amount of such bonds can be contained within the volume cap established for the State of Nevada by federal tax law (26 U.S.C. §146(b) and (c)); and

"Whereas, the State of Nevada has successfully managed these financing tools under the existing allocation process; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of Nevada, jointly*, That Congress and the President of the United States are hereby urged to approve legislation to make permanent the authority for states to issue tax-exempt small issue industrial development bonds and qualified tax-exempt mortgage revenue bonds; and be it further

"*Resolved*, That the authority to issue these bonds should remain within the Department of Commerce or its successor organization pursuant to the reorganization of state government; and be it further

"*Resolved*, That a copy of this resolution be transmitted by the Chief Clerk of the Assembly to the President of the United States, the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

"*Resolved*, That this resolution becomes effective upon passage and approval."

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POM-260. A House Joint Resolution adopted by the legislature of the State of Alaska relative to the desecration of the Flag of the United States; to the Committee on the Judiciary.

"S.J. RES. 27

"Whereas certain actions, although arguably related to one person's free expression, nevertheless raise issues concerning public decency, public peace, and the rights of expression and sacred values of others; and

"Whereas there are symbols of our national soul such as the Washington Monument, the United States Capitol Building, and memorials to our greatest leaders, that are the property of every American and are therefore worthy of protection from desecration and dishonor; and

"Whereas the American Flag was most nobly born in the struggle for independence that began with "The Shot Heard Round the World" on a bridge in Concord, Massachusetts; and

"Whereas in the War of 1812 the American Flag stood boldly against foreign invasion, symbolized the stand of a young and brave nation against the mighty world power of that day, and in its courageous resilience inspired our national anthem; and

"Whereas in the Second World War the American Flag was the banner that led the American battle against fascist imperialism from the depths of Pearl Harbor to the mountaintop of Iwo Jima, and from defeat in North Africa's Kasserine Pass to victory in the streets of Hitler's Germany; and

"Whereas Alaska's star was woven into the fabric of the Flag in 1959, and that 49th star has become an integral part of the Union; and

"Whereas the American Flag symbolizes the ideals that good and decent people fought for in Vietnam, often at the expense of their lives or at the cost of cruel condemnation upon their return home; and

"Whereas the American Flag symbolizes the sacred values for which loyal Americans

risked and often lost their lives in securing civil rights for all Americans, regardless of race, sex, or creed; and

"Whereas the American Flag was carried to the moon as a banner of goodwill, vision, and triumph on behalf of all mankind; and

"Whereas the American Flag to this day is a most honorable and worthy banner of a nation that is thankful for its strengths and committed to curing its faults, and remains the destination of millions of immigrants attracted by the universal power of the American ideal; and

"Whereas the law as interpreted by the United States Supreme Court no longer accords to the Stars and Stripes that reverence, respect, and dignity befitting the banner of that most noble experiment of a nation-state; and

"Whereas it is only fitting that people everywhere should lend their voices to a forceful call for restoration to the Stars and Stripes of a proper station under law and decency; Be it *"Resolved by the Alaska State Legislature*, That the Congress of the United States is requested to prepare and present to the legislatures of the several states an amendment to the Constitution of the United States that would specifically provide the Congress and the legislatures of the several states the power to prohibit the physical desecration of the Flag of the United States; this request does not constitute a call for a constitutional convention: and be it further *"Resolved*, That the legislatures of the several states are invited to join with Alaska to secure ratification of the proposed amendment.

"Copies of this resolution shall be sent to the Honorable Al Gore, Vice-President of the United States and President of the U.S. Senate; the Honorable George J. Mitchell, Majority Leader of the U.S. Senate; to the Honorable Thomas S. Foley, Speaker of the U.S. House of Representatives; the governors of each of the several states; the presiding officers of each house of the legislatures of the several states; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, United States Senators, and the Honorable Don Young, United States Representative, members of the Alaska delegation in Congress."

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INOUYE, from the Committee on Indian Affairs, without amendment:

S.J. Res. 19. A joint resolution to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii (Rept. No. 103–26).

By Mr. GLENN, from the Committee on Governmental Affairs, without amendment:

H.R. 490. A bill to provide for the conveyance of certain lands and improvements in Washington, District of Columbia, to the Columbia Hospital for Women to provide a site for the construction of a facility to house the National Women's Health Resource Center (Rept. No. 103–125).

By Mr. BAUCUS, from the Committee on Environment and Public Works, without amendment:

S. 597. A bill to designate the United States Courthouse located at 10th and Main Streets in Richmond, Virginia, as the "Lewis F. Powell, Jr. United States Courthouse".

By Mr. BYRD, from the Committee on Appropriations:

Special Report entitled "Legislative and Oversight Activities Report of the Committee on Small Business, United States Senate, One Hundred Second Congress" (Report No. 103–127).

By Mr. BYRD, from the Committee on Appropriations:

Special Report entitled "Further Revised Allocation to Subcommittees of Budget Totals from the Concurrent Resolution for Fiscal Year 1994" (Report No. 103–128).

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GLENN, from the Committee on Governmental Affairs:

Lorraine Allyce Green, of the District of Columbia, to be Deputy Director of the Office of Personnel Management.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee on the Senate.)

By Mr. NUNN, from the Committee on Armed Services:

Victor H. Reis, of the District of Columbia, to be an Assistant Secretary of Energy (Defense Programs.)

The following-named rear admiral (lower half) in the line of the Navy for promotion to the permanent grade of rear admiral, pursuant to title 10, United States Code, section 624, subject to qualifications therefore as provided by law:

UNRESTRICTED LINE OFFICER

*To be real admiral*

Rear Adm. (lh) Joseph Wilson Prueher, xxx-xx-xxxx, U.S. Navy.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. NUNN. Mr. President, from the Committee on Armed Services, I report favorably the attached listing of nominations.

Those identified with a single asterisk (*) are to be placed on the Executive Calendar. Those identified with a double asterisk (**) are to lie on the Secretary's desk for the information of any Senator since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again.

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

*Capt. Harold E. Grant, Judge Advocate General's Corps USN to be rear admiral and to be Deputy Judge Advocate General of the Navy (Reference No. 62)

*In the Navy there are 24 promotions to the grade of rear admiral (lower half) (list begins with James Frederick Amerault) (Reference No. 63–2)

**In the Army there are 1,608 promotions to the grade of major (list begins with Angel L. Acevedo) (Reference No. 91)

**In the Army there are 128 promotions to the grade of colonel (list begins with Rufus Y. Brandy) (Reference No. 151)

*In the Army there are 28 promotions to the grade of major general (list begins with William H. Campbell) (Reference No. 166)

*Maj. Gen. Thomas G. Rhame, USA to be lieutenant general (Reference No. 214)

**In the Marine Corps there are 96 appointments to the grade of colonel (list begins with Michael J. Aguilar) (Reference No. 231)

**Rear Adm. (lower half) William Anton Heine III, USNR to be rear admiral (Reference No. 298)

*Maj. Gen. John P. Otjen, USA to be lieutenant general (Reference No. 327)

*Maj. Gen. Kenneth R. Wykle, USA to be lieutenant general (Reference No. 330)

*Lt. Gen. John E. Jaquish, USAF to be placed on the retired list in the grade of lieutenant general (Reference No. 365)

*Lt. Gen. Stephen B. Croker, USAF for reappointment to the grade of lieutenant general (Reference No. 368)

*Lt. Gen. John E. Jackson, Jr., USAF for reappointment to the grade of lieutenant general (Reference No. 369)

*Lt. Gen. Walter Kross, USAF for reappointment to the grade of lieutenant general (Reference No. 370)

*Maj. Gen. Thad A. Wolfe, USAF to be lieutenant general (Reference No. 371)

**In the Navy there is 1 promotion to the grade of commander (Paul I. Murdock) (Reference No. 399)

**In the Navy there is 1 promotion to the grade of lieutenant commander (Christopher M. Culp) (Reference No. 400)

**In the Navy and Naval Reserve there are 14 appointments to the grade of commander and below (list begins with David V. Barnes) (Reference No. 401)

**In the Navy there are 73 appointments to the grade of lieutenant and below (list begins with Stephen Paul Ambrose) (Reference No. 402)

**In the Navy there are 332 appointments to the grade of captain and below (list begins with Robert Dean Allen) (Reference No. 403)

**In the Navy there is 1 promotion to the grade of captain (John Forrest Schork) (Reference No. 430)

**In the Navy and Naval Reserve there are 15 appointments to the grade of commander and below (list begins with Todd A. Braynard) (Reference No. 431)

**In the Air Force and Air Force Reserve there are 47 appointments to the grade of colonel and below (list begins with John D. Anderson) (Reference No. 446)

**In the Air Force there are 125 promotions to the grade of major (list begins with Wanda P.C. Adkins) (Reference No. 447)

**In the Army there are 15 promotions to the grade of colonel (John W. Brinsfield) (Reference No. 473)

**In the Army there are 292 promotions to the grade of major (list begins with Rebecca L. Aadland) (Reference No. 474)

**In the Air Force Reserve there are 40 promotions to the grade of lieutenant colonel (list begins with John C. Chase) (Reference No. 479)

**In the Air Force and Air Force Reserve there are 29 appointments to the grade of colonel and below (list begins with Mark A. McLaughlin) (Reference No. 484)

**In the Air Force Reserve there are 23 promotions to the grade of lieutenant colonel (list begins with Bernard R. Barker) (Reference No. 485)

**In the Army Reserve there are 37 promotions to the grade of colonel and below (list begins with David H. Blair) (Reference No. 486)

*Brig. Gen. Nolan Sklute, USAF to be major general and to be Judge Advocate General of the U.S. Air Force (Reference No. 492)

**In the Army there are 5 promotions to the grade of colonel and below (list begins with Robert M. Wilson) (Reference No. 493)

*Maj. Gen. William W. Hartzog, USA to be lieutenant general (Reference No. 499)

Total 2,946.

The above listing of nominations appeared in the RECORD on the following dates: February 16, 1993; March 29, 1993; April 19, 1993; June 7, 22, 29, 1993; July 13, 15, 16, 20, 1993.

## 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. KOHL:

S. 1395. A bill relating to the tariff treatment of certain plastic flat goods; to the Committee on Finance.

By Mr. NUNN (for himself, Mr. BREAUX, Mr. WARNER, Mr. PRYOR, Mr. HEFLIN, Mr. GRAHAM, and Mr. LIEBERMAN):

S. 1396. A bill to establish youth apprenticeship demonstration programs, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. REID:

S. 1397. A bill to require the Secretary of Agriculture to convey certain lands in Austin, Nevada, to the Austin Historical Mining District Historical Society, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. GRAHAM:

S. 1398. A bill to provide law enforcement scholarships and retirement incentives; to the Committee on the Judiciary.

By Mr. BINGAMAN (for himself, Mr. RIEGLE, and Mr. ROCKEFELLER):

S. 1399. A bill to amend the Competitiveness Policy Council Act to provide for reauthorization, to rename the Council, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LAUTENBERG (for himself and Mr. SIMON):

S. 1400. A bill to amend title 18, United States Code, to permanently prohibit the possession of firearms by persons who have been convicted of a violent felony, and for other purposes; to the Committee on the Judiciary.

By Mr. PELL (by request):

S. 1401. A bill to provide for the adjudication of certain claims against Iraq, and for other purposes; to the Committee on Foreign Relations.

By Mr. CRAIG (for himself and Mr. KEMPTHORNE):

S. 1402. A bill to convey a certain parcel of public land to the county of Twin Falls, Idaho, for use as a landfill, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 1403. A bill to extend the suspension of duty on certain narrow fabric weaving machines; to the Committee on Finance.

By Mr. KOHL:

S. 1404. A bill to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing cases, disclosures of discovery information in civil actions, and for other purposes; to the Committee on the Judiciary.

By Mr. KERRY:

S. 1405. A bill to strenghten the National Flood Insurance Program and to reduce risk to the flood insurance fund by increasing compliance, providing incentives for community floodplain management, providing for mitigation assistance, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KERREY (for himself and Mr. DASCHLE):

S. 1406. A bill to amend the Plant Variety Protection Act to make such Act consistent with the International Convention for the Protection of New Varieties of Plants of March 19, 1991, to which the United States is a signatory, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. MOSELEY-BRAUN (for herself, Mr. SIMON, Mr. BOND, Mr. DANFORTH, Mr. FEINGOLD, Mr. GRASSLEY, Mr. HARKIN, and Mr. KOHL):

S. 1407. A bill to direct the Secretary of the Army to conduct a study to assess the adequacy of current flood control measures on the Upper Mississippi River and its tributaries, and for other purposes; to the Committee on Environment and Public Works.

By Mr. LOTT:

S. 1408. A bill to repeal the increase in tax on social security benefits; to the Committee on Finance.

By Mr. JOHNSTON:

S. 1409. A bill to limit the funding to the Northern Mariana Islands pursuant to the provisions set forth in the Agreement of the Special Representatives on Future Federal Financial Assistance, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. INOUYE (by request):

S. 1410. A bill to amend Indian Self-Determination and Education Assistance Act; to the Committee on Indian Affairs.

By Mr. GORTON:

S. 1411. A bill to authorize certain elements of the Yakima River Basin Water Enhancement Project, and for other purposes.

By Mr. LIEBERMAN (for himself and Mr. JEFFORDS):

S. 1412. A bill to amend title 13, United States Code, to require that any data relating to the incidence of poverty produce or published by the Secretary of Commerce for subnational areas is corrected for differences in the cost of living in those areas; to the Committee on Governmental Affairs.

By Mr. LEVIN (for himself and Mr. COHEN):

S. 1413. A bill to amend the Ethics in Government Act of 1978, as amended, to extend the authorization of appropriations for the Office of Government Ethics for eight years, and for other purposes; to the Committee on Governmental Affairs.

By Mr. BINGAMAN:

S. 1414. A bill to amend the Federal Water Pollution Control Act to authorize the Administrator of the Environmental Protection Agency to award grants to improve wastewater treatment for certain unincorporated communities, and for other purposes; to the Committee on Environment and Public Works.

By Mr. PRYOR (for himself, Mr. SIMON, Mr. BOREN, Mr. DURENBERGER, Mr. WALLOP, Mr. INOUYE, Mr. BURNS, Mr. HEFLIN, Mr. LEVIN, Mr. CHAFEE, Mr. BAUCUS, and Mr. COCHRAN):

S. 1415. A bill to amend the Internal Revenue Code of 1986 to clarify provisions relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes; to the Committee on Finance.

By Mr. BRADLEY:

S. 1416. A bill to authorize appropriations for the Coastal Heritage Trail Route in the State of New Jersey, and for other purposes; to the Committee on Finance.

By Mr. WOFFORD (for himself and Mr. BAUCUS):

S. 1417. A bill to amend the Federal Water Pollution Control Act to provide for training and certification of individuals in the operation of wastewater treatment works, and for other purposes; to the Committee on Environment and Public Works.

By Mr. WARNER:

S. 1418. A bill to ban the use of radar in commercial motor vehicles, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. GRASSLEY:

S. 1419. A bill to provide for regional equity in funding resolution of failed savings asssociations, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. GLENN (for himself, Mr. BRADLEY, Mr. DURENBERGER, Mr. RIEGLE, Mr. DODD, Mrs. FEINSTEIN, Mr. ROBB, Mr. DECONCINI, Mr. KENNEDY, Mr. HATFIELD, Mr. NUNN, Ms. MOSELEY-BRAUN, Mr. CHAFEE, and Mr. BINGAMAN):

S. 1420. A bill to reauthorize the National Commission to Prevent Infant Mortality, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HATCH (for himself and Mrs. FEINSTEIN):

S. 1421. A bill to amend title 17, United States Code, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions; to the Committee on the Judiciary.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1422. A bill to confer jurisdiction on the United States Claims Court with respect to land claims of Pueblo of Isleta Indian Tribe; to the Committee on the Judiciary.

By Mr. CHAFEE (for himself and Mr. BRADLEY):

S. 1423. A bill to amend the Social Security Act to improve access to medicaid benefits and to reduce State administrative burdens under the medicaid program; to the Committee on Finance.

By Mr. DORGAN:

S. 1424. A bill to amend chapter 4 of title 23, United States Code, to establish a national program concerning motor vehicle pursuits by law enforcement officers, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CONRAD (for himself, Mr. DASCHLE, and Mr. DORGAN):

S. 1425. A bill to establish a National Appeals Division of the Department of Agriculture to hear appeals of adverse decisions made by certain agencies of the Department, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CONRAD (for himself, Mr. INOUYE, and Mr. BINGAMAN):

S. 1426. A bill to amend title XVIII of the Social Security Act and the Budget and Emergency Deficit Control Act of 1985 with respect to essential access community hospitals, the rural transition grant program,

durable medical equipment, adjustments to discretionary spending limits, standards for medicare supplemental insurance policies, expansion and revision of medicare select policies, psychology services in hospitals, payment for anesthesia services furnished directly or concurrently in providers, improve reimbursement for clinical social worker services, and for other purposes; to the Committee on Finance.

By Mr. KERRY:

S. 1427. A bill to provide the necessary authority to manage the activities in Antarctica of United States scientific research expeditions and United States tourists, and to regulate the taking of Antarctic marine living resources, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SIMON (for himself, Mrs. MURRAY, Mr. RIEGLE, Ms. MOSELEY-BRAUN, and Mrs. BOXER):

S. 1428. A bill to amend the Public Health Service Act to provide for programs regarding women and the human immunodeficiency virus, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. SIMON (for himself, Mrs. MURRAY, Mr. RIEGLE, Ms. MOSELEY-BRAUN, and Mrs. BOXER):

S. 1429. A bill to amend the Public Health Service Act to establish programs of research with respect to women and cases of information with the human immunodeficiency virus, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. GRAHAM:

S. 1430. A bill to designate the Federal building in Miami, Florida, as the "David W. Dyer Federal Justice Building"; to the Committee on Environment and Public Works.

By Mr. DECONCINI:

S. 1431. A bill to establish a Commission on Crime and Violence; to the Committee on the Judiciary.

By Mr. HOLLINGS (for himself, Mr. BREAUX, Mr. KERRY, Mr. ROBB, and Ms. MIKULSKI):

S. 1432. A bill to amend the Merchant Marine Act, 1936, to establish a National Commission to Ensure a Strong and Competitive United States Maritime Industry; to the Committee on Commerce, Science, and Transportation.

By Mr. BRADLEY:

S. 1433. A bill to suspend temporarily the duty on 5-(N,N-dibenzylglycl)-salicylamide, 2-{N-benzyl-N-tert-butylamino}-4'-hydroxy-3'- hydromethylacetophenone hydrochloride, flutamide, and loratadine; to the Committee on Finance.

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 1434. A bill to suspend temporarily the duty on certain chemicals; to the Committee on Finance.

S. 1435. A bill to suspend temporarily the duty on certain chemicals; to the Committee on Finance.

S. 1436. A bill to extend the suspension of duties on certain chemicals; to the Committee on Finance.

By Mr. DOLE (for himself, Mr. LAUTENBERG, and Mr. HATFIELD):

S. 1437. A bill to amend section 1562 of title 38, United States Code, to increase the rate of pension for persons on the Medal of Honor roll; to the Committee on Veterans' Affairs.

By Mr. STEVENS:

S. 1438. A bill to encourage States to enact and enforce laws ensuring that motor vehicles yield the right-of-way to pedestrians, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LIEBERMAN:

S. 1439. A bill to provide for the application of certain employment protection laws to the Congress, and for other purposes; to the Committee on Governmental Affairs.

By Mr. BURNS:

S. 1440. A bill to amend the Endangered Species Act of 1973 with commonsense amendments to strengthen the Act, enhance wildlife conservation and management, augment funding, and protect fishing, hunting, and trapping; to the Committee on Environment and Public Works.

By Mr. BIDEN:

S. 1441. A bill to reform habeas corpus; to the Committee on the Judiciary.

By Mr. SHELBY:

S.J. Res. 123. A joint resolution to designate the week beginning November 6, 1994, as "National Elevator and Escalator Safety Awareness Week"; to the Committee on the Judiciary.

By Mr. DOLE (for himself, Mr. MURKOWSKI, Mr. BOND, Mr. DOMENICI, Mr. MATHEWS, Mr. SHELBY, Mr. PRESSLER, Mrs. FEINSTEIN, Mr. D'AMATO, Mr. ROTH, Ms. MIKULSKI, Mr. BROWN, and Mr. DECONCINI):

S.J. Res. 124. A joint resolution designating September 6, 1993, as "Try American Day"; considered and passed.

By Mr. MITCHELL (for himself, Mrs. MURRAY, Mr. AKAKA, Mr. BINGAMAN, Mr. HOLLINGS, Mr. MOYNIHAN, Mr. D'AMATO, Mr. PELL, Mr. STEVENS, Mr. SASSER, Mr. THURMOND, Mr. BOND, Mr. BAUCUS, Mr. DODD, Mr. LEAHY, Mr. BREAUX, Mr. MATHEWS, Mr. CHAFEE, Mr. METZENBAUM, Mr. DANFORTH, Mr. LIEBERMAN, Mr. ROCKEFELLER, Mr. FORD, Mr. DOMENICI, Mr. MURKOWSKI, Mr. DORGAN, Mr. MACK, Mr. GLENN, Mr. HEFLIN, Mr. KENNEDY, Mr. REID, Mr. WARNER, Mr. COHEN, Mr. DASCHLE, Mr. SARBANES, Ms. MIKULSKI, Mr. DURENBERGER, Mr. WELLSTONE, Mrs. BOXER, Mr. BRADLEY, Mr. BRYAN, Mr. RIEGLE, Mr. SIMON, Mr. BURNS, Mr. CRAIG, Mr. DOLE, Mr. GRASSLEY, Mr. JEFFORDS, Mr. MCCAIN, Mr. PRESSLER, Mr. SPECTER, Mr. HELMS, Mr. COATS, Mr. COVERDELL, and Mr. ROTH):

S.J. Res. 125. A joint resolution designating September 1993 as "Childhood Cancer Month"; considered and passed.

By Mr. SMITH (for himself and Mr. DODD):

S.J. Res. 126. A joint resolution designating September 10, 1993, as "National POW/MIA Recognition Day" and authorizing the display of the National League of Families POW/MIA flag; considered and passed.

By Mr. BURNS:

S.J. Res. 127. A joint resolution proposing an amendment to the Constitution prohibiting the imposition of retroactive taxes on the American people; to the Committee on the Judiciary.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FORD (for Mr. MITCHELL (for himself and Mr. DOLE)):

S. Res. 140. A resolution to authorize the testimony of Senate employees; considered and agreed to.

S. Res. 141. A resolution to direct the Senate Legal Counsel to appear as amicus curiae in the name of the Senate in United States v. Durenberger, et al; considered and agreed to.

By Mr. BRADLEY:

S. Con. Res. 34. A concurrent resolution expressing the sense of the Senate regarding the accounting standards proposed by the Financial Accounting Standards Board; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. WOFFORD:

S. Con. Res. 35. A concurrent resolution to express the sense of the Congress with respect to certain regulations of the Occupational Safety and Health Administration; to the Committee on Labor and Human Resources.

By Mr. RIEGLE (for himself, Mr. ROCKEFELLER, Mr. SIMON, and Ms. MOSELEY-BRAUN):

S. Con. Res. 36. A concurrent resolution expressing the sense of the Congress that United States truck safety standards are of paramount importance to the implementation of the North American Free Trade Agreement; to the Committee on Finance.

By Mr. BINGAMAN (for himself, Mr. MCCAIN, and Mr. GLENN):

S. Con. Res. 37. A concurrent resolution to state the sense of the Congress with respect to the proliferation of space launch vehicle technologies; to the Committee on Foreign Relations.

By Mr. FORD (for Mr. MITCHELL (for himself and Mr. DOLE)):

S. Con. Res. 38. A concurrent resolution to authorize the reprinting of the book entitled "The United States Capitol: A Brief Architectural History"; considered and agreed to.

S. Con. Res. 39. A concurrent resolution to authorize the printing of a new annotated edition of Glenn Brown's "History of the United States Capitol", originally published in two volumes in 1900 and 1903, prepared under the auspices of the Architect of the Capitol; considered and agreed to.

S. Con. Res. 40. A concurrent resolution to authorize the printing of the book entitled "Constantino Brumidi: Artist of the Capitol", prepared by the Office of the Architect of the Capitol; considered and agreed to.

S. Con. Res. 41. A concurrent resolution to authorize the printing of the book entitled "The Cornerstones of the United States Capitol"; considered and agreed to.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KOHL:

S. 1395. A bill relating to the tariff treatment of certain plastic flat goods; to the Committee on Finance.

PLASTIC FLAT GOODS CLARIFICATION ACT OF

• Mr. KOHL. Mr. President, on June 29, 1993, I introduced legislation to clarify the classification of certain plastic flat goods, items carried in your wallet or purse, and close a loophole which occurred when the United States converted to the international Harmonized Tariff Schedule [HTS]. But after extensive discussion with Members of the House of Representatives and other interested parties, I would like to introduce a compromise version of my original legislation. This new bill, which is identical to the substantiative provisions of H.R. 1748, has accommodated

the legitimate concerns of importers of plastic flat goods with leather trim. I believe this legislation is an improvement on my first bill (S. 1176) and I would ask that the Senate treat this bill as a substitute for S. 1176. I ask unanimous consent that my remarks and the full text of the bill be inserted into the RECORD.

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

S. 1395

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. CERTAIN PLASTIC FLAT GOODS.**

(a) IN GENERAL.—Chapter 42 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new subheading, with the article description having the same degree of indentation as the article description in subheading 4202.21.90.

| | | | | |
|---|---|---|---|---|
| "4202.21.90 | With outer surface area of not less than 20 percent leather. | 8% | Free (IL, CA) 7.4% (E,J). | 35%". |

(b) DEFINITION.—The Additional U.S. Notes to chapter 42 of the Harmonized Tariff Schedule of the United States are amended by adding at the end the following new note:

"3. For purposes of subheading 4202.32.10, the term 'reinforced or laminated plastics' means—

"(a) rigid, infusible, insoluble plastics formed by the application of heat and high pressure on 2 or more superimposed layers of fibrous sheet material which has been impregnated or coated with plastics, or

"(b) rigid plastics comprised of imbedded fibrous reinforcing material (such as paper, fabric, asbestos, and fibrous glass) impregnated, coated or combined with plastics usually by the application of heat or heat and low pressure.".

(c) STAGED RATE REDUCTIONS.—Any staged rate reduction of a special rate of duty set forth in subheading 4202.31.60 that was proclaimed by the President before the date of the enactment of this Act and that takes effect on or after the date of the enactment of this Act shall apply to the corresponding special rate of duty in subheading 4202.32.05 (as added by subsection (a)).

**SEC. 2. EFFECTIVE DATE.**

The amendments made by section 1 shall apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.•

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By Mr. NUNN (for himself, Mr. BREAUX, Mr. WARNER, Mr. PRYOR, Mr. HEFLIN, Mr. GRAHAM, and Mr. LIEBERMAN):

S. 1396. A bill to establish youth apprenticeship demonstration programs, and for other purposes; to the Committee on Labor and Human Resources.

THE YOUTH APPRENTICESHIP ACT OF 1993

• Mr. NUNN. Mr. President, I reintroduce legislation to authorize demonstration projects aimed at establishing a national system of youth apprenticeships. I first introduced a variation of this proposal in the 101st Congress. I am joined today in introducing this legislation by Senators BREAUX, PRYOR, WARNER, BOB GRAHAM, LIEBERMAN, and HEFLIN. Congressman DAVE MCCURDY has introduced the same legislation in the House.

It is no secret that American workers' skills have too often not kept pace with the increasingly complex jobs in our knowledge-based, high tech global economy. For far too long, our Nation has concentrated most of its educational resources on young people who go to college, even though 60 percent of the jobs for the future will not require a college degree. The majority of those jobs, however, will require skills and training—training that most of our trading partners provide their young people through nationwide systems of apprenticeship programs.

I am introducing this bill because of the enormous importance such a program could have for our Nation and for our young people. It is critical that in the highly competitive global marketplace we have a highly skilled and fully employed work force. The prosperity of all of our people depends on our ability to innovate, to have the flexibility to respond quickly and efficiently to changing needs and to make effective use of advancing technology. To do that, our workers must have the fundamental knowledge and skills to compete with workers in the most advanced industrialized nations, and it is clear that there are important opportunities for learning in work places that cannot be matched in classrooms alone. We must provide our noncollege young people with a clear, direct, and functional path into careers.

For a number of years, Western Europe and Japan have been doing a much better job of preparing their young people who do not go to college to meet these challenges. I have long felt that by failing to do this, Americans are undermining our own economy and our future.

The agreement between the Group of Seven industrialized nations last month to concentrate on job creation was an acknowledgment of the worldwide need, not just to produce more and better products and services, but to truly provide better lives for our people in the process. We cannot afford to leave significant segments of our population out of our economy, even if that was our wish. We must bridge the growing opportunity gap between college and noncollege youth.

In point of fact, we cannot ultimately build a strong economy in an age of high technology without a skilled, flexible work force. The program provided in this bill would lay the groundwork for a system to build that kind of work force—not by arbitrarily imposing systems used elsewhere, but by creating a uniquely American system to provide for the needs of our people, making use of the long experience of other nations in such programs. By trying and carefully evaluating demonstration projects around the country, we can more effectively design such a national system to prepare our young people for a knowledge-based global economy.

I understand that President Clinton plans to propose a larger school-to-work transition program this week. I want to make it clear that this bill is not intended to compete with his proposal in any way. I know he shares my concern and my sense of urgency on this matter, and I look forward to working with him and Secretaries Reich and Riley on this important issue.

A variety of proposals for increasing worker skills have floated around each year that I have submitted this legislation. As we stand here today, however, students that were in junior high school when I first proposed it have now graduated—or dropped out of school—into the worst job market in many years, without the training and skills this bill might have provided them. Many of those young people have been unable to find jobs. Many more have only been able to find work that, at best, will never lead to a job that could support a family and provide a good future.

Poorly trained workers can cost employees in downtime, defective products, wasted materials, health and safety risks, late deliveries, poor customer service, and lost business. Workers who are not prepared can also delay the implementation of new technology and reduce its efficiency and effectiveness.

Many of the serious problems our Nation faces domestically could be greatly alleviated if all of our young people were prepared to do needed, useful work well—and be well paid for doing it. The real key to solving the problems of health, welfare, productivity, infrastructure, and economic development in our communities, lies in significant part in the education and training of the young and their opportunities to get good jobs.

This is a matter of concern not only for the generation of young people now in school but for all Americans, whatever their age. If the older generation and the middle-aged generation expect there to be an economy that can support its retirement funds when our generation needs them, then we had better provide the young with the tools to build that kind of economy, and the skills to hold the jobs.

This bill creates a new Institute of Youth Apprenticeship, a public-private partnership managed by a board of directors which would include representatives of educational institutions, business, labor, trade associations, and government.

The institute would set up demonstration projects, with the apprenticeships administered by a partnership between local secondary and post secondary schools and business. I believe

the direct involvement of business is crucially important to making this program effective. The institute would evaluate results of these programs and would then make recommendations on how to create a nationwide apprenticeship system.

The bill provides for a 3-year apprenticeship—during the 11th and 12th grades in high school and for 1 year after graduation from secondary school. During the first 2 years, high school courses would be combined with training at work sites. The time a student would spend at the work site would increase from 30 per cent in the 11th grade to 50 percent in the 12th grade. During the third year, apprentices would supplement on-the-job training with academic courses at technical institutes or community colleagues.

Students would receive high school diplomas when they complete the first 2 years of the program and their other high school courses and would graduate with their high school class. Upon satisfactorily completing apprenticeship training, they would receive a certificate recognizing their competency in the field in which they received training.

I believe three elements are essential to any genuine apprenticeship program:

First, it must offer students certifiable skills that are directly transferable into the private job market;

Second, it must involve employers as direct participants with a stake in the individual student's achievements, both academically and in skills training;

Third, it must make apprenticeships an integral part of the school curriculum. Apprenticeship should not be an add-on or adjunct program, but a basic option in life that is available to all students and that carries prestige in the school and in the community, rather than the stigma currently attached to so many vocational educational programs.

To do this, we will have to make a clean break with the currently prevailing philosophy of vocational education, although a national program may well be implemented by reorienting existing programs and funds.

The decision to start with demonstration programs does not indicate that we are not fully convinced that apprenticeship programs are a good idea, but to help determine exactly how best to make the transition from today's system to tomorrow's as quickly and smoothly as possible.

Passage of this bill would be the first expression of a national commitment to offer all our young people the best possible preparation for the workplaces of the future.

I mentioned last year the old saying that, "Unless a society honors its plumbers as well as its philosophers—then neither its pipes nor its ideas will hold water."

I urge my colleagues to pass the bill and honor all of our young people by providing them an opportunity to learn the skills they will need to build a strong economy for our Nation and good lives for themselves and their families.

Mr. President, I ask unanimous consent that the text of this bill be inserted into the RECORD.

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

S. 1396

*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 "Youth Apprenticeship Act of 1993".

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds that—

(1) many foreign countries, including Germany, Japan, Denmark, and Sweden, have national policies that—

(A) are aimed at effective employment preparation of youth who do not seek a college education; and

(B) include programs that provide occupational guidance to students and combine schooling with work experience;

(2) in Germany, almost all eligible students apply for vocational training, which substantially reduces the risk of unemployment for young people, and German firms spend $18,000,000,000 annually on vocational training;

(3) United States international competitiveness is being eroded because a substantial increase is occurring in jobs requiring greater skills and youth are unprepared to meet the new labor market demands;

(4) partly as a result of inadequate skills in the work force, the productivity growth of the United States has slowed dramatically over the past 10 years, with the country taking almost 3 years to achieve the same productivity improvement previously achieved in 1 year;

(5) while the United States still leads the world in productivity, the rate of productivity improvement is increasing much faster among competing nations;

(6) the economic position of United States high school graduates who do not seek a college education is deteriorating, with real earnings of the graduates declining by 28 percent from 1973 to 1986;

(7) about 9,000,000 of the 33,000,000 United States youth age 16 to 24, or 27 percent of the youth, lack the necessary skills to meet employer requirements for entry level positions;

(8) in the United States, apprenticeship training programs are providing valuable training services to—

(A) 300,000 apprentices enrolled in more than 40,000 federally registered programs; and

(B) 100,000 apprentices participating in nonregistered programs;

(9) attempts to expand apprenticeship training in the United States have been unsuccessful and the percentage of the civilian United States work force enrolled in federally registered apprenticeship programs fell from an already low .3 percent in 1970 to only .16 percent in 1987;

(10) federally registered apprenticeship training programs do not provide assistance to the average high school graduate, as evidenced by the fact that—

(A) fewer than 2 percent of United States high school graduates enter into youth apprenticeship training programs; and

(B) the median age of United States apprentices is 25;

(11) currently, there are at most approximately 3,500 United States high school students participating in school-to-work apprenticeship programs; and

(12) school-to-work apprenticeship programs can—

(A) allow students to become registered apprentices as the students complete high school;

(B) produce positive outcomes for the students, schools, and employers; and

(C) provide supervised work experience for the students during high school, promoting desirable work habits and developing knowledge and skills for the working world.

(b) PURPOSE.—The purpose of this Act is to develop and evaluate a range of youth apprenticeship programs that will—

(1) establish partnerships between secondary and postsecondary schools, employers, labor organizations, and community and civic leaders to bridge the growing gap in skills, income, and opportunity between college bound and noncollege bound youth;

(2) offer young people a better chance to gain marketable skills and incentives to remain in school and achieve better grades;

(3) establish a systematic transition for students from school to work by combining work experience for youth with a work-related curriculum;

(4) identify and develop competency standards for youth apprentices;

(5) instill a sense of pride, self-esteem, and purpose in youth apprentices;

(6) contribute to the public policy debate on youth apprenticeship programs; and

(7) test a range of approaches to youth apprenticeship programs.

**SEC. 3. DEFINITIONS.**

As used in this Act:

(1) BOARD.—The term "Board" means the Board of Directors of the Institute.

(2) DISADVANTAGED YOUTH.—The term "disadvantaged youth"—

(A) means an individual (other than an individual with a handicap) who—

(i)(I) is an economically disadvantaged individual; or

(II) has academic disadvantages; and

(ii) requires special services and assistance in order to succeed in an apprenticeship training program; and

(B) includes—

(i) an individual who is a member of an economically disadvantaged family;

(ii) a migrant;

(iii) an individual with limited-English proficiency; and

(iv) an individual who is identified as a potential dropout from a secondary school.

(3) ECONOMICALLY DISADVANTAGED FAMILY; ECONOMICALLY DISADVANTAGED INDIVIDUAL.—The terms "economically disadvantaged family" and "economically disadvantaged individual" mean a family and an individual, respectively, that the Institute, or a partnership participating in a youth apprenticeship demonstration program, determines to be low-income, according to the latest available data from the Department of Commerce.

(4) INSTITUTE.—The term "Institute" means the Institute for Youth Apprenticeship, established in section 4.

(5) PARTNERSHIP.—The term "partnership" means a coalition of secondary and postsecondary schools, employers, labor organizations, and community and civic leaders,

formed for the purpose of operating a youth apprenticeship demonstration program.

(6) POSTSECONDARY SCHOOL.—The term "postsecondary school" means a community college, junior college, technical institute, or area vocational school.

(7) POSTSECONDARY SCHOOL DEMONSTRATION PROGRAM.—The term "postsecondary school demonstration program" means a demonstration program described in section 6(b)(3).

(8) SECONDARY SCHOOL DEMONSTRATION PROGRAM.—The term "secondary school demonstration program" means a demonstration program described in section 6(b)(2).

(9) YOUTH APPRENTICESHIP DEMONSTRATION PROGRAM.—The term "youth apprenticeship demonstration program" means a demonstration program described in paragraph (2) or (3) of section 6(b).

**SEC. 4. INSTITUTE FOR YOUTH APPRENTICESHIP.**

(a) ESTABLISHMENT.—There is established an Institute for Youth Apprenticeship that shall administer the programs established under this title. The Institute shall be an independent establishment, as defined in section 104 of title 5, United States Code.

(b) COMPOSITION OF BOARD OF DIRECTORS.—The Institute shall be administered by a Board of Directors. The Board shall be composed of 21 members, including—

(1) a Chairperson, appointed by the President with the advice and consent of the Senate;

(2) the Administrator of the Office of Work-Based Learning of the Department of Labor;

(3) the Director of the Division of Vocational and Technical Education of the Department of Education; and

(4) 18 members, appointed by the President—

(A) who shall include—

(i) nine individuals from among individuals nominated by the Speaker of the House of Representatives; and

(ii) nine individuals from among individuals nominated on the joint recommendation of the Majority Leader of the Senate and the Minority Leader of the Senate; and

(B) of whom—

(i)(I) six individuals shall be representatives of the education community;

(II) six individuals shall be representatives of labor and worker groups; and

(III) six individuals shall be representatives of the business community; and

(ii) individuals within each of the groups described in subclauses (I), (II), and (III) of clause (i) shall represent the national, State, and local community levels.

(c) TERM.—Each appointed member of the Board shall be appointed for a term of 5 years.

(d) VACANCIES.—Vacancies in the membership of the Board shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(e) FEDERAL EMPLOYMENT.—

(1) MEMBERS.—Members of the Board appointed under subsection (b)(4) shall not be employees or officers under section 2104 or 2105 of title 5, United States Code.

(2) CHAIRPERSON.—The Chairperson of the Board shall be an officer under section 2104 of title 5, United States Code.

(f) SUIT.—Members of the Board shall be immune from suit and legal process relating to acts performed by the members in their capacity, and within the scope of their functions, as members of the Board.

(g) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—

(1) UNCOMPENSATED SERVICE.—Members of the Board who are not employees of the Federal Government shall not be compensated for the performance of duties for the Board.

(2) TRAVEL EXPENSES.—Each member of the Board shall receive travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(h) QUORUM.—A quorum shall consist of 14 members of the Board, except that 9 members may conduct a hearing.

(i) MEETINGS.—The Board shall meet at the call of the Chairperson or a majority of the members of the Board.

(j) EXECUTIVE DIRECTOR.—The Chairperson, in consultation with the Board, shall appoint an Executive Director for the Institute.

(k) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Executive Director of the Institute may appoint and determine the compensation of such staff as the Board determines to be necessary to carry out the duties of the Institute.

(2) LIMITATIONS.—The rate of compensation for each staff member appointed under paragraph (1) shall not exceed the daily equivalent of the rate for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day the staff member is engaged in the performance of duties for the Institute. The Executive Director of the Institute may otherwise appoint and determine the compensation of staff without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that relate to classification and General Schedule pay rates.

(l) EXPERTS AND CONSULTANTS.—The Executive Director of the Institute may obtain the services of experts and consultants and compensate such experts and consultants in accordance with section 3109(b) of title 5, United States Code, as the Board determines to be necessary to carry out the duties of the Institute.

(m) DETAIL OF FEDERAL EMPLOYEES.—On the request of the Board, the Secretary of Labor and the Secretary of Education shall detail, without reimbursement, any of the personnel of the Department of Labor and the Department of Education to the Institute as the Board determines to be necessary to carry out the duties of the Institute. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(n) TECHNICAL ASSISTANCE.—On the request of the Board, the Secretary of Labor, the Secretary of Education, and the heads of other pertinent Federal agencies shall provide, without reimbursement, such technical assistance and administrative support services to the Institute as the Board determines to be necessary to carry out the duties of the Institute.

(o) OBTAINING INFORMATION.—The Executive Director of the Institute may secure directly from any Federal agency information necessary to enable the Institute to carry out the duties of the Institute, if the information may be disclosed under section 552 of title 5, United States Code. Subject to the previous sentence, on the request of the Executive Director of the Institute, the head of the agency shall furnish the information to the Institute.

(p) GIFTS AND PRIVATE CONTRIBUTIONS.—The Executive Director of the Institute may accept on behalf of the Institute gifts or contributions from private sources for the benefit of the Institute or to carry out any of the functions of the Institute. No gift or contribution shall be accepted if the gift or contribution is conditioned on any expenditure of funds by the Institute.

(q) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, the Chairperson of the Board may accept for the Board voluntary services provided by a member of the Board.

**SEC. 5. ESTABLISHMENT OF YOUTH APPRENTICESHIP DEMONSTRATION PROGRAMS.**

After consultation with the Board, the Chairperson of the Board shall establish guidelines, criteria, and procedures for youth apprenticeship demonstration programs, including—

(1) developing recommended guidelines for an appropriate curriculum for each occupational field within the programs, including postsecondary courses to enable apprentices to supplement training after completion of the programs;

(2) establishing site criteria to be used in the selection of partnerships to develop and evaluate youth apprenticeship demonstration programs, including requirements that the programs be established in rural and urban areas in all regions of the country;

(3) establishing criteria for apprenticeship occupations, including requirements that demand exist for skill training in the occupations and that the occupations offer a career ladder for apprentices;

(4) establishing competency criteria for apprenticeships and trainers in specific occupational fields; and

(5) establishing certification procedures for apprentices and trainers.

**SEC. 6. CONTRACTS.**

(a) ESTABLISHMENT.—Not later than 12 months after the date of enactment of this Act, the Executive Director of the Institute shall, to the extent appropriations are available, enter into contracts with eligible partnerships, to pay for the Federal share of developing and evaluating youth apprenticeship demonstration programs, in accordance with the requirements specified in section 7.

(b) CONTRACTS.—

(1) IN GENERAL.—The Board shall enter into contracts under this section with eligible partnerships that propose youth apprenticeship demonstration programs consistent with the criteria and procedures established under section 5.

(2) SECONDARY SCHOOL DEMONSTRATION PROGRAMS.—

(A) IN GENERAL.—The Board shall enter into contracts with eligible partnerships to establish demonstration programs at the secondary school level.

(B) WAGE INCENTIVE DEMONSTRATION PROGRAM.—The Board shall enter into a contract with an eligible partnership to establish at least one demonstration program in which the Institute shall pay for 50 percent of the cost of the apprenticeship wage.

(C) DISADVANTAGED YOUTH DEMONSTRATION PROGRAM.—The Board shall enter into a contract with an eligible partnership to establish at least one demonstration program that shall train disadvantaged youth.

(3) POSTSECONDARY SCHOOL DEMONSTRATION PROGRAMS.—The Board may enter into contracts with two eligible partnerships to establish demonstration programs that solely involve students at the postsecondary school level.

(4) AWARDS.—The Board shall enter into contracts under this section on a majority vote of the Board.

(c) APPLICATION.—To be eligible to enter into a contract under this section, a partnership shall submit an application to the Executive Director of the Institute at such time, in such manner, and containing such information as the Executive Director may require. At a minimum, the application shall include—

(1) a description of the youth apprenticeship demonstration program proposed to be conducted by the partnership, including sufficient information to enable the Executive Director to determine whether the proposal of the partnership is consistent with the criteria and procedures specified in section 5;

(2) an assessment of the future work force needs of each area in which a youth apprenticeship demonstration program will be established and the manner in which the program will help provide skilled workers to meet the needs;

(3) a description of the activities to be offered through the youth apprenticeship demonstration program to students in the seventh grade or older;

(4) a description of the manner in which each school, employer, or other representative of a partnership shall participate in the partnership;

(5) a description of the manner in which the program will be administered by schools participating in the youth apprenticeship demonstration program, including the support and counseling staff available to students pursuing apprenticeships, which staff at a minimum shall include one full-time vocational counselor;

(6) a description of the manner in which in-service training for teachers will be provided and the manner in which such training will—

(A) be designed to train teachers to effectively implement apprenticeship training curricula;

(B) provide for joint training for all the teachers in the partnership; and

(C) provide for the training in weekend, evening, and summer sessions, institutes, or workshops;

(7) a description of the manner in which training programs will be provided for counselors and the manner in which such training will be designed to enable counselors to more effectively—

(A) recruit students for apprenticeship training programs;

(B) ensure that such students successfully complete high school and the apprenticeship training program; and

(C) assist such students in finding appropriate employment;

(8) a description of courses to be offered to students considering or participating in the apprenticeship program;

(9) a description of the work processes to which apprentices will be exposed;

(10) a description of the manner in which apprentices shall be selected;

(11) a description of the academic and technical skill levels to be achieved by apprentices on completion of the program;

(12) a description of the apprenticeship wage and employee benefits offered;

(13) an estimate of the amount of time to be spent by apprentices at the workplace during the school day;

(14) a plan for monitoring and evaluating apprentices and the youth apprenticeship demonstration program within each partnership; and

(15) an assurance that the partnership will comply with the matching requirement specified in subsection (d).

(d) MATCHING REQUIREMENT.—

(1) FEDERAL SHARE.—The Federal share of the costs of developing and evaluating youth apprenticeship demonstration programs shall be not more than 50 percent.

(2) NON-FEDERAL SHARE.—The non-Federal share of the costs may be in cash or in kind, fairly evaluated, including plant, equipment, and services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal share.

**SEC. 7. YOUTH APPRENTICESHIP DEMONSTRATION PROGRAM REQUIREMENTS.**

(a) RESPONSIBILITIES.—Each partnership that participates in a youth apprenticeship demonstration program shall be responsible for—

(1) program and curriculum development;

(2) coordination and quality assurances; and

(3) provision of information to the Institute for the assessment and evaluation of apprentices and training programs.

(b) SECONDARY SCHOOL DEMONSTRATION PROGRAMS.—

(1) IN GENERAL.—The partnerships participating in secondary school demonstration programs shall provide apprenticeship training to students as appropriate for the grade level of the students.

(2) SEVENTH THROUGH TENTH GRADE STUDENTS.—The partnerships shall provide students in the seventh through tenth grades with an opportunity to learn about possible occupations through school courses, site visits, job sampling, and employer visits to schools. The partnerships shall also provide information about the youth apprenticeship demonstration program to the parents of students in the seventh through tenth grades.

(3) TENTH GRADE STUDENTS.—The partnerships shall provide students in the tenth grade with an opportunity to apply and interview for apprenticeships. Apprentices who successfully complete the tenth grade, pass a basic skills test, and successfully interview with employers may sign agreements with employers at the end of the academic year.

(4) ELEVENTH AND TWELFTH GRADE STUDENTS.—The partnerships shall provide training at work sites for students in the eleventh and twelfth grades, in combination with high school courses. The partnerships shall structure the training and educational requirements of students—

(A) so that students gradually increase the time spent at work sites from 30 percent in eleventh grade to 50 percent in the twelfth grade, depending on the structure of the program; and

(B) in such a manner as to allow the students to graduate and receive a high school diploma with other members of their class.

(5) HIGH SCHOOL GRADUATES.—The partnerships shall structure the training and educational requirements of high school graduates so that students spend 75 to 80 percent of program time at work sites and draw on postsecondary schools for supplementary theory and skill courses. The youth apprenticeship demonstration programs shall allow students in technical fields to take basic skills courses and apply them toward an associate degree.

(c) POSTSECONDARY SCHOOL DEMONSTRATION PROGRAMS.—Partnerships participating in postsecondary school demonstration programs shall provide on-the-job training to students to supplement academic courses taught in postsecondary schools.

(d) PAYMENT.—

(1) SECONDARY SCHOOL DEMONSTRATION PROGRAMS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), employers participating in secondary school demonstration programs shall pay for 100 percent of the cost of wages to apprentices.

(B) SUBSIDIZED WAGE.—Employers participating in demonstration programs described in section 6(b)(2)(B) shall pay for 50 percent of the cost of the apprenticeship wage.

(2) POSTSECONDARY SCHOOL DEMONSTRATION PROGRAMS.—

(A) WAGES.—Employers participating in postsecondary school demonstration programs shall pay for 100 percent of the cost of the apprenticeship wage to apprentices.

(B) SCHOOL COSTS.—Individual students shall pay for the cost of taking continuing basic skills courses from a postsecondary school.

(3) AMOUNT.—Apprentices participating in the secondary and postsecondary school demonstration programs shall receive, at a minimum, an apprenticeship wage equal to the wage rate described in section 6(a)(2) of the Fair Labor Standards Amendments of 1989 (29 U.S.C. 206 note).

(e) TRAINING.—Employers participating in the postsecondary school demonstration programs shall pay for the cost of on-the-job training.

(f) EMPLOYMENT.—The Institute shall encourage, but not require, employers participating in youth apprenticeship demonstration programs to place, or assist in placing, the apprentices in employment positions similar to the positions in which the apprentices received training.

(g) OTHER EMPLOYER CONTRIBUTIONS.—Apprentices participating in youth apprenticeship demonstration programs shall—

(1) be covered by all applicable Federal and State laws regarding occupational health and safety; and

(2) receive the same employment benefits as full-time employees, commensurate with the length of service of the apprentices to the employer.

**SEC. 8. COORDINATION.**

The Institute shall—

(1) consult with the Office of Work-Based Learning of the Department of Labor and with the Division of Vocational and Technical Education of the Department of Education;

(2) provide technical assistance to partnerships participating in youth apprenticeship demonstration programs to assist the partnerships with strategic planning, curriculum planning, and coordination;

(3) operate an apprenticeship clearinghouse for the partnerships;

(4) disseminate model programs and practices to the partnerships;

(5) gather input from all sources regarding the labor mobility of apprentices; and

(6) comply with evaluation and report requirements specified in section 12.

**SEC. 9. NONDISCRIMINATION.**

(a) IN GENERAL.—Any assistance provided under this Act shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

(b) NONDISCRIMINATION.—

(1) IN GENERAL.—Any individual with responsibility for the administration of a youth apprenticeship demonstration program that receives assistance under this Act shall not discriminate in the selection of participants to the demonstration program

on the basis of race, religion, color, national origin, sex, age, disability, or political affiliation.

(2) EXCEPTION.—This subsection shall not apply to an employer or educational institution that is controlled by a religious organization, if any, if the application of this subsection would not be consistent with the religious tenets of the organization.

(c) RULES AND REGULATIONS.—The Chairperson of the Board shall promulgate rules and regulations to provide for the enforcement of this section, including provisions for summary suspension of assistance for not more than 30 days, on an emergency basis, until notice and an opportunity to be heard can be provided.

(d) RIGHT OF ACTION.—Notwithstanding any other provision of law, the Attorney General of the United States may file an action under this section in the appropriate district court of the United States against any organization or partnership under this Act that violates this subsection.

**SEC. 10. NOTICE, HEARING, AND GRIEVANCE PROCEDURES.**

(a) IN GENERAL.—

(1) SUSPENSION OF PAYMENTS.—The Chairperson of the Board may in accordance with the provisions of this Act, suspend or terminate payments under a contract providing assistance under this Act whenever the Chairperson determines there is a material failure to comply with this Act or the applicable terms and conditions of any contract entered into under this Act.

(2) PROCEDURES TO ENSURE ASSISTANCE.—The Chairperson of the Board shall prescribe procedures to ensure that—

(A) assistance provided under this Act shall only be suspended for not more than 30 days for failure to comply with the applicable terms and conditions of this Act and only in emergency situations; and

(B) assistance provided under this Act shall not be terminated for failure to comply with applicable terms and conditions of this Act unless the recipient of such assistance has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) HEARINGS.—Hearings or other meetings that may be necessary to fulfill the requirements of this section shall be held at locations convenient to the recipient of assistance under this Act.

(c) TRANSCRIPT OR RECORDING.—A transcript or recording shall be made of a hearing conducted under this section and shall be available for inspection by any individual.

(d) STATE LEGISLATION.—Nothing in this Act shall be construed to preclude the enactment of State legislation providing for the implementation, consistent with this Act, of the programs administered under this Act.

(e) GRIEVANCE PROCEDURE.—

(1) IN GENERAL.—State and local applicants that receive assistance under this Act shall establish and maintain a procedure to adjudicate grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance under this Act, including grievances regarding proposed placements of the participants in the projects.

(2) DEADLINE FOR GRIEVANCES.—Except for a grievance that alleges fraud or criminal activity, a grievance shall be made not later than 1 year after the date of the alleged occurrence.

(3) DEADLINE FOR HEARING AND DECISION.—

(A) HEARING.—A hearing on any grievance conducted under this subsection shall be conducted not later than 30 days after the filing of the grievance.

(B) DECISION.—A decision on any grievance shall be made not later than 60 days after the filing of the grievance.

(4) ARBITRATION.—

(A) IN GENERAL.—On the occurrence of an adverse grievance decision, or 60 days after the filing of the grievance if no decision has been reached, the party filing the grievance shall be permitted to submit the grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties.

(B) DEADLINE FOR PROCEEDING.—An arbitration proceeding shall be held not later than 45 days after the request for the arbitration.

(C) DEADLINE FOR DECISION.—A decision concerning a grievance under this paragraph shall be made not later than 30 days after the date of the beginning of the arbitration proceeding concerning such grievance.

(D) COST.—The cost of an arbitration proceeding shall be divided evenly between the parties to the arbitration.

(5) PROPOSED PLACEMENT.—If a grievance is filed regarding a proposed placement of a participant in a program that receives assistance under this Act, the placement shall not be made unless it is consistent with the resolution of the grievance pursuant to this subsection.

(6) REMEDIES.—Remedies for a grievance filed under this subsection shall include—

(A) suspension of payments for assistance under this Act;

(B) termination of payments; and

(C) prohibition of the placement described in paragraph (5).

**SEC. 11. NONDUPLICATION AND NONDISPLACEMENT.**

(a) NONDUPLICATION.—

(1) IN GENERAL.—Assistance provided under this Act shall be used only for a program that does not duplicate, and is in addition to, an apprenticeship program operating in the locality.

(2) PRIVATE NONPROFIT ENTITY.—Assistance made available under this Act shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by the State or local government agency in the locality that the entity resides in, unless the requirements of subsection (b) are met.

(b) NONDISPLACEMENT.—

(1) IN GENERAL.—An employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving assistance under this Act.

(2) SERVICE OPPORTUNITY.—An employer shall not create a service opportunity under this Act that will infringe in any manner on the promotional opportunity of an employed individual.

(3) LIMITATION OF SERVICES.—

(A) DUPLICATION OF SERVICES.—A participant in a program receiving assistance under this Act shall not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of the employee.

(B) SUPPLANTATION OF HIRING.—A participant in any program receiving assistance under this Act shall not perform any services or duties or engage in activities that will supplant the hiring of full-time workers.

(C) DUTIES FORMERLY PERFORMED BY ANOTHER EMPLOYEE.—A participant in any program receiving assistance under this Act shall not perform services or duties that have been performed by or were assigned to any—

(i) presently employed worker;

(ii) employee who recently resigned or was discharged;

(iii) employee who is subject to a reduction in force;

(iv) employee who is on leave (terminal, temporary, vacation, emergency, or sick); or

(v) employee who is on strike or who is involved in a lockout.

**SEC. 12. EVALUATION.**

(a) EVALUATION BY THE INSTITUTE.—

(1) FINAL EVALUATION.—

(A) EVALUATION.—The Institute shall conduct an evaluation of all youth apprenticeship demonstration programs to determine the effectiveness of apprenticeship training and the most effective youth apprenticeship program structures for a nationwide youth apprenticeship program. The evaluation shall include an analysis of—

(i) the ability of the programs to prepare workers, particularly minorities and women, for the technical workplace;

(ii) the ability of such programs to increase the overall competency of the work force in the United States;

(iii) the level of academic and technical skills acquired by an apprentice in the programs;

(iv) the potential labor mobility of apprentices;

(v) the effectiveness of combining on-the-job training with classroom instruction;

(vi) the ability of the programs to encourage students to complete high school;

(vii) the ability of the programs to establish a more definite transition from school to work;

(viii) the value of apprentices and the effectiveness of the program according to business; and

(ix) the direct and indirect costs and benefits of the demonstration program to the company and the individual student.

(B) REPORT.—The Institute shall prepare and submit a report to the President, the Secretary of Labor, the Secretary of Education, the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives, containing the evaluation described in subparagraph (A), and recommendations for legislative reform. The Institute shall submit the report not later than 9 months after the conclusion of the youth apprenticeship demonstration programs.

(2) INTERIM EVALUATION.—

(A) EVALUATION.—Not later than 24 months after the initiation of the youth apprenticeship demonstration programs, the Institute shall conduct an interim evaluation of the effectiveness of all the demonstration programs, including an assessment of the matters described in paragraph (1)(A) to the extent that the necessary data and information is available.

(B) REPORT.—The Institute shall prepare and submit a report to the President, the Secretary of Labor, the Secretary of Education, the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives containing the evaluation described in subparagraph (A). The Institute shall submit the report not later than 33 months after the initiation of the demonstration programs.

(b) EVALUATION BY PARTNERSHIPS.—

(1) DATA COLLECTION AND ASSISTANCE.—Each partnership that participates in a youth apprenticeship demonstration program shall establish data collection mechanisms consistent with the needs of the Institute and provide to the Institute information

for, and assistance in conducting, the final evaluation described in subsection (a)(1) and the interim evaluation described in subsection (a)(2).

(2) ANNUAL REPORT.—

(A) EVALUATION.—Each partnership that participates in a youth apprenticeship demonstration program shall conduct an annual evaluation that contains summary information on the implementation and operation of the demonstration program including—

(i) the number and type of students enrolled in apprenticeship training;

(ii) a description of the type of activities in which the youth apprentices are participating, including the type of occupational training youth apprentices are receiving;

(iii) the effectiveness of the program in keeping youth in school;

(iv) the reaction of businesses involved in the training program; and

(v) any other information that the Institute may require.

(B) REPORT.—Each such partnership shall submit an annual report to the Institute containing the information described in subparagraph (A).

**SEC. 13. EXECUTIVE SCHEDULE.**

Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Chairman, Board of Directors of the Institute for Youth Apprenticeship.".

**SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this Act $50,000,000 for fiscal year 1994, which shall remain available until expended.

**SEC. 15. TERMINATION AND REPEAL.**

(a) TERMINATION.—Not later than 69 months after the initiation of the youth apprenticeship demonstration programs, the Board and Institute shall be abolished, and all programs established by this Act shall terminate.

(b) REPEAL.—Not later than 69 months after the initiation of the youth apprenticeship demonstration programs, this Act and the amendments made by this Act shall be repealed.•

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By Mr. BINGAMAN (for himself, Mr. RIEGLE, and Mr. ROCKEFELLER):

S. 1399. A bill to amend the Competitiveness Policy Council Act to provide for reauthorization, to rename the Council, and for other purposes; to the Committee on Commerce, Science, and Transportation.

REAUTHORIZATION OF THE COMPETITIVENESS POLICY COUNCIL

• Mr. BINGAMAN. Mr. President, I introduce legislation, together with Senators RIEGLE and ROCKEFELLER to reauthorize the Competitiveness Policy Council. The Council is a bipartisan government-industry-labor advisory committee established in the 1988 Trade Act to report to the President and the Congress on our Nation's economic competitiveness.

To date, the Council has issued two annual reports, both of which were well received on both sides of the aisle. I believe that the Council is a useful mechanism for developing recommendations for a comprehensive competitiveness strategy for this country.

This legislation reauthorizes the Council for 4 years and makes various technical modification requested by the Council. The bill, also by request of the Council, changes the name to National Competitiveness Commission. This change is necessary to reduce confusion with other organizations.

This bill is similar to legislation that passed the Senate last year, both as a free-standing bill and as part of the reauthorization of the various trade agencies. Unfortunately, that legislation was caught up in the end of session logjam and did not become law. I hope we will be able to move expeditiously to reauthorize the Council this year.

I ask unanimous consent that a copy of the bill and a section-by-section analysis be inserted in the RECORD.

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

S. 1399

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REAUTHORIZATION.**

Section 5209 of the Competitiveness Policy Council Act (15 U.S.C. 4808) is amended—

(1) by striking "1991 and 1992" and inserting "1993, 1994, 1995, and 1996"; and

(2) by striking "$5,000,000" and inserting "$2,500,000".

**SEC. 2. RENAMING OF COUNCIL.**

The Competitiveness Policy Council Act (15 U.S.C. 4801 et seq.) is amended as follows:

(1) In the subtitle heading—

(A) insert "National" before "Competitiveness"; and

(B) strike "Policy Council" and insert "Commission".

(2) In section 5201—

(A) insert "National" before "Competitiveness"; and

(B) strike "Policy Council" and insert "Commission".

(3) In section 5202(b)(2)—

(A) insert "National" before "Competitiveness"; and

(B) strike "Policy Council" and insert "Commission".

(4) In section 5203—

(A) in the section caption, strike "COUNCIL" and insert "COMMISSION";

(B) insert "National" before "Competitiveness";

(C) strike "Policy"; and

(D) strike "council" each place it appears and insert "Commission".

(5) In section 5204—

(A) in the section caption, strike "COUNCIL" and insert "COMMISSION"; and

(B) strike "Council" and insert "Commission".

(6) In sections 5205 through 5208, strike "Council" each place such term appears and insert "Commission".

(7) In section 5207, in the section caption, strike "COUNCIL" and insert "COMMISSION".

(8) In section 5210—

(A) in paragraph (1)—

(i) inset "National" before "Competitiveness";

(ii) strike "Policy"; and

(iii) strike "Council" each place it appears and insert "Commission"; and

(B) in paragraph (2)—

(i) insert "National" before "Competitiveness"; and

(ii) strike "Policy Council" and insert "Commission".

**SEC. 3. DUTIES OF THE COMMISSION.**

Section 5204 of the National Competitiveness Commission Act (15 U.S.C. 4802) is amended by striking paragraphs (11) and (12) and inserting the following:

"(11) prepare, publish, and distribute reports that—

"(A) contain the analysis and recommendations of the Commission; and

"(B) comment on the overall competitiveness of the United States economy, including the report described in section 5208; and

"(12) submit an annual report to the President and to the Congress on the activities of the Commission.".

**SEC. 4. EXECUTIVE DIRECTOR AND STAFF OF COMMISSION.**

Section 5206 of the National Competitiveness Commission Act (15 U.S.C. 4805) is amended—

(1) in subsection (a)(1), by striking "GS–18 of the General Schedule" and inserting "the maximum rate payable under section 5376 of title 5, United States Code";

(2) in subsection (b)—

(A) by striking paragraph (a);

(B) by redesignating paragraph (2) as paragraph (3); and

(C) by inserting before paragraph (3), as redesignated, the following:

"(1) FULL-TIME STAFF.—The Executive Director may appoint such officers and employees as may be necessary to carry out the functions of the Commission in accordance with the Federal civil service and classification laws, and fix compensation in accordance with the provisions of title 5, United States Code.

"(2) TEMPORARY STAFF.—The Executive Director may appoint such employees as may be necessary to carry out the functions of the Commission for a period of not more than 1 year, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, at rates not to exceed the maximum rate payable under section 5376 of title 5, United States Code."; and

(3) in subsection (c), by striking "GS–16 of the General Schedule" and inserting "the maximum rate payable under section 5376 of title 5, United States Code.".

**SEC. 5. POWERS OF THE COMMISSION.**

Section 5207 of the National Competitiveness Commission Act (15 U.S.C. 4806) is amended—

(1) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(2) by inserting after subsection (f) the following:

"(g) CONTRACTING AUTHORITY.—Within the limitation of appropriations to the Commission, the Commission may enter into contracts with State agencies, private firms, institutions, and individuals for the purpose of carrying out its duties under this subtitle.".

**SEC. 6. REPORTING REQUIREMENTS.**

Section 5208 of the National Competitiveness Commission Act (15 U.S.C. 4807) is amended—

(1) by striking the caption and inserting the following:

**"SEC. 5208. ANNUAL PUBLICATION OF ANALYSIS AND RECOMMENDATIONS.";**

(2) in subsection (a)—

(A) by striking the subsection heading and inserting "(a) PUBLICATION OF ANALYSIS AND RECOMMENDATIONS.—"; and

(B) by striking "on" and inserting "not later than"; and

(3) by adding at the end the following:

"(d) OTHER REPORTS.—The Commission may submit to the President and the Congress such other reports containing analyses

and recommendations as the Commission deems necessary.".

SEC. 7. REFERENCES IN FEDERAL LAW.

(a) COMPETITIVENESS POLICY COUNCIL.—Any reference in Federal law to the Competitiveness Policy Council shall be construed to be a reference to the National Competitiveness Commission.

(b) COMPETITIVENESS POLICY COUNCIL ACT.—Any reference in Federal law to the Competitiveness Policy Council Act shall be construed to be a reference to the National Competitiveness Commission Act.

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REAUTHORIZATION AND RENAME OF THE COMPETITIVENESS POLICY COUNCIL—SECTION-BY-SECTION ANALYSIS

Section 1. This section reauthorizes the Commission for 4 years, through fiscal year 1996, and reduces the authorization from $5 million to $2.5 million.

Section 2. This section changes the name from Competitiveness Policy Council to National Competitiveness Commission. This change is needed to differentiate this organization from other groups with similar names.

Section 3. This section clarifies that the Commission mandated report on the competitiveness of the U.S. economy is separate from the agency's annual report as defined under the printing laws. The Commission had a problem earlier in that the wording of the law caused its report to fall under the restrictions which govern agency annual reports.

Section 4. This section updates references to GS schedules to conform with changes in law, and allows the Commission to appoint temporary staff without regard to civil service rules and classifications, but with a salary cap.

Section 5. This section gives the Commission explicit contract authority, which something that was inadvertently left out of the original statute.

Section 6. This section allows the Commission to publish its analysis of U.S. competitiveness before March 1 and clarifies the Commission's authority to print reports.

Section 7. This section updates any other references in law to the "Competitiveness Policy Council" and Competitiveness Policy Council Act" in light of the change in the name.•

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By Mr. LAUTENBERG (for himself and Mr. SIMON):

S. 1400. A bill to amend title 18, United States Code, to permanently prohibit the possession of firearms by persons who have been convicted of a violent felony, and for other purposes; to the Committee on the Judiciary.

STOP ARMING FELONS ACT

• Mr. LAUTENBERG. Mr. President, today, along with Senator SIMON, I am introducing legislation, the Stop Arming Felons [SAFe] Act, to close two loopholes in current law that allow convicted violent felons to possess and traffic in firearms.

The bill would abolish a procedure by which the Bureau of Alcohol, Tobacco and Firearms can waive Federal firearm restrictions for individuals otherwise prohibited from possessing firearms. The legislation also would end a practice by which States are restoring the firearm rights of individuals convicted of violent felonies and serious drug offenses. In addition, the bill would increase penalties for the unlawful possession of a firearm by a felon or other disqualified person.

In essence, Mr. President, this bill stands for two common sense propositions.

First, convicted violent felons and serious drug offenders should not be entrusted with firearms. Second, taxpayers should not be forced to pay $10,000 so that a convicted felon can possess these deadly weapons.

Unfortunately, the law in this area has drifted far from common sense.

As a general matter, Federal law does prohibit any person convicted of a crime punishable by a term of imprisonment exceeding 1 year from possessing, receiving, shipping interstate, or transporting interstate, any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

In short, felons cannot possess firearms.

However, Mr. President, there are two gaping loopholes. I call them the "guns for felons loopholes."

First, if all the felon's basic civil rights have been restored under State law—that is, rights like the right to vote, the right to hold public office, and the right to sit on a jury—then the conviction is wiped out and all firearm rights are restored. This is true unless the restoration of rights explicitly maintains the firearm ban.

Many States now automatically restore the civil rights of convicted felons. Sometimes, the restoration is effective immediately after the felon serves his or her sentence. Sometimes, the felon must wait a few years.

As a result of this loophole, which was added with little debate in 1986, even persons convicted of violent crimes can legally obtain firearms.

I think most Americans would agree that this loophole makes no sense. Given the severity of our crime problem, we should be looking for ways to get tougher, not easier, on convicted felons. How can the government claim to be serious about crime, and then turn around and give convicted violent felons their firearms back?

According to some theories, the criminal justice system is supposed to rehabilitate convicted criminals. But in reality, many of those released from prison soon go back to their violent ways. According to the Justice Department, of State prisoners released from prison in 1983, 62.5 percent were rearrested within only 3 years. Knowing that, how many Americans would want convicted violent felons legally carrying firearms around their neighborhood?

Our bill would close this loophole. Under the legislation, persons convicted of violent felonies or serious drug offenses would be banned from possessing firearms, regardless of whether a State restores other rights. Moreover, in the case of those convicted of other crimes that disqualify them from firearm possession, a State's restoration of civil rights, or setting aside of a conviction, would not eliminate the Federal firearm prohibition unless the State makes an individualized determination that the person is not likely to act in a manner dangerous to public safety.

Let me turn now to the second "guns for felons loophole."

Even if a felon's civil rights have not been restored under State law, the felon can still apply to the Federal Bureau of Alcohol, Tobacco and Firearms. Upon application, ATF performs a broad-based field investigation and background check. If the Bureau believes that the applicant does not pose a threat to public safety, it can grant a waiver.

Since 1985, well over 2,000 waivers have been granted.

Mr. President, this relief procedure has an interesting history. It was first established in 1965 not to permit common criminals to get access to guns, but to help out a particular firearm manufacturer, called Winchester. Winchester had pleaded guilty to felony counts in a kickback scheme. Because of the conviction, Winchester was forbidden to ship firearms in interstate commerce. The amendment was approved to allow Winchester to stay in business.

Because it was drafted broadly, however, the waiver provision applied not only to corporations like Winchester, but to common criminals. Originally, waivers were not available to those convicted of firearms offenses. But the loophole was further expanded in the 1986 McClure-Volkmer bill, which allowed even persons convicted of firearms offenses, as well as those involuntarily committed to a mental institution, to apply for a waiver.

Between 1988 and 1990, ATF processed about 3,000 applications at taxpayer expense. While some applications are withdrawn or disposed of easily, many require a substantial amount of scarce time and resources. ATF officials perform investigations that can last weeks, including interviews with family, friends, and the police.

In the late 1980's, the cost of processing and investigating these petitions worked out to about $10,000 for each waiver granted.

It is hard to imagine a more outrageous waste of hard-earned taxpayer dollars.

Mr. President, from 1985 to 1991, ATF spent well over $20 million to process and investigate applications for relief. That's more than $20 million to put guns in the hands of convicted terrorists, rapists, and armed robbers, while pressing domestic needs have gone unmet and our budget deficit has skyrocketed.

Of course, Mr. President, giving firearms to convicted felons is more than a problem of wasted taxpayer dollars and misallocated ATF resources. It also threatens public safety.

Under the relief procedure, ATF officials are required to make an educated guess whether a given convicted felon can be entrusted with deadly weapons. Needless to say, it is a difficult task. Even after Bureau investigators spend long hours investigating a particular criminal, there is no way to know with any certainty whether he or she is still dangerous.

Officials are now forced to make these types of guesses, knowing that a mistake could have tragic consequences for innocent Americans; consequences that could range from serious bodily injury to death.

Mr. President, thrusting this heavy responsibility on ATF officials is not fair. It is not fair to the innocent Americans whose safety is at risk. And it is not fair to the officials themselves.

What happens when convicted felons get their firearms rights back? Well, some apparently go back to their violent ways. Those granted relief subsequently have been rearrested for crimes ranging from attempted murder to rape and kidnaping.

Mr. President, this simply has got to stop.

Last year, Senator SIMON and I were successful in securing language in the fiscal year 1993 appropriations bill for the Treasury Department that prohibited the use of appropriated funds to implement the firearm disability relief procedure. We are pushing for similar language in the fiscal year 1994 appropriations bill, and I am pleased that the Senate has approved language that would continue the funding ban.

A funding ban, however, is merely a stop-gap measure effective for 1 fiscal year. This bill would eliminate the relief procedure permanently. As we see it, taxpayers should never be forced to pay a single cent to arm a felon.

In addition to closing the two guns-for-felons loopholes, Mr. President, this bill would increase the maximum fine for the unlawful possession of a firearm by a convicted felon, drug user, or other disqualified person, from $5,000 to $20,000. This increase accounts for inflation since the penalty was originally established.

Mr. President, in the last Congress, Senator SIMON and I introduced very similar legislation, S. 2304. That bill was endorsed by the Fraternal Order of Police, the National Association of Police Organizations, and the International Brotherhood of Police Officers.

Also, as OMB Director Leon Panetta wrote in a letter to me dated June 28, 1993:

The Administration shares your view that the Government should not be in the business of rearming dangerous felons and supports enactment of legislation to assure that violent felons and those convicted of serious drug trafficking crimes are not provided access to firearms.

Similarly, in a letter to me dated May 26 of this year, Treasury Secretary Lloyd Bentsen agreed with my assessment of the ATF relief procedure, stating, and I quote, "the expenditure of funds for processing relief applications is not the best utilization of law enforcement resources."

I appreciate that many Americans are very concerned about any effort that could lead to unreasonable restrictions on the rights of law-abiding citizens to get access to guns for sporting or other lawful purposes. So I want to emphasize something: this is an anticriminal bill. And a protaxpayer bill. Law-abiding citizens have nothing to fear, and everything to gain from a prohibition on firearm possession by violent felons and serious drug offenders.

I also want to state that we are not criticizing the many dedicated men and women to work for ATF. To the contrary, the role they play is vitally important, and they deserve our appreciation and support. The problem in this case is not with the Bureau itself, but with the law that they are obligated to implement.

Mr. President, firearm violence has reached epidemic proportions. And we have a responsibility to the victims and prospective victims to take all reasonable steps to keep this violence to a minimum. Keeping firearms away from convicted violent felons is the least these innocent Americans should be able to expect.

I urge my collegues to support the legislation.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 1400

*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 "Stop Arming Felons (SAFe) Act".

**SEC. 2. PERMANENT FIREARMS PROHIBITION FOR CONVICTED VIOLENT FELONS AND SERIOUS DRUG OFFENDERS.**

Section 921(a)(20) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by inserting "(A)" after "(20)"; and

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(2) in the second sentence, by striking "What" and inserting the following:

"(B) What"; and

(3) by striking the third sentence and inserting the following new subparagraph:

"(C)(i) A conviction that has been expunged or set aside, or for which a person has been pardoned or has had civil rights restored, shall not be considered to be a conviction for purposes of this chapter if—

"(I) the expungement, setting aside, pardon, or restoration of civil rights applies to a named person; and

"(II) the authority that grants the expungement, setting aside, pardon, or restoration of civil rights expressly authorizes the person to ship, transport, receive, and possess firearms and expressly determines that the circumstances regarding the conviction and the person's record and reputation are such that—

"(aa) the person is not likely to act in a manner that is dangerous to public safety; and

"(bb) the granting of the relief is not contrary to the public interest.

"(ii) Clause (i) shall not apply to a conviction of a serious drug offense (as defined in section 924(e)(2)(A)) or violent felony (as defined in section 924(e)(2)(B)).".

**SEC. 3. ADMINISTRATIVE RELIEF FROM CERTAIN FIREARMS PROHIBITIONS.**

(a) IN GENERAL.—Section 925(c) of title 18, United States Code, is amended—

(1) in the first sentence by inserting "(other than a natural person)" before "who is prohibited";

(2) by striking the second and third sentences;

(3) in the fourth sentence—

(A) by inserting "person (other than a natural person) who is a" before "licensed importer"; and

(B) by striking "his" and inserting "the person's"; and

(4) in the fifth sentence, by inserting "(i) the name of the person, (ii) the disability with respect to which the relief is granted, and, if the disability was imposed by reason of a criminal conviction of the person, the crime for which and the court in which the person was convicted, and (iii)" before "the reasons therefor".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to—

(1) applications for administrative relief and actions for judicial review that are spending on the date of enactment of this Act; and

(2) applications for administrative relief filed and actions for judicial review brought after the date of enactment of this Act.

**SEC. 4. INCREASE IN PENALTIES FOR UNLAWFUL POSSESSION OF A FIREARM BY A CONVICTED FELON OR OTHER PROHIBITED PERSON.**

Section 924(a)(2) of title 18, United States Code, is amended—

(1) by inserting "(A)" before "Whoever";

(2) by striking "(g),"; and

(3) by adding at the end the following new subparagraph:

"(B) Whoever knowingly violates subsection (g) of section 922 shall be fined not more than $20,000, imprisoned not more than 10 years, or both.".

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[From the Washington Post, Sept. 25, 1991]

WHY ARE WE REARMING FELONS?

In this era of budget shortages and service cut-backs, it is ludicrous that the federal government is spending money to help rearm convicted felons, but because of a congressional directive, that is being done. A sensible federal law bars convicted felons from possessing, shipping, transporting or receiving firearms or ammunition, but an amendment adopted in the '60s creates a loophole so that the secretary of the Treasury can grant relief in cases where the applicant "will not be likely to act in a manner dangerous to public safety." The Violence Policy Center, which studied the operation of

this law and recently released a report, says that the loophole was created as a favor to the Winchester firearms company whose parent corporation, Olin Mathieson had pleased guilty to felony counts in a kickback scheme. Without the amendment, Winchester would have gone out of business.

Despite this narrow intent, the amendment is broad enough to accommodate individuals, and they have been applying by the thousands for relief. To make matters worse, Congress amendment the law again in 1986 creating a right to appeal an adverse decision to the U.S. District Court. Thus while the secretary had been free to withhold relief in almost every case, there is now what amounts to a presumption that this privilege will be restored and that he has to have a good reason for turning down each applicant.

In the past six years, the Treasury's Bureau of Alcohol, Tobacco and Firearms has had to process about 10,000 applications for relief. Some are easily disposed of, but most require a full field investigation of the applicant, including interviews with family, neighbors, employers and the like. About one out of four requests is granted. To BATF's credit, its judgment has proved wrong in only 2.6 percent of the cases. But the task of deciding who is not likely to pose a danger to the community at some time in the future is a formidable one, given the frequency with which supposedly reformed and nonviolent criminals disappoint the psychiatrists, parole boards and others who thought they would do no further harm.

As far as we are concerned, the fewer felons walking around armed, the better. Why is it wrong to decide that no one convicted of a felony can own a gun again? Why is it important that this privilege be restored? Felons lose other rights as a consequence of conviction—the right to vote or run for office, for example—which in most cases can only be restored by a pardon. Why is the privilege of owning a firearm easier to regain? Congress made a mistake in creating this loophole in firearms regulation, and that mistake was compounded in 1986. Legislators now considering the crime bill should reassess this law.

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[From the Washington Post, Nov. 27, 1991]

FOUR MILLION A YEAR TO REARM FELONS

Congress, reluctant for so long, to buck the National Rifle Association, has come to understand the importance of controlling firearms. Whether or not the measure becomes law this year, both houses have now voted for a waiting period before the purchase of a handgun, and the Senate was even willing to prohibit the sale of certain kinds of semiautomatic assault weapons. Another proposal to limit gun possession, first suggested by the Washington-based Violence Policy Center, was offered too late for inclusion in the crime bill will be introduced by its sponsors, Rep. Edward Feighan (D-Ohio) and Rep. Lawrence Smith (D-Fla.), when Congress returns in January.

By statute, the Treasury's Bureau of Alcohol, Tobacco and Firearms is required to process applications submitted by convicted felons seeking to have their right to own guns restored. In general, such individuals are prohibited from possessing, shipping, transporting or receiving firearms, but a special exception was created to allow the federal government to restore these rights in some circumstances. The loophole was created to save the Winchester Firearms Co.—whose parent company had been convicted in a kickback scheme—from bankruptcy. Unfortunately, the law is broad enough to encompass individuals who are found "not likely to act in a manner dangerous to public safety," and because special appellate rights have been granted to applicants who are turned down, BATF must take every application seriously and be able to justify every ruling.

How does a federal agency go about deciding which felons, of the 10,000 who have applied for restoration of gun rights, would constitute a danger to society if allowed to own a firearm? By full field investigations, involving interviews with family, friends, neighbors and business associates of the applicant, by reviewing criminal records and parole histories and by relying on the expert judgment of professionals trained to assess an individual's potential for violence—if, indeed, that can be done. All this takes a great deal of time and costs the taxpayer about $4 million a year.

The idea of the government's making a special effort to rearm convicted felons is difficult to fathom. The continued expenditure, in tight budget times, of millions of dollars to implement this program is impossible to justify. Both situations should be remedied by the passage of the Feighan-Smith bill early next year.

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[From the New York Times, July 27, 1992]

HOW YOUR TAX DOLLARS ARM FELONS

Who is the most egregious coddler of criminals in Washington? It turns out to be the Bureau of Alcohol, Tobacco and Firearms. Because of a bizarre legal loophole, the bureau must spend as much as $4 million annually helping convicted felons regain the right to own a gun.

Federal law once prohibited any convicted felon from possessing a gun. But in 1965, the Olin Mathieson Corporation pleaded guilty to felony charges in a kickback scheme; since Olin owned the Winchester Arms Company, the law threatened to put the gun producer out of business. So Congress passed a new law intended to save Winchester, but its wording allowed individual felons to apply for reinstatement as well.

Many did apply—and more followed after 1986, when the National Rifle Association pushed Congress to pass a bill that permitted return of gun privileges to a broader range of felons, including those convicted of gun crimes.

Applications now run about 1,000 per year; a third gain approval. Since they aren't treated casually, the B.A.T.F. employs more than 40 people to evaluate them. Even so, a sample of those approved isn't reassuring: one felon had been convicted of killing his cousin with a shotgun while drunk, another of binding and raping a former girlfriend, another of trafficking illegally in machine guns.

The B.A.T.F. is proud that of 1,781 felons whose gun rights were restored, only 47 have been rearrested. But what justifies exposing the public to even a low level of risk? Or the tax dollars to keep the program going? No such program exists to help felons regain the right to vote.

Representatives Ed Feighan of Ohio and Lawrence Smith of Florida, both Democrats, are pushing a measure to eliminate money for the processing of such applications. It was passed by the House and deserves swift Senate approval—for the sake of safety, savings and common sense.•

• Mr. SIMON. Mr. President, Senator LAUTENBERG and I are once again introducing the Stop Arming Felons Act of 1993, a bill which would save taxpayers millions of dollars and help prevent felons from receiving firearm privileges.

In 1965, Congress passed legislation to provide convicted felons the opportunity to apply to the Bureau of Alcohol, Tobacco and Firearms [BATF] for firearms privileges. The purpose of the provisions was to help the Winchester Firearms Co., whose parent company had been convicted of a felony. Without this help, the company would have been put out of business because Federal law prohibits convicted felons from possessing firearms. Because the provision was broadly drafted, however, since 1965, the BATF has had to use agent time and agency money to determine which individual felons should get firearm privileges returned—at a taxpayer cost of approximately $4 million per year.

Amazingly, an application for relief isn't always necessary: Several States automatically restore gun privileges to felons upon the completion of their sentence. This is possible because Congress made it even easier for felons to receive firearms in 1986. The 1986 McClure-Volkmer amendments placed the responsibility for determining who can't own a firearm after conviction upon the State where the proceedings were held.

According to the Washington Post, some 22,000 applications for exemption by individuals have been processed by BATF in the past decade. Not only is the process costly, it's also very laborious. Because an applicant's eligibility depends upon laws of the State where he or she was convicted, BATF agents must be familiar with 50 different statutes. Furthermore, many of the numerous applications for relief require a background check and an extensive investigation of the former felon. These time consuming, often tedious investigations are performed by agents who would otherwise be investigating violent crimes. How unfortunate that we have created a law which binds the ATF to expending valuable resources so that they may rearm those whom law enforcement have previously sent to jail.

Who is ultimately rearmed by this process? Felons like Sherman D. Williams who pleaded guilty to the felony offense of illegally selling machineguns. He was rearmed even after neighbors described him as "kind of strange acting," and local law enforcement officers said he would be a threat to the community if armed, but had no arrest records to substantiate their fears. Robert Christopher Gunn was also rearmed. He pled guilty to two separate counts of delivery of a controlled substance and received 3 to 20 years for each count. Felon John Wayne Young had his firearm privileges restored even though he pled guilty to aggravated assault and aggravated robbery and had a record of sex-related offenses that dated back to his 13th year. Even

Jerome Sanford Brower, who pled guilty to charges of conspiracy to transport explosives in foreign commerce with intent to use unlawfully, was found eligible to regain his firearm privileges.

Perhaps the most disturbing case of them all has been that of Idaho felon Baldemar Gomez. He had been convicted of a second-degree murder, voluntary manslaughter and battery on a correctional officer. However, because Idaho was one of the States that automatically restored convicts' civil rights upon their release from prison, in the words of Assistant U.S. Attorney Kim Lindquist, "when Baldemar walked out of the penitentiary, someone could have been standing there and handed him a shotgun and it would have been entirely legal * * *." In 1987, Gomez was rearrested during a drug raid and was convicted of violating the Gun Control Act. However, this conviction was overturned by the U.S. court of appeals because of Idaho's automatic relief provision. In response to the Gomez case, the Idaho legislature changed its law so that felons must wait five years after their sentence and then get state approval in order to own a firearm.

Unfortunately, the list doesn't end with Gunn, Young, Brower, or Gomez. Former felons such as these are given the privilege of obtaining and possessing firearms every day—all at the taxpayers' expense. An average of one in four requests to BATF is granted, and to date, an average of 2.6 percent of relieved felons have been rearrested for other crimes. A computer criminal history check has shown that 47 individuals who were granted relief by BATF during the period of 1985–89 were subsequently rearrested. 10 of these 47 individuals were rearrested for offenses involving firearms, such as the possession of firearms in drug crimes, malicious wounding, and unlawful use of a weapon. However, there are many other criminal charges among the 47 rearrests that could have also involved the use of a firearm, such as aggravated assault, robbery, kidnaping, wanton endangerment, rape and attempted murder.

As the crime rate continues to soar and as more and more citizens walk in fear of gun-related violence, why should BATF agents spend their time and our tax dollars giving firearms back to felons? Clearly, their time is far better spent fighting crime.

Our act can put an end to this unnecessary expense and allow the agents as BATF to investigate violent crimes, and not convicted felons. Specifically, the bill would prohibit individuals—including felons and fugitives from justice—from applying to BATF for firearms disability relief. In addition, the bill would prohibit the States from granting violent felons firearm privileges. The States could still grant nonviolent felons firearms privileges.

Last year, Senator LAUTENBERG and I successfully included language in the Treasury, Postal and General Government appropriations bill to ensure that no money was spent by the Bureau in 1993 to rearm felons. However, a permanent ban is clearly needed.

While there are some gun related issues where my colleagues in the Senate and House are divided, I think we can all agree that convicted felons should not be applying to the Federal Government for firearms relief at the taxpayers' expense—nor should violent felons be getting relief from the States. This is simply common sense. I urge all of my colleagues to join me in this effort.●

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By Mr. PELL (by request):

S. 1401. A bill to provide for the adjudication of certain claims against Iraq, and for other purposes; to the Committee on Foreign Relations.

IRAQ CLAIMS ACT OF 1993

● Mr. PELL. Mr. President, by request, I introduce for appropriate reference a bill to provide for the adjudication of certain claims against Iraq, and for other purposes.

This proposed legislation has been requested by the Department of State, and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD, together with the section-by-section analysis and the letter from the Assistant Secretary for Legislative Affairs of the Department of State, which was received on August 3, 1993.

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

S. 1401

*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 "Iraq Claims Act of 1993".

**SEC. 2. ADJUDICATION OF CLAIMS.**

(a) The Foreign Claims Settlement Commission of the United States ("the Commission") is authorized to receive and determine the validity and amounts of any claims referred to it by the Secretary of State with respect to which the United States has received lump-sum payments from the United Nations Compensation Commission ("the UNCC").

(b) The Commission is further authorized to receive and determine the validity and amounts of any claims by nationals of the United States against Iraq that are determined by the Secretary of State to be outside the jurisdiction of the UNCC.

(c) In deciding such claims, the Commission shall apply, in the following order—

(1) relevant decisions of the United Nations Security Council and the UNCC (in the case of claims under subsection (a));

(2) applicable substantive law, including international law; and

(3) applicable principles of justice and equity.

(d) The Commission shall, to the extent practical, decide all pending non-commercial claims of members of the armed forces and other individuals arising out of Iraq's invasion and occupation of Kuwait before deciding any other claim.

(e) Except as otherwise provided in this act, the provisions of titles I and VII of the International Claims Settlement Act of 1949 (22 U.S.C. 1621 et seq.) shall apply with respect to claims under this act. Any reference in such provisions to "this title" shall be deemed to refer to those provisions and to this act. Any reference in such provisions to "section 703" shall be deemed to refer to section 2(b) of this act.

(f) In determining the amount of any claim adjudicated under this act, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

**SEC. 3. CLAIMS FUNDS.**

(a) The Secretary of the Treasury is authorized to establish in the Treasury of the United States one or more funds ("the UNCC Claims Funds") for payment of claims under section 2(a). The Secretary of the Treasury shall cover into the UNCC Claims Funds such amounts as are transferred to him by the Secretary of State pursuant to subsection (e).

(b) The Secretary of the Treasury is further authorized to establish in the Treasury of the United States a fund ("the Iraq Claims Fund") for payment of claims under section 2(b). The Secretary of the Treasury shall cover into the Iraq Claims Fund such amounts as are allocated by the President from assets of the Government of Iraq liquidated pursuant to subsection (d).

(c) In accordance with section 8(g) of the International Claims Settlement Act of 1949 (22 U.S.C. 1627(g)), the funds established pursuant to sections 3(a) and 3(b) shall be invested in public debt securities and shall bear interest at rates determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturity.

(d) The President is authorized to vest and liquidate as much of the assets of the Government of Iraq in the United States that have been blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) as may be necessary to satisfy claims under section 2(b), as well as claims of the United States Government against Iraq which are determined by the Secretary of State to be outside the jurisdiction of the UNCC. The President shall allocate these funds in the manner he determines appropriate between the Iraq Claims Fund and such other accounts as are appropriate for the payment of claims of the United States Government.

(e) The Secretary of State shall allocate funds received by the United States from the UNCC in the manner he determines appropriate between the UNCC Claims Funds and funds established under the authority of section 2668a of title 22 of the United States Code.

**SEC. 4. PROGRAM ADMINISTRATION SELF-SUFFICIENCY.**

Notwithstanding any other provision of law, the Secretary of the Treasury shall deduct an amount equal to 1½ per centum from

any amount covered into the claims funds established under Section 3, and from any amounts the Secretary of State receives from the UNCC which are not covered into a claims fund established under Section 3 and not in payment of a claim of the United States Government, to reimburse the agencies of the Government of the United States for their expenses in administering the Iraq claims program and this act. The Secretary of the Treasury, in consultation with the Chairman of the Foreign Claims Settlement Commission and the Secretary of State, shall determine the proportional distribution of the reimbursement set-aside, and shall advance for credit or reimburse a department, agency, or instrumentality of the Federal Government for its respective expenses in administering the Iraq claims program and this act. Amounts received by such department, agency or instrumentality shall be credited or reimbursed to the appropriation account then current and shall remain available for expenditure without fiscal year limitation.

**SEC. 5. PAYMENTS.**

(a) The Commission shall certify to the Secretary of the Treasury each award made pursuant to section 2. The Secretary of the Treasury shall make payment in the following order of priority out of the appropriate fund provided for in section 3:

(1) payment in the amount of $10,000 or the principal amount of the award, whichever is less;

(2) when the Secretary of the Treasury has determined that funds are available to pay each claim having priority under section 2(d) an additional $90,000, payment of a further $90,000 of the principal of the awards that have priority under section 2(d);

(3) payments from time to time in ratable proportions on account of the unpaid balance of the principal amounts of all awards according to the proportions which the unpaid balance of such awards bear to the total amount in the appropriate claims fund that is available for distribution at the time such payments are made;

(4) after payment has been made of the principal amounts of all such awards, pro rata payments on account of accrued interest on such awards as bear interest;

(5) after payment has been made in full of all the awards payable out of any of the claims funds established by section 3, any funds remaining in that claims fund shall be transferred to the other claims fund created by that section, except any funds received by the United States from the UNCC shall be so transferred to the extent not inconsistent with UNCC requirements.

(b) Payment of any award made pursuant to this act shall not extinguish any unsatisfied claim, or be construed to have divested any claimant, or the United States on his or her behalf, of any rights against the Government of Iraq with respect to any unsatisfied claim.

**SEC. 6. RECORDS.**

(a) The Secretary of State and the Secretary of the Treasury may transfer or otherwise make available to the Commission such records and documents relating to claims authorized by this act as may be required by the Commission in carrying out its functions under this act.

(b) Notwithstanding section 552 of title 5 of the United States Code (commonly referred to as the Freedom of Information Act), records pertaining to claims before the Commission and the UNCC may not be disclosed to the general public, except that—

(1) decisions of the UNCC and filings of the United States on its own behalf at the UNCC shall be made available to the public, unless the Secretary of State determines that public disclosure would be prejudicial to the interests of the United States or United States claimants, or that public disclosure would be inconsistent with the procedures of the UNCC;

(2) with respect to records of the Department of State, the Secretary of State may determine on a case-by-case basis to make such information available when in the judgment of the Secretary the interests of justice so require;

(3) With respect to records of the Department of the Treasury, the Secretary of the Treasury may determine on a case-by-case basis to make such information available when in the judgment of the Secretary the interests of justice so require; and

(4) with respect to records of the Commission, the Chairman of the Commission may determine on a case-by-case basis to make such information available when in the judgment of the Chairman the interests of justice so require. Before releasing records that originated with another Executive Branch agency (as defined in section 105 of title 5 of the United States Code), the Commission shall obtain the concurrence of the originating agency.

**SEC. 7. SEVERABILITY.**

If any provision of this act or the application thereof to any person or circumstance shall be held invalid, the remainder of the act or the application of such provision to other persons or circumstances shall not be affected.

**SEC. 8. STATUTE OF LIMITATIONS; DISPOSITION OF UNPAID CERTIFIED CLAIMS.**

(a) Nine years after the Secretary of the Treasury last covers funds into the UNCC Fund(s) or the Iraq Claims Fund established under Section 3 of this act, the Secretary of the Treasury shall publish a notice in the Federal Register detailing this statute of limitations and identifying the claim numbers and awardee names of unpaid certified claims. Any demand or claim for payment on account of an award certified under the Iraq claims program shall be barred one year after the publication date of the notice required by this subsection.

(b) Two years after the publication date of the notice required by subsection (a), any unpaid certified claim amount and any remaining balance in the UNCC Claims Fund(s) or the Iraq Claims Fund established under Section 3 of this act shall be deposited to the miscellaneous receipts of the Treasury.

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SECTION-BY-SECTION ANALYSIS

Purpose. The purpose of the legislation is to provide a fair and orderly system for adjudicating the claims of U.S. nationals against Iraq. The bill authorizes the vesting of frozen Iraqi assets to pay claims that are not within the jurisdiction of the U.N. Compensation Commission (UNCC). The UNCC will provide compensation out of a percentage of Iraqi oil exports for direct losses resulting from the invasion and occupation of Kuwait (for members of the allied coalition forces, only claims for inhumane treatment of prisoners of war in violation of international humanitarian law). Other losses, such as pre-war debts and obligations, injury claims of the seamen on the U.S. Stark, and death and injury claims of veterans of Desert Storm, are outside the jurisdiction of the UNCC. These claims would be adjudicated by the United States Foreign Claims Settlement Commission (FCSC). The bill also authorizes the FCSC to allocate to U.S. claimants any lump-sum awards which may be received from the UNCC, in the event that the UNCC does not adjudicate claims on a case-by-case basis.

Sec. 1. The legislation may be cited as the "Iraq Claims Act of 1993."

Sec. 2. Subsection (a) authorizes the FCSC to adjudicate any claims referred to it by the Secretary of State with respect to which the United States has received a lump-sum payment from the UNCC. While the UNCC currently is planning to make claim-by-claim awards (which would be distributed to claimants under the existing authority in 22 U.S.C. §2668a without the intervention of the FCSC), it is possible in view of its massive docket that the UNCC will have to sample the claims of each country and made lump-sum awards covering a number of claims submitted by the country. If the United States should receive such a lump sum award covering a number of claims, the FCSC would be asked to review the claims covered so that distribution of the lump sum could be made.

Subsection (b) authorizes the FCSC to adjudicate any claims by U.S. nationals that the Secretary of State determines to be outside the jurisdiction of the UNCC. This category of claims includes all pre-war private claims against Iraq, including those arising from debt and other obligations, as well as such claims as the U.S.C. Stark seamen's injury claims and the certain claims of U.S. members of the allied coalition forces.

Subsection (c) directs the FCSC, in deciding such claims, to apply relevant decisions of the U.N. Security Council and the UNCC (with respect to UNCC lump sum allocations), applicable substantive law, including international law, and applicable principles of justice and equity.

Subsection (d) provides that the FCSC shall, to the extent practical, decide noncommercial claims of members of the armed forces and other individuals arising out of the invasion and occupation of Kuwait before other claims. This corresponds to the processing priority accorded by the UNCC to the claims of individuals for amounts below $100,000. It will also benefit any Persian Gulf War veterans who may have valid claims.

Subsection (e) incorporates by reference the provisions of other titles of the International Claims Settlement Act, 22 U.S.C. 1621 et seq., including a provision allowing U.S. nationals with ownership interests in foreign corporations to present claims for a pro rata share of losses sustained by such corporations.

In order to prevent double recoveries, subsection (f) requires that compensation received from any other source by deducted from any FCSC award. (The UNCC has established a similar requirement that compensation received from any other sources be deducted from its awards.)

Sec. 3. Subsection (a) authorizes the Secretary of the Treasury to establish one or more UNCC Claims Funds to receive payments made by the UNCC.

Subsection (b) authorizes the establishment of the Iraq Claims Fund to receive amounts allocated by the President for payment of claims by U.S. nationals out of frozen Iraqi assets vested under the act.

Subsection (c) provides that these claims funds shall earn interest, as is the case for claims funds under the International Claims Settlement Act.

Subsection (d) authorizes the President to vest and liquidate the amount of frozen Iraqi assets as may be needed to satisfy awards of the FCSC for non-UNCC claims non-UNCC United States Government claims. The subsection provides for the use of frozen Iraqi

assets only for non-UNCC claims, since this maximizes the total recovery to all U.S. claimants. If any portion of UNCC-covered claims were paid out of frozen assets, the UNCC recovery would be reduced by the amount of such payments, decreasing the net recovery to U.S. claimants. Further, this subsection provides that the President shall allocate the proceeds of any vested frozen Iraq assets between the claims fund established to cover FCSC awards to non-UNCC private claimants and other accounts as are appropriate for the payment of claims of the United States Government.

Subsection (e) directs the Secretary of State to allocate funds received from the UNCC as appropriate to either UNCC Claims Funds or to funds established pursuance to 22 U.S.C. §2668a. If the UNCC makes lump sum awards covering several claimants, funds would be allocated to the appropriate UNCC Claims Fund established by the act, and the FCSC would determine the distribution of the funds among the claimants. If the UNCC makes individual awards to claimants, existing authority in 22 U.S.C. §2668a would be used. This permits money received to be deposited into the Treasury in trust for claimants and to be paid out of the direction of the Secretary of State; there would be no need for such claims to be reviewed again by the FCSC.

Sec. 4. This section provides that 1½ percent is to be deducted from funds obtained to pay claims, in order to reimburse the United States Government for its expenses in administering the Iraq claims program and this act. The provision calls on the Secretary of the Treasury to allocate these deductions to any agency of the federal government for expenses in administering the Iraq claims program of the act.

Sec. 5. Subsection (a) establishes the payment mechanism for awards made by the FCSC. First, an initial payment of up to $10,000 in principal is provided for, which can be made if there are adequate funds available upon certification of an award by the FCSC to the Treasury Department. Thereafter, again assuming there are adequate funds, individuals with non-commercial claims are to obtain a payment of up to $90,000 in principal of their award. Thereafter, as funds become available, proportionate payments of first, principal, and then, interest, will be made to all award holders, When all the claims covered by any claims fund are paid, the section contemplates a spillover of any moneys remaining in that fund to the other claims funds. Subsection (b) provides that a claimant's rights against Iraq are not extinguished with respect to any unsatisfied portion of his or her award.

Sec. 6. Subsection (a) provides that the Secretaries of State and Treasury will make available relevant records to the FCSC.

Subsection (b) is modeled on a similar provision in the Iran Claims Act (section 505 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, codified at 50 U.S.C. 1701 note). The provision provides for the confidentiality of records and documents relating to claims before the UNCC and FCSC, except provision is made for disclosure where this would be in the interests of justice. This is important to enable the United States to comply with the rules of the United Nations Compensation Commission and to protect the privacy interests of claimants.

Sec. 7. This section provides for the severability of the provisions of the act is case any provision should be held invalid.

Sec. 8. This section provides that nine years after money is last deposited in any of the claims funds established by section 3, the Secretary of Treasury shall publish a notice identifying an uncollected award and indicating that the claimant has a further year in which to collect his or her award. Thereafter, any claim for payment of the award is barred, and in a further year any balance in the fund is to be deposited to the miscellaneous receipts of the Treasury.

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DEPARTMENT OF STATE,
*Washington, DC, August 2, 1993.*

Hon. AL GORE,
*President of the Senate.*

DEAR MR. PRESIDENT: There is transmitted herewith proposed legislation concerning claims of the United States and U.S. nationals against Iraq. Its purpose is to provide a fair and orderly system for adjudicating thee claims and for utilizing blocked Iraqi assets in the United States for their satisfaction. (A similar bill was initially transmitted to Congress on October 6, 1992, but no action was taken prior to the end of the 102nd Congress.)

The proposed legislation would expressly authorize the vesting of blocked Iraq assets in the United States for the satisfaction of claims by the U.S. Government and U.S. nationals that are not within the jurisdiction of the newly created UN Compensation Commission. These claims would be adjudicated by the U.S. Foreign Claims Settlement Commission (FCSC), and paid from any vested Iraqi assets. The UN Commission has jurisdiction only over claims resulting from the Iraqi invasion and occupation of Kuwait, and not claims arising from pre-existing obligations.

The bill would also provide express authorization to the FCSC to allocate among U.S. claimants lump-sum awards which we receive in due course from the UN Compensation Commission. Those with claims within the jurisdiction of the UN Compensation Commission would not have access to the assets vested by the United States, on the assumption through the UN mechanism from Iraqi oil export revenues. The FCSC will give priority to non-commercial claims of members of the armed forces and other individuals arising out of Iraq's invasion and occupation of Kuwait.

There is, of course, no guarantee that full compensation will be available for either class of claimants. In fact, our best estimate is that the volume of pre-war U.S. claims will substantially exceed the value of the Iraqi assets blocked in the United States, and that the volume of worldwide war claims will substantially exceed the value of Iraqi oil export revenues that are likely to be collected by the UN Commission. Nonetheless, we believe these mechanisms will provide substantial compensation, as well as a procedure for adjudicating these claims while evidence is still fresh and available, and are in any event the best remedies available under the circumstances.

The vesting of assets is not the approach generally favored for the resolution of claims against a foreign government. Normally, we strongly prefer to hold such assets until it is possible to negotiate a settlement with the government involved, which as a general matter is more conducive to the protection of foreign investment and the peaceful resolution of disputes. However, the UN Security Council has already decided that Iraq is responsible under international law both for claims arising from the war and for pre-existing obligations; it has directed Iraq to honor these obligations and Iraq has not done so. The war with Iraq and Iraq's continuing refusal to comply with the terms of the ceasefire and the decisions of the Security Council have removed any practical prospect of resolving these claims through negotiation with Iraq.

The UN Security Council has adopted a resolution providing for the temporary use of certain frozen Iraqi assets for UN purposes. Under this resolution, the United States has transferred over $92 million to date, and is prepared to transfer a total of up to $200 million from frozen Iraqi oil revenues received in the United States after the imposition of UN sanctions in August 1990; these assets will be used for urgent UN operations concerning Iraq, and will be reimbursed in full (with applicable interest) from the proceeds of Iraqi oil exports as soon as such exports resume. Thirty per cent of blocked assets contributed under this resolution goes to the UN Compensation Commission, whose processing of claims has been delayed for lack of financial resources; accordingly, the resolution should have an immediate and positive effect on the prospects of U.S. claimants before the Commission. The resolution does not affect the terms of the proposed legislation.

The Omnibus Budget Reconciliation Act in of 1990 (OBRA) requires that all revenue and direct spending legislation meet a pay-as-you-go requirement: that is, no such legislation should result in an increase in the deficit, and, if it does, it would trigger a sequester if it is not fully offset. Offsetting collections in this bill would recover costs of administering the Iraq claims program and the activities provided for under the bill, resulting in a net zero pay-as-you-go effect. Thus, this bill meets the pay-as-you-go requirement of OBRA.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the submission of this proposed legislation to the Congress.

The Administration will welcome the opportunity to work with the Congress to achieve early enactment of this proposed legislation and the Department of State stands ready to respond to any questions you or your colleagues may have on this issue.

Sincerely,

WENDY R. SHERMAN,
*Assistant Secretary,*
*Legislative Affairs.*

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By Mr. CRAIG (for himself and Mr. KEMPTHORNE):

S. 1402. A bill to convey a certain parcel of public land to the county of Twin Falls, Idaho, for use as a landfill, and for other purposes; to the Committee on Energy and Natural Resources.

THE TWIN FALLS COUNTY LAND FILL ACT OF 1993

• Mr. CRAIG. Mr. President, I rise to introduce the Twin Falls County Land Fill Act of 1993. This bill is needed so that Twin falls County, ID, will have a sanitary land fill that meets Environmental Protection Agency Resource Conservation and Reclamation Act subtitle D municipal solid waste landfill regulations.

Twin Falls County, located in south central Idaho has completed an exhaustive search of the entire county for possible locations for a new land fill and has performed a detailed study of four possible sites. As a result of this analysis, a site referred to as Hub

Butte was identified as the best choice. This selection was made based on criteria that included a wide range of consideration such as effects on the natural and human environment.

Twin falls County encompasses 1,957 square miles and has a population of approximately 54,000 people. Of the total land base in Twin Falls County, approximately 52 percent is owned by the Federal Government. This fact of land ownership has led to the siting of the proposed facility on a tract of Federal land.

The time period for Twin Falls County to meet the Environmental Protection agency requirements is fast approaching and the time to allow the usual process for the Federal Government to pass title to this site extends beyond the date that EPA has placed on meeting the subtitle D requirements. Even with the recent extension of the subtitle D requirements by the EPA the county will be faced with not meeting the rather narrow extension criteria proposed by EPA.

For these reason, it is necessary to introduce and pass this legislation that will allow the county of Twin Falls to own the land needed for the land fill after it has paid the Federal Government the fair market value of the land.•

• Mr. KEMPTHORNE. Mr. President, I am pleased to join my colleague the distinguished senior Senator from Idaho in introducing this bill to transfer at fair market value a relatively small parcel of federal land to Twin Falls County, ID. Without the transfer of title to this land, there is no way that Twin Falls County will be able to provide its citizens with a landfill that meets subtitle D environmental requirements prior to expiration of the Environmental Protection Agency's proposed 6 months extension of the compliance deadline. Failure to meet the deadline will impose unreasonable and avoidable costs on the county.

Three to 4 years ago, Twin Falls county entered negotiations to establish a regional landfill. Its citizens strongly objected, so county commissioners began the task of looking around for a site that could serve Twin Falls county needs and meet the subtitle D standards. The county commissioners had five criteria: First, the site had to be within 30 miles of Twin Falls City; second, it had to offer a minimum life of 25 years; third, the site had to provide minimum impact to residents; fourth, the site had to minimize impact on prime agricultural lands; and most importantly; fifth, the site had to meet all state and Federal requirements, including those outlined in subtitle D regulations for airport safety, flood plains, wetlands, fault areas, seismic impact areas, unstable areas, and existing closures. State requirements included those related to critical habitat, setback, scenic and national lands, and perennial streams and lakes.

The county narrowed the field to four sites, all of which are located on Bureau of Land Management [BLM] lands, and finally selected the Hub Butte site, which is the subject of this land transfer bill. The county made formal application to BLM in December 1992 and ever since has been bogged down in the red tape associated with doing anything on federal land.

Mr. President, 52 percent of Twin Falls County is federal land. There are no remaining good and sound options available to Twin Falls County. The commissioners have made a good faith effort to do their homework and to select a site that is very best from all standpoints. That process has taken longer than any of us could of wished and the expenses to date have been enormous.

I submit to my colleagues that requiring Twin Falls County to shoulder the additional costs associated with failure to meet the subtitle D deadline is unreasonable, especially since that original deadline did not take realistic account of the problems and delays that are routine in siting, designing, constructing and permitting a landfill. EPA has proposed a 6-month extension, an extension period that has also been chosen in a rather arbitrary fashion and makes no allowance for special circumstances like those facing Twin Falls. Fairness dictates that, given Twin Falls County's good faith efforts to comply with subtitle D, and the genuine likelihood that EPA and Congress are going to do nothing to provide for some flexibility on a case-by-case basis, Congress ought to do what it can to help out.

I therefore urge my colleagues to look favorably on this bill to transfer land to Twin Falls County at fair market value.•

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By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 1403. A bill to extend the suspension of duty on certain narrow fabric weaving machines; to the Committee on Finance.

DUTY SUSPENSION LEGISLATION

• Mr. LAUTENBERG. Mr. President, I introduce legislation on behalf of myself and Senator BRADLEY to suspend the duty on narrow fabric weaving machines and lace braiding machines.

This legislation would assist, F.G. Montabert Co., a manufacturer of woven labels in my State. F.G. Montabert Co. manufactures woven labels, primarily for sale to manufacturers of clothing and accessories for clothing. The machinery for production of these woven labels is not being manufactured in the United States at this time. F.G. Montabert must purchase its equipment from Europe and other international markets.

Mr. President, the duty-free status on these very specialized textile weaving machines expired at the end of 1992. This expiration occurred at a time when F.G. Montabert was trying to expand its production capabilities by acquiring additional label weaving looms. The expiration of duties has so far resulted in additional costs to the company in the form of import duties. And because of F.G. Montabert's plans for expansion, these additional costs will be very high.

Mr. President, early in our history, the Government relied on tariffs as its sole source of income. In this century, with the introduction of the income tax, tariffs were replaced by other revenues as the main source of Government revenues. Some tariffs have remained in place to protect domestic markets from international competition. However, many tariffs have outlived their original purpose. Now, as a routine matter, after investigation by the International Trade Commission and the Finance and Ways and Means Committees, they are periodically suspended to avoid imposing burdens on U.S. companies trying to compete internationally. When the ITC confirms there is no known domestic producers of a product, it will support tariff suspensions.

To my knowledge, the weaving machinery affected by this bill is not produced domestically and tariffs on the machinery affected would serve only to make U.S. companies that import these machines less competitive and perhaps cost their employees their jobs.

As our Nation continues to face a trade deficit, a deficit which has hit the apparel and textile industry especially hard, passage of this legislation would assist F.G. Montabert and its employees in New Jersey by easing the way for its expansion, creating jobs for less skilled workers.

Mr. President, I urge my colleagues to support this measure. 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. 1403

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SUSPENSION OF DUTY.**

Heading 9902.84.42 of the Harmonized Tariff Schedule of the United States (relating to power-driven weaving machines for weaving fabrics not exceeding 30cm in width) is amended by striking "12/31/92" and inserting "12/31/98".

**SEC. 2. EFFECTIVE DATE.**

(a) IN GENERAL.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

(b) RETROACTIVE APPLICATION.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the appropriate customs officer before the 90th day after the date of the enactment of this Act,

any entry, or withdrawal from warehouse for consumption, of any good described in heading 9902.84.42 of the Harmonized Tariff Schedule of the United States that was made—

(1) after December 31, 1992; and

(2) before the 15th day after the date of the enactment of this Act;

shall be liquidated or reliquidated as though such entry or withdrawal occurred on the 15th day after the date of the enactment of this Act.•

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By Mr. KOHL:

S. 1404. A bill to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing cases, disclosures of discovery information in civil actions, and for other purposes; to the Committee on the Judiciary.

LITIGATION IN THE SUNSHINE ACT OF 1993

• Mr. KOHL. Mr. President, I introduce the Litigation in the Sunshine Act of 1993. The measure is designed to combat a dangerous trend: secret court settlements and confidentiality orders which prevent people from gaining access to vital information about threats to public health and safety.

The problem is a simple one. An individual files a law suit in which they allege, for example, that they were injured by a defective product. The defendant, at any stage of the litigation, can offer to settle the case—and can, as a condition of that offer, require the plaintiff to agree to seal any information they have about the product. In fact, they often offer plaintiff a larger cash settlement if they agree to seal, destroy, or return the information they have obtained in the course of litigation. The plaintiff is interested in resolving the case and collecting the damages; the offer is a quick way to do that; the plaintiff accepts; the court, with at best a cursory review, agrees to a motion to seal the record; the case is closed. And public access to any information about the defective product is choked off.

Mr. President, a few of these agreements are even more troubling because they also prohibit the plaintiff from talking about the case to the State and Federal regulators charged with ensuring all of our safety.

There are no records kept of the number of confidentiality orders accepted by State or Federal courts. Anecdotal evidence, however, suggests that the use of such orders is increasing. And specific examples demonstrate the impact that these orders can have. Indeed, a variety of product liability, medical malpractice, environmental, and consumer fraud cases furnish chilling evidence of the harm caused by judicially sanctioned secrecy on public health and safety. Let me share a few examples.

At my 1990 Judiciary Committee hearing on confidentiality orders, we learned firsthand about an instance where secrecy seemed to undermine safety. For more than a decade, Bjork-Shiley pursued a strategy of requiring confidential settlements with persons harmed by its defective heart valves. A resident of my home State of Wisconsin, Frederick Barbee, testified that his wife—who died when her heart valve stopped functioning—would be alive today if courts had not agreed to seal records revealing the safety-related problems with the product.

General Motors' side-saddle gas tanks provide another timely and tragic example. For the past 20 years, lawsuits have charged that these gas tanks—used in many of GM's pickup trucks—are potential fire hazards during collisions. Nevertheless, this information became public only recently. Why? The reason is simple: GM paid over $100 million in out-of-court settlements and, in exchange, it demanded and received confidentiality agreements from virtually every plaintiff. The alleged perils of side-saddle gas tanks remained secret—until one litigant refused to accept such an agreement. Now the public knows about the problem—but we could have known about it, and acted to deal with it, years earlier if courts had not agreed to seal the records which revealed it.

Yet another illustration involves the recent disclosures about silicone implants. By the early 1980's, the manufacturer was apparently aware of the potentially harmful effects. But safety and research memos were withheld from Government regulatory agencies and restricted from public access. Again, court-approved confidentiality orders played a role in keeping relevant information from the Government and the public.

I ask unanimous consent to place in the RECORD at the end of my statement newspaper articles from the Wisconsin State Journal, the Idaho Statesman, and the New York Times discussing other instances of court secrecy as well as Dow Corning's strategy of requiring sealed settlements in resolving lawsuits over its breast implants.

Mr. President, reasonable people can disagree about whether heart valves are faulty, trucks are defective, or breast implants are dangerous. But they must agree that the increasing use of protective orders and secret court settlements unfairly tips the scales of justice against the public's right to know. And what is most disturbing to me is that, because of this secrecy, we just do not know what other dangers are out there. Those who do know are often silenced.

Initially I had hoped this problem could be corrected by the courts themselves. I believed that if all judges would examine requests for confidentiality orders more carefully—as a few already do—they might not be as willing to grant them routinely. Indeed, when Judge Weis of the third circuit testified at our hearing, I was optimistic about the willingness and ability of the Federal courts to develop a solution. "I think it is interesting that Texas solved its problem by changing its rules of civil procedure," Judge Weis told the committee, "and I think that the Federal courts should be given the same opportunity." Well, we gave the Federal courts 3 years of opportunity to change its rules, but they did not.

So now we have to.

I believe my solution, the Litigation in the Sunshine Act of 1993, is simple, effective, straightforward, but limited in scope. It would require that, prior to making any portion of a case confidential, a judge would have to determine—by making particularized findings of fact—that doing so would not restrict the disclosure of information which is relevant to the protection of public health and safety. The essence of this provision is to require a judge to critically examine the request for confidentiality from the perspective of the public interest rather than the private interests of the parties appearing before him or her. Additionally, the legislation would prohibit agreements that forbid persons from disclosing such information to the Federal and State regulators charged with protecting us.

The proposal would not eliminate confidentiality orders entirely—nor should we—but it does help guarantee that information crucial to the public well being is not hidden. The status quo—where judges have no obligation to consider the public interest and which too often leads to the triumph of secrecy over safety—is clearly unacceptable.

Mr. President, a few special interest groups have mistakenly claimed that this legislation could harm business or bottleneck the courts. But in fact the opposite may be true: several States have passed far more sweeping antisecrecy legislation and, in these States, business is still thriving and the courts are not clogged.

Even more disturbing, however, are the critics who baldly claim that business will oppose this legislation. I know that is not true. I have worked with several business organizations, and while they may not yet endorse the bill, they are willing to work with me on it. And there is a simple reason for their willingness to cooperate: no one cares about safety more than businessmen. We plan to prove this when the Judiciary Committee holds hearings on my measure later this year, and as we continue to work with the business community to improve this legislation. In fact, if we are honest with each other, this legislation protects both business and consumers because just as no one would want a loved one to purchase a defective product, no business worth having would want to produce a defective product.

Mr. President, how many deadly secrets lie buried in courthouse files? We don't know. But the Litigation in the

Sunshine Act of 1993 will, at the very least, bring this matter out of the shadows and into the public light. I urge my colleagues to support it and ask unanimous consent the text of the bill be printed in the RECORD.

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

S. 1404

*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 "Sunshine in Litigation Act of 1993".

**SEC. 2. PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.**

(a) IN GENERAL.—Chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new section:

**"§ 1659. Protective orders and sealing of cases and settlements relating to public health or safety**

"(a)(1) A court shall enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery or an order restricting access to court records in a civil case only after making particularized findings of fact that such order would not restrict the disclosure of information which is relevant to the protection of public health or safety.

"(2) No order entered in accordance with the provisions of paragraph (1) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that such order would not prevent the disclosure of information which is relevant to the protection of public health or safety.

"(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

"(c)(1) No agreement between or among parties in a civil action filed in a court of the United States may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

"(2) Any disclosure of information to a Federal or State agency as described under paragraph (1) shall be confidential to the extent provided by law.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1658 the following:

"1659. Protective orders and sealing of cases and settlements relating to public health or safety.".

**SEC. 3. EFFECTIVE DATE.**

The amendments made by this Act shall take effect 30 days after the date of the enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

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[From the Wisconsin State Journal, July 25, 1993]

SEALED DEALS MAY BE HURTING OTHERS

(By Marilyn Kaifus)

Susan and Richard Lundblade were determined to warn other families after their toddler was crippled by a recliner. The boy's neck was crushed as the chair folded.

Settling their lawsuit with a secret pact was out of the question.

"We'd be defeating our purpose if we didn't let the public know about the dangers of the chair," said Susan Lundblade, of Santa Ana, Calif. "they're still in people's homes."

Confidential settlements and sealed records are routine in civil disputes. Taped-up envelopes bulge with all sorts of bad news: Toxic chemicals, unsafe cars, doctors who may be dangerous.

But the practice of concealing such information has come under increasing attack.

In May, San Francisco Superior Court judges adopted a rule that restricts sealing documents in civil cases. The rule, expected to take effect in January, is similar to one San Diego judges passed in 1990.

California Gov. Pete Wilson vetoed a bill to limit confidentiality last year, but state legislators are taking another shot at it.

So the debate goes on.

"To have the public's court system operating in secret is appalling," said Alameda County Superior Court Judge Roderic Duncan, a former newspaper reporter.

"If you're going to use the public courts, I don't think you have a right to keep secret from the public what you're doing."

Other experts contend that the legal system exists so people can resolve disputes—and confidentiality speeds up that process.

"The name of the game is to settle lawsuits," said Ron Talmo, a Santa Ana civil-rights lawyer. "The personal-injury lawyer's job is simply to get dollars, and the more dollars the better. The obligation is to the client, not to society in general."

The money isn't the only thing no one can talk about. When a case is settled—often, with no admission of wrongdoing—the file or certain documents can be sealed as part of the deal.•So lawyers who come along later and sue the same company may have to reinvent the wheel.

Deals to keep documents secret have been struck over auto gas tanks and cigarette lighters that exploded, drugs that caused deadly reactions and heart valves that fractured midbeat.

Dow Corning settled early lawsuits over silicone-gel breast implants on condition of secrecy many years before the Food and Drug Administration banned their sale. More than 5,000 cases are pending. Leaks from the gel-filled implants have been linked to immune-system diseases and abnormal growths.

"Dow has been settling left and right," said Lucy Dalglish, chairwoman of the Freedom on Information Committee for the Society of Professional Journalists. "How many women in that period of time have had these implants?"

Defense lawyers, however, say sealed settlements and documents discourage lawsuits and protect companies from competitive and unproven allegations. They say news that a company paid a six-figure or multimillion-dollar sum would attract syringe-in-the-Pepsi-type scam artists.

"The fact that something may be settled may or may not mean there is any substance to the allegation," said Karen Kudushin, president of the San Francisco Bar.

"It's a lot cheaper to settle it than it is to litigate it. You cannot assume they have something to hide."

But what if they do?

"The defense tries to buy you off by saying, 'We'll settle with you, but only on the condition that you don't tell anybody else,'" said William Smith, president of the San Francisco Trial Lawyers Association. "I think it's criminal to stipulate to that."

Victims, however, feel they are being held hostage.

"Most clients are not willing to put themselves through a nasty and aggressive trial for the public good," said Wylie Aitken, a Santa Ana personal-injury lawyer. "They're not quite willing to be the sacrificial lamb. And no one can blame them for that."

The Lundblades were prepared to do just that, though ultimately, it wasn't necessary because the companies did not force a secret settlement.

Michael Lundblade, now 8, was brain-damaged at 18 months old when his head was caught in the space between the seat and the footrest of a recliner at a day-care center. The boy's weight on the footrest apparently created a vise-like chokehold on his neck, cutting off oxygen.

Michael cannot walk, barely speaks and has impaired motor skills.

Two years ago, the Lundblades settled their lawsuit against Mohasco Corp., the maker of the chair, and the Levitz furniture chain for $5 million. The family's attorney expects that through investments that sum will yield $50 million to $75 million during the boy's lifetime.

And there was no pact to keep them from going public.

"We felt we were doing it for a purpose other than financial," said Susan Lundblade, 40. "We wanted to get a lot of public awareness."

The Lundblades' lawyer, Robert Barta, said the Consumer Product Safety Commission determined that at least nine children had been killed by such chairs and that others had suffered permanent brain damage.

Francis Breidenbach, the lawyer for the manufacturer and the furniture chain, has said Mohasco was unaware of the defect until receiving a letter from the safety commission in 1985. The chair in which Michael was injured was made before that date, he said.

The California Defense Counsel, whose members are product-liability and malpractice lawyers, say forced disclosure would clog the court system.

If companies and other defendants have to go public anyway, said Jon Smock, legislative advocate for the counsel, they might as well slug it out in open court. Besides, he said, companies are already required to report information about defective products to the government.

"It's much better to have that kind of reporting to the responsible agency than to publish a wild report in the press," he said.

But some lawyers question how candid companies are in their self-reporting and contend that regulatory agencies, plagued by budget cuts, do not do the best job protecting the public.

People tend to pay more attention to a conflict when it's being played out in a high-profile court case than in a regulatory agency's proceeding, said Terry Francke, executive director of the California First Amendment Coalition.

Said Francke, "How many times have we seen instances where the regulatory agency is galvanized because there has been some accident, some tragedy, some scandal?"

CONFIDENTIAL CASES

These cases involved confidential settlements:

Claims against the Dalkon Shield, in intrauterine contraceptive implant, were initially resolved as sealed settlements. Eventually, allegations of miscarriages, sterility and infections caused the now-defunct maker, A. H. Robins Co., to seek bankruptcy protection.

The U.S. government and Morton Thiokol Inc., the maker of the defective O-ring that

caused the explosion of the space shuttle Challenger in 1986, kept secret a court settlement giving $7.7 million to the families of four crew members killed in the accident. The information became public when news organizations sued.

Dozens of claims for death and injury against Shiley Inc. over its Bjork-Shiley convexo-concave heart valve were settled and sealed. The valves, with an internal part susceptible to fracture, were blamed for more than 200 deaths and crippling injuries.

A 17-year legal struggle between a Cypress, Calif., family and the Hare Krishna sect ended last month with the Krishnas agreeing to a secret cash payment. The family accused the Krishnas of brainwashing and coercing Robin Westkamp into joining the sect.

The California Republican Party last year paid a secret settlement to five Santa Ana voters who accused the state Republican Party of conspiring to intimidate Hispanic voters when security guards were posted at polling places in 1988.

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[From the Idaho Statesman, Mar. 14, 1992]

WOMAN'S BREAST IMPLANT SUIT STARTED THE DOMINOES FALLING

(By Ursula Thomas)

BOISE, ID—When Maria Stern received two silicone breast implants after a double mastectomy in 1978, she thought they would restore her self esteem.

Instead, they made her lift a living hell.

First, she suffered a bizarre series of medical problems. Convinced it was linked to the implants, which were removed in 1981, Stern sued the Nation's No. 1 maker of silicone breast implants, Dow Corning Corp. of Midland, Mich.

In 1984, she won a $1.7 million settlement. Hers became the first case to threaten the future of silicone breast implants, which had been marketed successfully since 1964.

But no public warning about the implants was issued because court records were sealed in an agreement between both sides.

Despite that secrecy agreement, the lawsuit by Stern who moved to Boise from California two years ago, started the dominoes falling.

Her legal victory prompted Dow Corning to change the packaging of the silicone breast implants to include warnings of possible problems, said Jerry Kuester, a researcher and implants expert at Public Citizen Health Research Group, a Washington, D.C., consumer group that has long questioned implant safety.

"Doctors were supposed to start telling their patients that there was some risk involved," he recalled. "But no one knows if they did it."

Stern said she never understood the broad implications of the court's decision to keep critical documents from her case out of the public eye. And the San Francisco attorney who handled her case, Dan Bolton, says now he probably should not have agreed to it.

Nontheless, it was evidence from Stern's case and several others that convinced the Food and Drug Administration in January to place a moratorium on the use of silicone implants. The reason: to allow time to review the long-sealed documents.

A decision on the future use of the implants is expected next month.

The Stern case was significant because it unearthed the first bits of damaging evidence from Dow Corning's own files, including internal memos that indicated quality control problems in the manufacturing of the implants and virtually no scientific studies to prove their safety.

Dow Corning has maintained that there is no concrete link between its implants and autoimmune illnesses, which some women with implants are believed to suffer. Still, the company has announced it will launch two major studies to "expand our existing data" on whether the implants could be linked to cancer or autoimmune disorders.

Following Stern's direction, hundreds of lawsuits are being filed by women alleging that they developed immune diseases and other health problems after their implants ruptured.

Stern, 46, says she is convinced that there are "a lot of people who are sick and don't know why."

Ironically, Stern had been told 13 years ago that her implants would last a lifetime and that she "would live happily ever after."

She first noticed problems when her fingers mysteriously became "swollen up like sausages," one year after she got the implants. Then she lost her sense of taste and smell, much of her hearing and about 50 percent of her hair.

Doctors initially couldn't diagnose what was wrong. One told her she had advanced rheumatoid arthritis and prescribed aspirin. By 1981, she was bedridden with "bone-shattering pain" and believed she was near death.

Finally, doctors at Stanford Medical Center in Palo Alto, Calif., removed the implants in 1981. They were found to be perforated and leaking silicone throughout her body, she said. About a third of the silicone could not be recovered.

That's when she decided to sue.

In many ways, Stern has not recovered from her ordeal. Her 5-foot-4 frame dropped from 120 pounds to 87 in the summer of 1981. Since then, she has regained only eight pounds.

Now, she wears a prosthesis, an external breast-like pouch, and is fairly healthy. On a good day, she walks sprightly and speaks with an energetic voice. But her appearance is still frail, and she continues to experience silicone-filled lymph nodes from time to time.

"It's been 10 years, and, as far as I can tell, I will continue to feel the effects," she said.

GNS national medical reporter Sherry Jacobson contributed to this story.

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[From the New York Times, Feb. 18, 1992]

SECRECY ORDERS IN LAWSUITS PROMPT STATES' EFFORTS TO RESTRICT THEIR USE

(By Gina Kolata)

John Sparco won a bitter victory last year in his medical malpractice case. He had sued two doctors who, he said, botched his brain surgery. In September, eight years after he filed suit, the doctors agreed to settle the case.

But there was one condition. Their names would have to be kept secret. Only their hospital, Johns Hopkins University Hospital in Baltimore, would be mentioned in the public record.

The settlement was thus kept secret from the public and from a newly formed national list of doctors who had lost or settled malpractice suits, a list intended to inform hospitals and state licensing boards about questionable doctors.

"A SLAP IN THE FACE"

When Mr. Sparco learned of the secrecy condition, he was outraged. "It was a slap in the face," he said. But he was deeply in debt from pursuing the case and had been unable to work since the surgery. Although he wanted to see justice done and the doctors' names made public, he felt he had no choice but to agree to the order.

Cases like Mr. Sparco's have proliferated in recent years. Files are routinely sealed, for example, in product liability suits, medical malpractice suits and suits involving toxic chemicals released into the environment.

These secrecy orders have a significant bearing on agencies like the Food and Drug Administration, which are denied pertinent information about the safety of products they regulate.

In the case of silicone breast implants, trial lawyers first saw the documents that cast doubt on the implants' safety some eight years before the drug agency did. They agency ordered a moratorium on the implants immediately after reading the documents.

Another recent case involved some side effects of the sleeping drug Halcion. But in that case, the company agreed to let the drug agency see the documents in question.

Trial lawyers defend the use of secrecy orders, saying that the system is working well and that judges always have the option to refuse orders that can harm the public. They maintain that such orders are necessary to protect trade secrets and keep unproved accusations of wrongdoing by doctors or corporations out of the public eye.

Robert D. Monnin, a Cleveland trial lawyer who is president of the Defense Research Institute, which represents 18,000 trial lawyers, said the debate over protective orders is "an emotional issue right now." But he added, "The system works just fine."

Mr. Monnin said a principal benefit of secrecy orders is that they induce parties to settle and reduce litigation. In addition, he said, the orders protect companies from unreasonable disclosure of proprietary data.

"A lot of things in lawsuits start out as allegations," Mr. Monnin said. "Suppose somebody gets in an everyday auto accident and gets a broken arm. Then they come in and sue the manufacturer of the car, saying, 'Give me all the documents you have since you have been making cars.' You may think that's farfetched, but we get requests like that."

With a protective order, he added, the car maker can agree to provide some documents in return for secrecy, and then settle the case quickly.

"The question is, 'Is a protective order supposed to serve the public or is it supposed to serve the parties?'" Mr. Monnin asked. The answer, he said, is that it is supposed to serve the disputing parties.

But opponents of secrecy orders vehemently disagree. They are "an absolutely horrible problem," said Arthur Bryant, executive director of Trial Lawyers for Public Justice. "What these companies want to keep secret is exactly what the public needs to know."

Mr. Bryant said companies can use the orders to keep damaging documents away from the eyes of state and Federal regulators, for example. With the help of secrecy orders, every lawyer whose client wants to sue a company has to start from scratch in finding out what documents the company has. This makes product liability suits much costlier for the litigants.

Mr. Bryant contended that the companies often say: "I will give you what you want if you agree to keep it secret. If not, I will fight you tooth and nail and I will still argue for secrecy." Faced with such a choice, Mr. Bryant said, a plaintiff "will often sign on the dotted line and take the documents."

"A SYSTEMATIC COVER-UP"

George Annas, a lawyer who directs the program on law, medicine and ethics at Boston University, said secrecy orders had become a serious problem in the medical profession. When doctors settle malpractice suits, he said, they routinely move to have the cases sealed.

"There is a systematic cover-up, and that's bad for the public," Mr. Annas said. "Even though nobody would say they are doing this to hurt the public, that's the effect."

Legislators in some states are becoming so concerned by what they perceive as the abuse of secrecy orders that they are passing laws to restrict this well-established legal tool.

Florida, New York and Texas recently passed laws that greatly restrict secrecy orders, and on Jan. 30 the California Senate passed a bill that would create similar restrictions in that state. In addition, a Washington public interest group, Trial Lawyers for Public Justice, has embarked on a national project to petition courts to lift secrecy orders in cases where they believe the orders hurt the public.

The states hope to force judges to deny requests for protective orders when the data are in the public interest. The orders would usually be denied if, for example, they involve documents describing defective products, environmental hazards or medical malpractice.

Critics of secrecy orders cite the positive experience of states that have restricted them. Trial lawyers and companies lobbied heavily in Florida, New York and Texas against restrictions on protective orders. But so far none of the dire consequences they predicted have come to pass.

In New York, whose law restricting protective orders took effect last March, "we have not had any problems," said Sol Wachtler, chief judge of the New York Court of Appeals. "Settlements have been made and they have been on the record."

Protective orders in New York "had become almost automatic," Judge Wachtler said, adding: "It occurred to me that this was wrong. We are a public court, this is a public forum. Sealing records seemed somewhat perverse."

Justice Lloyd Doggett of the Texas Supreme Court said Texas, too, had not had any problems in the 18 months since that state passed a law restricting protective orders. Industry representatives warned that companies would leave the state, he said, and lawyers predicted that the courts would be clogged with cases that would otherwise have been settled. But none of these predictions have occurred, Justice Doggett said.

PLAINTIFFS IN THE DARK

Trial lawyers often maintain that it should be up to judges to weigh the public interest in granting secrecy orders. But Justice Doggett said, "Unless you have specific rules or statutes, judges will sign whatever order they get and the public interest will be forgotten."

To obtain a protective order, lawyers for both sides go the judge, saying they have agreed to secrecy. But sometimes plaintiffs are unaware that the condition for settlement was a protective order.

This was the experience of Maria Stern of Boise, Idaho, who brought the first product liability suit against the Dow Corning Corporation, which manufacturers silicone breast implants. She contended that the implants leaked silicone throughout her body and caused a life-threatening autoimmune reaction. In the discovery process, her lawyer, Dan Bolton of San Francisco, had combed through the company's files and pulled out what he and Ms. Stern considered damning memorandums and studies on the implants. In 1984, Dow Corning settled the suit for an amount that ran to seven figures.

But, although Ms. Stern did not realize it, Mr. Bolton had made an agreement with Dow Corning that if they allowed him to see their documents he would return the papers to the company and would never tell anyone about them. They had been found late last year in another lawsuit and were accidentally released by a court clerk despite a protective order.

"A TOTAL OUTRAGE"

Ms. Stern said she spent years wondering why the F.D.A. was not taking any action on the implants. Now that she realizes there was a secrecy order, she said, she believes that it was "a complete and total outrage."

Mr. Bolton said he was certain he told Ms. Stern about the secrecy order. He also said that he was not happy with the order, but that he felt he had no choice but to accept it.

"There are only so many battles you can fight in a lawsuit," Mr. Bolton said. "Getting the documents was more important than debating whether they should be under a protective order. I needed the documents to represent my client."

Mr. Bolton said he had "very strong feelings that this is information the public needs to know, but my first obligation is to my client."

The lawyer in Mr. Sparco's malpractice suit, Nicole Schultheis of Baltimore, said that at first she was adamantly opposed to a protective order. When the lawyers for the Johns Hopkins doctors proposed it, she said, she "became very angry and hung up the phone on them."

Then she told Mr. Sparco what she had done. He was distraught and told Ms. Schultheis that he could not afford to turn down the settlement, she said. So, reluctantly, she called the lawyers for the other side and told them that she would agree to a secrecy order after all.•

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By Mr. KERRY:

S. 1405. A bill to strengthen the National Flood Insurance Program and to reduce risk to the flood insurance fund by increasing compliance, providing incentives for community floodplain management, providing for mitigation assistance, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

NATIONAL FLOOD INSURANCE REFORM ACT OF 1993

Mr. KERRY. Mr. President, the Bible defines a foolish man as one who "builds his house upon the sand."

The question I put before the Senate the same week as we have passed an emergency supplemental appropriation of over $5 billion for flood disaster relief in the upper midwest, is how we would define a Congress that has provided subsidized insurance for that house upon the sand? Would we define such a legislature as wise?

Over the past quarter-century, the Federal flood insurance program has become one more case of the federal government committing itself to a liability on a program that was supposed to be self-financing. The problems with the program have been known about for a long time. We tried to fix them 2 years ago, and again last year. We warned then that the flood insurance fund was depleted, and in danger of requiring funds from the Treasury. Now, with the program $18 million in the red prior to the massive summer flooding of the Mississippi and Missouri, the taxpayers are once again at risk from yet another program that threatens to increase the Federal budget deficit.

I have been concerned about the National Flood Insurance Program [NFIP] for many years—on fiscal grounds, on environmental grounds, and in terms of increased risk to human life. As our coastal and river floodplain populations have grown, my concerns have grown. And as we continue to experience one "storm of the century" after another—massive flooding in the upper Mississippi River basin being the latest natural calamity—the need for reform has never been more vitally important.

You would think that our government would discourage people from living in areas where these risks are the greatest. But we don't. We do the opposite. The Federal flood insurance program provides an incentive for people to live in at least some areas where common sense would dictate it makes no sense to live. In so doing, we provide especially the most recent emigres to the coast a false sense of security. We tell them: "go ahead, build your house in the floodplain or on sand, and if Mother Nature should do what Mother Nature is all too often prone to do, don't worry, the Federal Government will bail you out."

Whether this outcome was intentional or not, one now must ask, as public policy, does this make sense? Of course it doesn't, and it is time to change it.

The National Flood Insurance Reform Act of 1993 which I am introducing today, addresses the chronic problems of the NFIP and would improve the financial soundness of the flood insurance fund through a balanced, comprehensive approach of increased participation and risk reduction.

The NFIP was created to alleviate the taxpayer burden of paying for disaster relief in areas damaged, often repeatedly, by floods. In exchange for the insurance, communities were required to plan and implement measures to limit and constrict development in order to reduce future flood losses. Today, over 18,000 communities participate in this voluntary program.

Unfortunately, the mandate to plan and sensibly limit unwise development, and guide development out of harm's way has never been adequately carried out. Communities have been allowed to develop in ill-advised areas, almost as if hurricanes, floods, and erosion will not occur. Consequently, the program has become an increasingly large financial liability now insuring over $215

billion in property. More important, as of May 31, 1993, the NFIP had reached an $18 million deficit, a figure that will grow substantially higher when claims start rolling in from the great midwest flood this summer.

The last thing this country needs is another bail-out of a federally guaranteed benefits program. But that is exactly where we are headed with the NFIP. The time to act is now, before the next catastrophic storm, such as a class five hurricane hitting the east coast of Florida or the Gulf of Texas, where estimated losses could run anywhere between $2 to $4 billion, strikes. And who will make up the difference if the flood insurance fund runs short? The answer, of course, is your constituents and mine—the taxpayers.

The legislation I am introducing today would bolster the financial soundness of the NFIP by increasing participation in the program. Ensuring compliance by lenders with the mandatory purchase requirement is essential towards greater participation and a broadened insurance risk pool. Only 2.4 million of the estimated 11 million structures in flood hazard areas are covered by flood insurance. That is a compliance rate of 19 percent, an unacceptable rate in what is supposed to be a mandatory program for participating communities. The policy base must expand, and those institutions making loans in hazardous floodplain areas must share that risk and responsibility with the borrower, not the Federal Government.

Title II of this legislation would improve compliance in four major ways. First, it would expand the scope of the flood insurance purchase requirement by requiring Government sponsored enterprises, notably Fannie Mae and Freddie Mac, and Federal agencies which function as lenders, such as the Federal Housing Administration, Veterans' Administration, and Federal Farm Credit Administration, to require flood insurance for the mortgages they originate or purchase, and to document that a determination as to whether the property requires flood insurance has been done.

Second, this title would require lenders and Federal agencies that currently escrow to also escrow for flood insurance premiums. This provision would make it much more difficult for a borrower to allow an insurance policy to lapse after the initial purchase of insurance at origination. Part of the problem attributed to low participation has been that there is no mechanism to ensure that borrowers who are required to purchase flood insurance renew policies when they expire. Escrowing for flood insurance premiums would provide just such an effective mechanism and ensure that policies are maintained for the life of the mortgage as required by law.

Third, a notification process and flood hazard determination form would be established to provide lenders with a reasonable 5-year "safe harbor" once they have made a flood hazard determination at the origination of a mortgage. In addition, information recorded on the determination form, if provided by someone other than the lender, must be guaranteed. This would improve the accuracy of flood hazard determinations at origination and also eliminate unnecessary determinations in the future.

Fourth, this title would enable regulated lenders and Federal agency lenders to purchase flood insurance for mortgages they uncover which are without the required flood insurance in force. Such authority to force place flood insurance coverage is necessary to provide lenders with the ability to comply with the mandatory purchase requirement in the event that a flood insurance policy has lapsed, or if a structure is determined to be in a flood hazard area after origination of the mortgage due to a flood insurance rate map revision caused by changes in the local floodplain.

In summary, these provisions would provide a streamlined compliance strategy that is not overly intrusive, costly or burdensome for lenders, and should significantly improve participation in the NFIP by making sure that flood insurance is purchased and maintained as a regular part of lending in floodplains.

This legislation would also provide additional encouragement to participate by increasing the amounts of available insurance coverage. Available coverage for single-family residences would be raised from $100,000 to $250,000, and coverage for non-residential properties would be raised from $250,000 to $2.4 million. Maximum coverage amounts have not been raised since the 1970's, and these increases more accurately reflect the increased insurable value of buildings in floodplains.

Importantly, additional coverage at actuarial rates also would be made available to address substantially damaged or repetitively flooded structures. This coverage would allow property owners to comply with local land use and control measures, provide property owners with an enhanced sense of financial security, and reduce the frequency and cost of repetitive flood losses to the flood insurance fund.

While increasing program participation is essential, it alone is not enough to ensure a more financially sound NFIP. Risk reduction through mitigation is a proven, cost-effective strategy to reduce future flood losses and is as equally important as increased participation toward a balanced reform of the NFIP. This legislation would provide additional incentives to encourage States and communities to implement mitigation activities in order to reduce future flood damage, and would direct FEMA to improve and expand its identification of floodplain hazards.

Title III of this bill would establish a Community Rating System (CRS) as a permanent program in the NFIP. The [CRS] is an incentive program that provides for credits to a community's flood insurance premium rates if that community has adopted performance standards that exceed the minimum criteria required for participation in the regular NFIP. Importantly, this legislation would also allow credits under CRS for communities that implement measures that protect and preserve natural and beneficial floodplain functions, or that address local erosion hazards.

This legislation also recognizes that States and communities need financial assistance to implement local mitigation projects to improve the floodworthiness of buildings and make them less costly to insure. Title IV of this legislation, would establish a State and community mitigation program within the NFIP to provide mitigation grants to eligible States and communities that develop comprehensive mitigation plans for flood and erosion hazards. Planning grants also would be available to encourage States and communities to develop these plans.

Funding for planning grants and mitigation activities would be made available from the flood insurance fund, phased in during the first 2 years of the program at $10, and $15 million respectively, and would be capped at $20 million in the third year of the program and for subsequent years. Mitigation grants, which would require a 25 percent State or community match, would be used to implement eligible mitigation activities including elevation, relocation, and demolition and acquisition of structures.

The current section 1362 program which provides funds for the purchase of repetitively flooded properties on a willing seller basis would be repealed. Also, the section 1306(c) provision, or "Jones/Upton" benefit, which allows for claims to be paid by FEMA for the relocation or demolition of structures certified as in imminent collapse due to erosion, would be terminated after 1 year since this program has not functioned as intended by Congress, and has contributed to the current deficit in the flood insurance fund by providing excessive payments that are not actuarially based. Importantly, acquisition, relocation and demolition are retained as eligible mitigation activities under the mitigation assistance program to ensure that these activities are implemented consistent with comprehensive mitigation plans, and in a cost-effective manner to the NFIP.

Of course, mitigation will only be effective if the hazards are clearly known and identified. A common concern raised during congressional hearings on

flood insurance has been the relative poor quality of flood insurance rate maps.

For this reason, title VI of this legislation would direct FEMA to regularly review, and update, where necessary, flood insurance rate maps on a regular 5-year cycle. FEMA would be required to publish all revisions and changes every 6 months in a compendium to be made available to States and communities at no charge. Also, a Technical Mapping Advisory Council would be created to improve the accuracy of maps, and importantly, to make them easier to use.

It is also time for FEMA to finally identify erosion hazards on flood insurance rate maps. Coastal geologists have estimated that over 70 percent of the Nation's coastlines are experiencing erosion. Further, the Army Corps of Engineers has calculated that 24 percent of shoreline is eroding significantly, and that 4 percent of the Nation's streambanks are seriously eroding. From an insurance standpoint, omitting the identification and consideration of erosion from the premium rate structure simply makes no sense. I know of no other insurance program that so casually dismisses a known risk of this magnitude.

This legislation would direct FEMA to identify erosion hazard areas in coastal areas as well as along the Nation's rivers. Determination of erosion hazard areas would be based on erosion rate data and local baseline reference features, an approach endorsed in a 1991 report of coastal erosion by the National Academy of Sciences, and a method currently employed by certain States.

Importantly, FEMA would be required to use existing State erosion rate data and reference features, and to include local erosion control projects in the determination of erosion rates. To ensure consistency and coordination with the Coastal Zone Management Act, FEMA would be required to coordinate erosion actitivies with State coastal zone management programs.

To further reduce future claims in erosion hazard areas, this legislation would not allow FEMA to make available insurance to new construction, or for additions to structures that render them not readily movable within a 30-year erosion area. Landward of the 30-year area, flood insurance would be limited to new, readily movable structures in the 60-year erosion hazard area. Beaches, bluffs and riverbanks that are predicted to disappear within the life of a mortgage cannot be considered "safe" places to build. And while this legislation would not prohibit construction in erosion hazard areas, it would reasonably limit NFIP from insuring structures that will become total losses.

In short, Mr. President, Congress needs to reform the NFIP to make it a more effective took in the Unified National Program for Floodplain Management, and to ensure that the program does, in fact, function to reduce costs for Federal disaster assistance.

Ill-advised coastal and river floodplain development and resulting storm or flood damage impose additional financial burdens beyond flood insurance claims. Often, these costs go unnoticed because they are picked up by the taxpayer on the local, State or Federal level. But the taxpayer foots the bill for repairs to public infrastructure damaged in storms—crucial items like roads, sewers, levees, dikes and utility lines. Additional costs must also be paid for vital public services, notably for police and fire assistance, not to mention the personal risks of life and limb taken by these individuals to save individuals who have voluntarily placed themselves in jeopardy.

Damage to our floodplain environment is another cost that is often ignored but can no longer be overlooked. Building out to the water's edge has meant a substantial loss of sensitive fish and wildlife spawning and breeding habitat, areas critical to the vitality of our commercial and recreational fisheries. Also, damaged septic systems and oil tanks pollute coastal waters and force closures of shellfish beds. And then there's simply the unsightly debris left to litter our shores and riverbanks following storms and floods. None of these costs are picked up by flood insurance, but are paid out by everyone.

Defenders of the flood insurance program, as it is currently operated, often overlook the chronic problems with the NFIP, but I think that is wrong. These problems are real, costly to the Nation's taxpayers, and will not vanish unless Congress acts. In fact, if the hurricanes, nor'easters and floods that our Nation has experienced over the past 2 years are an indication—a scenario, I might add, predicted by the National Hurricane Center—things are going to worsen, and worsen in a hurry.

Over the past 6 months, I have worked closely with Senator D'AMATO, the ranking member of the Senate Committee on Banking, Housing and Urban Affairs, who has provided many valuable suggestions as to how to improve this legislation. Although he is not ready to join me in sponsoring this bill, his efforts to date have improved it. I wish to express my thanks for the serious effort he and his staff have made and will continue to make to achieve real reforms in the flood insurance program.

Obviously, any changes in a program such as the NFIP will be controversial. But not to act, and to ignore the problem is an abrogation of the legitimate role of government which is to protect the health, safety and welfare of its citizenry. The one outcome I will not accept is inaction, or continuation of the status quo. I anticipate a hearing on this bill as soon as we reconvene in September, and will work to see legislation action on it this year.

In closing, Mr. President, this legislation is fair, reasonable and balanced, and would accomplish essential reforms without prescribing Federal construction standards or cancellation of existing flood insurance policies. It would improve the financial soundness of the Nation's flood insurance program by increasing participation and by reducing the potential damage from future flooding and erosion through an incentive-based approach.

I urge my colleagues to recognize the need for reform and to support this bill. I ask unanimous consent that the full text of the bill, and a section-by-section summary, be placed following my remarks in the RECORD.

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

S. 1405

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "National Flood Insurance Reform Act of 1993".

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

**SEC. 2. CONGRESSIONAL FINDINGS.**

The Congress finds that—

(1) unprecedented growth in population and development has occurred along the coasts and rivers of the United States and a significant portion of the United States population is exposed to the hazards of flood, mudslide, and erosion damage;

(2) the number of properties insured against floods remained roughly constant during the 1980's, despite continuing growth in real estate activity in coastal, lakeshore, and riverine areas, and the level of flood insurance coverage that an individual can purchase has not been increased since 1977;

(3) due to substantial increases in construction costs, many property owners are prevented from purchasing flood insurance for the replacement value of the building, potentially resulting in an owner not receiving a payment to fully restore flood-damaged property;

(4) since 1989, there has been a significant increase in the incidence of major storms and hurricanes and severity of related damages in the United States;

(5) as a consequence of the increase in the incidence of storms, the national flood insurance fund has been depleted, creating the risk of borrowing from the Treasury, and threatening to exacerbate the Federal budget deficit;

(6) no comprehensive Federal program exists to assist in the removal of structures from high risk areas, such as regulatory floodways and coastal high hazard areas, before disaster strikes;

(7) no comprehensive Federal program exists to evaluate and provide technical assistance and funds to communities for the mitigation of damages to repetitively and severely damaged structures or insured structures threatened by shoreline erosion, and such a program would reduce the vulnerability of the Federal Government to flood- and erosion-related losses;

(8) a Federal flood insurance program that combines predisaster mitigation efforts together with an insurance and compliance program will reduce the physical and economic effects of flood-related damage on the Federal Government, State and local governments, and individuals;

(9) requiring regulated lending institutions, government agencies, and government-sponsored enterprises to make sure that flood insurance coverage is purchased on all properties in areas of special flood hazards in participating communities will increase compliance with the program, and increase the pool of funds, thereby decreasing the impact on the fund of individual flood events;

(10) the relative rise in sea level and the fluctuations in water levels of the Great Lakes expose the National Flood Insurance Program to greater risks, and such risks should be adequately considered in order to determine a comprehensive assessment of risk under the program;

(11) erosion hazard areas have not been identified or adequately considered for the purposes of insurance established under the National Flood Insurance Act of 1968;

(12) identification of erosion hazard areas and erosion management can improve public safety, guide appropriate development, and help reduce erosion losses to existing structures and protect new structures from erosion losses, thereby reducing Federal, State, local, and private expenditures due to erosion;

(13) a community-based approach to mitigation and erosion management, to reduce losses in floodplains and to minimize adverse impacts on natural and beneficial floodplain functions, is the most comprehensive, effective, and cost-efficient method to reduce losses in floodplains and disaster assistance expenditures, and such benefits could be enhanced if combined with insurance protection for insured property owners to meet the increased reconstruction costs required by Federal, State, or local mitigation standards;

(14) incentives in the form of reduced premium rates for flood insurance under the National Flood Insurance Program should be provided in communities that have adopted and enforced exemplary or particularly effective measures for comprehensive floodplain and erosion hazard area management; and

(15) such community-based and individual mitigation and loss prevention methods and incentives should be incorporated into the National Flood Insurance Program.

**SEC. 3. DECLARATION OF PURPOSE UNDER THE NATIONAL FLOOD INSURANCE ACT OF 1968.**

Section 1302(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4001(e)) is amended—

(1) by redesignating paragraphs (3), (4), and (5), as paragraphs (4), (5), and (6), respectively; and

(2) by inserting after the comma at the end of paragraph (2) "(3) encourage State and local governments and Federal agencies to protect natural and beneficial floodplain functions that reduce flood-related losses,".

## TITLE I—DEFINITIONS

**SEC. 101. FLOOD DISASTER PROTECTION ACT OF 1973.**

(a) IN GENERAL.—Section 3(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a)) is amended—

(1) by striking paragraph (5) and inserting the following new paragraph:

"(5) 'Federal entity for lending regulation' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration Board, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision, approval, insuring, or regulation of the institution;";

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by inserting after paragraph (6) the following new paragraphs:

"(7) 'regulated lending institution' means a bank, savings association, credit union, or similar institution subject to the supervision, approval, regulation, or insuring of a Federal entity for lending regulation; and

"(8) the term 'Federal agency lender' means the Federal Housing Administration, the Farm Credit Administration, the Farmers Home Administration, the Small Business Administration, and the Veterans' Administration, when such agency makes loans secured by improved real estate or a manufactured home.".

(b) CONFORMING AMENDMENTS.—

(1) REQUIREMENTS TO PURCHASE FLOOD INSURANCE.—Section 102(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)) is amended by striking "Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation direct such institutions" and inserting "Each Federal entity for lending regulation shall by regulation direct regulated lending institutions".

(2) EFFECT OF NONPARTICIPATION IN FLOOD INSURANCE PROGRAM.—Section 202(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(b)) is amended by striking "Federal instrumentality described in such section shall by regulation require the institutions" and inserting "Federal entity for lending regulation (with respect to regulated lending institutions)".

**SEC. 102. NATIONAL FLOOD INSURANCE ACT OF 1968.**

(a) IN GENERAL.—Section 1370(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4121(a)) is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(7) the term 'Federal entity for lending regulation' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration Board, and with respect to a particular regulated lending institution, means the entity primarily responsible for the supervision, approval, insuring, or regulation of the institution;

"(8) the term 'regulated lending institution' means a bank, savings and loan association, credit union, or similar institution subject to the supervision, approval, regulation, or insuring of a Federal entity for lending regulation;

"(9) the term 'Federal agency lender' means the Federal Housing Administration, the Farm Credit Administration, the Farmers Home Administration, the Small Business Administration, and the Veterans' Administration, when such agency makes loans secured by improved real estate or a manufactured home;

"(10) the term 'natural and beneficial floodplain functions' means—

"(A) the functions associated with the natural or relatively undisturbed floodplain that moderate flooding, retain flood waters, reduce erosion and sedimentation, and mitigate the effects of waves and storm surge from storms; and

"(B) ancillary beneficial functions, including maintenance of water quality, recharge of ground water, and provision of fish and wildlife habitats;

"(11) the term 'erosion hazard area' means, based on erosion rate information and other historical data available, an area where erosion or avulsion is likely to result in damage to or loss of buildings and infrastructure within a 60-year period;

"(12) the term 'erosion control measures' means a community's efforts to control erosion through nonstructural and structural projects;

"(13) the term 'baseline reference feature' means an identifiable and prevalent physical or mapped feature of a shoreline from which erosion shall be measured;

"(14) the term 'readily movable structure' means a small permanent structure of less than 5,000 square feet that is designed, sited, and built to accomplish relocation at a reasonable cost relative to other structures of the same size and construction and that has access of sufficient width and acceptable grade to permit such relocation; and

"(15) the term 'repetitive loss structure' means an insured property that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each flood event.".

(b) CONFORMING AMENDMENT.—Section 1322(d) of the National Flood Insurance Act of 1968 (42 U.S.C. 4029(d)) is amended by striking "federally supervised, approved, regulated or insured financial institution" and inserting "regulated lending institution".

## TITLE II—COMPLIANCE AND INCREASED PARTICIPATION

### SEC. 201. EXPANDED FLOOD INSURANCE PURCHASE REQUIREMENTS.

(a) IN GENERAL.—Section 102(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)) (as amended by section 101(b)) is further amended—

(1) by inserting "(1)" after "(b)";

(2) by inserting before "shall by regulation" the following: "(after consultation and coordination with the Federal Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974)"; and

(3) by adding at the end the following new paragraphs:

"(2) The Director of the Office of Federal Housing Enterprise Oversight (after consultation and coordination with the Federal Financial Institutions Examination Council) shall by regulation direct that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation implement procedures reasonably designed to assure that all loans that are—

"(A) secured by improved real estate or a manufactured home located in an area that has been identified at the time of the origination of the loan by the Director of the Federal Emergency Management Agency, as an area of special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, and

"(B) purchased by either such entity,

are covered for the term of the loan by flood insurance in the amount provided in paragraph (1).

"(3) Each Federal agency lender shall implement procedures reasonably designed to assure that all property—

"(A) that secures loans that the Federal agency lender makes, increases, extends, renews, or purchases, and

"(B) that is improved by real estate or a manufactured home located in an area that has been identified at the time of the origination of the loan by the Director of the Federal Emergency Management Agency as an area of special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968,

is covered for the term of the loan by flood insurance in the amount provided in paragraph (1).".

(b) EFFECTIVE DATE.—The provisions of this section shall apply to all transactions occurring after the expiration of the 1-year period beginning on the date of enactment of this Act.

### SEC. 202. ESCROW OF FLOOD INSURANCE PAYMENTS.

(a) IN GENERAL.—Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) is amended by adding at the end the following new subsection:

"(d)(1) Each Federal entity for lending regulation, after consultation and coordination with the Federal Financial Institutions Examination Council, shall by regulation require that, if a regulated lending institution requires the escrowing of taxes, insurance premiums, fees, or any other charges for loans secured by residential real estate or manufactured homes, all charges for flood insurance under this title for the property shall be paid by the borrower to the institution. Upon receipt of a notice from the Director or the provider of the insurance that insurance premiums, fees, or other charges are due, the institution shall pay from the escrow account to the provider of the insurance the amount of insurance premiums, fees or other charges owed.

"(2) If a Federal agency lender requires the escrowing of taxes, insurance premiums, fees, or any other charges, then any charges for flood insurance under this title for the residential real estate or the manufactured home shall be paid by the borrower to the Federal agency lender. Upon receipt of a notice from the Director or the provider of the insurance that insurance premiums, fees, or other charges are due, the Federal agency lender shall pay from the escrow account to the provider of the insurance the amount of insurance premiums, fees or other charges owed.

"(3) Escrow accounts used to collect flood insurance premiums, fees, or other charges under this subsection shall be subject to the provisions of section 10 of the Real Estate Settlement Procedures Act of 1974.".

(b) APPLICABILITY.—Section 102(d) of the Flood Disaster Protection Act of 1973 (as added by subsection (a)) shall apply with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of this Act.

### SEC. 203. NOTICE REQUIREMENTS.

Section 1364 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104a) is amended to read as follows:

"SEC. 1364. NOTICE REQUIREMENTS.

"(a) LENDING INSTITUTIONS.—Each Federal entity for lending regulation, after consultation and coordination with the Federal Financial Institutions Examination Council, shall by regulation require that before a regulated lending institution makes, increases, extends, or renews a loan secured by improved real estate or a manufactured home located in an area that has been identified by the Director as an area of special flood hazards, the institution shall notify the borrower of the special flood hazards and of the need to purchase and maintain flood insurance.

"(b) FEDERAL AGENCY LENDERS.—Before a Federal agency lender makes, increases, extends, or renews a loan secured by improved real estate or a manufactured home located in an area that has been identified by the Director as an area of special flood hazards, the Federal agency lender shall notify the borrower of the special flood hazards and of the need to purchase and maintain flood insurance.

"(c) PARTICIPATING COMMUNITIES.—The Director shall by regulation require each participating community, upon receiving the semiannual list prepared by the Director of all changes, revisions, and amendments made to the flood insurance rate maps during the preceding 6 months, to determine whether any properties in their community have been affected, and to provide annual notice by mail, notice by publication, or notice by other reasonable method, to regulated lending institutions that are known to lend in the community, and to the owners of all properties newly determined to be in special flood hazard areas, of the requirement that Federal flood insurance be purchased for insurable structures located within the special flood hazard areas in the community.

"(d) CONTENTS OF NOTICE.—Notification required by this section shall include a warning, in a form to be established by the Director, stating that the real estate or manufactured home securing the loan is located in an area of special flood hazards, a description of the flood insurance purchase requirements under section 102(b) of this title, a statement that flood insurance coverage may be purchased under the National Flood Insurance Program and may also be available from private insurers, and any other information that the Director considers necessary to carry out the purposes of the National Flood Insurance Program.".

### SEC. 204. PLACEMENT OF FLOOD INSURANCE BY REGULATED LENDING INSTITUTION OR FEDERAL AGENCY LENDER.

(a) REQUIRED ACTIONS BY LENDER.—Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) (as amended by section 202(a)) is further amended by adding at the end the following new subsection:

"(e) REQUIRED ACTIONS BY LENDER.—

"(1) NOTIFICATION TO BORROWER OF LACK OF COVERAGE.—If, at any time during the term of a loan secured by improved real estate or by a manufactured home located in an area that has been identified by the Director as an area of special flood hazards and in which flood insurance is available under this title, a regulated lending institution or Federal agency lender determines that the building or manufactured home and any personal property securing the loan held or serviced by the regulated lending institution or Federal agency lender is not covered by flood insurance, in an amount not less than the amount required by subsection (b)(1), the regulated lending institution or Federal agency lender shall notify the borrower that the borrower should obtain, at the borrower's expense, an amount of flood insurance that is not less than the amount required by subsection (b)(1), for the term of the loan. If, not later than 60 days after receiving such

notification, the borrower fails to purchase such flood insurance, the regulated lending institution or Federal agency lender shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the regulated lending institution or Federal agency lender in purchasing the insurance.

"(2) REVIEW.—

"(A) BY THE DIRECTOR.—A borrower may request that the Director review a determination that the improved real estate or manufactured home securing the loan is located in an area of special flood hazards. Not later than 45 days after the Director receives the request, the Director shall review the determination and provide the borrower with a letter stating whether or not the property is in a special flood hazards area. The determination of the Director shall be final.

"(B) INSURANCE NOT REQUIRED.—If a person is provided by the borrower with a letter issued by the Director pursuant to subparagraph (A) during the preceding 1-year period, stating that the property is not in an area of special flood hazards, such person shall have no obligation under this title to require the purchase of flood insurance on the property.".

(b) APPLICABILITY.—Section 102(e) of the Flood Disaster Protection Act (as added by subsection (a)) shall apply to all loans outstanding on or after the date of enactment of the National Flood Insurance Reform Act of 1993.

**SEC. 205. STANDARD FLOOD HAZARD DETERMINATION FORMS.**

Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.) is amended by adding at the end the following new section:

**"SEC. 1365. STANDARD FLOOD HAZARD DETERMINATION FORMS.**

"(a) DEVELOPMENT.—The Director, in consultation with the Federal entities for lending regulation, shall develop a standard flood hazard determination form (hereafter in this section referred to as the 'determination form') for use in connection with loans secured by improved real estate or a manufactured home located in an area of special flood hazards and in which flood insurance is available under this title.

"(b) DESIGN AND CONTENTS.—The determination form shall state whether the property is in an area of special flood hazards, the risk premium rate classification established for the special flood hazard area in which the property is located, the complete map and panel numbers for the property, and the date of the map used for the determination. If the complete map and panel numbers for the property are not available because the property is not located in a community that is participating in the National Flood Insurance Program or because no map exists for the relevant area, the determination form shall so state.

"(c) REQUIRED USE.—Each Federal entity for lending regulation shall by regulation require the use of the determination form by regulated lending institutions. Each Federal agency lender shall by regulation provide for the use of the determination form. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall require use of the determination form by any person from whom they purchase loans.

"(d) GUARANTEES REGARDING INFORMATION.—In recording information on a determination form, a person may rely on information provided by a third party to the extent that the third party guarantees the accuracy of the information.

"(e) RELIANCE ON PREVIOUS DETERMINATION.—A person or institution increasing, extending, renewing, purchasing, or servicing a loan may rely on a previous determination as to whether property is in a special flood or erosion hazard area, if the previous determination was made not later than 5 years after the date of the transaction, and the basis for the previous determination has been set forth on a determination form.".

**SEC. 206. EXAMINATIONS REGARDING COMPLIANCE BY REGULATED LENDING INSTITUTIONS.**

(a) AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by adding at the end the following new subsection:

"(h) FLOOD HAZARD INSURANCE COMPLIANCE BY INSURED DEPOSITORY INSTITUTIONS REQUIRED.—

"(1) EXAMINATIONS.—The appropriate Federal banking agency shall, during each scheduled on-site examination required by this section, determine whether the insured depository institution is complying with the requirements of the National Flood Insurance Program.

"(2) REPORT.—Not later than 1 year after the date of enactment of the National Flood Insurance Reform Act of 1993, and biannually thereafter for the next 4 years, each appropriate Federal banking agency shall submit a report to Congress on compliance by insured depository institutions with the requirements of the National Flood Insurance Program. The report shall include a description of the methods used to determine compliance, the number of institutions examined during the reporting year, a listing and total number of institutions found to be in noncompliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.".

(b) AMENDMENT TO THE FEDERAL CREDIT UNION ACT.—Section 204 of the Federal Credit Union Act (12 U.S.C. 1784) is amended by adding at the end the following new subsection:

"(e) FLOOD HAZARD INSURANCE COMPLIANCE BY INSURED CREDIT UNIONS REQUIRED.—

"(1) EXAMINATION.—The Board shall, during each examination conducted under this section, determine whether the insured credit union is complying with the requirements of the National Flood Insurance Program.

"(2) REPORT.—Not later than 1 year after the date of enactment of the National Flood Insurance Reform Act of 1993, and biannually thereafter for the next 4 years, the Board shall submit a report to Congress on compliance by insured credit unions with the requirements of the National Flood Insurance Program. The report shall include a description of the methods used to determine compliance, the number of insured credit unions examined during the reporting year, a listing and total number of insured credit unions found to be in noncompliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.".

**SEC. 207. PENALTIES AND CORRECTIVE ACTIONS FOR FAILURE TO REQUIRE FLOOD INSURANCE, ESCROW, OR NOTIFY.**

Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) (as amended by sections 202(a) and 204(a)) is further amended by adding at the end the following new subsections:

"(f) CIVIL PENALTIES.—

"(1) IN GENERAL.—A regulated lending institution that is found to have a pattern or practice of violating this section shall be assessed a civil penalty by the appropriate Federal entity for lending regulation of not more than $350 for each such violation. A penalty under this subsection may be issued only after notice and an opportunity for a hearing on the record.

"(2) TOTAL AMOUNT.—The total amount of penalties assessed under this subsection against a single regulated lending institution for any calendar year may not exceed $100,000.

"(3) SALES OR TRANSFERS.—The subsequent sale or other transfer of a loan by a regulated lending institution that has committed a violation of this section shall not affect the liability of the transferring institution with respect to any penalty under this subsection. An institution shall not be liable for a violation relating to a loan committed by another institution that previously held the loan.

"(4) 3-YEAR LIMIT.—No penalty may be imposed under this subsection after the expiration of the 3-year period beginning on the date of the occurrence of the violation.

"(g) ADDITIONAL ACTIONS.—If a Federal entity for lending regulation determines—

"(1) that a regulated lending institution has demonstrated a pattern and practice of noncompliance in violation of the regulations issued pursuant to subsection (b) or subsection (d) or the notice requirements under section 1364 of the National Flood Insurance Act of 1968, and

"(2) that the regulated lending institution has not demonstrated measurable improvement in compliance despite the issuance of penalties under subsection (f),

the agency may require the regulated lending institution to take such remedial actions as are necessary to ensure that the regulated lending institution is in satisfactory compliance with the requirements of the National Flood Insurance Program.".

**SEC. 208. FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.**

Section 1006 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3305) is amended by adding at the end the following new subsection:

"(g) FLOOD INSURANCE.—The Council shall consult and assist the Federal entities for lending regulation, as such term is defined in section 1370(a)(7) of the National Flood Insurance Act of 1968, in developing and coordinating uniform standards and requirements for use by regulated lending institutions and Federal agency lenders under the National Flood Insurance Program.".

**SEC. 209. CONFORMING AMENDMENT.**

The section heading for section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) is amended to read as follows:

"FLOOD INSURANCE PURCHASE AND COMPLIANCE REQUIREMENTS AND ESCROW ACCOUNTS".

## TITLE III—RATINGS AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT PROGRAMS

**SEC. 301. COMMUNITY RATING SYSTEM AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT.**

(a) REQUIREMENT FOR PARTICIPATION IN FLOOD INSURANCE PROGRAM.—Section 1315 of the National Flood Insurance Act of 1968 (42 U.S.C. 4022) is amended—

(1) by inserting after "SEC. 1315." the following: "(a) REQUIREMENT FOR PARTICIPATION IN FLOOD INSURANCE PROGRAM.—"; and

(2) by adding at the end the following new subsection:

"(b) COMMUNITY RATING SYSTEM AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT.—

"(1) AUTHORITY AND GOALS.—The Director shall carry out a community rating system program to evaluate the measures adopted by communities voluntarily participating in the community rating system, to provide incentives for measures to reduce the risk of flood or erosion damage that exceed the criteria set forth in section 1361, to encourage adoption of more effective measures for floodplain and erosion management, and to promote the reduction of Federal flood insurance losses.

"(2) INCENTIVES.—The program shall provide incentives in the form of credits on premium rates for flood insurance coverage in communities that the Director determines have adopted and enforced measures to reduce the risk of flood and erosion damage that exceed the criteria set forth in section 1361. In providing incentives under this paragraph, the Director may provide for credits to flood insurance premium rates in communities that the Director determines have implemented measures relating to—

"(A) the protection of natural and beneficial floodplain functions; and

"(B) the management of erosion hazards.

"(3) CREDITS.—The credits on premium rates for flood insurance coverage shall be based on the estimated reduction in flood damage risks resulting from the measures adopted by the community under this program.

(b) REPORTS.—Two years after the date of enactment of the National Flood Insurance Reform Act of 1993 and biannually thereafter, the Director shall submit a report to the Congress regarding the program under section 1315(a) of the National Flood Insurance Act of 1968. Each report shall include an analysis of the cost-effectiveness and other accomplishments and shortcomings of the program and any recommendations of the Director for legislation regarding the program.

**SEC. 302. FUNDING.**

Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—

(1) in paragraph (4), by striking "and" at the end;

(2) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(3) by adding after paragraph (5) the following new paragraph:

"(6) for carrying out the program under section 1315(b);".

## TITLE IV—MITIGATION OF FLOOD AND EROSION RISKS

**SEC. 401. MITIGATION ASSISTANCE IN FEDERAL INSURANCE ADMINISTRATION.**

Section 1105(a) of the Housing and Urban Development Act of 1968 (42 U.S.C. 4129(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2) The Director of the Federal Emergency Management Agency shall coordinate all mitigation activities, including the administration of the program for mitigation assistance under section 1367, under the Federal Insurance Administrator. These activities shall include the development and implementation of various mitigation activities and techniques, the provision of advice and assistance regarding mitigation to States, communities, and individuals, including planning assistance under section 1367(d), coordination with other Federal flood and erosion mitigation efforts, and coordination with State and local governments and public and private agencies and organizations for collection and dissemination of information regarding erosion.".

**SEC. 402. AUTHORIZATION OF NATIONAL FLOOD AND EROSION MITIGATION FUNDS UNDER SECTION 1362.**

Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.), is amended by adding at the end the following new section:

**"SEC. 1366. NATIONAL FLOOD AND EROSION MITIGATION PROGRAM.**

"(a) EXPENDITURES.—For flood and erosion mitigation activities authorized under section 1367, the Director may expend from the National Flood Insurance Fund—

"(1) up to $10,000,000 in the fiscal year ending September 30, 1994;

"(2) up to $15,000,000 in the fiscal year ending September 30, 1995;

"(3) up to $20,000,000 in the fiscal year ending September 30, 1996;

"(4) up to $20,000,000 in each fiscal year thereafter; and

"(5) any amounts recaptured under section 1367(i).

"(b) REPORT.—Not later than 1 year after the date of enactment of the National Flood Insurance Reform Act of 1993 and biannually thereafter, the Director shall submit a report to the Congress describing the status of flood and erosion mitigation activities carried out with funds authorized under this section.".

**SEC. 403. STATE AND COMMUNITY MITIGATION ASSISTANCE PROGRAM.**

(a) IN GENERAL.—Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.) is amended by adding at the end the following new section:

**"SEC. 1367. STATE AND COMMUNITY MITIGATION ASSISTANCE.**

"(a) AUTHORITY.—The Director shall develop and implement a financial assistance program with amounts made available under section 1366 to States and communities for planning and activities designed to reduce the risk of flood and erosion damage to insured structures.

"(b) MITIGATION PLAN REQUIREMENT.—To be eligible to receive financial mitigation assistance, a State or community shall develop, and have approved by the Director, a flood and erosion risk mitigation plan (hereafter in this section referred to as a 'mitigation plan'), that is more protective against flood losses and if applicable, erosion losses, than the criteria established by the Director under section 1361. The mitigation plan shall include a comprehensive strategy for mitigation activities adopted by the State or community following a public hearing.

"(c) NOTIFICATION OF APPROVAL.—Not later than 120 days after the submission of a mitigation plan, the Director shall notify the State or community submitting the plan of the Director's approval or disapproval of the plan. If the Director does not approve a plan, the Director shall notify the State or community in writing of the reasons for such disapproval.

"(d) PLANNING ASSISTANCE.—

"(1) IN GENERAL.—The Director shall make planning assistance available to States and communities for developing mitigation plans.

"(2) FUNDING.—From any amounts made available for use under section 1366 of the National Flood Insurance Act of 1968 in any fiscal year, the Director may use not more than $1,500,000 to provide planning assistance grants to States or communities to develop mitigation plans under this subsection.

"(3) LIMITATIONS.—

"(A) TIMING.—A grant for planning assistance may be awarded to a State or community once every 5 years and each grant may cover a period of 1 to 3 years.

"(B) AMOUNT.—A grant for planning assistance may not exceed—

"(i) $150,000, to any State; or

"(ii) $50,000, to any community.

"(C) GEOGRAPHIC.—Not more than $300,000 may be awarded to any 1 State and all communities located in that State for planning assistance in each fiscal year.

"(e) ELIGIBLE MITIGATION ACTIVITIES.—The Director shall determine eligibility for assistance under this section for mitigation activities that shall be technically feasible and cost-effective. These activities may include—

"(1) elevation, relocation, demolition, or floodproofing of structures;

"(2) acquisition by States and communities of property substantially damaged by flood for public use as the Director determines is consistent with sound land management and use in such area; and

"(3) the provision of technical assistance by States to communities and individuals to conduct eligible mitigation activities.

"(f) LIMITATIONS ON MITIGATION ASSISTANCE.—

"(1) AMOUNT.—The amount of mitigation assistance provided under subsection (e) may not exceed in any 5-year period—

"(A) $10,000,000, to any State; or

"(B) $3,300,000, to any community.

"(2) GEOGRAPHIC.—Not more than $20,000,000 may be awarded to any 1 State and all communities located in that State for mitigation assistance in any 5-year period.

"(g) MATCHING REQUIREMENT.—The Director may provide mitigation assistance to a State or community in an amount not to exceed 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from other funds to carry out mitigation planning under subsection (d) and eligible activities under subsection (e).

"(h) OVERSIGHT OF MITIGATION PLANS.—The Director shall conduct oversight of recipients of mitigation assistance to ensure that the mitigation assistance is used in compliance with approved plans.

"(i) RECAPTURE.—If the Director determines that a State or community that has received mitigation assistance has not carried out the mitigation activities as set forth in the mitigation plan, the Director shall recapture any unexpended amounts and deposit the amounts in the Fund.

"(j) DEFINITION OF COMMUNITY.—For purposes of this section, the term 'community' means a political subdivision that has zoning and building code jurisdiction over a particular area of special flood hazards, and that is participating in the National Flood Insurance Program.".

(b) REGULATIONS.—Not later than 6 months after date of enactment of this Act, the Director of the Federal Emergency Management Agency shall issue regulations implementing section 1367 of the National Flood Insurance Act of 1968, as added by subsection (a).

**SEC. 404. REPEAL OF PROGRAM FOR PURCHASE OF CERTAIN INSURED PROPERTIES.**

(a) REPEAL.—Section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) is repealed.

(b) TRANSITION.—Notwithstanding the repeal under subsection (a), the Director of the

Federal Emergency Management Agency may continue to purchase property under subsections (a) and (b) of section 1362 of the National Flood Insurance Act of 1968, as such section existed immediately before the date of enactment of this Act, for a period of 1 year beginning on the date of enactment of this Act.

**SEC. 405. TERMINATION OF EROSION THREATENED STRUCTURES PROGRAM.**

(a) IN GENERAL.—Section 1306 of the National Flood Insurance Act of 1968 (42 U.S.C. 4013) is amended by striking subsection (c).

(b) TRANSITION.—The Director of the Federal Emergency Management Agency (hereafter in this title referred to as the "Director") may pay amounts under flood insurance contracts for demolition or relocation of structures as provided in section 1306(c) of the National Flood Insurance Act of 1968 (as in effect immediately before the date of enactment of this Act) only during the 1-year period beginning on the date of enactment of this Act.

**SEC. 406. LIMITATIONS ON NEW FLOOD INSURANCE COVERAGE IN EROSION HAZARD AREAS.**

The National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is amended by inserting after section 1313 the following new section:

**"SEC. 1314. PROPERTIES LOCATED WITHIN 30-YEAR AND 60-YEAR EROSION HAZARD AREAS.**

"(a) PROPERTIES LOCATED WITHIN 30-YEAR EROSION HAZARD AREA.—After the establishment of erosion hazard areas under section 1360(i), the Director may not make flood insurance available within a 30-year erosion hazard area with respect to any new—

"(1) construction; or

"(2) addition to an existing structure, if the addition makes the structure not readily movable.

"(b) PROPERTIES LOCATED WITHIN 60-YEAR EROSION HAZARD AREA AND OUTSIDE 30-YEAR EROSION HAZARD AREA.—After the establishment of erosion hazard areas under section 1360(i), the Director may not make flood insurance available with respect to any new—

"(1) nonresidential structure;

"(2) residential structure that is not readily movable; or

"(3) addition to an existing structure, if the addition makes the structure not readily movable;

that is constructed or relocated landward of the 30-year erosion hazard area and within the 60-year erosion hazard area established by the Director under such section.".

**SEC. 407. RIVERINE EROSION STUDY.**

(a) STUDY.—The Director shall conduct a study to determine the feasibility of identifying and establishing riverine erosion hazard areas, erosion rates, and baseline reference features, and the best methods of community management of such hazards consistent with section 1361 of the National Flood Insurance Act of 1968. In conducting the study, the Director shall—

(1) investigate and assess existing and state-of-the-art technical methodologies for assessing riverine erosion;

(2) examine and evaluate natural riverine processes, environmental conditions, human-induced changes to the banks of rivers and streams, examples of erosion and likely causes, and examples of erosion control; and

(3) analyze riverine erosion management strategies, the technical standards, methods, and data necessary to support such strategies, and methods of administering such strategies through the National Flood Insurance Program.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director shall submit a report to the Congress regarding the findings and conclusions of the study under this section. The report shall include any recommendations of the Director regarding appropriate methods and approaches for identifying and determining riverine erosion hazard areas and management strategies relating to riverine erosion.

**SEC. 408. COORDINATION WITH COASTAL ZONE MANAGEMENT PROGRAMS.**

(a) IN GENERAL.—In the implementation of this title and the amendments made pursuant to this title, the Director shall consult with the Under Secretary of Commerce for Oceans and Atmosphere and representatives from State coastal zone management programs to promote full coordination of the erosion management provisions of the National Flood Insurance Act of 1968 as amended by this Act, and the provisions of the Coastal Zone Management Act of 1972. The Director shall, to the greatest extent possible, utilize State management programs approved under section 306 of the Coastal Zone Management Act of 1972 to facilitate development and implementation of regulations and guidelines for this title.

(b) COORDINATION REPORT.—The Director and the Under Secretary of Commerce for Oceans and Atmosphere shall jointly prepare a report that details the proposed mechanisms for achieving the coordination required in subsection (a). This report shall be transmitted to the Congress not later than 2 years after the date of enactment of this Act.

## TITLE V—FLOOD INSURANCE TASK FORCE

**SEC. 501. FLOOD INSURANCE INTERAGENCY TASK FORCE.**

(a) ESTABLISHMENT.—There is established an interagency task force to be known as the Flood Insurance Task Force (hereafter in this title referred to as the "Task Force").

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Task Force shall consist of 11 members, who shall be the designees of—

(A) the Director of the Federal Emergency Management Agency;

(B) the Federal Housing Commissioner;

(C) the Secretary of Veterans Affairs;

(D) the Administrator of the Farmers Home Administration;

(E) the Administrator of the Small Business Administration;

(F) each member of the Federal Financial Institutions Examination Council;

(G) the chairman of the Board of Directors of the Federal Home Loan Mortgage Corporation; and

(H) the chairman of the Board of Directors of the Federal National Mortgage Association.

(2) QUALIFICATIONS.—Members of the Task Force shall be designated for membership on the Task Force by reason of demonstrated knowledge and competence regarding the National Flood Insurance Program.

(c) DUTIES.—The Task Force shall—

(1) make recommendations to the head of each Federal agency and corporation referred to under subsection (b)(1) regarding the establishment or adoption of standardized enforcement procedures among such agencies and corporations responsible for enforcing compliance with the requirements under the National Flood Insurance Program to ensure the fullest possible compliance with such requirements;

(2) study the extent to which Federal agencies and the secondary mortgage market can provide assistance in ensuring compliance with the requirements under the National Flood Insurance Program;

(3) study the extent to which existing programs of Federal agencies and corporations for compliance with the requirements under the National Flood Insurance Program can serve as a model for other Federal agencies responsible for enforcing compliance, and submit to the Congress a report describing the study and any conclusions;

(4) study the extent to which the flood insurance premium rate structure could be revised to minimize existing premium rate subsidies, to incorporate premium rate adjustments for erosion hazards, to account for catastrophic loss events, and propose strategies to establish an actuarial-based premium structure to account for all insurable risks identified under the National Flood Insurance Act of 1968, as amended by this Act; and

(5) develop guidelines regarding enforcement and compliance procedures, based on the studies and findings of the Task Force and publishing the guidelines in a usable format.

(d) REPORTS.—Not later than 2 years after the date of enactment of this Act, the Task Force shall transmit to the Congress a report describing its studies and any conclusions.

(e) COMPENSATION.—Members of the Task Force shall receive no additional compensation by reason of their service on the Task Force.

(f) CHAIRPERSON.—The members of the Task Force shall elect 1 member to serve as the chairperson of the Task Force (hereafter in this section referred to as the "Chairperson").

(g) MEETINGS AND ACTION.—The Task Force shall meet at the call of the Chairperson or a majority of the members of the Task Force and may take action by a vote of the majority of the members. The Federal Insurance Administrator shall coordinate and call the initial meeting of the Task Force.

(h) OFFICERS.—The Chairperson may appoint officers to carry out the duties of the Task Force under subsection (c).

(i) STAFF OF FEDERAL AGENCIES.—Upon the request of the Chairperson, the head of any of the Federal agencies and corporations referred to in subsection (b)(1) may detail, on a nonreimbursable basis, any of the personnel of the agency to the Task Force to assist the Task Force in carrying out its duties under this Act.

(j) POWERS.—In carrying out this section, the Task Force may hold hearings, sit and act at times and places, take testimony, receive evidence and assistance, provide information, and conduct research as the Task Force considers appropriate.

(k) TERMINATION.—The Task Force shall terminate 2 years after the date on which all members of the Task Force have been designated under subsection (b)(1).

## TITLE VI—MISCELLANEOUS PROVISIONS

**SEC. 601. MAXIMUM FLOOD INSURANCE COVERAGE AMOUNTS.**

(a) IN GENERAL.—Section 1306(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(b)) is amended—

(1) in paragraph (1)(A)—

(A) by inserting "and" at the end of clause (i); and

(B) by striking clause (iii);

(2) by striking subparagraph (B) of paragraph (1) and inserting the following new subparagraph:

"(B) in the case of any nonresidential property, including churches—

"(i) $100,000 aggregate liability for each structure; and

"(ii) $100,000 aggregate liability for any contents related to each structure;";

(3) by striking subparagraph (C) of paragraph (1);

(4) in paragraph (2), by striking "so as to enable" and all that follows through the end of the paragraph and inserting "up to an amount, including the limits specified in clause (i) of paragraph (1)(A), of $250,000 multiplied by the number of dwelling units in the building;";

(5) in paragraph (3), by striking "so as to enable" and all that follows through the end of the paragraph and inserting "up to an amount of $90,000 for any single-family dwelling and $240,000 for any residential structure containing more than one dwelling unit;"; and

(6) by striking paragraph (4) and inserting the following new paragraph:

"(4) in the case of any nonresidential property, including churches, additional flood insurance in excess of the limits specified in clauses (i) and (ii) of paragraph (1)(B) shall be made available to every insured upon renewal and every applicant for insurance up to an amount of $2,400,000 for each structure and $2,400,000 for any contents related to each structure; and".

(b) REMOVAL OF CEILING ON COVERAGE REQUIRED.—Section 1306(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(b)) is amended—

(1) in paragraph (5), by striking "; and" at the end and inserting a period;

(2) by striking paragraph (6); and

(3) by adding at the end the following new flush sentence:

"Upon determining that a property is a repetitive loss structure, the Director shall charge the applicable risk premium rate for flood insurance based on consideration of the risk involved and accepted actuarial principles under section 1307(a)(1).".

(c) CONFORMING AMENDMENTS.—Section 1306(b)(5) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(b)(5)) is amended—

(1) by striking "(A), (B), or (C)" and inserting "(A) or (B)"; and

(2) by striking "(1)(C),".

**SEC. 602. ADDITIONAL COVERAGE FOR COMPLIANCE WITH LAND USE AND CONTROL MEASURES.**

Section 1304(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4011(a)) is amended by inserting before the period ", including the cost of compliance with land use and control measures adopted by the State or community pursuant to section 1315, for properties that are repetitive loss structures or that have flood damage in which the cost of repairs equals or exceeds 50 percent of the value of the structure at the time of the flood event".

**SEC. 603. FLOOD INSURANCE PROGRAM ARRANGEMENTS WITH PRIVATE INSURANCE ENTITIES.**

Section 1345(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4081(b)) is amended by striking the period at the end and inserting the following: "and without regard to the provisions of the Federal Advisory Committee Act.".

**SEC. 604. UPDATING OF FLOOD INSURANCE MAPS AND IDENTIFICATION OF EROSION HAZARD AREAS.**

(a) 5-YEAR UPDATES.—Section 1360 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101) is amended by adding at the end the following new subsections:

"(e) ASSESSMENT OF NEED TO UPDATE AREAS.—(1) Once during each 5-year period (the 1st such period beginning on the date of enactment of the National Flood Insurance Reform Act of 1993), or more often as the Director determines necessary, the Director shall assess the need to revise and update the flood insurance rate map.

"(2) Upon the request of a State or community stating that a flood insurance rate map needs revision or updating and the State or community making the request agrees to provide not less than 50 percent of the cost, or the equivalent value of data, technical analysis, or other in-kind services, for the requested revision or update, the Director shall review and update the flood insurance rate map for the State or community.

"(f) AVAILABILITY.—To promote compliance with the requirements of this title, the Director shall make flood insurance rate maps and related information available free of charge to State agencies directly responsible for coordinating the National Flood Insurance Program and to appropriate representatives of communities participating in the National Flood Insurance Program, and at a reasonable cost to all other persons pursuant to section 1310.

"(g) NOTIFICATION.—The Director shall publish in the Federal Register or by other comparable method, not later than 30 days after the map change or revision under this section becomes effective, notices of changes to flood insurance map panels, and changes to flood insurance map panels issued in the form of Letters of Map Amendment and Letters of Map Revision. Such comparable methods shall include all pertinent information, provide for regular and frequent distribution, and be at least as accessible to map users as the Federal Register. Notices published in the Federal Register, or otherwise, shall also include information on how to obtain copies of the changes or revisions.

"(h) AVAILABILITY.—Every 6 months, the Director shall publish separately and make available in their entirety within a compendium, all changes and revisions to flood insurance map panels and all Letters of Map Amendment and Letters of Map Revision that were published in the Federal Register or distributed through other comparable methods during the preceding 6 months, free of charge, to States and communities participating in the National Flood Insurance Program pursuant to section 1310 and at cost to all other parties.".

(b) ASSESSMENT, IDENTIFICATION, AND MAPPING OF EROSION HAZARD AREAS.—Section 1360 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101) (as amended by subsection (a)) is further amended by adding at the end the following new subsection:

"(i) ASSESSMENT, IDENTIFICATION, AND MAPPING OF EROSION HAZARD AREAS.—

"(1) IN GENERAL.—Not later than 60 months after the date of enactment of the National Flood Insurance Reform Act of 1993, the Director shall, using erosion rate information and other historical data, assess, identify, and map all erosion hazard areas.

"(2) MAPPING PRIORITIES.—Not later than 2 years after the date of enactment of the National Flood Insurance Reform Act of 1993, the Director shall determine areas that are at greatest risk from erosion and assess, identify, and map the erosion hazard areas in these areas.

"(3) CONSIDERATION OF MITIGATION ACTIVITIES.—In identifying and mapping erosion hazard areas, the Director shall determine erosion rates based on the presence of any community erosion control measures and erosion of the area in the absence of the project. The Director shall use the lower estimated erosion rate in the determination of erosion hazard areas.

"(4) TRANSITION.—Until the Director has assessed, identified, and mapped erosion rate data for a community, the community may obtain, review, and reasonably use erosion rate information or other historical data available from other Federal, State, or other sources in order to develop a mitigation plan.

"(5) STATE EROSION RATE DATA AND BASELINE REFERENCE FEATURES AND STATE AND COMMUNITY LOSS REDUCTION PROGRAMS.—The Director shall, to the maximum extent practicable, use State or community erosion rate data and baseline reference features in designating erosion hazard areas under this title.

"(6) EROSION HAZARDS.—On each flood insurance rate map established under this section, the Director shall publish erosion rates for areas that are subject to erosion hazards. These erosion rates shall be used to identify areas that are subject to erosion hazards within a 60-year period (hereafter referred to as the '60-year erosion hazard area'), and for areas that are subject to erosion hazards within a 30-year period (hereafter referred to as the '30-year erosion hazard area') as measured from a baseline reference feature. On each flood insurance rate map, the Director shall identify and provide legible demarcation of the baseline reference feature. The Director may also provide for legible demarcation of erosion hazard areas where map scale or other limitations allow for such demarcation.

"(7) REVISION OF EROSION HAZARD AREAS.—In revising the demarcation of the baseline reference feature and erosion rate data, the legible demarcation of erosion hazard areas, or geographical boundaries of erosion hazard areas, the Director shall give special consideration to—

"(A) areas (or subdivisions thereof) that are experiencing or have recently experienced erosion rates in excess of the erosion rate established under this section, due to storms, high lake levels, or other extraordinary events creating a dynamic change in the local erosion rate; and

"(B) areas in which community erosion control measures have been implemented or erosion rates established under this section have been significantly altered otherwise by manmade or induced activity.

"(8) REVIEW.—The Director shall consult with State and community governments in the determination of erosion hazard areas, and shall provide for a public review and appeals process comparable to the established review and appeals process for flood elevation determinations required under this title.".

**SEC. 605. TECHNICAL MAPPING ADVISORY COUNCIL.**

(a) ESTABLISHMENT.—There is established a council to be known as the Technical Mapping Advisory Council (hereafter in this section referred to as the "Council").

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall consist of the Director of the Federal Emergency Management Agency (hereafter in this section referred to as the "Director"), or the Director's designee, and 12 additional members to be appointed by the Director or his designee, and shall include—

(A) the Under Secretary of Commerce for Oceans and Atmosphere (or his or her designee);

(B) a member of recognized surveying and mapping professional associations and organizations;

(C) a member of recognized professional engineering associations and organizations;

(D) a member of recognized professional associations or organizations representing flood hazard determination firms;

(E) a representative of the United States Geologic Survey;

(F) a representative of State geologic survey programs;

(G) a representative of State national flood insurance coordination offices;

(H) a representative of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; and

(I) a representative of a regulated lending institution.

(2) QUALIFICATIONS.—Members of the Council shall be appointed based on their demonstrated knowledge and competence regarding surveying, cartography, remote sensing, geographic information systems, or the technical aspects of preparing and using flood insurance rate maps.

(c) DUTIES.—The Council shall—

(1) make recommendations to the Director on how to improve in a cost-effective manner the accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps;

(2) recommend to the Director mapping standards and guidelines for flood insurance rate maps; and

(3) transmit an annual report to the Director describing—

(A) the activities of the Council;

(B) an evaluation of the status and performance of flood insurance rate maps and mapping activities to update and revise flood insurance rate maps as established by the amendments made under section 604; and

(C) a summary of recommendations made by the Council to the Director.

(d) CHAIRPERSON.—The members of the Council shall elect 1 member to serve as the chairperson of the Council (hereafter in this section referred to as the "Chairperson").

(e) COORDINATION.—To ensure that the Council's recommendations are consistent to the maximum extent practicable with national digital spatial data collection and management standards, the Chairperson shall consult with the Chairperson of the Federal Geographic Data Committee (established pursuant to OMB Circular A-16).

(e) COMPENSATION.—Members of the Council shall receive no additional compensation by reason of their service on the Council.

(g) MEETINGS AND ACTIONS.—

(1) IN GENERAL.—The Council shall meet not less than twice each year at the request of the Chairperson or a majority of its members and may take action by a vote of the majority of the members.

(2) INITIAL MEETING.—The Director, or a person designated by the Director, shall request and coordinate the initial meeting of the Council.

(h) OFFICERS.—The Chairperson may appoint officers to assist in carrying out the duties of the Council under subsection (c).

(i) STAFF OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.—Upon the request of the Chairperson, the Director may detail, on a nonreimbursable basis, personnel of the Federal Emergency Management Agency to assist the Council in carrying out its duties.

(j) POWERS.—In carrying out this section, the Council may hold hearings, receive evidence and assistance, provide information, and conduct research as it considers appropriate.

(k) TERMINATION.—The Council shall terminate 5 years after the date on which all members of the Council have been appointed under subsection (b)(1).

**SEC. 606. FUNDING FOR INCREASED ADMINISTRATIVE AND OPERATIONAL RESPONSIBILITIES.**

(a) AVAILABILITY OF FUND.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) (as amended by section 302) is further amended—

(1) in the matter preceding paragraph (1), by inserting "(except as otherwise provided)" after "without fiscal year limitation"; and

(2) by adding at the end the following new paragraphs:

"(7) for assessment and mapping of erosion hazard areas under section 1360(1), except that the fund shall be available for the purpose under this paragraph in an amount not to exceed an aggregate of $25,000,000 over the 5-year period beginning on the date of enactment of the National Flood Insurance Reform Act of 1993; and

"(8) for revising and updating flood insurance rate maps under section 1360(1), except that the fund shall be available for the purpose under this paragraph in an amount not to exceed $2,000,000, in each fiscal year beginning after the expiration of the 2-year period beginning on the date of enactment of the National Flood Insurance Reform Act of 1993.".

(b) CREDITS OF FUND.—Section 1310(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(b)) is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) by redesignating paragraph (6) as paragraph (7); and

(3) by inserting after paragraph (5) the following new paragraph:

"(6) any penalties collected under section 102(f) of the Flood Disaster Protection Act of 1973; and".

**SEC. 607. REGULATIONS.**

The Director of the Federal Emergency Management Agency, and any head of an appropriate Federal agency may each issue any regulations necessary to carry out the applicable provisions of this Act and the applicable amendments made by this Act.

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SECTION-BY-SECTION SUMMARY OF THE NATIONAL FLOOD INSURANCE REFORM ACT OF 1993

Sec. 1. Short Title and Table of Contents.

This title may be cited as the "National Flood Insurance Reform Act of 1993."

Sec. 2. Congressional Findings.

Sec. 3. Declaration of Purpose Under The National Flood Insurance Act Of 1968.

Encourages state and local governments to protect natural and beneficial floodplain functions that reduce flood-related losses.

TITLE I—DEFINITIONS.

Sec. 101. Flood Disaster Protection Act of 1973.

Defines the terms "Federal entity for lending regulation," "regulated lending institution," and "Federal agency lender." Requires all regulated lending institutions and federal agency lenders to enforce the mandatory purchase requirement for flood insurance.

Sec. 102. National Flood Insurance Act of 1968.

Defines the terms "Federal entity of lending regulation," "regulated lending institution," "Federal agency lender," "natural and beneficial floodplain functions," "erosion hazard area," "state coastal zone program," "erosion control measures," "baseline reference feature," "readily movable structure," and "repetitive loss structure."

TITLE II—COMPLIANCE AND INCREASED PARTICIPATION.

Sec. 201. Expanded Flood Insurance Purchase Requirements.

Extends the mandatory purchase requirements to Federal agency lenders and to Fannie Mae and Freddie Mac effective one year after the date of enactment.

Sec. 202. Escrow Of Flood Insurance Payments.

Requires regulated lending institutions and federal agency lenders to escrow for flood insurance payments if the lender or federal agency escrows for other taxes, insurance premiums and fees effective one year after date of enactment.

Sec. 203. Notice Requirements.

Requires regulated lending institutions and federal agency lenders to notify borrowers of special flood hazards. Requires participating communities upon receiving a semi-annual list of map changes to annually publicly notify affected property owners and local regulated lending institutions of the flood insurance purchase requirement for newly determined properties. Specifies the contents of the notice.

Sec. 204. Placement of Flood Insurance by Regulated Lending Institution or Federal Agency Lender.

Authorizes a regulated lending institution or Federal agency lender to purchase flood insurance on behalf of the borrower within 60 days if the property is found to be in a special flood hazard area without flood insurance. Borrowers may dispute flood determinations and, if a property is found not to be in a special flood hazard area, a letter of such findings issued by the Director of FEMA relieves the obligation of lenders and Federal agencies to require flood insurance. Such a letter is valid for one year after date of issuance.

Sec. 205. Standard Flood Hazard Determination Form.

Requires development of a standard flood hazard determination form for use by regulated lending institutions, Federal agency lenders, and Fannie Mae and Freddie Mac for real estate loans and mortgages. Provides for guarantees regarding the accuracy of flood determination information by third parties and reliance on such information for five years.

Sec. 206. Examinations Regarding Compliance by Regulated Lending Institutions.

Requires appropriate federal entities for lending regulation as part of scheduled on-site examinations to determine whether an institution is complying with the requirements of the NFPI and to report such findings to Congress.

Sec. 207. Penalties and Corrective Actions For Failure To Require Flood Insurance, Escrow, or Notify.

Imposes up to a $350 fine per violation on regulated lending institutions for a pattern and practice of failure to require flood insurance, to escrow, or to notify for flood insurance. Total penalties may not exceed $100,000 for any lender in any one year.

Sec. 208. Federal Financial Institutions Examination Council.

The Council shall consult and assist federal regulators and the Director of FIA in developing and coordinating uniform standards and requirements for use by lenders.

Sec. 209. Conforming Amendment.

Changes the heading of section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) to read: "Flood Insurance Purchase and Compliance Requirements and Escrow Accounts".

TITLE III—RATINGS AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT PROGRAMS.

Sec. 301. Community Rating System And Incentives For Community Floodplain Management.

Authorizes a Community Rating System to provide premium rate credits for communities that implement land use and loss control measures that exceed the minimum criteria, to promote flood insurance awareness, and to provide incentives for management of natural and beneficial floodplain functions and erosion hazards.

Sec. 302. Funding.

Authorizes funds to carry out this program from the National Flood Insurance Fund.

TITLE IV—MITIGATION OF FLOOD AND EROSION RISKS.

Sec. 401. Mitigation Assistance In Federal Insurance Administration.

Authorizes the Federal Insurance Administrator to carry out a program for mitigation assistance available to eligible states and communities; to coordinate all mitigation activities; to develop and implement various mitigation techniques; to provide planning and technical assistance; and, to coordinate and collect information regarding erosion hazards.

Sec. 402. Authorization of National Flood and Erosion Mitigation Funds Under Sec. 1362.

Authorizes the expenditure of funds from the National Flood Insurance Fund for flood and erosion mitigation activities to be phased in at $10, $15 and $20 million over the first three fiscal years after date of enactment, not to exceed $20 million per fiscal year thereafter. Requires the Director to report to Congress regarding the status of activities carried out with funds made available under this section.

Sec. 403. State and Community Mitigation Assistance Program.

Authorizes a financial assistance program to implement mitigation activities including building acquisition, elevation, relocation, demolition or floodproofing, and technical assistance. States and communities are eligible pending approval of mitigation plans. Planning assistance grants are available and capped at $150,000 to any State or $50,000 to any community, limited $300,000 to any state per year. Mitigation grant amounts are capped at $10 million per state, and $3.3 million per community over a 5-year period, limited to $20 million per state in any five-year period. All grants require a 75/25 non-federal fund match. Compliance with mitigation plans is to be monitored, and unexpended funds are to be recaptured by the Director.

Sec. 404. Repeal of Program Purchase of Certain Insured Properties.

Section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) is repealed. This activity is included in the mitigation assistance program.

Sec. 405. Termination of Erosion Threatened Structures Program.

Terminates the current Sec. 1306(c) Jones/Upon program one year after date of enactment. Relocation and demolition are activities included in the mitigation assistance program.

Sec. 406. Limitations on New Flood Insurance Coverage in Erosion Hazard Areas.

Federal flood insurance will not be available for new construction or additions to existing structures that make them not readily movable within 30-year erosion hazard areas, and limits availability of flood insurance to new readily movable residential structures within 60-year erosion hazard areas.

Sec. 407. Riverine Erosion Study.

Requires FEMA to conduct a study to determine the feasibility of identifying riverine erosion hazards and methods for management. A report of findings is to be submitted to Congress within two years after date of enactment.

Sec. 408. Coordination With Coastal Zone Management Programs.

Requires FEMA to consult with NOAA to promote full coordination regarding coastal erosion management under the National Flood Insurance Act of 1968 and the Coastal Zone Management Act of 1972. Approved state CZM program are to be utilized in the development of regulations and guidelines. A coordination report is to be filed jointly by FEMA and NOAA one year after date of enactment.

TITLE V—FLOOD INSURANCE TASK FORCE.

Sec. 501. Flood Insurance Interagency Task Force.

Establishes an interagency task force to conduct studies and make recommendations regarding: secondary market compliance and enforcement of insurance purchase requirements; existing federal compliance programs; actuarial adjustments to premium rates; enforcement and compliance of guidelines; and, implementation of loss reduction provisions. A report is to be submitted 2 years after date of enactment.

TITLE VI—MISCELLANEOUS PROVISIONS.

Sec. 601. Maximum Flood Insurance Coverage Amounts.

Coverage amounts are increased for single-family residences from $100,000 to $250,000, and from $250,000 to $2.4 million for non-residential properties. Authorizes excess coverage not to exceed $250,000 for reconstruction of structures to meet land use criteria under section 1361(c). Authorizes the Director to charge applicable premium rates for repetitive loss structures.

Sec. 602. Additional Coverage for Compliance with Land Use and Control Measures.

Authorizes coverage to enable compliance with land use and control measures adopted by States or communities under section 1315 for repetitive loss structures or for flood which exceed 50% of the value of the structure.

Sec. 603. Flood Insurance Program Arrangement With Private Insurance Entities.

Exempts arrangements made between FEMA and private insurers from the Federal Advisory Committee Act.

Sec. 604. Updating of Flood Insurance Maps and Identification of Erosion Hazard Areas.

Requires FEMA to update flood insurance maps every 5 years, or more frequently if necessary, and to distribute revised maps free of charge to states and communities. Requires FEMA to publish changes within 30 days, and requires FEMA to publish a compendium of all changes every 6 months. Requires FEMA to map 30- and 60-year erosion hazard areas using erosion rate data and baseline reference features and to subsequently update erosion areas as necessary. Requires the use of existing state erosion rate data and reference features and consideration of local mitigation activities.

Sec. 605. Technical Mapping Advisory Council.

Establishes an advisory council to provide guidance and recommendations to improve flood insurance rate maps.

Sec. 606. Funding for Increased Administrative and Operational Responsibilities.

Authorizes funding for administrative costs necessary to develop and service the program for mitigation assistance. Also authorizes $25 million over 5 years for mapping erosion zones, and $2 million per year for revising erosion hazard areas starting 2 years after date of enactment.

Sec. 607. Regulations.

The Director of FEMA and any appropriate head of any federal agency may issue regulations necessary to implement provisions of this amendment.

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By Mr. KERREY (for himself and Mr. DASCHLE):

S. 1406. A bill to amend the Plant Variety Protection Act to make such act consistent with the International Convention for the Protection of New Varieties of Plants of March 19, 1991, to which the United States is a signatory, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

PLANT VARIETY PROTECTION ACT AMENDMENTS OF 1993

Mr. KERREY. Mr. President, today I am joined by Senator DASCHLE in introducing the Plant Variety Protection Act Amendments of 1993.

This legislation has three objectives. First, it is intended to ensure that those who risk the technological, financial, and other resources necessary to develop successful new seed varieties are rewarded for their investment and encouraged to continue this essential research.

Second, the measure is intended to make sure that those who have come to depend on steady germplasm advancements—including farmers, consumers, and others who benefit from plant improvements—continue to enjoy the economic and other rewards provided by scientific progress.

Finally, this bill is offered as a necessary step to fulfill the obligations incurred by the United States as a result of our participation in agreements designed to protect intellectual property rights in the international marketplace.

Mr. President, Federal protection of the intellectual property rights that arise from plant breeding is available in the United States in three forms: Plant patents, plant variety protection, and utility patents. Parental lines of crops normally sold as hybrids, such as corn and sunflowers, are protected as trade secrets which fall under State contract law.

Prior to 1930, plant breeding and research depended on federally funded agricultural experiment stations or the limited endeavors of private plant breeders to develop new varieties. Financial incentives for the private sector were inadequate to recover research and development costs. Indeed, the only opportunity for cost recovery was in the initial sales of the varieties, since purchasers could freely propagate the variety once it was released to the public.

To address this shortcoming and to encourage private investment in plant development, asexually-reproduced

plants were the first to receive protection with enactment of the Plant Patent Act of 1930 [PPA]. Because of doubts about whether sexually-reproduced plants would breed true-to-type, sexually-reproduced varieties continued to be bred primarily at public institutions and released without protection.

Two developments subsequently led to enactment of the Plant Variety Protection Act [PVPA] and its protection for sexually-reproduced varieties. First was eventual acceptance of the notion that sexually-reproduced varieties would breed true-to-type. Second was the formation, in 1960, by several European countries, of the International Union for the Protection of New Varieties of Plants [UPOV].

The PVPA was enacted in 1970: First, to provide economic incentive for companies to undertake the costs and risks inherent in producing new varieties and second, to alleviate the competitive disadvantage that American agriculture and breeders faced because European countries offered protection under UPOV.

In recent years, so-called utility patents have been granted on living material under the Patent and Trademark Act. Both asexually and sexually-reproduced plants which have been developed by traditional breeding, genetic engineering, tissue culture, and various other methods have received utility patents.

While similar in its intent of providing incentive and protection to inventors, the PVPA differs from the Patent and Trademark Act in a number of ways: The legal standards for protection are less stringent; administration is through the Department of Agriculture rather than the Patent and Trademark office; and exemptions allow the use of protected varieties in the development of new varieties and permit individual farmers to save and sell limited quantities of seed—the so-called "farmer's exemption."

Eligiblity for protection under the current PVPA requires that varieties be novel, distinct, uniform, and stable. The unobvious requirement of patent law, considered a more difficult hurdle, is supplanted in PVPA by distinctiveness—a requirement that the variety may be unique in one or more identifiable morphological, physiological, or other characteristics. Therefore, an obvious, but distinct, new variety, may be more easily protected under PVPA.

The research exemption was included to promote the free flow of germplasm—essential to the maintenance of genetic diversity. The farmer's exemption was included to allow farmers to continue their traditional practice of saving seed for their own planting needs and selling a limited quantity to their neighbors.

The International Convention for the Protection of new Varieties of Plants [UPOV], which prompted enactment of the PVPA, was updated in 1991 as part of the general strengthening of intellectual property rights in the international arena and in response to advancements in knowledge and technology. Twenty-one countries, including the United States, are now members of the UPOV, and 16 of those members, including the United States, have signed the updated treaty, although none have ratified the new treaty to date. Six other countries have breeders rights laws similar to UPOV and are expected eventually to comply with UPOV.

The major revisions to UPOV that were made in 1991 are as follows:

First, protection of all plant genera and first generation hybrids. Member countries must provide protection for all plant genera even if the variety will not be grown in the member country.

Second, extension of breeders' rights to propagating material. Production of propagating material without permission of the breeder is prohibited. In the original UPOV, production was allowed if it was not commercial use. This new restriction extends to both asexual, cuttings and tissue culture, and sexual, seed, reproduction of protected varieties. An exemption authorizes, but does not require, member countries to allow farmers to save seed for planting on their own holdings.

Third, extension of breeders' rights to harvested material. This provision prevents importation of harvested material of a protected variety from a country where protection is not available. Currently, only propagating material is protected.

Fourth, essential derivation. Defines essentially-derived varieties as new varieties which are predominantly derived from an initial variety with only one or a few clearly distinguishing characteristics. Essentially-derived varieties may be protected, but only with the permission of the owner of the initial variety. Thus, stronger protection is provided to developers of basic varieties.

Fifth, length of Protection. Protection is extended from 18 and 20 years to 20 and 25 years for non-woody varieties, respectively.

Additional changes may be required due to negotiations about intellectual property protection in other international treaties including the General Agreement on Tariffs and Trade [GATT], the World International Property Organization [WIPO], the Biodiversity Treaty [UNCED], and the North American Free-Trade Agreement [NAFTA].

Ratification of the new UPOV treaty requires the United States to make conforming changes in the PVPA. That is what the legislation I am introducing today is all about. The changes required—which are embodied in the legislation—first, extend protection to first generation hybrids; second, lengthen the term of protection to 20 years; third, extend protection to harvested plant parts; fourth, limit the farmer's exemption to saving seed for use only on their own holdings; fifth, define essentially derived; and sixth, modify the definitions of breeder and variety to conform to UPOV.

In the original effort to protect plant breeders' rights, Congress intended "To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest." The success of the PVPA can be judged from the increase in private sector research and development on plant breeding and the success of modern varieties.

For example, increases in crop yields since enactment of PVPA for major commodities range from 7 percent for alfalfa to 35 percent for cotton. According to USDA estimates, approximately 60 percent of the increase can be attributed to improvements in plant breeding. At the end of fiscal year 1992, nearly 3000 plant variety protection certificates were in force and 325 are expected to be issued in 1993.

In preparing this legislation, I requested technical assistance from the Department of Agriculture in drafting the changes necessary to bring the PVPA into compliance with the 1991 UPOV. The bill in its current form reflects those technical recommendations—nothing more, nothing less.

In discussions with representatives of farmers, commodity groups, seed industry representatives, Government officials, and others, it is apparent that the farmer's exemption is the most contentious issue. In fact, a case concerning the farmer's exemption has been appealed to the U.S. Supreme Court.

In addition, both public and private breeders have expressed some reservations about the practical application of the essentially-derived concept and the potential for restrictions on germplasm availability. Plant breeding is a progressive process. New varieties are based on past improvements and germplasm exchanges among plant breeders are common. Providing protection for developers of initial varieties may restrict such traditional exchanges, as well as preservation of plant material in germplasm centers.

For all these reasons I view the bill I am introducing today as a starting point—a reference point for further debate and discussion on this issue. I look forward to hearings on this legislation so that interested parties will have an opportunity to make additional recommendations for what modifications, if any, should be made in this legislation and whether, in fact

this particular effort is necessary and should move forward.

The text of the bill and a section-by-section analysis follow:

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

S. 1406

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; REFERENCES.**

(a) SHORT TITLE.—This Act may be cited as the "Plant Variety Protection Act Amendments of 1993".

(b) REFERENCES TO PLANT VARIETY PROTECTION ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

**SEC. 2. DEFINITIONS AND RULES OF CONSTRUCTION.**

Section 41 (7 U.S.C. 2401) is amended to read as follows:

**"SEC. 41. DEFINITIONS AND RULES OF CONSTRUCTION.**

"(a) DEFINITIONS.—As used in this Act:

"(1) BASIC SEED.—The term 'basic seed' means the seed planted to produce certified or commercial seed.

"(2) BREEDER.—The term 'breeder' means the person who directs the final breeding creating a variety or who discovers and develops a variety. If the actions are conducted by an agent on behalf of a principal, the principal, rather than the agent, shall be considered the breeder. The term does not include a person who redevelops or rediscovers a variety the existence of which is publicly known or a matter of common knowledge.

"(3) ESSENTIALLY DERIVED VARIETY.—

"(A) IN GENERAL.—The term 'essentially derived variety' means a variety that—

"(i) is predominantly derived from another variety (referred to in this paragraph as the 'initial variety') or from a variety that is predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

"(ii) is clearly distinguishable from the initial variety; and

"(iii) except for differences that result from the act of derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

"(B) METHODS.—An essentially derived variety may be obtained by the selection of a natural or induced mutant or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, transformation by genetic engineering, or other method.

"(4) KIND.—The term 'kind' means one or more related species or subspecies singly or collectively known by one common name, such as soybean, flax, or radish.

"(5) SEXUALLY REPRODUCED.—The term 'sexually reproduced' includes any production of a variety by seed.

"(6) UNITED STATES.—The terms 'United States' and 'this country' mean the United States, territories and possessions of the United States, and the Commonwealth of Puerto Rico.

"(7) VARIETY.—The term 'variety' means a plant grouping within a single botanical taxon of the lowest known rank, that, without regard to whether the conditions for plant variety protection are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, and other matter.

"(b) RULES OF CONSTRUCTION.—For the purposes of this Act:

"(1) SALE OR DISPOSITION FOR NONREPRODUCTIVE PURPOSES.—The sale or disposition, for other than reproductive purposes, of harvested material produced as a result of experimentation or testing of a variety to ascertain the characteristics of the variety, or as a by-product of increasing a variety, shall not be considered to be a sale or disposition for purposes of exploitation of the variety.

"(2) SALE OR DISPOSITION FOR REPRODUCTIVE PURPOSES.—The sale or disposition of a variety for reproductive purposes shall not be considered to be a sale or disposition for the purposes of exploitation of the variety if the sale or disposition is done as an integral part of a program of experimentation or testing to ascertain the characteristics of the variety, or to increase the variety on behalf of the breeder or the successor in interest of the breeder.

"(3) SALE OR DISPOSITION OF HYBRID SEED.—The sale or disposition of hybrid seed shall be considered to be a sale or disposition of harvested material of the varieties from which the seed was produced.

"(4) APPLICATION FOR PROTECTION OR ENTERING INTO A REGISTER OF VARIETIES.—The filing of an application for the protection or for the entering of a variety in an official register of varieties, in any country, shall be considered to render the variety a matter of common knowledge from the date of the application, if the application leads to the granting of protection or to the entering of the variety in the official register of varieties, as the case may be.

"(5) DISTINCTNESS.—The distinctness of one variety from another may be based on one or more identifiable morphological, physiological, or other characteristics (including any characteristics evidenced by processing or product characteristics, such as milling and baking characteristics in the case of wheat) with respect to which a difference in genealogy may contribute evidence.

"(6) PUBLICLY KNOWN VARIETIES.—

"(A) IN GENERAL.—A variety that is adequately described by a publication reasonably considered to be a part of the public technical knowledge in the United States shall be considered to be publicly known and a matter of common knowledge.

"(B) DESCRIPTION.—A description that meets the requirements of subparagraph (A) shall include a disclosure of the principal characteristics by which a variety is distinguished.

"(C) OTHER MEANS.—A variety may become publicly known and a matter of common knowledge by other means.".

**SEC. 3. RIGHT TO PLANT VARIETY PROTECTION; PLANT VARIETIES PROTECTABLE.**

Section 42 (7 U.S.C. 2402) is amended to read as follows:

**"SEC. 42. RIGHT TO PLANT VARIETY PROTECTION; PLANT VARIETIES PROTECTABLE.**

"(a) IN GENERAL.—The breeder of any sexually reproduced plant variety (other than fungi or bacteria) who has so reproduced the variety, or the successor in interest of the breeder, shall be entitled to plant variety protection for the variety, subject to the conditions and requirements of this Act, if the variety is—

"(1) new, in the sense that, on the date of filing of the application for plant variety protection, propagating or harvested material of the variety has not been sold or otherwise disposed of to other persons, by or with the consent of the breeder, or the successor in interest of the breeder, for purposes of exploitation of the variety—

"(A) in the United States, more than 1 year prior to the date of filing; or

"(B) in any area outside of the United States—

"(i) more than 4 years prior to the date of filing; or

"(ii) in the case of a tree or vine, more than 6 years prior to the date of filing;

"(2) distinct, in the sense that the variety is clearly distinguishable from any other variety the existence of which is publicly known or a matter of common knowledge at the time of the filing of the application;

"(3) uniform, in the sense that any variations are describable, predictable, and commercially acceptable; and

"(4) stable, in the sense that the variety, when sexually reproduced, will remain unchanged with regard to the essential and distinctive characteristics of the variety with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

"(b) MULTIPLE APPLICANTS.—

"(1) IN GENERAL.—If 2 or more applicants submit applications on the same effective filing date for varieties that cannot be clearly distinguished from one another, but that fulfill all other requirements of subsection (a), the applicant who first complies with all requirements of this Act shall be entitled to a certificate of plant variety protection, to the exclusion of any other applicant.

"(2) REQUIREMENTS COMPLETED ON SAME DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if 2 or more applicants comply with all requirements for protection on the same date, a certificate shall be issued for each variety.

"(B) VARIETIES INDISTINGUISHABLE.—If the varieties that are the subject of the applications cannot be distinguished in any manner, a single certificate shall be issued jointly to the applicants.".

**SEC. 4. APPLICATIONS.**

Section 52 (7 U.S.C. 2422) is amended—

(1) in paragraph (1), by adding at the end the following new sentence: "The variety shall be named in accordance with regulations issued by the Secretary.";

(2) in the first sentence of paragraph (2), by striking "novelty" and inserting "distinctiveness, uniformity, and stability";

(3) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(4) by inserting after paragraph (2) the following new paragraph:

"(3) A statement of the basis of the claim of the applicant that the variety is new.".

**SEC. 5. BENEFIT OF EARLIER FILING DATE.**

Section 55(a) (7 U.S.C. 2425(a)) is amended—

(1) by redesignating the first and second sentences as paragraphs (1) and (2), respectively;

(2) in paragraph (1) (as so designated), by inserting before the period at the end the following: ", not including the date on which the application is filed in the foreign country"; and

(3) by adding at the end the following new paragraph:

"(3)(A) An applicant entitled to a right of priority under this subsection shall be allowed to furnish any necessary information, document, or material required for the purpose of the examination of the application during—

"(i) the 2-year period beginning on the date of the expiration of the period of priority ; or

"(ii) if the first application is rejected or withdrawn, an appropriate period after the rejection or withdrawal, to be determined by the Secretary.

"(B) An event occurring within the period of priority (such as the filing of another application or use of the variety that is the subject of the first application) shall not constitute a ground for rejecting the application or give rise to any third party right.".

**SEC. 6. CONTENTS AND TERM OF PLANT VARIETY PROTECTION.**

Section 83 (7 U.S.C. 2483) is amended—

(1) in the second sentence of subsection (a), by striking "by variety name";

(2) in the first sentence of subsection (b)—

(A) by striking "eighteen" and inserting "20"; and

(B) by inserting before the period at the end the following: ", except that, in the case of a tree or vine, the term of the plant variety protection shall expire 25 years from the date of issue of the certificate"; and

(3) in subsection (c), by striking "repository: *Provided, however*, That" and inserting "repository, or requiring the submission of a different name for the variety, except that".

**SEC. 7. PRIORITY CONTEST.**

(a) PRIORITY CONTEST; EFFECT OF ADVERSE FINAL JUDGMENT OR INACTION.—Sections 92 and 93 (7 U.S.C. 2502 and 2503) are repealed.

(b) INTERFERING PLANT; VARIETY PROTECTION.—

(1) REDESIGNATION.—Chapter 9 of title II (7 U.S.C. 2501 et seq.) is amended by redesignating section 94 (7 U.S.C. 2504) as section 92.

(2) AMENDMENTS.—Section 92 (as so redesignated) is amended—

(A) by striking "The owner" and inserting "(a) The owner"; and

(B) by striking the second sentence.

(c) APPEAL OR CIVIL ACTION IN CONTESTED CASES.—

(1) TRANSFER.—Section 73 (7 U.S.C. 2463) is amended by transferring subsection (b) to the end of section 92 (as redesignated by subsection (b)(1)).

(2) REPEAL.—Section 73 (as amended by paragraph (1)) is repealed.

(d) CONFORMING AMENDMENT.—Section 71 (7 U.S.C. 2461) is amended by striking "92,".

**SEC. 8. INFRINGEMENT OF PLANT VARIETY PROTECTION.**

Section 111 (7 U.S.C. 2541) is amended—

(1) in subsection (a)—

(A) by striking "novel" the first two places it appears and inserting "protected";

(B) in paragraph (1), by striking "the novel" and inserting "or market the protected";

(C) by striking "novel" each place it appears in paragraphs (2) through (7);

(D) by striking "or" each place it appears at the end of paragraphs (3) through (6);

(E) by redesignating paragraphs (7) and (8) as paragraphs (9) and (10), respectively; and

(F) by inserting after paragraph (6) the following new paragraphs:

"(7) condition the variety for the purpose of propagation;

"(8) stock the variety for any of the purposes referred to in paragraphs (1) through (7);";

(2) by redesignating subsection (b) as subsection (f); and

(3) by inserting after subsection (a) the following new subsections:

"(b) The owner of a protected variety may authorize the use of the variety under this section subject to conditions and limitations specified by the owner.

"(c) This section shall apply equally to—

"(1) any variety that is essentially derived from a protected variety, unless the protected variety is an essentially derived variety;

"(2) any variety that is not clearly distinguishable from a protected variety;

"(3) any variety whose production requires the repeated use of a protected variety; and

"(4) harvested material (including entire plants and parts of plants) obtained through the unauthorized use of propagating material of a protected variety, unless the owner of the variety has had a reasonable opportunity to exercise the rights provided by this Act with respect to the propagating material.

"(d) It shall not be an infringement of the rights of the owner of a variety to perform any act concerning propagating material of any kind, or harvested material, including entire plants and parts of plants, of a protected variety that has been sold or otherwise marketed with the consent of the owner in the United States, unless the act involves further propagation of the variety or involves an export of material of the variety, that enables the propagation of the variety, into a country that does not protect varieties of the plant genus or species to which the variety belongs, unless the exported material is for final consumption purposes.

"(e) It shall not be an infringement of the rights of the owner of a variety to perform any act done privately and for noncommercial purposes.".

**SEC. 9. RIGHT TO SAVE SEED; CROP EXEMPTION.**

The first sentence of section 113 (7 U.S.C. 2543) is amended by striking "section: *Provided*, That" and all that follows through the period and inserting "section.".

**SEC. 10. LIMITATION OF DAMAGES; MARKING AND NOTICE.**

Section 127 (7 U.S.C. 2567) is amended by striking "novel" each place it appears.

**SEC. 11. OBLIGATION TO USE VARIETY NAME.**

Section 128(a) (7 U.S.C. 2568(a)) is amended by adding at the end the following new paragraph:

"(4) Failure to use the name of a variety for which a certificate of protection has been issued under this Act, even after the expiration of the certificate.".

**SEC. 12. TRANSITIONAL PROVISIONS.**

(a) IN GENERAL.—Except as provided in subsection (b), any variety for which a certificate of plant variety protection has been issued prior to the effective date of this Act, and any variety for which an application is pending on the effective date of this Act, shall continue to be governed by the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), as in effect on the day before the effective date of this Act.

(b) APPLICATIONS WITHDRAWN AND REFILED.—If a pending application is withdrawn and refiled after the effective date of this Act, eligibility for protection and the terms of protection shall be governed by the Plant Variety Protection Act, as amended by this Act.

**SEC. 13. EFFECTIVE DATE.**

This Act and the amendments made by this Act shall become effective 180 days after the date of enactment of this Act.

SECTION-BY-SECTION ANALYSIS OF THE PLANT VARIETY PROTECTION ACT AMENDMENT OF 1993

Section 1. This section would provide that the Act may be cited as the "Plant Variety Protection Act Amendments of 1993".

Section 2. This section would replace section 41 of the Plant Variety Protection Act (hereafter referred to as the "PVPA") by reordering, revising, adding and deleting definitions [subsection (a)] and rules of construction [subsection (b)], as follows:

Sec. 2(a)(1) would designate current section 41(g) as 41(a)(1).

Sec. 2(a)(2) would revise the definition of the term "breeder" in order to conform to Article 1(iv) of the International Convention for the Protection of New Varieties of Plants (UPOV), March 19, 1991, by removing the statement that the terms "breed", "develop", "originate", and "discover" each include the other and instead specifying that the breeder is the person who directs the final breeding or who both discovers and develops the variety. Also, it would be made clear that a person who rediscovers a publicly known variety is not the breeder of that variety.

New section 2(a)(3) would define a new term, "essentially derived variety", to comply with article 14(5) of the 1991 UPOV Convention. A variety that is essentially derived from another variety may be protected (if otherwise eligible) but if derived from a protected variety, the consent of the owner of the initial variety must be obtained to avoid infringement (see section 8(2) of these amendments).

Sec. 2(a)(4) would redesignate current section 41(c) as 41(a)(4).

Sec. 2(a)(5) would redesignate current section 41(f) as 41(a)(5).

Sec. 2(a)(6) would redesignate current section 41(b) as 41(a)(6) and make minor revisions to adapt the definition to current U.S. standards.

Sec. 2(a)(7) would add a definition of "variety" and remove the definition of "novel variety." The PVPA did not define the term "variety", although the meaning was implicit in the definition of "novel variety." The elements of a novel variety (distinctness, uniformity, and stability) would be modified and placed in section 42. Part of the provision relating to distinctness would be placed in a rule of construction, discussed below. This would place the substantive requirements for protection in one section and would avoid confusion which may result from the use of the term "novel variety." The PVPA used "novel variety" to refer primarily to a variety which is distinct, while the 1991 UPOV Convention uses "novelty" to refer to a variety which is new.

The definition of the term "date of determination" [current section 41(d)] would be removed, because the term would no longer be used elsewhere in the PVPA (section 3 of this Act would amend section 42 of the PVPA to base eligibility for protection on the date of filing for protection rather than the date of determination of a variety). The 1991 UPOV Convention requires that protection be based on the date of filing and not the date of determination.

Section 2(b) would define Rules of Construction. Current subsection (h) is a definition of the term "testing". The definition would be replaced by a rule of construction, discussed below. Current subsections (i) and (j) are the definition of the term "public variety" and a rule of construction concerning that term. The term "public variety" will no longer be used in the PVPA but, as discussed below, the vast majority of the varieties

which, without these amendments, would be excluded from protection because they have been public varieties for more than one year, will continue to be excluded from protection.

New sections 41(b)(1) and (2) would add rules of construction which would replace the definition of the term "testing." New section 41(b)(1) would provide that the disposition for purposes other than propagation of harvested material produced as a result of experimentation or testing to ascertain the characteristics of a variety will not be considered a disposition for the purposes of exploitation of the variety, which would otherwise begin a time period bar to protection under section 42 of the PVPA as amended. New section 41(b)(2) would provide that the sale or other disposition of a variety for reproductive purposes shall not be considered to be for the purposes of exploitation of the variety if done as an integral part of a testing program or to increase the variety on behalf of the breeder. These clarifying provisions reflect the long standing interpretation of the PVPA.

New section 41(b)(3) would add a rule of construction which would provide that the sale of hybrid seed shall be considered a sale of harvested material of the varieties from which it was produced. Whether the sale was for the purposes of exploitation of those varieties would depend upon the circumstances of the sale. Prior to these amendments, a similar result was obtained under section 42 of the PVPA, which made the use of a variety an event which began a one year period after which protection for the variety would be barred.

New section 41(b)(4) would provide that the filing of an application for protection or for the entering of another variety in an official register of varieties, in any country, shall be considered to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of protection or to the entering of the said other variety in the official register of varieties, as the case may be. This rule of construction is necessary to conform to Article 7 of the 1991 UPOV Convention.

New section 41(b)(5) is derived from the distinctness portion of the deleted definition of "novel variety" and would clarify the broad range of characteristics which may be the basis of distinctiveness.

New section 41(b)(6) would provide a rule of construction clarifying that a variety which is adequately described by a publication which includes a disclosure of the principal characteristics by which the variety is distinguished, will be considered to be publicly known and a matter of common knowledge, and that a variety may become publicly known or a matter of common knowledge by other means. This provision is derived from current subsections 41(i) and (j) and related portions of section 42(a)(1).

Section 3. This section would amend section 42 of the PVPA, "Right to Plant Variety Protection; Plant Varieties Protectable". The amended section would set forth the substantive requirements for plant variety protection, which would be changed in several significant ways.

The amendment would remove the exclusion of protection for first generation hybrids. This is necessary to conform to Articles 1(vi), 5 and 9 of the 1991 UPOV Convention.

Also, the amendment would place together the substantive requirements for protection, that the variety be new, distinct, uniform and stable. Currently, section 42 of the PVPA incorporates the elements of distinctness, uniformity and stability from the definition of "novel variety," and separately states the bars to protection. Because all of the requirements would be set forth together, the bars to protection would be integrated and would no longer be separately stated.

The first requirement that a variety would have to meet in order to be protected is that it be "new". This concept would incorporate most of the first part of the current "public variety" bar which precludes protection when a variety has been sold or used in this country for more than one year. It would modify the bar in that sale or use without the consent of the breeder (or successor in interest) would no longer be a bar. Also, the secret commercial use of a variety would not present a bar to protection of a variety which cannot be clearly distinguished from the secret variety. This is because the requirement that a variety be "new" applies only to the variety for which protection is sought, and not to any other variety, including those which cannot be clearly distinguished from it.

The second requirement, that a variety be "distinct," would make two significant changes in the PVPA. First, the date at which the variety must be distinct would be changed to the date of filing, rather than the date of determination. Second, it would eliminate a portion of the second part of the "public variety" bar which denies protection if the variety has been both publicly known and existing in this country for more than one year prior to the application. Thus, the breeder would be able to publish the characteristics of the variety or to place it in varietal trials without beginning a time bar to protection.

The amendment would remove the bar in section 42(a)(2) for filing an application in another country more than one year before the effective filing date here. This provision is necessary to conform to Article 5(2) of the 1991 UPOV Convention. It should be noted that the Secretary has issued regulations under section 42(b) of the PVPA which have the effect of extending the one year periods in section 42(a) to four years (six years for trees and vines) from the time the variety was marketed in another country (7 CFR 180.7(a)(7) (1992)). The regulation was necessary to conform to the 1978 UPOV Convention.

The amendment would also remove the bar in section 42(a)(3), that another person is entitled to an earlier date of determination. As discussed above, eligibility for protection would be based on the date of filing rather than the date of determination.

The requirements for uniformity and stability would not be changed substantively but would be moved from the definition of "novel variety" to section 42(a).

The amendment would also add a provision (new section 42(b)) to determine eligibility for protection when applicants have the same effective filing date for varieties which cannot be clearly distinguished from one another.

Current section 42(b), which allows the secretary to extend certain time limits and to commensurately reduce the term of protection, is deleted. This assures conformity to Articles 5, 6, 7 and 19 of the 1991 UPOV Convention.

Section 4 would amend section 52 of the PVPA, "Content of Application."

Sec. 4(1) would add a sentence at the end of section 52(1) of the PVPA specifying that the variety must be named in accordance with regulations issued by the Secretary. This provision is intended to assure conformity with Article 20 of the 1991 UPOV convention. Regulations issued by the Secretary would permit only variety names that comply with the provisions of the 1991 UPOV Convention or any other treaty or statute which may apply. In particular, the regulations would only permit denominations that are not liable to mislead or cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In addition, the regulations would only permit a variety name that is different from that of another variety of the same species or of a closely related species, either in this country or in any member of UPOV. (Other aspects of Article 20 are addressed elsewhere; provisions for requiring a change in the variety name are in section 6 and provisions for requiring the use of the variety name are in section 11.)

Sec. 4(2) would amend section 52(2) of the PVPA by replacing the word "novelty" with the phrase "distinctiveness, uniformity and stability". This change is not substantive since distinctiveness, uniformity and stability are the elements of a novel variety in the PVPA. The change avoids confusion since the amendments would discontinue the use of the term "novel variety" throughout the PVPA.

Sec. 4(3) would amend section 52 of the PVPA by adding a provision requiring that the application contain a statement of the basis of the applicant's claim that the variety is new.

Section 5. This section would amend section 55 of the PVPA, "Benefit of Earlier Filing Date."

Sec. 5(1) would divide subsection (a) into paragraphs (1) and (2). This change is not substantive but is clarifying in view of an addition discussed below.

Sec. 5(2) would add the phrase "not including the date on which the application is filed in the foreign country" to assure that the provision for a twelve-month period in which an applicant may claim the priority of an earlier filing date in another country will conform to the period contained in Article 11(1) of the 1991 UPOV Convention.

Sec. 5(3) would add a paragraph providing that an applicant entitled to a right of priority shall be allowed a period of two years after the expiration of the period of priority to furnish any necessary information, document, or material required for the purpose of the examination of the application, or if the first application is rejected or withdrawn, an appropriate period after such rejection or withdrawal, to be determined by the Secretary, to provide the information, document, or material. An event occurring within the period of priority (such as the filing of another application or use of the variety that is the subject of the first application) shall not constitute a ground for rejecting the application or give rise to any third party right.

This provision would assure conformity with Article 11(3) of the 1991 UPOV Convention, which is intended to assure that applicants are not unfairly denied the benefit of the earlier date of application because of unreasonable time constraints. For example, a breeder who files for protection in several countries may not have enough seed of the variety to submit the required sample to each country.

Section 6. This section would amend section 83 of the PVPA, "Contents and Term of Plant Variety Protection."

Sec. 6(1) would revise section 83(a) so that it continues to allow an owner to elect that

the variety shall be sold only as a class of certified seed, but no longer allows an election that the variety be sold by variety name only as a class of certified seed. This change is necessary to conform to Article 20(7) of the 1991 UPOV Convention, which requires that protected varieties must be sold by variety name.

Sec. 6(2) would revise section 83(b) to provide that the term of plant variety protection shall expire 20 years after the date of issue, except that the term shall expire 25 years after the date of issue in the case of a tree or vine. This would extend the term of protection from the current 18 years, in conformity with Article 19 of the 1991 UPOV Convention.

Sec. 6(3) would amend section 83(c) by adding the failure to comply with regulations requiring the submission of a different name for the variety as a condition which shall cause a certificate of protection to expire. This provision is necessary to assure that varieties are named in conformity with Article 20 of the 1991 UPOV Convention and to secure the cooperation of owners in making any necessary changes in variety names. It is in conformity with Article 22 of the 1991 UPOV Convention, pertaining to cancellation of the breeder's right.

Section 7. This section would amend the PVPA by removing the provisions which relate exclusively to priority contests and by making conforming changes in other sections. A priority contest is an adversarial proceeding between competing applicants to determine which has the earliest date of determination (the date that it was determined that a variety had been developed or discovered and sexually reproduced). These changes are necessary because section 42 of the PVPA would be amended so that the date of filing for protection, rather than the date of the determination of the variety, would determine priority when applications are received for the same variety, or for varieties which cannot be clearly distinguished from one another. Because the date of filing is a matter of record, it is no longer necessary or appropriate to provide for an adversarial proceeding.

Section 8. This section would amend section 111 of the PVPA, "Infringement of Plant Variety Protection".

Sec. 8(1)(a) would change the first reference to "novel variety" to "protected variety" and Sec. 8(1)(B) would also add marketing as an act which requires the authority of the breeder. This clarifying change assures conformity with Article 14(1)(iv) of the 1991 UPOV Convention. Sec. 8(1)(C) would delete the word "novel" elsewhere in section 111.

Sec. 8(1)(E) would redesignate paragraphs to allow for the insertion of new provisions.

Sec. 8(1)(F) insert two new provisions containing actions which constitute infringement: conditioning a variety for the purposes of propagation (planting), and stocking a variety for any of the purposes which would constitute infringement. These provisions are necessary to conform to Article 14(1)(a) of the 1991 UPOV Convention. They would allow the owner of a variety to take action at earlier stages and thus minimize injury. The provision against conditioning a variety for planting would not apply to the conditioning of seed saved by farmers for replanting on their own holdings.

Sec. 8(2) redesignate subsection (b) as subsection (f) and would add new subsections (b) through (e).

New subsection 111(b) would provide that the owner of a protected variety may make authorization to use the variety subject to conditions and limitations. This is a clarifying change which would assure conformity with Article 14(1)(b) of the 1991 UPOV Convention.

New subsection 111(c) would provide that the infringement provisions apply equally go any variety that is essentially derived from a protected variety, unless the protected variety is itself an essentially derived variety, to any variety that is not clearly distinguishable from a protected variety, to any variety whose production requires the repeated use of the protected variety, and to harvested material (including entire plants and parts of plants) obtained through the unauthorized use of propagating material of a protected variety, unless the owner of the variety has had a reasonable opportunity to exercise the rights provided by this Act with respect to the propagating material. These provisions are necessary to conform to Article 14 (5) and (2) of the 1991 UPOV Convention.

New subsection 111(d) would provide that it shall not be an infringement to perform any act concerning harvested material, including entire plants and parts of plants, of a protected variety which has been sold or otherwise marketed with the consent of the owner in the United States, unless such act involves further propagation of the variety or involves an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes. This provision assures conformity to Article 15 of the 1991 UPOV Convention and sets forth the exhaustion of the rights provided by the PVPA.

New subsection 111(e) would provide that it shall not be an infringement to perform any act done privately and for noncommercial purposes. This provision assures conformity to Article 15(1)(i) of the 1991 UPOV Convention.

Section 9. This section would amend section 113 of the PVPA by removing the provision which allows a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell "saved seed" to other such persons, for reproductive purposes. The amendment would not diminish the right of a farmer to save seed for replanting and to use the crop or to sell it for other than reproductive purposes. The deletion of the provision allowing certain sales of saved seed is necessary to conform to Articles 14(1) and 15(2) of the 1991 UPOV Convention.

Section 10. This section would amend section 127 of the PVPA by deleting the word "novel". It is unnecessary to refer to a variety as a "novel variety" in this context and it could cause confusion in view of the deletion of "novel variety" as a defined term in section 41 of the PVPA. Section 128 of the PVPA prohibits the use of the notices referred to in section 127 on varieties for which an application for protection has not been filed or for which a certificate of protection has not been granted, as the case may be.

Section 11. This section would amend section 128 of the PVPA by adding a requirement that a protected variety be sold by variety name, even after the expiration of protection. This requirement is necessary to conform to Article 20(7) of the 1991 UPOV Convention. The requirement is placed in section 128 for efficiency in enforcement.

Section 12. This section would provide for the transition from the current PVPA. Applications received before the effective date of these amendments would be examined under current law, but an applicant could reapply under the new provisions if the time for filing requirements may be met. The scope of protection provided by certificates issued under current law would not be changed by these amendments.

Section 13. This section would provide that these amendments would be effective 180 days after the date of enactment in order to provide for the issuance of new regulations and for the efficient transition from current law.

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By Ms. MOSELEY-BRAUN (for herself, Mr. SIMON, Mr. BOND, Mr. DANFORTH, Mr. FEINGOLD, Mr. GRASSLEY, Mr. HARKIN, and Mr. KOHL):

S. 1407. A bill to direct the Secretary of the Army to conduct a study to assess the adequacy of current flood control measures on the Upper Mississippi River and its tributaries, and for other purposes; to the Committee on Environment and Public Works.

MISSISSIPPI RIVER FLOOD CONTROL ASSESSMENT STUDY

Ms. MOSELEY-BRAUN. Mr. President, as communities continue to battle the great flood of 1993, I rise today, along with my distinguished colleague from Illinois, Senator SIMON, and Senators FEINGOLD, KOHL, HARKIN, GRASSLEY, BOND, and DANFORTH, to introduce legislation directing the Secretary of the Army to assess the adequacy and performance of the existing flood control measures along the Upper Mississippi River. This legislation is similar to a companion measure introduced in the House of Representatives by my good friend and colleague from Illinois, Congressman RICHARD DURBIN, whom I would like to thank for his leadership on this issue.

Most of the levees, which now have suffered severe flood damage, are maintained by local drainage districts. These levees were constructed to provide important flood control functions, protect prime farmland, and facilitate commercial navigation along the waterway. Long before this summer's catastrophic floods, however, extensive shoreline erosion and deterioration caused by fluctuating water levels and river commerce had already threatened the integrity of many of these levees.

Months ago, letters began arriving in my office from farmers and homeowners in the Sny Island, Lima Lake, and Henderson County drainage districts in Illinois, for example, detailing their attempts to get the Corps of Engineers to strengthen these levees before deterioration worsened and high-cost emergency repairs became necessary. These letters were clear warnings on the extent to which these levees had weakened. These problems are not unique to Illinois, but are illustrative of a broad range of levee conditions throughout the Upper Mississippi River area.

Of course, Mr. President, not even the most fortified levees along the Mississippi were all able to hold back the

force of a flood of a magnitude which occurs only once every 500 years. But the fact remains that for a long time, drainage districts have sought help from the corps to strengthen their only shield from the might of the Mississippi.

This problem originates in a legal dispute between the corps and the local drainage districts as to which entity is responsible for addressing levee erosion. Drainage districts currently mow the grass, remove roots and trees, and perform general upkeep around the levees. Erosion repairs are another matter, however. The high cost of such repairs far outweighs the financial capabilities of most rural districts, which typically have a very limited tax base.

In the Lower Mississippi Valley, the Corps of Engineers has the authority under the Flood Control Act of 1928 to perform levee maintenance and repairs. But in the Upper Mississippi River area, the corps operates under separate legislative authority. Questions remain as to whether the corps has responsibility under existing legislation to address river bank and levee erosion along the Upper Mississippi.

The legislation we are introducing today directs the Secretary of the Army to study the differences in Federal policy regarding construction and maintenance requirements of levees in the Upper and Lower Mississippi River systems, to determine what sort of effect these differences have on levees and flood control measures in the Upper Mississippi River, and to recommend changes in Federal cost-sharing for flood control projects.

This legislation requires the Secretary of the Army to examine other questions that have arisen on the role of levees in flood control. Environmentalists argue that levees damage the delicate ecology of wetlands in the flood plains, within which many endangered species are found. Public works specialists point out that levees can intensify the velocity and height of floodwaters, creating greater water pressures and flooding downstream. Our legislation would examine the role of wetlands as alternative flood control measures, and assess the impact that levees have had on flood levels during this disaster.

Furthermore, this legislation directs the Secretary of the Army to evaluate the adequacy of flood protection for water, sewer, transportation and other essential public facilities, and to assess the impact that the great flood of 1993 has had on established flood prevention measures along the Upper Mississippi. The Corps of Engineers will recommend improvements in all of these areas and report these findings to Congress no later than January 1, 1995.

Mr. President, I can certainly say that if I was a farmer or a homeowner who lives along the Upper Mississippi, and I had spent years sounding the alarm that levee repairs were needed, I now would be simply shaking my head in dismay, or even my fist in anger, at the fact that it appears to take an emergency of this magnitude to wake up the Federal Government. I was sent to the Senate because people are tired of inaction. And I say its time we ended the debate on responsibility and begin to answer these questions. The residents of the Midwest have waited too long for this. I thank the chair and I yield the remainder of my time.

Mr. President, I ask unanimous consent that a copy of the bill be printed at this point in the RECORD.

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

S. 1407

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. PURPOSES.**

The purposes of this Act are as follows:

(1) To improve the flood protection on the Upper Mississippi River and its tributaries in order to protect public health and safety, maintain commerce, and reduce economic losses due to flooding

(2) To assess the adequacy of current flood control measures in use at the time of the assessment (referred to in this Act as "then current flood control measures"), both Federal and non-Federal, on the Upper Mississippi River and its tributaries and recommend improvements to protect critical public facilities and prevent the release of hazardous materials into flood waters.

(3) To examine the Federal and non-Federal roles in funding the construction and maintenance of flood control measures on the Mississippi River and its tributaries and recommend changes to improve flood protection for high priority facilities.

**SEC. 2. FLOOD CONTROL MEASURES ON UPPER MISSISSIPPI RIVER AND TRIBUTARIES.**

(a) STUDY.—The Secretary of the Army shall conduct a study to assess the adequacy of then current flood control measures on the Upper Mississippi River and its tributaries.

(b) CONTENTS.—In conducting the study under subsection (a), the Secretary shall—

(1) identify critical water, sewer, transportation, and other essential public facilities that currently do not have adequate flood protection;

(2) identify high priority industrial, petrochemical, hazardous waste, and other facilities that require additional flood protection due to the special health and safety risks caused by flooding;

(3)(A) evaluate then current Federal, State, and local flood impact review requirements for infrastructure improvements and other development in the flood plain; and

(B) recommend changes to reduce the potential loss of life, property damage, economic losses, and threats to health and safety caused by flooding;

(4) examine the differences in Federal cost-sharing for construction and maintenance of flood control projects on the Upper and Lower Mississippi River systems and assess the effect of the differences on the level of flood protection on the Upper Mississippi River and its tributaries;

(5)(A) assess the then current Federal policy on pre-event repair and maintenance of both Federal and non-Federal levees; and

(B) recommend actions to help prevent the failure of the levees during flooding;

(6)(A) assess the impact of the then current system of levees and flood control projects on the flood levels experienced on the Upper Mississippi River and its tributaries in 1993; and

(B) evaluate the cost-effectiveness of alternative flood control measures, such as the preservation and restoration of wetlands;

(7) recommend flood control improvements, changes in Federal cost-sharing, and other measures to reduce economic losses, damage to critical public facilities, and the release of hazardous materials from industrial, petrochemical, hazardous waste, and other facilities caused by flooding of the Upper Mississippi River and its tributaries; and

(8) assess the environmental impact of then current flood control measures and the flood control improvements recommended pursuant to this section.

(c) REPORT.—Not later than January 1, 1995, the Secretary shall submit to Congress a report on the results of the study conducted under subsection (a).

Mr. SIMON. Mr. President, several of my colleagues and I are introducing a bill today that directs the Secretary of the Army to conduct an assessment of the current flood control measures on the Upper Mississippi River and its tributaries. The Secretary is to report back to Congress no later than January 1, 1995, with its findings. Congressman DICK DURBIN is introducing similar legislation on the House side.

This legislation is both necessary and timely. We are all aware of the widespread and catastrophic damage caused by the flood of 1993, and to avoid similar disasters in the future, we must improve the flood protection on the Upper Mississippi and its tributaries. The current flood control measures for Federal levees in the Lower Mississippi region are far more effective than those in place for the non-Federal levees on the upper portion of the Mississippi.

Many States are affected by the complex flood control structure along the Mississippi River. To provide maximum protection, all levees along the Mississippi need to work together as a system. Allowing the upper region to continue as a weak link in the system is penny-wise and pound-foolish.

This bill authorizes a study to examine all aspects of flood control along the Upper Mississippi River and its tributaries, and asks for recommendations for flood control improvements, changes in Federal cost-sharing, and other measures to avoid the catastrophic damage to homes, farms, public facilities and businesses that this most recent Mississippi River flood has wrought.

Mr. President, there is no doubt that this year's flood is the worst to hit the Midwest this century. Once the danger has passed, and people have begun to put their lives and businesses back together, a new challenge arises: How to avoid a repetition of this disaster in the future—how can we improve flood protection for the entire Mississippi River region.

We need the Army Corps of Engineers to use its vast experience and expertise to find solutions, so that the same high-quality flood protection provided for the Lower Mississippi exists for those who live and work upstream.

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By Mr. LOTT:

S. 1408. A bill to repeal the increase in tax on social security benefits; to the Committee on Finance.

TAX REPEAL LEGISLATION

Mr. LOTT. Mr. President, this bill will repeal the increase in the tax on Social Security benefits.

It is a simple, straightforward piece of legislation to remove an unfair surtax on the elderly. This tax is no small amount in the President's budget. It will take $24 billion from the fixed pockets of seniors.

As a reference point, this $24 billion is the third largest tax revenue source in Mr. Clinton's budget. The first is the increase in the top income tax bracket, and the second is the removal of the cap on health insurance—another elderly tax.

Frankly, the tax on Social Security benefits is a tax on the savings of senior citizens. It directly hits those prudent and frugal Americans who worked, sacrificed, and invested in America.

Just under one fourth of America's seniors will be affected by this tax, and because it is not indexed for inflation with each passing year more and more seniors will get socked by this tax.

This is not fair or logical.

On June 24, 1993—just 43 days ago, the last time this Chamber voted on this tax, 46 Senators were in favor of removing this tax provision. Despite the fact that it was a procedural vote which tends to fall along party lines, it received support from a significant number of Senators who want to remove this tax provision. It should be noted that this vote enjoyed bipartisan support with five Democrats voting to remove this provision. It should also be noted that on this vote 3 Senators were unable to vote, but it is likely that 2 would have joined the 46 for a very near majority.

The tax increase on Social Security benefits is unfair and many Senators know it. My bill will remove this tax increase.

I, and the elderly all over America, look forward to your support on this legislation.

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By Mr. JOHNSTON:

S. 1409. A bill to limit the funding to the Northern Mariana Islands pursuant to the provisions set forth in the Agreement of the Special Representatives on Future Federal Financial Assistance, and for other purposes; to the Committee on Energy and Natural Resources.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS FUNDING ACT OF 1993

Mr. JOHNSTON. Mr. President, today I am introducing a bill that would limit Federal funding to the Commonwealth of the Northern Mariana Islands [CNMI]. This issue was debated in the context of budget reconciliation, but was not resolved. It is important legislation that we need to move forward with, and enact quickly into law.

In 1947 the United Nations placed the Northern Mariana Islands within the Trust Territory of the Pacific Islands. The United States became the administering authority of the trust territory under the terms of a trusteeship agreement. In 1976 Congress approved the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States" which had been negotiated between the two governments. The first constitutional government in the CNMI took office in January 1978. The Covenant was fully implemented on November 3, 1986, pursuant to a Presidential Proclamation which terminated the trusteeship as it applied to the CNMI.

Section 702 of the Covenant committed the United States to provide financial assistance to the CNMI for 7 years to "achieve a progressively higher standard of living for its people * * * and to develop the economic resources needed to meet the financial responsibilities of local self-government." In addition, section 902 of the Covenant provided that, before the end of this initial period of financial assistance, representatives of the United States and CNMI would meet to consider and make recommendations regarding future multiyear financial assistance to the CNMI. In order to ensure that there was no lapse in funding, the Covenant provided that until Congress approved a subsequent level of assistance, the amounts would continue. The provision constitutes an entitlement backed by the full faith and credit of the United States. Assistance to the CNMI during the first 7 years, 1978 through 1985, totaled $192 million.

In 1985, Congress enacted the second multiyear financial assistance agreement which provided funds for the period of 1986 to 1992. This second agreement continued the provision of the Covenant that the CNMI would continue to receive $27.7 million, the seventh year funding level, annually after the seventh year until Congress provided otherwise by law. This provision was intended to assure continued funding for the CNMI in the event that an agreement was not reached between the United States and CNMI representatives or Congress was unable to enact implementing legislation prior to the end of fiscal year 1992. As it happened, an agreement was not reached prior to the end of fiscal year 1992, so the CNMI received this $27.7 million contingency payment. On December 17, 1992, the special representatives of the CNMI and the United States signed the third multiyear financial assistance agreement and it was transmitted to Congress on January 19, 1993.

On February 17, 1993, President Clinton included the implementation of this new agreement in his economic plan. Because the new agreement would reduce financial assistance to the CNMI from the current $27.7 million annual payment, its implementation would result in a budget savings estimated at $42 million over the period 1994–98.

The Committee on Energy and Natural Resources adopted, as part of its budget reconciliation legislation, language that would have decreased funding to the CNMI pursuant to the 1992 agreement.

The House of Representatives' budget reconciliation language would have repealed the annual funding of $27.72 million to the CNMI and required congressional approval prior to providing any further funding, as well as other provisions.

After many long hours of hard work, we came close to reaching an agreement that would have saved the American taxpayers $42 million. We would have allowed funding to go forward, but only if the CNMI made significant changes in policy to address serious conditions that exist in the CNMI regarding immigration, alien labor, and taxation. I regret that we were unable to reach final resolution on this issue within the allotted time.

Because we were unable to agree, under current law the CNMI will receive $27.7 million in 1994—almost $6 million more than they would have under the 1992 negotiated agreement. And without any guarantee that changes in policy would be made. This is a result that no one intended. My bill would readdress this situation.

The bill contains the last Senate offer to the House on this issue. We had reached agreement on all but two issues. It is my hope that we can resolve these differences in conference. If we can, we can save almost $6 million in 1994 and ensure meaningful reforms in the CNMI.

The bill would provide funding for fiscal year 1994 at the level provided for the first year of the 1992 agreement: $22 million. The CNMI would be required to match this with a $9 million contribution. Over the 7-year life of the 1992 agreement, Federal funding decreases each year to $9 million in the 7th year, with a required CNMI match in the 7th year of $22 million. But in order to receive funding, the CNMI would be required to meet certain conditions, including the following:

CNMI would freeze immigration at the 1992 level;

CNMI would limit immigration so that an increasing percentage of the employees in the garment industry are local residents, rather than alien labor;

CNMI would raise the same amount of net revenues as if the mirror tax system applied; and

CNMI would amend it's minimum wage law to provide the same exemptions of job categories and for the same level of deductions for housing and other expenses as are contained in the Fair Labor Standards Act of 1938.

A goal of the United States in the insular areas is to assist them in becoming self-sufficient. However, as the CNMI has moved toward self-sufficiency, problems associated with rapid economic growth have arisen.

The CNMI has taken significant steps to address some of these concerns. Recently, they have enacted into law a minimum wage reform bill and legislation to increase revenues through developer taxes. The legislature is also debating a package of comprehensive tax reforms and an alien labor bill to reform and increase labor enforcement. While I applaud the CNMI for taking these steps, we need to ensure that the reforms are meaningful, and that there is no backsliding. Without enactment of legislation similar to that debated in the budget reconciliation conference, the CNMI will receive funding in excess of the amount provided in the negotiated agreement. Additionally, we have no absolute guarantee that there will be long lasting, meaningful reform in the CNMI.

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. 1409

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

SEC. 2. Public Law 94-241 (90 Stat. 263) as amended, is further amended by striking "law" in subsection (b) of section 4 and inserting in lieu thereof "law: *Provided*, That for fiscal years 1994 through 1998, payments shall be limited to the provisions set forth in the Agreement of the Special Representatives on Future Federal Financial Assistance of the Northern Mariana Islands, executed on December 17, 1992, between the special representative of the President and the special representatives of the Governor of the Northern Mariana Islands for the first five years of such 1992 Agreement; *Provided further*, That no amendment to such 1992 Agreement may take effect until approved by an Act of Congress; *Provided further*, after fiscal year 1998, the amount shall continue at the annual amount of $27,720,000, unless Congress otherwise provides by law.

"(c) No funds made available in accordance with the 1992 Agreement referred to in subsection (b) shall be obligated until 60 days after the Secretary of the Interior certifies, together with findings, after the date of enactment of this provision, and each fiscal year thereafter, to the Committee on Natural Resources of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate, that the following conditions have been fulfilled, to the extent such condition is applicable in such fiscal year, and no such funds shall be obligated for additional projects thereafter if the Secretary of the Interior determines that the Northern Mariana Islands are not in compliance with such conditions to the extent such condition is applicable at that time:

"(1) the number of aliens (a person who is not a citizen or national of the United States, a citizen of a state in free association with the United States, or an alien lawfully admitted into the United States) present in the Northern Mariana Islands for work or residency does not exceed the 1992 average daily number of such aliens present in the Northern Mariana Islands as determined by the Commissioner of the United States Immigration and Naturalization Service (INS), except that within such limitation, the Northern Mariana Islands shall impose a numerical limitation on the total number of alien workers admitted for employment in the garment industry so that the percentage of alien workers compared to the total number of workers in the garment industry shall be 75 percent in 1994, 70 percent in 1995, and 65 percent in 1996 and thereafter;

"(2) the Northern Mariana Islands shall implement a petitioning mechanism similar to that in section 214 (c)(1) of the immigration and Nationality Act (8 U.S.C. 1184 (c)(1)) to measure and compare the number of alien admissions with the 1992 average and the Northern Mariana Islands shall provide the Immigration and Naturalization Service with such information and access as the Commissioner of the Service determines to be necessary to make his determination and for verification;

"(3) The Northern Mariana Islands has enacted and is enforcing such measures as may be necessary to raise revenues, and expend for public purposes, in each of the years funding is provided pursuant to the Agreement, in addition to those revenues which would have been raised under laws in effect on the date of enactment of this provision, of at least the same amount of net revenue (taking into account all credits, deductions, exemptions, and payments provided for in Federal law) that would otherwise have been raised in calendar year 1992 under full application of section 601 of the Covenant absent any rebates pursuant to section 602 of such Covenant, less the actual amount of revenues retained by the Northern Mariana Islands from income taxes, which measures may include, but need to be limited to, one or more of the following:

"(A) developer taxes and impact fees;

"(B) taxes on services to visitors;

"(C) a reduction in the level of rebates of taxes levied under section 602 of the Covenant;

"(D) income taxes, or

"(E) taxes or fees imposed for public benefit of users of publicly provided services.

"(4) the Northern Marina Islands is implementing a rate schedule approved by the Secretary of the Interior that, over a five year period beginning on the date of enactment of this provision, will phase in charges for all (except low-income) users of utilities which will recover the full operating, maintenance, and debt service cost of the power utility services, and, as a minimum, the operating and maintenance costs of the water and sewer utility services;

"(5) the Secretary has approved the plans of the Northern Mariana Islands for the fiscal year for the use of the funds which indicate the priority and purpose of the projects and their cost and financing arrangements; and

"(6) the Secretary of the Interior, in consultation with the Secretary of Labor, determines that the Northern Mariana Islands has enacted and is enforcing laws—

"(A) to provide no greater deductions from wages for housing, food, transportation, health care, employment fees, or other expenses for any workers not permanently admitted into the Northern Mariana Islands than are contained in Fair Labor Standards Act of 1938 and

"(B) which allow for the same exemptions from the payment of minimum wages as provided in the Fair Labor Standards Act of 1938.".

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By Mr. INOUYE (by request):

S. 1410. A bill to amend Indian Self-Determination and Education Assistance Act; to the Committee on Indian Affairs.

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT AMENDMENTS OF 1993

Mr. INOUYE. Mr. President, I introduce a bill at the request of many Indian tribal governments across the country, to amend the Indian Self-Determination and Education Assistance Act.

Mr. President, 5 years ago, the Committee on Indian Affairs reported a measure to amend this act—it was acted upon by the Senate and House—and signed into law by the President. But today, 5 years and 6 months later, regulations to implement these comprehensive amendments and there is, understandably, a growing sense of frustration in Indian country.

Mr. President, the bill I am introducing today, by request, represents a good faith effort on the part of the Indian tribal governments and their attorneys to develop a bill that will bridge the 5-year gap in the regulatory process by proposing amendments to the act that will go into effect without awaiting the promulgation of regulations.

Mr. President, the Indian Affairs Committee will examine this bill closely. We will consult with the new Assistant Secretary for Indian Affairs in the Department of the Interior and with Secretary Babbitt. We will consult with the Acting Director of the Indian Health Service and Secretary Shalala. And last, but clearly not least, we will consult with the leaders of Indian country.

Mr. President, I look forward to working with my colleagues to give our serious consideration to this measure.

Mr. President, I ask unanimous consent of the Senate that this measure and the section-by-section analysis of the bill be printed in the RECORD.

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

S. 1410

*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 Indian Self-Determination and Education Assistance Act Amendments Act of 1993.

**SEC. 2. AMENDMENTS.**

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended as follows:

(1) at the beginning of section 4, insert the following new paragraph and redesignate all other paragraphs accordingly:

"(a) "construction contract" means a fixed-price or cost-reimbursement self-determination contract for a construction project. Contracts (i) limited to providing architectural and engineering services, planning services, and/or construction management services; (ii) for the Housing Improvement Program or roads construction and maintenance program administered by the Secretary of the Interior; and (iii) for the health facility maintenance and improvement program administered by the Secretary of Health & Human Services, shall not be deemed to be construction contracts within the meaning of this Act";

(2) amend the text of section 5(f) to read as follows:

"(f) For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this subchapter, the tribal organization which requested such contract or grant shall submit to the appropriate Secretary a single agency audit report as required by chapter 75 of Title 31, United States Code. Such tribal organization shall also submit such information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request through regulations promulgated in conformity with sections 552 and 553 of Title 5, United States Code, except that the Secretary shall only request the minimal information necessary to assure the delivery of satisfactory services and protection of trust resources, consistent with the purposes of this Act to vest primary responsibility for the administration of contracted programs in the tribal organization.";

(3) in section 7(a) delete "of subcontractors" and insert in lieu thereof "or subcontractors (excluding tribal organizations)";

(4) at the end of section 7, add the following new subsection:

(c) Notwithstanding subsections (a) and (b), where a self-determination contract, or portion thereof, is intended to benefit one tribe, a tribal organization contracting under this Act shall comply with tribal employment or contract preference laws adopted by such tribe.";

(5) at the end of section 102(a)(1), add the following new sentence:

"Such programs shall include administrative functions of the Department of the Interior or the Department of Health and Human Services which support the delivery of services to Indians, including those administrative activities related to, but not part of, the service delivery program, which are otherwise contractible, without regard to the organizational level within the Department where such functions are carried out.";

(6) amend the text of section 102(a)(2) to read as follows:

"(2) If so authorized by an Indian tribe under paragraph (1) of this subsection, a tribal organization may submit a proposal for a self-determination contract, or to amend or renew a self-determination contract, to the Secretary for review. Subject to the provisions of subsection (4) hereof, the Secretary shall, within ninety days after receipt of the proposal, approve the proposal unless, within sixty days of receipt of the proposal, a specific finding is made that—

"(A) the service to be rendered by the tribal organization to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

"(B) adequate protection of trust resources by the tribal organization is not assured; or

"(C) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract, either because (i) the amount of funds proposed in the contract is in excess of the funding levels specified in section 106(a) of this Act, (ii) the program (or portion thereof) to be contracted is beyond the scope of paragraph (1) hereof, because the proposal includes activities which cannot be lawfully carried out by the contractor, or (iii) the existence of some other deficiency justifying declination under this section.";

(7) at the end of section 102(a), add the following new paragraph (4):

"(4) The Secretary shall approve any severable portion of a contract proposal which does not support a declination finding as provided in paragraph (3) of this subsection. Whenever the Secretary determines under paragraph (3) that a contract proposal (A) proposes in part to plan, conduct or administer a program that is beyond the scope of paragraph (1), or (B) proposes a funding level in excess of the funding levels specified in section 106(a) of this Act, the Secretary shall approve the proposal to the extent authorized by paragraph (1) or section 106(a) of this Act, as appropriate (subject to any agreed-upon alteration in the proposed scope of work). In the event the tribal organization elects to operate the severable portion of a contract proposal, subsection (b) hereof shall apply only with respect to the declined portion of the contract.";

(8) at the end of section 102, add the following:

"(e) In any hearing or appeal provided under subsection (b)(3), the Secretary shall carry the burden of proof to establish by clear and convincing evidence that the contract proposal should be declined. Final departmental decisions in all such appeals shall be made at a level not lower than the level of the Assistant Secretary.

"(f) A tribal organization in Alaska authorized by tribal resolution(s) to contract under this Act the operation of one or more programs may redelegate that authority, by formal action of the tribal organization's governing body, to another tribal organization provided advance notice of such redelegation and a copy of the contracting proposal, prior to its submission to the Secretary, are provided to all tribes served by the tribal organization. Nothing herein is to be construed as a limitation on the authority of a tribe to limit, restrict or rescind its resolution at any time or in any manner whatsoever. A tribe receiving such notice shall have 60 days from receipt of the notice to notify the tribal organization in writing of its intent to adopt a limiting resolution prohibiting or conditioning the proposed redelegation, and thereafter shall have 60 days to adopt and transmit such resolution to the tribal organization. A tribal organization so notified of a tribe's intent shall not proceed with any redelegation proposal until the expiration of the 60 day period.

(9) amend the text of section 105(a), to read as follows:

"(a) Contracts, grants and cooperative agreements with tribal organizations pursuant to sections 102 and 103 of this title shall not be subject to general Federal contracting, discretionary grant or cooperative agreement laws and regulations, except to the extent such laws expressly apply to Indian tribes; *Provided*, That with respect to construction contracts as defined in Section 4 of this Act (or subcontracts of such a construction contract), the Office of Federal Procurement Policy Act (88 Stat. 796; 41 U.S.C. 401 et. seq.) and Federal acquisition regulations promulgated thereunder shall only apply to the limited extent such statute or regulations are necessary to assure proper completion of the contract and are not inconsistent with the provisions or policy of this Act.";

(10) amend the text of section 105(e) to read as follows:

"(e) Whenever an Indian tribe or tribal organization requests retrocession of the appropriate Secretary for any contract, or portion thereof, entered into pursuant to this Act, such retrocession shall, unless the request for retrocession is rescinded by such tribe or tribal organization, become effective one year from the date of the request by the Indian tribe or at such date as may be mutually agreed by the Secretary and the Indian tribe.";

(11) amend the text of section 105(f)(2) to read as follows:

"(2) donate to an Indian tribe or tribal organization the title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, except that title to property and equipment furnished by the federal government for use in the performance of the contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization, and upon retrocession, rescission or termination of such self-determination contract or grant, title to such property having a present value in excess of $5,000 and remaining in use in support of the contracted program shall, at the Secretary's option, revert to the Secretary; and";

(12) in section 105(g) add "for the provision of personal services" after "make any contract";

(13) at the end of section 105, add the following new subsections (i), (j), (k), and (l):

"(i) Where a self-determination contract requires the Secretary to administratively divide a program which has previously been administered for the benefit of a greater number of tribes than are represented by the tribal organization that is a party to the contract, the Secretary shall

"(1) endeavor to minimize any adverse effect on the level of services to be provided to all affected tribes;

"(2) notify all affected tribes not party to the contract of the receipt of the contract proposal at the earliest possible date, and of the right of such tribes to comment on how the Secretary's program should be divided to best meet the needs of all affected tribes;

"(3) explore the feasibility of instituting cooperative agreements amongst the affected tribes not a party to the contract, the tribal organization operating the contract, and the Secretary; and

"(4) identify and report to Congress the nature of any diminution in quality, level or quantity of services to any affected tribe resulting from the division of the Secretary's program, together with an estimate of the funds which would be required to correct such diminution. In determining whether to decline a contract under section 102(a)(2), the Secretary shall not consider the effect which a contract proposal will have on tribes not represented by the tribal organization submitting such proposal, nor on Indians not served by the portion of the program to be contracted. The Secretary shall make such

special provisions as may be necessary to assure that services are provided to the tribes not served by a self-determination contract.

"(j) Upon notice to the Secretary, tribal organizations carrying out self-determination contracts are authorized to redesign programs, activities, functions and services under contract, including program standards, to best meet the local geographic, demographic, economic, cultural, health and institutional needs of the Indian people and tribes served under the contract. The Secretary shall evaluate any redesign proposal against the declination criteria set forth in section 102 of this Act.

"(k) For purposes of section201(a) of the Act of June 30, 1949 (40 U.S.C. 481(a)) (involving federal sources of supply), an Indian tribe or tribal organization carrying out a contract, grant or cooperative agreement under this Act shall be deemed an executive agency when carrying out such contract, grant or agreement.

"(l) Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into leases with Indian tribes and tribal organizations which hold title to, a leasehold interest in, or a beneficial interest in, facilities used by Indian tribes or tribal organizations for the administration and delivery of contract services under the Act. The Secretary shall compensate such Indian tribes or tribal organizations for the use of leased facilities for contract purposes. Lease compensation may include: rent, depreciation based on the useful life of the building, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses determined by regulation to be allowable.

(14) amend the text of section 106(a) to read as follows:

"(a)(1) The amount of funds provided under the terms of self-determination contracts entered into pursuant to this Act shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to the organizational level or levels within the Department at which the program (or portion thereof), including supportive administrative functions which are otherwise contractible, is operated.

"(2) There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which-

"(A) normally are not carried on by the respective Secretary in his direct operation of the program; or

"(B) are provided by the Secretary in support of the contracted program from resources other than those under contract.

"Contract support costs shall include, without distinction, funds to reimburse tribal contractors for reasonable and allowable costs of contracting attributable to direct program expenses, and reasonable administrative or other overhead expenses in connection with tribal operation of federal programs. The amount of funds to which a tribe or tribal organization is entitled pursuant to this subparagraph shall be negotiated annually with the Secretary.

"(3) Any savings in operation under a self-determination contract (including a cost reimbursement construction contract) shall be utilized to provide additional services or benefits under the contract or be expended in the succeeding fiscal year as provided in section 13a of this title.

"(4) During the initial year of a self-determination contract there shall be included, in the amount required to be paid under paragraph (2), start-up costs consisting of the reasonable costs, either previously incurred or to be incurred under the contract on a one-time basis, necessary to plan, prepare for and take over operation of the contracted program and to also ensure compliance with the terms of the contract and prudent management, *provided that* previously incurred costs shall not be included to the extent the Secretary was not notified in advance and in writing of the nature and extent of the costs to be incurred.";

(15) amend section 106(c) as follows:

(A) in clause (1) delete "and indirect costs" and insert in lieu thereof "indirect costs and negotiated contract support costs";

(B) in clause (2) insert immediately after "indirect costs" the following: "and negotiated contract support costs";

(C) delete "and" at the end of clause (4);

(D) delete the period at the end of clause (5) and insert in lieu thereof a semicolon and "and"; and

(E) at the end thereof, add the following:

"(6) a reporting of any deficiency of funds needed to maintain the preexisting level of services to any tribes affected by contracting activities under this Act.";

(16) at the end of section 106(d)(2), add the following new sentence:

"Notwithstanding any other provision of law, and subject to the availability of appropriations, every federal agency and every State shall pay its full proportionate share of the indirect costs associated with federally funded contracts or grants awarded to tribes or tribal organizations under any other law. In the event that appropriations are not sufficient for agencies other than the Department of the Interior and the Department of Health and Human Services, or for state governments or state agencies, to pay their full proportionate share as provided herein, the Secretary shall, subject to the availability of appropriations for this purpose, fund and pay such shortfalls and report all unfunded shortfalls to the Congress, as provided in Section 106(c)(2).";

(17) amend section 106(f) by inserting immediately after the second sentence thereof the following:

"For the purpose of the 365 day period, an audit report shall be deemed received on the date of actual receipt by the Secretary, absent a notice by the Secretary within sixty days of receipt that the report will be rejected as insufficient due to non-compliance with chapter 75 of title 31 of the United States Code, or other applicable law.";

(18) amend the text of section 106(g) to read as follows:

"(g) Upon approval of a self-determination contract, the Secretary shall allocate to the contract the full amount to which the contractor is entitled under section 106(a), subject to adjustments for each subsequent year that federal programs are administered by such tribe or tribal organization.";

(19) amend the text of section 106(l) to read as follows:

"(l) The Secretary shall consult annually with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs, including participation in the formulation of annual budget requests of Congress.";

(20) amend section 106 by adding at the end thereof the following:

"(j) A tribal organization may use funds provided under a self-determination contract to meet matching or cost participation requirements under other Federal and non-Federal programs.

"(k) Without intending any limitation, a tribal organization may, without approval, expend funds provided under a self-determination contract for the following purposes to the extent supportive of a contracted program:

"(1) depreciation and use allowances not otherwise specifically prohibited by law, including depreciation of facilities owned by the tribe or tribal organization and constructed with federal financial assistance;

"(2) publication and printing costs;

"(3) building, realty and facilities costs, including rental costs or mortgage expenses;

"(4) automated data processing and similar equipment or services;

"(5) cost of capital assets and repairs;

"(6) management studies;

"(7) professional services other than services provided in connection with judicial proceedings by or against the United States;

"(8) insurance and indemnification, including insurance covering the risk of loss of or damage to property used in connection with the contract without regard to the ownership of such property;

"(9) costs incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of a self-determination contract;

"(10) interest expenses paid on capital expenditures such as buildings, building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to Secretarial delays in providing funds under a contract; and

"(11) expenses of a tribal organization's governing body to the extent attributable to the management or operation of programs under this Act.

"(l) Within twelve months following the date of enactment of this subsection, the Office of Management and Budget, with the active participation of Indian tribes and tribal organizations, the Department of the Interior, Office of the Inspector General, and the Health and Human Services Department, Cost Determination Branch, shall develop a separate set of cost principles applicable to Indian tribes and tribal organizations consistent with the government-to-government Federal-Tribal relationship embodied in this Act.

"(m) Except in connection with rescission and reassumption of a contract under section 109 of this Act, the Secretary shall in no circumstance suspend, without or delay the payment of funds to a tribal organization under a self-determination contract.

"(n) Program income earned by a tribal organization in the course of carrying out a self-determination contract shall be used by the tribal organization to further the general purposes of the contract and shall not be a basis for reducing the amount of funds otherwise obligated to the contract, provided that use of collections made under Title IV of Pub. L. 94-437 shall be further limited to the extend provided in that Act.

"(o) To the extent contracting activities under this Act reduce the secretary's administrative or other responsibilities in connection with the operation of Indian programs, resulting in savings which have not otherwise been included in the contract amount specified in subsection (a) herefor, and to the extent that doing so will not adversely affect the Secretary's ability to carry out his responsibilities to other tribes and tribal organizations, the Secretary shall make such

savings available to tribal organizations contracting under this Act.

"(p) notwithstanding any laws or regulations to the contrary, a tribal organization may budget within the approved budget of its contract to meet contract requirements, provided that such rebudgeting does not have a significant and adverse effect upon the level or nature of services.";

(21) amend the text of section 107(a) to read as follows:

"(a) The Secretaries of the Interior and of Health and Human Services are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this subchapter:*Provided, however*, That all Federal requirements for self-determination contracts and grants under this Act shall be promulgated as a single set of regulations in Title 25 of the Code of Federal regulations and in conformity with sections 552 and 553 of Title 5. Notwithstanding the preceding sentence, the amendments made by the Indian Self-Determination and Education Act Amendments of 1993 shall be effective as of October 5, 1988.";

(23) amend the text of section 107(b) to read as follows:

"(b) In drafting, and promulgating, regulations for implementation of this Act, as amended, the Secretaries shall comply with the following procedures:

"(1) prior to publishing proposed regulations, the Secretaries shall within 45 days from the date of enactment of these amendments convene regional meetings and a national meeting to obtain input from interested parties in the development of proposed regulations to implement the provisions of this Act, as amended. Such meetings shall include representatives of Indian tribes, tribal organizations, individual tribal members, and representatives of other parties interested in the implementation of this act, as amended.

"(2) during the meetings identified in subparagraph (1), the tribal representatives shall identify key issues concerning implementation of the Indian Self-Determination Act, as amended. The Secretaries shall provide for a comprehensive discussion and exchange of information on these issues. Likewise, the Secretaries may identify issues concerning implementation of the Indian Self-Determination Act, as amended, and provide for a comprehensive discussion and exchange of information received at such meetings in the development of proposed regulations, and shall publish a summary of such information in the Federal Register along with a notice of proposed rulemaking.

"(3) subsequent to the regional and national meetings and prior to publication of proposed regulations in the federal Register, the Secretaries shall prepare draft regulations implementing the Indian Self-Determination Act, as amended, including regulations addressing all key issues identified by the tribal organizations and those key issues identified by the Secretaries pursuant to paragraph (2), and the Secretaries shall submit the draft regulations to a negotiated rulemaking process. The process shall waive application of the Federal Advisory Committee Act (5 U.S.C. App. 2 §1 et seq.). The rulemaking process shall follow the guidance of the Negotiated Rulemaking Act of 1990 and of the Administrative Conference of the United States in Recommendation 82-4 and 85-5, "Procedures for Negotiating Proposed Regulations" (1 C.F.R. §§305.82-4 and 305.85-5), and any successor recommendation, regulation or law. Participants in the negotiation shall be chosen by the Secretaries from among participants in the regional and national meetings, representing the groups described in paragraph (1) and from all geographic regions. The Secretaries shall publish the product of the negotiated rulemaking process in the Federal Register in the form of a proposed rule. The Secretaries shall also include in the final rule as much of the proposed rule as is practicable. The negotiations shall be conducted in a timely manner and the proposed rule shall be published in the Federal Register by the Secretaries within six (6) months from the date of enactment of these Amendments.";

(24) amend section 107 by adding at the end thereof the following new subsection (d);

"(d) Notwithstanding any laws or regulations to the contrary, the Secretary shall retain the authority to waive or make exceptions to his regulations where the Secretary finds that such waiver or exception is in the best interest of the Indians served by the contract. The Secretary shall review a waiver request under the declination criteria contained in section 102(a)(2) of this Act.";

(25) amend the text of section 109 to read as follows:

"Each contract or grant agreement entered into pursuant to sections 102 and 103 of this title shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, such Secretary may, under regulations prescribed by him and after providing notice and a hearing on the record to such tribal organization, rescind such contract or grant agreement and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by him to remedy the contract deficiency: *Provided*, That the appropriate Secretary may, upon written notice to a tribal organization, and the tribe(s) served thereby, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat of imminent harm to the safety of any person and that such threat arises from the contractor's failure to fulfill the requirements of the contract. In such cases, he shall provide the tribal organization with a hearing on the record within ten days or such later date as the tribal organization may approve. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. In any hearing or appeal provided for under this section, the Secretary shall carry the burden of proof to establish by clear and convincing evidence that the contract should be rescinded, assumed or reassumed. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970, as amended.

(26) amend section 110(a) by inserting immediately before the period at the end thereof the following:

"(including immediate injunctive relief to compel the Secretary to fund an approved self-determination contract)"; and

(27) amend section 110(d) by inserting immediately before the period at the end thereof the following:

"except that all such administrative appeals shall be heard by the Interior Board of Contract Appeals".

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SECTION-BY-SECTION ANALYSIS

Section 1 provides that the Act may be cited as the "Indian Self-Determination and Education Assistance Act Amendments of 1993".

Section 2(1) amends the definitions section of the Act to insert a new subsection (a) at the beginning of section 4, and redesignates all of the other subsections accordingly. This new subsection provides a definition for the term "construction contract," a term which is presently used but not defined in the statute. The term excludes architectural and engineering services, programs administered under the Bureau of Indian Affairs' Housing Improvement Program and roads program, and the health facility and maintenance program administered by the Secretary of Health and Human Services. As the term is later used in the statute, the amendment will assure that the federal acquisition regulations are not applied to contracts which do not involve classic construction activities.

Section 2(2) conforms portions of section 5(f) of the Act with the 1988 Amendments, and also clarifies and reinforces the intent of Congress to minimize the reporting requirements which the Secretary may impose upon tribal contractors. One of the primary goals of the 1988 amendments was to eliminate excessive and burdensome reporting requirements. The amendment is designed to compel the Departments to substantially cut back on the amount of reporting now required from tribal contractors.

As amended, section 5(f) of the Act [25 U.S.C. §405c(f)] will read:

(f) For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this subchapter, the tribal organization which requested such contract or grant shall submit to the appropriate Secretary a single agency audit report as required by chapter 75 of Title 31, United States Code. Such tribal organization shall also submit such information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request through regulations promulgated in conformity with sections 552 and 553 of Title 5, United States Code, except that the Secretary shall only request the minimal information necessary to assure the delivery of satisfactory services and protection of trust resources, consistent with the purposes of this Act to vest primary responsibility for the administration of contracted programs in the tribal organization.

For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this subchapter, the tribal organization which requested such contract or grant shall submit to the appropriate Secretary a single agency audit report as required by chapter 75 of Title 31, United States Code. Such tribal organization shall also submit such information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request through regulations promulgated in conformity with sections 552 and 553 of Title 5, United States Code, except that the Secretary shall only request the minimal information necessary to assure the delivery of satisfactory services and protection of trust

resources, consistent with the purposes of this Act to vest primary responsibility for the administration of contracted programs in the tribal organization.

*3. Amendment No. 3*

Amend section 7(a) (25 U.S.C. 450e(a)) to delete the word "of" before the word "subcontractors" and insert in lieu thereof the word: "or"; and add after the word "subcontractors" the words: "(excluding tribal organizations)". As amended, section 7(a) (25 U.S.C. 450e(a)) will read:

(a) All laborers and mechanics employed by contractors or subcontractors (excluding tribal organizations) in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended [40 U.S.C.A. 276a et seq.]. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950, and section 276c of Title 40.

*4. Amendment No. 4*

Amend section 7 (25 U.S.C. 450e) to add a new subsection (c). Section 7(c) (25 U.S.C. 450e) of the Act will read:

(c) Notwithstanding subsections (a) and (b), where a self-determination contract, or portion thereof, is intended to benefit one tribe, a tribal organization contracting under this Act shall comply with tribal employment or contract preference laws adopted by such tribe.

*5. Amendment No. 5*

Amend section 102(a)(1) (25 U.S.C. 450f(a)(1)) to insert at the end thereof the following sentence: "Such programs shall include administrative functions of the Department of the Interior or the Department of Health and Human Services which support the delivery of services to Indians, including those administrative activities related to, but not part of, the service delivery program, which are otherwise contractible, without regard to the organizational level within the Department where such functions are carried out." Amend section 102(a)(2) (25 U.S.C. 450f(a)(2)) to add the words: ", or to amend or renew a self-determination contract," before the words "to the Secretary"; and to delete the word "The" in the second sentence and to add in lieu thereof the following phrase: "Subject to the provisions of subsection (4) hereof, the". In section 102(a)(2)(A) (25 U.S.C. 450f(a)(2)(A)), add the words: "by the tribal organization" after the world "rendered". In section 102(a)(2)(B) (25 U.S.C. 450f(a)(2)(B)), add the words: "by the tribal organization" after the word "resources". In section 102(a)(2)(C), (25 U.S.C. 450f(a)(2)(C)), add after the word "contract" but before the period, the following clause: ", either because (i) the amount of funds proposed in the contract is in excess of the funding levels specified in section 106(a) of this Act, (ii) the program (or portion thereof) to be contracted is beyond the scope of paragraph (1) hereof, or (iii) the existence of some other deficiency justifying declination under this section" In section 102(a) (25 U.S.C. 450f(a)), add a new subsection (4). As amended, section 102(a) (25 U.S.C. 450f(a)), of the Act will read:

(a)(1) The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof, including construction programs—

(A) provided for in sections 452 and 457 of this title;

(B) which the Secretary is authorized to administer for the benefit of Indians under sections 13 and 52a of this title, and any Act subsequent thereto;

(C) provided by the Secretary of Health and Human Services under sections 2001 to 2004b of Title 42;

(D) administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of Health and Human Services or the Department of the Interior; and

(E) for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department of Health and Human Services or the Department of the Interior within which it is performed.

Such programs shall include administrative functions of the Department of the Interior or the Department of Health and Human Services which support the delivery of services to Indians, including those administrative activities related to, but not part of, the service delivery program, which are otherwise contractible, without regard to the organizational level within the Department where such functions are carried out.

(2) If so authorized by an Indian tribe under paragraph (1) of this subsection, a tribal organization may submit a proposal for a self-determination contract, or to amend or renew a self-determination contract, to the Secretary for review. Subject to the provisions of subsection (4) hereof, the Secretary shall, within ninety days after receipt of the proposal, approve the proposal unless, within sixty days of receipt of the proposal, a specific finding is made that—

(A) the service to be rendered by the tribal organization to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(B) adequate protection of trust resources by the tribal organization is not assured; or

(C) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract, either because (i) the amount of funds proposed in the contract is in excess of the funding levels specified in section 106(a) of this Act, (ii) the program (or portion thereof) to be contracted is beyond the scope of paragraph (1) hereof, because the proposal includes activities which cannot be lawfully carried out by the contractor, or (iii) the existence of some other deficiency justifying declination under this section.

(3) Upon the request of a tribal organization that operates two or more mature self-determination contracts, those contracts may be consolidated into one single contract.

(4) The Secretary shall approve any severable portion of a contract proposal which does not support a declination finding as provided in paragraph (3) of this subsection. Whenever the Secretary determines under paragraph (3) that a contract proposal (A) proposes in part to plan, conduct or administer a program that is beyond the scope of paragraph (1), or (B) proposes a funding level in excess of the funding levels specified in section 106(a) of this Act, the Secretary shall approve the proposal to the extent authorized by paragraph (1) or section 106(a) of this Act, as appropriate (subject to any agreed-upon alteration in the proposed scope of work). In the event the tribal organization elects to operate the severable portion of a contract proposal, subsection (b) hereof shall apply only with respect to the declined portion of the contract.

*6. Amendment No. 6*

Amend section 102 (25 U.S.C. 450f) to add new subsections (e) and (f). Sections 102(e) (25 U.S.C. 450f(e)) and section 102(f) (25 U.S.C. 450f(f)) of the Act will read:

(e) In any hearing or appeal provided under subsection (b)(3), the Secretary shall carry the burden of proof to establish by clear and convincing evidence that the contract proposal should be declined. Final departmental decisions in all such appeals shall be made at a level not lower than the level of the Assistant Secretary.

(f) A tribal organization in Alaska authorized by tribal resolution(s) to contract under this Act the operation of one or more programs may redelegate that authority, by formal action of the tribal organization's governing body, to another tribal organization provided advance notice of such redelegation and a copy of the contracting proposal, prior to its submission to the Secretary, are provided to all tribes served by the tribal organization. Nothing herein is to be construed as a limitation on the authority of a tribe to limit, restrict or rescind its resolution at any time or in any manner whatsoever. A tribe receiving such notice shall have 60 days from receipt of the notice to notify the tribal organization in writing of its intent to adopt a limiting resolution prohibiting or conditioning the proposed delegation, and thereafter shall have 60 days to adopt and transmit such resolution to the tribal organization. A tribal organization so notified of a tribe's intent shall not proceed with any redelegation proposal until the expiration of the 60 day period.

*7. Amendment No. 7*

Amend Section 105(a) (25 U.S.C. 450j(a)) to insert the words:", grants and cooperative agreements" after the word "Contracts" in the first sentence, and to insert the words: "and 103" after the words "section 102". Also in the first sentence, substitute the words: "not be subject to general" for the words "be in accordance with all" after the word "shall". After the words "Federal contracting" insert the words: ", discretionary grant or cooperative agreement", and after the words "laws and regulations" insert the words: "except to the extent such laws expressly apply to Indian tribes;". Delete all the words beginning with the words "except that" and ending with *"Provided further*, That, except for". Insert *"Provided*, That with respect to" prior to the words "construction contracts" and insert immediately after "as defined in Section 4 of this Act". In the last clause, substitute the word "only" for the word "not", and substitute the words "the limited extent such statute or regulations are necessary to assure proper completion of the contract and are not inconsistent with the provisions or policy of this Act" for the words "self-determination contracts". As amended, section 105(a) (25 U.S.C. 450j(a)) of the Act will read:

(a) Contracts, grants and cooperative agreements with tribal organizations pursuant to sections 102 and 103 of this title shall not be subject to general Federal contracting, discretionary grant or cooperative agreement laws and regulations, except to the extent such laws expressly apply to Indian tribes; with respect to construction contracts as defined in Section 4 of this Act (or subcontracts of such a construction contract), the Office of Federal Procurement

Policy Act (88 Stat. 796; 41 U.S.C. 401 et seq.) and Federal acquisition regulations promulgated thereunder shall only apply to the limited extent such statute or regulations are necessary to assure proper completion of the contract and are not inconsistent with the provisions or policy of this Act.

*8. Amendment No. 8*

Amend section 105(e) (25 U.S.C. 450j(e)) to insert "or tribal organization" after the word "tribe" in the first sentence, and after the word "shall" insert the words ", unless the request for retrocession is rescinded by such tribe or tribal organization,". As amended, section 105(e) (25 U.S.C. 450j(e)) of the Act will read:

(e) Whenever an Indian tribe or tribal organization requests retrocession of the appropriate Secretary for any contract, or portion thereof, entered into pursuant to this Act, such retrocession shall, unless the request for retrocession is rescinded by such tribe or tribal organization, become effective one year from the date of the request by the Indian tribe or at such date as may be mutually agreed by the Secretary and the Indian tribe.

*9. Amendment No. 9*

Section 105(f)(2) is amended to delete the word "including" and insert in lieu thereof the words: "except that title to"; and to insert the words "furnished by the federal government for use in the performance of the contract or" following the word "equipment"; and to insert after the word "agreement" but prior to the semicolon the following phrase: "shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization, and upon retrocession, rescission or termination of such self-determination contract or grant, title in such property having a present value in excess of $5,000 and remaining in use in support of the contracted program shall, at the Secretary's option, revert to the Secretary." As amended, subsection 105(f) (25 U.S.C 450j(f)) of the Act will read:

(f) In connection with any self-determination contract or grant made pursuant to section 102 or 103 of this title, the appropriate Secretary may—

(1) permit an Indian tribe or tribal organization in carrying out such contract or grant, to utilize existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon their use and maintenance;

(2) donate to an Indian tribe or tribal organization the title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, except that title to property and equipment furnished by the federal government for use in the performance of the contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization, and upon retrocession, rescission or termination of such self-determination contract or grant, title to such property having a present value in excess of $5,000 and remaining in use in support of the contracted program shall, at the Secretary's option, revert to the Secretary; and

(3) acquire excess or surplus Government personnel or real property for donation to an Indian tribe or tribal organization if the Secretary determines the property is appropriate for use by the tribe or tribal organization for a purpose for which a self-determination contract or grant agreement is authorized under this Act.

*10. Amendment No. 10*

Amend section 105(g) (25 U.S.C. 450j(g)) to add the words: "for the provision of personal services" after the words "make any contract" in the last clause. As amended, the last sentence of section 105(g) (25 U.S.C. 450j(g)) of the Act will read:

The contracts authorized under section 102 of this title and grants pursuant to section 103 of this title may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, benefits or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided*, That the Secretary shall not make any contract for the provision of personal services which would impair his ability to discharge his trust responsibilities to any Indian tribe or individual.

*11. Amendment No. 11*

Amend section 105 (25 U.S.C. 450j) to add the following new subsections; (i)(1), (i)(2), (i)(3), (i)(4), (j), (k), and (l). These new subsections will read:

(i) Where a self-determination contract requires the Secretary to administratively divide a program which has previously been administered for the benefit of a greater number of tribes than are represented by the tribal organization that is a party to the contract, the Secretary shall:

(1) endeavor to minimize any adverse effect on the level of services to be provided to all affected tribes;

(2) notify all affected tribes not party to the contract of the receipt of the contract proposal at the earliest possible date, and of the right of such tribes to comment on how the Secretary's program should be divided to best meet the needs of all affected tribes;

(3) explore the feasibility of instituting cooperative agreements amongst the affected tribes not a party to the contract, the tribal organization operating the contract, and the Secretary; and

(4) identify and report to Congress the nature of any diminution in quality, level or quantity of services to any affected tribe resulting from the division of the Secretary's program, together with an estimate of the funds which would be required to correct such diminution.

In determining whether to decline a contract under section 102(a)(2), the Secretary shall not consider the effect which a contract proposal will have on tribes not represented by the tribal organization submitting such proposal, nor on Indians not served by the portion of the program to be contracted. The Secretary shall make such special provisions as may be necessary to assure that services are provided to the tribes not served by a self-determination contract.

(j) Upon notice to the Secretary, tribal organizations carrying out self-determination contracts are authorized to redesign programs, activities, functions and services under contract, including program standards, to best meet the local geographic, demographic, economic, cultural, health and institutional needs of the Indian people and tribes served under the contract. The Secretary shall evaluate any redesign proposal against the declination criteria set forth in section 102 of this Act.

(k) For purposes of section 201(a) of the Act of June 30, 1949 (40 U.S.C. 481(a)) (involving federal sources of supply), an Indian tribe or tribal organization carrying out a contract, grant or cooperative agreement under this Act shall be deemed an executive agency when carrying out such contract, grant or agreement.

(l) Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into leases with Indian tribes and tribal organizations which hold title to, a leasehold interest in, or a beneficial interest in, facilities used by Indian tribes or tribal organizations for the administration and delivery of contract services under the Act. The Secretary shall compensate such Indian tribes or tribal organizations for the use of leased facilities for contract purposes. Lease compensation may include: rent, depreciation based on the useful life of the building, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses determined by regulation to be allowable.

*12. Amendment No. 12*

Section 106(a)(1) (25 U.S.C. 450j–1(a)(1)) is amended to insert after the word "contract" but before the period, the following clause: ", without regard to the organizational level or levels within the Department at which the program, including supportive administrative functions which are otherwise contractible, is operated." Section 106(a)(2) (25 U.S.C. 450j–1(a)(2)) is amended to insert the words: "an amount for" after the words "consist of". Insert at the end of section 106(a)(2) (25 U.S.C. 450j–1(a)(2)) the following sentence: "Contract support costs shall include, without distinction, funds to reimburse tribal contractors for reasonable and allowable costs of contracting attributable to direct program expenses in connection with tribal operation of federal programs. The amount of funds to which a tribe or tribal organization is entitled pursuant to this subparagraph shall be negotiated annually with the Secretary." Amend section 106(a)(3) (25 U.S.C. 450j–1(a)(3)) to add after the words "self-determination contract" the words: "(including a cost reimbursement construction contract)". Amend section 106(a) (25 U.S.C. 450j–1) to add a new subsection 106(a)(4) (25 U.S.C. 450j–1(a)(4)). As amended, section 106(a) (25 U.S.C. 450j–1(a)) of the Act will read:

(a)(1) The amount of funds provided under the terms of self-determination contracts entered into pursuant to this Act shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to the organizational level or levels within the Department at which the program, (or portion thereof), including supportive administrative functions which are otherwise contractible, is operated.

(2) There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which—

(A) normally are not carried on by the respective Secretary in his direct operation of the program; or

(B) are provided by the Secretary in support of the contracted program from resources other than those under contract.

Contract support costs shall include, without distinction, funds to reimburse tribal contractors for reasonable and allowable costs of contracting attributable to direct program expenses, and reasonable administrative or other overhead expenses in connection with tribal operation of federal programs. The amount of funds to which a tribe or tribal organization is entitled pursuant to this subparagraph shall be negotiated annually with the Secretary.

(3) Any savings in operation under a self-determination contract (including a cost reimbursement construction contract) shall be utilized to provide additional services or benefits under the contract or be expended in the succeeding fiscal year as provided in section 13a of this title.

(4) During the initial year of a self-determination contract there shall be included, in the amount required to be paid under paragraph (2), start-up costs consisting of the reasonable costs, either previously incurred or to be incurred under the contract on a one-time basis, necessary to plan, prepare for and take over operation of the contracted program and to also ensure compliance with the terms of the contract and prudent management, provided that previously incurred costs shall not be included to the extent the Secretary was not notified in advance and in writing of the nature and extent of the costs to be incurred.

*13. Amendment No. 13*

Amend section 106(c)(1) (25 U.S.C. 450j–1(c)(1)) to substitute a comma for the word "and" after the words "program costs"; and to insert the words "and negotiated contract support costs" after the words "indirect costs". Amend section 106(c)(2) (25 U.S.C. 450j–1(c)(2)) to insert after the word "costs" the following words: "and negotiated contract support costs". Delete the word "and" at the end of section 106(c)(4) (25 U.S.C. 450j–1(c)(4)). Replace the period at the end of section 106(c)(5) (25 U.S.C. 450j–1(c)(5)) with "; and". Add a new subsection 106(c)(6) (25 U.S.C. 450j–1(c)(6)). As amended, section 106(c) (25 U.S.C. 450j(c)) of the Act will read:

(c) The Secretary shall provide an annual report in writing on or before March 15 of each year to the Congress on the implementation of this Act. Such report shall include—

(1) an accounting of the total amounts of funds provided for each program and budget activity for direct program costs, indirect costs and negotiated contract support costs of tribal organizations under self-determination contracts during the previous fiscal year;

(2) an accounting of any deficiency of funds needed to provide required indirect costs and negotiated contract support costs to all contractors for the current fiscal year;

(3) the indirect costs rate and type of rate for each tribal organization negotiated with the appropriate Secretary;

(4) the direct cost base and type of base from which the indirect cost rate is determined for each tribal organization;

(5) the indirect cost pool amounts and the types of costs included in the indirect cost pools; and

(6) a reporting of any deficiency of funds needed to maintain the preexisting level of services to any tribes affected by contracting activities under this Act.

*14. Amendment No. 14*

Amend section 106(d)(2) (25 U.S.C. 450j–1(d)(2) of the act, to add the following sentence at the end: "Notwithstanding any other provision of law, and subject to the availability of appropriations, every federal agency and every State shall pay its full proportionate share of the indirect costs associated with federally funded contracts or grants awarded to tribes or tribal organizations under any other law. In the event that appropriations are not sufficient for agencies other than the Department of the Interior and the Department of Health and Human Services, or for state governments or state agencies, to pay their full porportionate share as provided herein, the Secretary shall, subject to the availability of appropriations for this purpose, fund and pay such shortfalls and report all unfunded shortfalls to the Congress as provided in Section 106(c)(2)." As amended, section 106(d) (25 U.S.C. 450j–1(d)) of the Act will read:

(d)(1) Where a tribal organization's allowable indirect cost recoveries are below the level of indirect costs that the tribal organizations should have received for any given year pursuant to its approved indirect cost rate, and such shortfall is the result of lack of full indirect cost funding by any Federal, State, or other agency, such shortfall in recoveries shall not form the basis for any theoretical over-recovery or other adverse adjustment to any future years' indirect cost rate or amount for such tribal organization, nor shall any agency seek to collect such shortfall from the tribal organization.

(2) Nothing in this subsection shall be construed to authorize the Secretary to fund less than the full amount of need for indirect costs associated with a self-determination contract. Notwithstanding any other provision of law, and subject to the availability of appropriations, every federal agency and every State shall pay its full proportionate share of the indirect costs associated with federally funded contracts or grants awarded to tribes or tribal organizations under any other law. In the event that appropriations are not sufficient for agencies other than the Department of the Interior and the Department of Health and Human Services, or for state governments or state agencies, to pay their full proportionate share as provided herein, the Secretary shall, subject to the availability of appropriations for this purpose, fund and pay such shortfalls and report all unfunded shortfalls to the Congress, as provided in Section 106(c)(2).

*15. Amendment No. 15*

Amend section 106(f) (25 U.S.C. 450j–1(f)) to insert after the second full sentence the following new sentence: "For the purpose of the 365 day period, an audit report shall be deemed received on the date of actual receipt by the Secretary, absent a notice by the Secretary within sixty days of receipt that the report will be rejected as insufficient due to non-compliance with chapter 75 of title 31 of the United States Code, or other applicable law." As amended, section 106(f) (25 U.S.C. 450j–1(f)) of the Act will read:

(f) Any right of action or other remedy (other than those relating to a criminal offense) relating to any disallowance of costs shall be barred unless the Secretary has given notice of any such disallowance within three hundred and sixty-five days of receiving any required annual single agency audit report or, for any period covered by law or regulation in force prior to enactment of chapter 75 of Title 31, any other required final audit report. Such notice shall set forth the right of appeal and hearing to the board of contract appeals pursuant to section 110 of this title. For the purpose of the 365 day period, an audit report shall be deemed received on the date of actual receipt by the Secretary, absent a notice by the Secretary within sixty days of receipt that the report will be rejected as insufficient due to noncompliance with chapter 75 of title 31 of the United States Code, or other applicable law. Nothing in this subsection shall be deemed to enlarge the rights of the Secretary with respect to section 476 of this title

*16. Amendment No. 16*

Amend section 106(g) (25U.S.C. 450j-1(g)) to delete the word "the" which immediately precedes the word "approval", and to delete the words "and at the request of an Indian tribe or tribal organization". After the words "Secretary shall", substitute the words "allocate the full amount to which the contractor is entitled under paragraph 106(a) to the contract" for the words "add the indirect cost funding amount awarded for a self-determination contract to the amount awarded for direct program funding to the tribe or tribal organization for the first year and". After the word "adjustments", delete the words "in the amount of direct program costs for the contract", and after the words "subsequent year that" substitute the words "federal programs are administered by such tribe or tribal organization" for the words "the program remains continuously under contract". As amended, section 106(g) (25 U.S.C.450j-1(g)) of the Act will read:

(g) Upon approval of a self-determination contract the Secretary shall allocate to the contract the full amount to which the contractor is entitled under section 106(a), subject to adjustments for each subsequent year that federal programs are administered by such tribe or tribal organization.

*17. Amendment 17*

An amendment to section 106(h) was considered. This amendment has been deleted from this latest draft as too overreaching. An overhaul of the indirect costs language could bog down the amendments in a highly technical debate, arresting their progress through the legislative process.

[Amend section 106(h) (25 U.S.C. 450J-1(H)) by substituting the words "contract support" "indirect". As amended, section 106(h) of the Act will read:

(h) In calculating the contract support costs associated with a self-determination contract for a construction program, the Secretary shall take into consideration only those costs associated with the administration of the contract and shall not take into consideration those moneys actually passed on by the tribal organization to construction contractors and subcontractors.]

*18. Amendment No. 18*

Repeal section 106(i) (25 U.S.C. 450j-1(i)) and reenact it to read as follows:

(i) The Secretary shall consult annually with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs, including participation in the formulation of annual budget requests to Congress.

*19. Amendment No. 19*

Amend section 106 (25 U.S.C. 450j-1) by adding new subsections (j), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), (k)(7), (k)(8), (k)(9), (k)(10), (i)(11), (l), (m), (n), (o), and (p). Sections 106(j)-106(p) of the Act will read:

(j) A tribal organization may use funds provided under a self-determination contract to meet matching or cost participation requirements under other Federal and non-Federal programs.

(k) Without intending any limitation, a tribal organization may, without approval,

expend funds provided under a self-determination contract for the following purposes to the extent supportive of a contracted program:

(1) depreciation and use allowances not otherwise specifically prohibited by law, including depreciation of facilities owned by the tribe or tribal organization and constructed with federal financial assistance;

(2) publication and printing costs;

(3) building, realty and facilities costs, including rental costs or mortgage expenses;

(4) automated data processing and similar equipment or services;

(5) cost of capital assets and repairs;

(6) management studies;

(7) professional services other than services provided in connection with judicial proceedings by or against the United States;

(8) insurance in indemnification, including insurance covering the risk of loss of or damage to property used in connection with the contract without regard to the ownership of such property;

(9) costs incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of a self-determination contract;

(10) interest expenses paid on capital expenditures such as buildings, building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to Secretarial delays in providing funds under a contract; and

(11) expenses of tribal organization's governing body to the extent attributable to the management or operation of programs under this Act.

(l) Within twelve months following the date of enactment of this subsection, the Office of Management and Budget, with the active participation of Indian tribes and tribal organizations, the Department of the Interior, Office of the Inspector General, and the Health and Human Services Department, Cost Determination Branch, shall develop a separate set of cost principles applicable to Indian tribes and tribal organizations consistent with the government-to-government Federal-Tribal relationship embodied in this Act.

(m) Except in connection with rescission and reassumption of a contract under section 109 of this Act, the Secretary shall in no circumstance suspend, without or delay the payment of funds to a tribal organization under a self-determination contract.

(n) Program income earned by a tribal organization in the course of carrying out a self-determination contract shall be used by the tribal organization to further the general purposes of the contract and shall not be a basis for reducing the amount of funds otherwise obligated to the contract, provided that use of collections made under Title IV of Pub. L. 94-437 shall be further limited to the extent provided in that Act.

(o) To the extent contracting activities under this Act reduce the Secretary's administrative or other responsibilities in connection with the operation of Indian programs, resulting in savings which have not otherwise been included in the contract amount specified in subsection (a) hereof, and to the extent that doing so will not adversely affect the Secretary's ability to carry out his responsibilities to other tribes and tribal organizations, the Secretary shall make such savings available to tribal organizations contracting under this Act.

(p) Notwithstanding any laws or regulations to the contrary, a tribal organization may budget within the approved budget of this contract to meet contract requirements, provided that such rebudgeting does not have a significant and adverse effect upon the level or nature of services.

*20. Amendment No. 20*

Amend section 107(a) (25 U.S.C. 450k(a)) to add after the word "promulgated" the words "as a single set of"; to add before the words "in conformity with" the words "in Title 25 of the Code of Federal Regulations and"; and to add the following new sentence at the end. "Notwithstanding the preceding sentence, the amendments made by the Indian Self-Determination and Education Act Amendments of 1993 shall be effective as of October 5, 1988." The amended section 107(a) (25 U.S.C. 450k(a)) of the Act will read:

(a) The Secretaries of the Interior and of Health and Human Services are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this subchapter: *Provided, however*, That all Federal requirements for self-determination contracts and grants under this Act shall be promulgated as a single set of regulations in Title 25 of the Code of Federal Regulations and in conformity with sections 552 and 553 of Title 5. Notwithstanding the preceding sentence, the amendments made by the Indian Self-Determination and Education Act Amendments of 1993 shall be effective as of October 5, 1988.

*21. Amendment No. 21*

Repeal section 107(b) (25 U.S.C. 450k(b)), and enact in the following section 107(b). When reenacted, section 107(b) (25 U.S.C. 450k(b)) of the Act will read:

(b) In drafting, and promulgating, regulations for implementation of this Act, as amended, the Secretaries shall comply with the following procedures:

(1) prior to publishing proposed regulations, the Secretaries shall within 45 days from the date of enactment of these amendments convene regional meetings and a national meeting to obtain input from interested parties in the development of proposed regulations to implement the provisions of this Act, as amended. Such meetings shall include representatives of Indian tribes, tribal organizations, individual tribal members, and representatives of other parties interested in the implementation of this Act, as amended.

(2) during the meetings identified in subparagraph (1), the tribal representatives shall identity key issues concerning implementation of the Indian Self-Determination Act, as amended. The Secretaries shall provide for a comprehensive discussion and exchange of information on these issues. Likewise the Secretaries may identify issues concerning implementation of the Indian Self-Determination Act, as amended, and provide for a comprehensive discussion and exchange of information on these issues. The Secretaries shall take into account the information received at such meetings in the development of proposed regulations, and shall publish a summary of such information in the Federal Register along with a notice of proposed rulemaking.

(3) subsequent to the regional and national meetings and prior to publication of proposed regulations in the Federal Register, the Secretaries shall prepare draft regulations implementing the Indian Self-Determination Act, as amended, including regulations addressing all key issues identified by the tribal organizations and those key issues identified by the Secretaries pursuant to paragraph (2), and the Secretaries shall submit the draft regulations to a negotiated rulemaking process. The process shall waive application of the Federal Advisory Committee Act (5) U.S.C. App. 2 §1 et seq.). The rulemaking process shall follow the guidance of the Negotiated Rulemaking Act of 1990 and of the Administrative Conference of the United States in Recommendation 82-4 and 85-5, "Procedures for Negotiating Proposed Regulations" (1 C.F.R. §§305.42-4 and 305.85-5), and any successor recommendation, regulation or law. Participants in the negotiation shall be chosen by the Secretaries from among participants in the regional and national meetings, representing the groups described in paragraph (1) and from all geographic regions. The Secretaries shall publish the product of the negotiated rulemaking process in the Federal Register in the form of a proposed rule. The Secretaries shall also include in the final rule as much of the proposed rule as is practicable. The negotiations shall be conducted in a timely manner and the proposed rule shall be published in the Federal Register by the Secretaries within six (6) months from the effective date of enactment of these Amendments.

*22. Amendment No. 22*

Amendment section 107 (25 U.S.C. 450k) by adding a new subsection (d) to the Act. Section 107(d) (25 U.S.C. 450k(d)) of the Act will read:

(d) Notwithstanding any laws or regulations to the contrary, the Secretary shall retain the authority to waive or make exceptions to his regulations when the Secretary finds that such waiver or exception is in the best interest of the Indians served by the contract. The Secretary shall review a waiver request under the declination criteria contained in section 102(a)(2) of this Act.

*23. Amendment No. 23*

Amend section 109, (25 U.S.C. 450m) to add the words "to remedy the contract deficiency" after the words "corrective action as prescribed by him" but before the colon. Insert the word "written" after the word "upon" and before the word "notice". In the same clause, insert the phrase ", and the tribe(s) served thereby" after the words "tribal organization", but before the words "immediately rescind". Replace the words "to safety and," with the words "of imminent harm to the safety of any person and that such threat arises from the contractor's failure to fulfill the requirements of the contract." Capitalize the "I" at the beginning of the phrase "in such cases". Before the last full sentence insert the following sentence: "In any hearing or appeal provided for under this section, the Secretary shall carry the burden of proof to establish by clear and convincing evidence that the contract should be rescinded, assumed or reassumed." As amended, section 109 (25 U.S.C. 450m) of the Act will read:

Each contract or grant agreement entered into pursuant to sections 102 and 103 of this title shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, such Secretary may, under regulations prescribed by him and after providing notice and a hearing on the record to such tribal organization, rescind such contract or grant agreement and assume or resume control or operation of the program, activity, or service involved if he

determines that the tribal organization has not taken corrective action as prescribed by him to remedy the contract deficiency: *Provided*, That the appropriate Secretary may, upon written notice to a tribal organization, and the tribe(s) served thereby, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat of imminent harm to the safety of any person and that such threat arises from the contractor's failure to fulfill the requirements of the contract. In such cases, he shall provide the tribal organization with a hearing on the record within ten days or such later date as the tribal organization may approve. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. In any hearing or appeal provided for under this section, the Secretary shall carry the burden of proof to establish by clear and convincing evidence that the contract should be rescinded, assumed or reassumed. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970, as amended.

*24. Amendment No. 24*

Amend section 110(a) (25 U.S.C. 450m–1(a)) to add the words: "(including immediate injunctive relief to compel the Secretary to fund an approved self-determination contract)" immediately following the word "hereunder" but preceding the period. As amended, section 110(a) (25 U.S.C. 450m–1(a)) of the Act will read:

(a) The United States district courts shall have original jurisdiction over any civil action or claim against the appropriate Secretary arising under this Act and, subject to the provisions of subsection (d) of this section and concurrent with the United States Court of Claims, over any civil action or claim against the Secretary for money damages arising under contracts authorized by this Act. In an action brought under this paragraph, the district courts may order appropriate relief including money damages, injunctive relief against any action by an officer of the United States or any agency thereof contrary to this Act or regulations promulgated thereunder, or mandamus to compel an officer or employee of the United States, or agency thereof, to perform any duty provided under this Act or regulations promulgated hereunder (including immediate injunctive relief to compel the Secretary to fund an approval self-determination contract).

*25. Amendment No. 25*

Amend section 110(d) (25 U.S.C. 450m–1(d)) to add the words: "except that all such administrative appeals shall be heard by the Interior Board of Contract Appeals" after the word "contracts" but preceding the period. As amended, section 110(d) (25 U.S.C. 450m–1(d)) of the Act will read:

(d) The Contract Disputes Act (Public Law 95–563, Act of November 1, 1978; 92 Stat. 2383, as amended) shall apply to self-determination contracts except that all such administrative appeals shall be heard by the Interior Board of Contract Appeals.

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By Mr. GORTON:

S. 1411. A bill to authorize certain elements of the Yakima River Basin Water Enhancement Project, and for other purposes.

YAKIMA ENHANCEMENT LEGISLATION

Mr. GORTON. Mr. President, for many, many years, those with an interest in the Yakima irrigation project in Washington State have worked to develop legislation authorizing project improvements that would benefit both irrigators and fish and wildlife in the Yakima Basin. Former Congressman Sid Morrison was tireless in his pursuit of a bill that had broad support, and I was pleased to join him in introducing Yakima enhancement legislation in the last Congress. Unfortunately, the committees of jurisdiction did not have time to act on the bill. I rise today to reintroduce the same legislation, and to ask that the Committee on Energy and Natural Resources schedule hearings on the bill.

The Yakima enhancement effort has been driven by the continuing uncertainty of irrigation water supplies, deteriorating water quality and lack of sufficient instream flows for fish. The legislation I am introducing today addresses these issues by authorizing phase II of the Yakima enhancement project. Phase I, which was initiated in 1983 and is essentially complete, involved installation of fish passage facilities at project dams and placement of screens at irrigation diversions. Phase I has greatly improved conditions for anadromous fish in the basin, and will aid the recovery of important wild fish stocks.

Phase II of the enhancement effort would achieve water conservation through structural improvements and changes in system operations at the Yakima project. Conservation measures would be evaluated and prioritized by a diverse advisory group, and saved water would be used both to improve instream flows for fish and firm up irrigation water supplies. Phase II would also provide for the use of saved water to irrigate new lands in the Yakima Reservation, and would provide an additional 14,600 acre feet of storage at Lake Cle Elum.

This bill would not effect ongoing adjudication of Yakima Basin water rights, and would not settle the treaty-reserved water rights of the Yakima Indian Nation. The bill also does not authorize significant new water storage, with the exception of the Lake Cle Elum expansion, even though storage in the Yakima Basin is relatively limited compared to other projects of its size.

Mr. President, this bill will be good for both farmers and fish and wildlife in the Yakima Basin. The bill balances a variety of traditionally competitive interests, but does so in a way that will allow those interests to cooperate in an effort to conserve the basin's most precious resource. I hope that the Senate will act quickly to approve this measure.

I ask unanimous consent that a copy 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. 1411

*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 "Yakima Basin Water Enhancement Act of 1993".

**SEC. 2. PURPOSES.**

The purposes of this Act are—

(1) to protect, mitigate, and enhance fish and wildlife through improved water management, improved instream flows, improved water quality, protection, creation and enhancement of wetlands, and by other appropriate means of habitat improvement;

(2) to improve the reliability of water supply for irrigation;

(3) to authorize a Yakima basin water conservation program that will improve the efficiency of water delivery and use, and to enhance basin water supplies, improve water quality, protect, create and enhance wetlands, and determine the quantity of basin water needs that can be met by water conservation measures;

(4) to encourage voluntary transactions among public and private entities that result in the implementation of water conservation measures, practices, and facilities; and

(5) to provide for the discretionary implementation by the Yakima Indian Nation of—

(A) an irrigation demonstration project on the Yakima Indian Reservation using water savings from system improvements to the Wapato Irrigation Project; and

(B) a Toppenish Creek corridor enhancement project integrating agricultural, fish, wildlife, and cultural resources.

**SEC. 3. DEFINITIONS.**

As used in this Act:

(1) BASIN CONSERVATION PROGRAM.—The term "Basin Conservation Program" means the Yakima River Basin Water Conservation Program established under section 4(a).

(2) CONSERVATION ADVISORY GROUP.—The term "Conservation Advisory Group" means the Yakima River Basin Conservation Advisory Group established under section 4(c).

(3) IRRIGATION DEMONSTRATION PROJECT.—The term "Irrigation Demonstration Project" means the Yakima Indian Reservation Irrigation Demonstration Project authorized in section 5(b).

(4) ON-DISTRICT STORAGE.—The term "on-district storage" means small water storage facilities located within the boundaries of an irrigation entity, including reregulating reservoirs, holding ponds, or other new storage methods that allow for efficient water use.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(6) TOPPENISH ENHANCEMENT PROJECT.—The term "Toppenish Enhancement Project" means the Toppenish Creek Corridor Enhancement Project authorized by section 5(c).

(7) YAKIMA PROJECT SUPERINTENDENT.—The term "Yakima Project Superintendent" means the individual designated by the Regional Director, Pacific Northwest Region, Bureau of Reclamation, to be responsible for the operation and management of the Yakima Federal Reclamation Project, Washington.

**SEC. 4. YAKIMA RIVER BASIN WATER CONSERVATION PROGRAM.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary, in consultation with the Governor of the State of Washington, representatives of the Yakima

Indian Nation, Yakima River Basin irrigators, and other interested parties, shall establish and administer a Yakima River Basin Water Conservation Program.

(2) PURPOSE.—The purpose of the Basin Conservation Program shall be to evaluate and carry out measures to improve the availability of water supplies for irrigation and the protection and enhancement of fish and wildlife resources, including wetlands, while improving the quality of water in the Yakima Basin.

(3) YAKIMA INDIAN NATION.—This section shall not apply to the Yakima Indian Nation except to the extent that the Yakima Indian Nation specifically applies for funds from the Basin Conservation Program.

(4) GRANTS.—The Secretary may make grants to eligible entities to carry out this Act under such terms and conditions as the Secretary may require.

(b) PHASES OF PROGRAM.—The Basin Conservation Program shall encourage and provide funding assistance for the following 4 phases of water conservation:

(1) FIRST PHASE.—The first phase shall consist of the development of water conservation plans, consistent with guidelines developed pursuant to subsection (d), by—

(A) irrigation districts;

(B) conservation districts;

(C) water purveyors;

(D) other areawide entities; and

(E) individuals not included within an areawide entity.

(2) SECOND PHASE.—The second phase shall consist of the investigation of the feasibility of specific potential water conservation measures identified in conservation plans.

(3) THIRD PHASE.—The third phase shall consist of the implementation of measures that have been identified in conservation plans and have been investigated for feasibility.

(4) FOURTH PHASE.—The fourth phase shall consist of post-implementation monitoring and evaluation of implemented measures.

(c) CONSERVATION ADVISORY GROUP.—

(1) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Governor of the State of Washington, representatives of the Yakima Indian Nation, Yakima River basin irrigators, and other interested and related parties, shall establish the Yakima River Basin Conservation Advisory Group.

(2) MEMBERS.—Members of the Conservation Advisory Group shall be appointed by the Secretary and shall be comprised of—

(A) 2 representatives of the Yakima River basin irrigators;

(B) 1 representative of the Yakima Indian Nation;

(C) 1 representative of counties and cities in the Yakima River basin; and

(D) 1 representative of environmental interests.

(3) DUTIES.—The Conservation Advisory Group shall—

(A) provide recommendations to the Secretary regarding the structure and implementation of the Basin Conservation Program;

(B) assist in the preparation of guidelines for the Basin Conservation Program, as provided for in subsection (d);

(C) structure a process to integrate specific water conservation measures into a basin conservation plan;

(D) provide for an annual review of the implementation of the guidelines; and

(E) provide recommendations consistent with State laws, on rules, regulations, and administration of a process to facilitate the voluntary sale or lease of water.

(4) DECISIONMAKING.—The Conservation Advisory Group shall make decisions based on consensus whenever possible. If disagreement occurs, any member may submit independent comments to the Secretary.

(5) TERMINATION.—The Conservation Advisory Group shall terminate 5 years after the date of the establishment of the Advisory Group, unless extended by the Secretary.

(d) GUIDELINES.—

(1) IN GENERAL.—The Secretary, in cooperation with the Governor of the State of Washington, representatives of the Yakima Indian Nation, Yakima River basin irrigators, and interested agencies, and in consultation with the Conservation Advisory Group, shall, not later than 1 year after all of the members of the Conservation Advisory Group are appointed, adopt guidelines to be used in the administration of the Basin Conservation Program.

(2) REPORT.—

(A) IN GENERAL.—The Secretary shall submit a detailed report on the guidelines to—

(i) the Committee on Energy and Natural Resources of the Senate;

(ii) the Committee on Natural Resources of the House of Representatives; and

(iii) the Governor of the State of Washington.

(B) DRAFT REPORT.—Not later than 60 days prior to the submission of the report under subparagraph (A), the Secretary shall make a draft of the report available to—

(i) the Governor of the State of Washington;

(ii) representatives of the Yakima Indian Nation;

(iii) Yakima River basin irrigators;

(iv) representatives of related agencies; and

(v) the public.

(C) COMMENT.—

(i) PROCEDURES.—The Secretary shall establish procedures for timely comments on the draft report.

(ii) INCLUSION OF COMMENTS.—The Secretary shall include a summary of the comments on the draft report as an appendix to the final report.

(3) CONTENTS OF GUIDELINES.—The guidelines shall, to the extent possible, be consistent with State law funding processes, regulations, and guidelines and shall include the following:

(A) Standards for the scope and content of water conservation plans and for feasibility studies of specific measures.

(B) Eligibility requirements for funding of proposals for conservation plan development, investigation of measures, and implementation.

(C) Criteria for evaluating and prioritizing proposals for the development of conservation plans and the investigation of potential measures and implementation, including—

(i) the availability of information on water diversions and use in the area for which the measures are proposed;

(ii) information to be gained, and applicability to other areas and programs in the Yakima River basin;

(iii) cost-effectiveness and availability of non-Federal funding;

(iv) the quantity of reduced diversions and timing in relation to present diversions;

(v) the extent to which each measure will contribute to the improved use of the available water and the reliability of the water supply of the Yakima River basin;

(vi) post-implementation monitoring and evaluation;

(vii) a plan to mitigate adverse environmental effects;

(viii) the extent to which proposed measures incorporate the testing of innovative water management techniques and technology;

(ix) the extent to which proposed measures contribute to the maintenance of the economic viability of agriculture in the area;

(x) consistency with applicable laws and Federal, State, tribal, and Yakima River basin water resource policies, goals, and objectives;

(xi) the existence or willingness of irrigation entities and other Basin Conservation Program participants to adopt procedures providing for incremental water pricing; and

(xii) the willingness to permanently restrict annual water diversions to a mutually agreed quantity in recognition of securing funding from and accomplishments of the Basin Conservation Program.

(D) Institutional and economic incentives to increase conservation and to promote more efficient use of water, including the specification of procedures for the voluntary transfer of water within the Yakima River basin.

(E) Procedures for administration and allocation of funds from the Basin Conservation Program.

(F) Oversight of the Basin Conservation Program and consultation requirements.

(e) COST SHARING.—

(1) IN GENERAL.—Costs incurred in the 4 phases of the Basin Conservation Program shall be shared as follows:

| Program phase | Non-Federal | | Federal share |
|---|---|---|---|
| | State share | Local | |
| 1. Development of water conservation plans | 50% but not more than $200,000 per recipient | Residual amount if any | 50% |
| 2. Investigation of specific water conservation measures | 50% but sum of 1 and 2 not greater than $200,000 per recipient | 20% after deducting State funds for Item 2 | Residual amount after deducting State and local funds for Item 2 |
| 3 and 4. Implementation and post-implementation monitoring and evaluation | 35% | 30% | 35% |

(2) SPECIFIC WATER RELATED IMPROVEMENTS.—

(A) NON-FEDERAL EXPENDITURES.—Water and water related resource improvements implemented in the Yakima River basin subsequent to and independent of this Act that utilize funding from the Bonneville Power Administration under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839 et seq.) to enhance fishery resources, and independent water related improvements of the State of Washington and other public and private entities to improve irrigation water use, water supply, and water quality shall be treated as non-Federal cost-share expenditures under this Act for purposes of the implementation and post-implementation monitoring and evaluation phases of the Basin Conservation Program.

(B) LIMITATION ON AMOUNT OF NON-FEDERAL SHARE.—Expenditures described in subparagraph (A) shall be limited to 50 percent of the non-Federal share of the total costs incurred in the implementation and post-implementation monitoring and evaluation phases of the Basin Conservation Program, and shall reduce the total amount of the non-Federal cost share required for the phases.

(3) BASIN CONSERVATION PROGRAM.—Costs of the Basin Conservation Program related to projects on the Yakima Indian Reservation shall be a Federal responsibility, shall be nonreimbursable, and shall not be subject to the cost-sharing requirements of this subsection.

(f) PUBLIC REVIEW.—A water conservation plan recommended for funding through the Basin Conservation Program shall be made available to the public for a period of not less than 30 days for review and comment prior to submission to the Secretary. A summary of the comments shall be included with the recommendation of the Conservation Advisory Group upon transmittal to the Secretary.

(g) CONSERVATION MEASURES.—

(1) IN GENERAL.—Measures considered for implementation in the Basin Conservation Program may include—

(A) conveyance and distribution system monitoring;

(B) automation of water conveyance systems;

(C) lining and piping of water conveyance and distribution systems;

(D) on-district storage;

(E) electrification of hydraulic turbines;

(F) tailwater recycling;

(G) consolidation of irrigation systems;

(H) irrigation scheduling; and

(I) improvement of on-farm water application systems.

(2) FUNDING.—Basin Conservation Program funds may be used throughout all 4 phases of the Conservation Program to mitigate adverse effects of program measures.

(3) OTHER MEASURES.—

(A) TESTING.—In addition to implementing technologies existing on the date of enactment of this Act, the Secretary shall encourage the testing of innovative water conservation measures.

(B) INNOVATIVE ALLOCATION TOOLS.—The Secretary shall, to the maximum extent possible under Federal and State law, cooperate with the State of Washington to facilitate—

(i) water and water right transfers;

(ii) water banking;

(iii) dry year options;

(iv) the sale and leasing of water; and

(v) other innovative allocation tools used to maximize the utility of Yakima River basin water supplies.

(4) ACQUISITION OF WATER RIGHTS.—The Secretary may use funds made available to carry out this section for the purchase or lease of land, water, or water rights from any entity or individual willing to limit or forego water use on a temporary or permanent basis.

(5) ON-FARM WATER MANAGEMENT.—On-farm water management improvements shall be coordinated with programs administered by the Secretary of Agriculture and State conservation districts.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary the following amounts for the Basin Conservation Program:

(1) $1,000,000 for the development of water conservation plans.

(2) $4,000,000 for investigation of specific potential water conservation measures identified in conservation plans for consideration for implementing through the Basin Conservation Program.

(3) $67,500,000 for implementation, post-implementation monitoring and evaluation of measures, and addressing environmental impacts.

(4) $6,000,000 for the initial acquisition of water from willing sellers or lessors specifically to provide instream flows for interim periods to facilitate the outward migration of anadromous fish. The funds shall not be subject to the cost-sharing requirements of subsection (e).

(5) $100,000 for each fiscal year for the establishment and support of the Conservation Advisory Group during duration of the Group. Funds made available under this paragraph shall be made available for travel and per diem expenses, rental of meeting rooms, typing, printing and mailing, and associated administrative needs. The Secretary and the Governor of the State of Washington shall provide appropriate staff support to the Conservation Advisory Group.

**SEC. 5. YAKIMA INDIAN NATION.**

(a) WAPATO IRRIGATION PROJECT IMPROVEMENTS.—

(1) COORDINATION.—The system improvements of the Yakima Indian Nation to the Wapato Irrigation Project proposed pursuant to this Act shall be coordinated with the Bureau of Indian Affairs.

(2) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There are authorized to be appropriated to the Secretary $10,000,000 for the preparation of plans, investigation of measures, and, following the certification by the Secretary that the measures are consistent with the water conservation objectives of this Act, the implementation of system improvements to the Wapato Irrigation Project.

(B) FURTHER IMPROVEMENTS.—Funding for further improvements within the Wapato Irrigation Project may be acquired under the Basin Conservation Program or other sources identified by the Yakima Indian Nation.

(3) USE OF SAVINGS.—Water savings resulting from irrigation system improvements shall be available for the use of the Yakima Indian Nation for irrigation and other purposes on the reservation and for protection and enhancement of fish and wildlife within the Yakima River basin. The conveyance of the water through irrigation facilities, other than the Wapato Irrigation Project, shall be on a voluntary basis.

(b) IRRIGATION DEMONSTRATION PROJECT.—

(1) IN GENERAL.—Subject to paragraph (3), there are authorized to be appropriated to the Secretary $8,500,000 for the design and construction of the Yakima Indian Reservation Irrigation Demonstration Project.

(2) OPERATION AND MAINTENANCE.—In addition to amounts made available under paragraph (1), and subject to paragraph (3), there are authorized to be appropriated to the Secretary such sums as are necessary for the operation and maintenance of the Irrigation Demonstration Project, including funds for administration, training, equipment, materials, and supplies for a period specified by the Secretary.

(3) CONCURRENCE OF SECRETARY.—Funds may not be made available under this subsection until the Yakima Indian Nation obtains the concurrence of the Secretary in the construction, management, and administration of the Irrigation Demonstration Project.

(4) CONSTRUCTION OF FACILITIES.—The Irrigation Demonstration Project shall provide for the construction of distribution and on-farm irrigation facilities to use water savings resulting from the Wapato Irrigation Project system improvements for—

(A) demonstrating cost-effective, state-of-the-art irrigation water management and conservation;

(B) training tribal members in irrigation methods, operation, and management; and

(C) upgrading existing hydroelectric facilities and constructing additional hydroelectric facilities on the reservation to meet irrigation pumping power needs.

(c) TOPPENISH CREEK CORRIDOR ENHANCEMENT PROJECT APPROPRIATIONS.—There are authorized to be appropriated to the Secretary—

(1) $1,500,000 for the investigation by the Yakima Indian Nation of measures to develop a Toppenish Creek Corridor Enhancement Project to demonstrate integration of management of agricultural, fish, wildlife, and cultural resources to meet tribal objectives; and

(2) such sums as the Secretary determines are necessary for the implementation and maintenance of a Toppenish Creek Corridor Enhancement Project.

(d) REPORT.—Not later than 5 years after the implementation of the Irrigation Demonstration Project and the Toppenish Enhancement Project, the Secretary, in consultation with the Yakima Indian Nation, shall report to the Committee on Energy and Natural Resources of the Senate, the Committee on Natural Resources of the House of Representatives, and the Governor of the State of Washington on the effectiveness of the conservation, training, mitigation, and other measures implemented.

(e) STATUS OF IMPROVEMENTS AND FACILITIES.—The Wapato Irrigation Project system improvements and any specific irrigation facility of the Irrigation Demonstration Project and the Toppenish Enhancement Project shall be considered part of the Wapato Irrigation Project.

(f) TREATMENT OF CERTAIN COSTS.—Costs related to Wapato Irrigation Project improvements, the Irrigation Demonstration Project, and the Toppenish Enhancement Project shall be a Federal responsibility and shall be nonreimbursable.

**SEC. 6. OPERATION OF YAKIMA BASIN PROJECTS.**

(a) WATER SAVINGS FROM BASIN CONSERVATION PROGRAM.—

(1) INTENTION OF CONGRESS.—It is the intention of Congress that the Basin Conservation Program shall result in reductions in water diversions allowing for changes in the operation of the Yakima Project, as in existence on the date of enactment of this Act, to improve streamflow conditions in the Yakima River basin.

(2) ESTIMATION OF WATER SUPPLY; FLOWS.—

(A) IN GENERAL.—The Secretary shall, acting through the Yakima Project Superintendent—

(i) continue to estimate the water supply that is anticipated to be available to meet water entitlements; and

(ii) provide instream flows in accordance with the following criteria:

| Water supply estimate for period (million acre feet): | | | | Target flow from date of estimate thru October downstream of (cubic feet per second): | |
|---|---|---|---|---|---|
| April through September | May through September | June through September | July through September | Sunnyside Diversion Dam | Prosser Diversion Dam |
| (1) 3.2 | 2.9 | 2.4 | 1.9 | 600 | 600 |
| (2) 2.9 | 2.65 | 2.2 | 1.7 | 500 | 500 |
| (3) 2.65 | 2.4 | 2.0 | 1.5 | 400 | 400 |
| Less than line 3 water supply | | | | 300 | 300. |

(B) TARGET FLOWS.—The instream flows referred to in subparagraph (A)(ii) shall, with represent target flows at the respective points, with reasonable fluctuations from

the targets flows anticipated in the operation of the Yakima Project.

(C) DEFINITION OF FULL SUPPLY.—As used in this section, the term "full supply" means the figures in the water supply columns referred to in subparagraph (A)(ii).

(3) INCREASE IN INSTREAM FLOWS.—The instream flows shall be increased for interim periods during April through October to facilitate, when necessary, the outward migration of anadromous fish. Increased instream flows for the interim periods shall be obtained through voluntary sale and leasing of water or water rights.

(4) REVIEW OF FALL SUPPLY.—

(A) IN GENERAL.—The Secretary, in cooperation with the Governor of the State of Washington, representatives of the Yakima Indian Nation, and Yakima River basin irrigators shall, not less often than once every 5 years after the completion of the first measure of the Basin Conservation Program, review the components that comprise the full supply.

(B) ADJUSTMENTS.—If the actual supply reflects an increase in relation to the quantity required to meet irrigation water entitlements and a reduction in water diversions that are attributed to the Basin Conservation Program, the full supply may be adjusted downward and the Yakima Project shall be operated by the Yakima Project Superintendent in accordance with the adjusted criteria.

(C) USE OF WATER SAVINGS.—Water savings resulting from improvements to the Wapato Irrigation Project shall be available for use by the Yakima Indian Nation for irrigation and other purposes on the reservation and for the protection and enhancement of fish and wildlife within the Yakima River basin.

(5) EFFECT OF JUDICIAL ACTIONS.—Operational procedures and processes in the Yakima River basin that have been or may be implemented through judicial actions shall not be affected by this Act.

(b) WATER FROM LAKE CLE ELUM.—Water accruing from the development of additional storage capacity at Lake Cle Elum, made available as a result of the modifications authorized in section 6(a), shall be considered a part of the water supply of the basin as provided in subsection (a). Releases may be made from other Yakima Project storage facilities to most effectively utilize water surpluses, except that water deliveries to holders of existing water rights shall not be impaired.

(c) STATUS OF BASIN CONSERVATION PROGRAM FACILITIES.—

(1) INTEGRATION AND COORDINATION.—Measures of the Basin Conservation Program that are implemented in connection with facilities under the administrative jurisdiction of the Secretary, except as provided in section 5, shall be considered part of the Yakima River Basin Water Enhancement Project, and the operation and maintenance of the Basin Conservation Program shall be integrated and coordinated with other features of the Yakima Project.

(2) OPERATION AND MAINTENANCE.—The responsibility for operation and maintenance and the related costs of the facilities described in paragraph (1) shall remain with the operating entity. As appropriate, the Secretary shall incorporate the operation and maintenance of the facilities into agreements.

(3) OPERATION.—The Secretary shall ensure that the facilities are operated in a manner consistent with Federal and State laws and in accordance with water rights recognized under Federal and State law.

(d) WATER ACQUIRED BY PURCHASE AND LEASE.—Water acquired from voluntary sellers and lessors shall be administered in accordance with the laws of the State of Washington, including chapter 90.38 of the Revised Code of Washington.

(e) APPROPRIATION FOR CHANDLER POWER CANAL OPERATIONS.—There are authorized to be appropriated to the Secretary $480,000 for facilities to automate the headgate, wasteways, and trashrack of the Chandler Power Canal to maintain operating controls for the delivery of water to the Kennewick Division as the requirements of subsection (a) are implemented.

**SEC. 7. LAKE CLE ELUM AUTHORIZATION OF APPROPRIATIONS.**

(a) MODIFICATIONS AND IMPROVEMENTS.—There are authorized to be appropriated to the Secretary—

(1) $2,934,000 to—

(A) modify the radial gates at Cle Elum Dam to provide an additional 14,600 acre-feet of storage capacity in Lake Cle Elum;

(B) provide for shoreline protection of Lake Cle Elum; and

(C) construct juvenile fish passage facilities at Cle Elum Dam; and

(2) such sums as are necessary for environmental mitigation.

(b) OPERATION AND MAINTENANCE APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary for the share of the operation and maintenance of Cle Elum Dam determined by the Secretary to be a Federal responsibility.

**SEC. 8. ENHANCEMENT OF WATER SUPPLIES FOR YAKIMA BASIN TRIBUTARIES.**

(a) GENERAL PROVISIONS.—The following shall apply to the investigation and implementation of measures to enhance water supplies for fish and wildlife and irrigation purposes on tributaries of the Yakima River basin:

(1) AGREEMENT OF WATER RIGHT OWNERS.—An enhancement program undertaken in any tributary shall be contingent upon the agreement of appropriate water rights owners to participate.

(2) WATER RIGHTS.—The enhancement program shall not impair—

(A) the water rights of any water rights owners in the tributary;

(B) the capability of tributary water users to divert, convey, and apply water; and

(C) existing water and land uses within the tributary area.

(3) LAWS OF WASHINGTON APPLICABLE.—The water supply for tributary enhancement shall be administered in accordance with the laws of the State of Washington.

(4) AVAILABILITY OF WATER SUPPLY.—Any enhancement program shall be predicated upon the availability of a dependable water supply.

(b) STUDY.—

(1) MEASURES STUDIED.—The Secretary, after consultation with Governor of the State of Washington, the tributary water rights owners, and representatives of the Yakima Indian Nation, and the agreement of appropriate water rights owners to participate, shall conduct a study concerning the measures that can be implemented to enhance water supplies for fish and wildlife and irrigation purposes on Taneum Creek, including—

(A) water use efficiency improvements;

(B) the conveyance of water from the Yakima Project through the facilities of any irrigation entity willing to contract with the Secretary without adverse impact to water users;

(C) the construction, operation, and maintenance of ground water withdrawal facilities;

(D) contracting with any entity that is willing to voluntarily limit or forego present water use through lease or sale of water or water rights on a temporary or permanent basis;

(E) the purchase of water rights from willing sellers; and

(F) other measures compatible with the purposes of this Act, including restoration of stream habitats.

(2) CONSIDERATION.—In conducting the Taneum Creek study, the Secretary shall consider—

(A) the hydrologic and environmental characteristics;

(B) the engineering and economic factors relating to each measure; and

(C) the potential effects on the operations of present water users in the tributary and measures to alleviate the effects.

(3) PUBLIC COMMENT.—

(A) IN GENERAL.—The Secretary shall make available to the public for a 45-day comment period a draft report describing in detail the findings, conclusions, and recommendations of the study.

(B) INCLUSION IN FINAL REPORT.—The Secretary shall consider and include any comment made in developing a final report.

(C) SUBMISSION OF FINAL REPORT.—The final report shall be submitted to the Committee on Energy and Natural Resources of the Senate, the Committee on Natural Resources of the House of Representatives, and the Governor of the State of Washington, and shall be made available to the public.

(c) IMPLEMENTATION OF NONSTORAGE MEASURES.—After securing the necessary permits, the Secretary may, in cooperation with the head of the Department of Ecology of the State of Washington and in accordance with the laws of the State of Washington, implement nonstorage measures identified in the final report under subsection (b) upon fulfillment of the following conditions:

(1) The Secretary enters into an agreement with the appropriate water rights owners who are willing to participate, the Governor of the State of Washington, and representatives of the Yakima Indian Nation, for the use and management of the water supply to be provided by proposed tributary measures pursuant to this section.

(2) The Secretary and the State of Washington finds that the implementation of the proposed tributary measures will not impair the water rights of any person or entity in the affected tributary.

(d) OTHER YAKIMA RIVER BASIN TRIBUTARIES.—An enhancement program similar to the program described in this section may be investigated and implemented by the Secretary in other tributaries contingent upon the agreement of the appropriate tributary water right owners to participate. The requirements of this section shall be applicable to such other programs.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated to the Secretary—

(A) $500,000 for the study of the Taneum Creek Project;

(B) such additional amounts as the Secretary subsequently determines are necessary for the implementation of tributary measures pursuant to this section; and

(C) such sums as the Secretary determines are necessary for the investigation of similar enhancement programs in other Yakima River basin tributaries contingent upon the

agreement of the appropriate water right owners to participate.

(2) INVESTIGATION REPORT.—Funds for the implementation of any enhancement program, other than the program described in this section, shall be appropriated to the Secretary following the submittal of an investigation report to the appropriate congressional committees.

**SEC. 9. ENVIRONMENTAL COMPLIANCE.**

(a) COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—Implementation of this Act is contingent upon compliance by the Secretary with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $2,000,000 for—

(1) environmental compliance activities, including the conduct, in cooperation with the Governor of the State of Washington, of an inventory of wildlife and wetland resources in the Yakima River basin; and

(2) an investigation of measures including wetland banking, that may be implemented to address potential effects of actions taken under this Act.

**SEC. 10. SAVINGS PROVISIONS.**

Nothing in this Act shall be construed to—

(1) affect or modify any treaty or other right of the Yakima Indian Nation;

(2) authorize the appropriation or use of water by any Federal, State, or local agency, the Yakima Indian Nation, or any other entity or individual;

(3) impair the rights or jurisdictions of the Federal Government, the States, the Yakima Indian Nation, or other entities over waters of any river or stream or over any ground water resource;

(4) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact entered into by the States;

(5) alter, establish, or impair the respective rights of States, the United States, the Yakima Indian Nation, or any other entity or individual with respect to any water or water-related right;

(6) alter, diminish, or abridge the rights and obligations of any Federal, State, or local agency, the Yakima Indian Nation, or other entity, public or private;

(7) affect or modify the rights of the Yakima Indian Nation or successors in interest to, and management and regulation of, water resources arising or used within the external boundaries of the Yakima Indian Reservation;

(8) affect or modify the settlement agreement between the United States and the State of Washington filed in Yakima County Superior Court with regard to Federal reserved water rights other than rights reserved by the United States for the benefit of the Yakima Indian Nation and the members of the Nation; or

(9) affect or modify the rights of any Federal, State, or local agency, the Yakima Indian Nation, or any other entity, with respect to any unresolved and unsettled claim in any water right adjudication, or court decision, including State against Acquavella, or constitute evidence in any proceeding in which any water or water-related right is adjudicated.

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By Mr. LIEBERMAN (for himself and Mr. JEFFORDS):

S. 1412. A bill to amend title 13, United States Code, to require that any data relating to the incidence of poverty produced or published by the Secretary of Commerce for subnational areas is corrected for subnational areas is corrected for differences in the cost of living in those areas; to the Committee on Governmental Affairs.

POVERTY DATA CORRECTION ACT OF 1993

Mr. LIEBERMAN. Mr. President, I rise to introduce a bill which will improve the quality of our information on persons and families in poverty, and which will make more equitable the distribution of Federal funds. This bill requires the Bureau of the Census to adjust for differences in the cost of living, on a State-by-State basis, when providing information on persons or families in poverty.

The current method for defining the poverty population is woefully antiquated. The definition was developed in the late 1960's based on data collected in the late 1950's early 1960's. The assumptions used then about what proportion of a family's income is spent on food is no longer valid. The data used to calculate what it costs to provide for the minimum nutritional needs, not to mention what minimum nutritional needs are, no longer applies. Nearly everyone agrees that it is time for a new look at what constitutes poverty. And, I am pleased to be able to report that the National Academy of Science, through its Committee on National Statistics, is studying this issue.

But there is a more serious problem with our information on poverty than old data and outdated assumptions. In calculating the number of families in poverty, the Census Bureau has never taken into account the dramatic differences in the cost of living from State to State. Recent calculations from the academic community show that the difference can be as much as 50 percent.

Let my give you an example. let's say that the poverty level is $15,000 for a family of four. That is, it takes $15,000 to provide the basic necessities for the family. In some States, where the cost of living is high, it really takes $18,750 to provide those basics. In other States, where the cost of living is low, it takes only $11,250 to provide those necessities. But when the Census Bureau counts the number of poor families, they don't take those differences into account.

But this is more than just an academic problem of definition. These census numbers are used to distribute millions of Federal dollars. Chapter 1 of the Elementary and Secondary Act allocates Federal dollars to school districts based on the number of children in poverty. States like Connecticut, where the cost of living is high, get fewer Federal dollars than they deserve because cost differences are ignored. Other States, where the cost of living is low, get more funds than they deserve.

It is important that we act now to correct this inequity. This bill provides a mechanism for that correction. Thank you Mr. President, I would also like to thank my colleagues, Representatives GALLO and KAPTUR, who introduced this legislation in the House of Representatives. Mr. President, I ask unanimous consent that the full text of the bill be included in the RECORD.

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

S. 1412

*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 "Poverty Data Correction Act of 1993".

**SEC. 2. REQUIREMENT.**

(a) IN GENERAL.—Chapter 5 of title 13, United States Code, is amended by adding after subchapter V the following:

"Subchapter VI—Poverty Data

**"SEC. 197. CORRECTION OF SUBNATIONAL DATA RELATING TO POVERTY.**

"(a) Any data relating to the incidence of poverty produced or published by or for the Secretary for subnational areas shall be corrected for differences in the cost of living, and data produced for State and sub-State areas shall be corrected for differences in the cost of living for at least all States of the United States.

"(b) Data under this section shall be published in 1995 and at least every second year thereafter.

**"SEC. 198. DEVELOPMENT OF STATE COST-OF-LIVING INDEX AND STATE POVERTY THRESHOLDS.**

"(a) To correct any data relating to the incidence of poverty for differences in the cost of living, the Secretary shall—

"(1) develop or cause to be developed a State cost-of-living index which ranks and assigns an index value to each State using data on wage, housing, and other costs relevant to the cost of living; and

"(2) multiply the Federal Government's statistical poverty thresholds by the index value for each State's cost of living to produce State poverty thresholds for each State.

"(b) The State cost-of-living index and resulting State poverty thresholds shall be published prior to September 30, 1994, for calendar year 1993 and shall be updated annually for each subsequent calendar year.".

(b) CONFORMING AMENDMENT.—The table of subchapters of chapter 5 of title 13, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—POVERTY DATA

"Sec. 197. Correction of subnational data relating to poverty.

"Sec. 198. Development of State cost-of-living index and State poverty thresholds.".

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By Mr. LEVIN (for himself and Mr. COHEN):

S. 1413. A bill to amend the Ethics in Government Act of 1978, as amended, to extend the authorization of appropriations for the Office of Government Ethics for 8 years, and for other purposes; to the Committee on Governmental Affairs.

OFFICE OF GOVERNMENT ETHICS REAUTHORIZATION ACT OF 1993

Mr. LEVIN. Mr. President, today I am introducing a bill that would reauthorize the Office of Government Ethics [OGE] for 8 years beyond its current expiration date of September 30, 1994. Senator COHEN, the ranking member of the Subcommittee on Oversight of Government Management, which I chair, joins me as an original cosponsor.

OGE was created in 1978 as part of the Office of Personnel Management. Over the years, Congress has given OGE more authority and autonomy, making it a separate agency as of October 1, 1989.

OGE was last reauthorized in 1988 for 6 years. We are seeking an 8-year reauthorization this time in order to avoid reauthorizing the office next time during a presidential election year or the first year of a new administration, which is a very important and busy time at OGE given its role in the nominee clearance process.

In addition to reauthorizing OGE, this bill would give OGE the authority to accept donations or gifts that would facilitate the agency's work. A Federal agency can't accept gifts unless it has specific statutory authority to do so. Many agencies do have such authority but, up until now, OGE hasn't been one of them. The reason OGE seeks this authority is mainly in connection with its training mission. OGE conducts multiagency ethics training sessions around the country, and sometimes there is no nearby Federal facility that is appropriate in terms of size and services. This gift acceptance authority would allow OGE to accept the use of non-Federal facilities—for example, an auditorium and related services such as projectionists and custodians—which might be offered by a State or local government or a university.

In reauthorizing OGE, our subcommittee plans to not only examine the specifics of the bill—the time period for reauthorization and gift acceptance authority—but OGE's overall mission and performance. OGE has a massive job: promoting ethics throughout the entire executive branch. Congress and the President both have assigned new tasks to OGE since the last reauthorization. OGE's responsibilities range from teaching to enforcement, from issuing regulations to providing guidance and interpretation, from reviewing financial disclosure forms to auditing agency ethics programs. In one sense, OGE's successes add to its workload: Increased education about ethics leads to a heightened sensitivity to potential ethical problems, and more agencies and individuals call on OGE for help and guidance.

In 1990, my subcommittee held a hearing to look at OGE's oversight of agency ethics programs. What we found was that when OGE went in and looked at an agency's ethics program, it did a pretty good job of identifying weaknesses. The problems were that OGE didn't look at enough programs or follow up effectively to get problems solved in the programs it reviewed.

Since that time, OGE oversight has improved. OGE told us in 1990 that one big impediment to its doing a better job in the auditing area was lack of staff—it simply did not have enough people to visit all of the executive branch agencies often enough, or to follow up diligently. GAO concurred in OGE's assessment that staffing was a major problem. In response to this, OGE's budget cap was lifted in October 1992, and the overwhelming proportion of the new staff hired with this money was assigned to the monitoring and compliance division. This was an important improvement.

Also since the last reauthorization, OGE has issued comprehensive new regulations on standards of conduct for all Federal employees. This was the culmination of a major effort, and the process continues as OGE teaches ethics officials at other agencies about the regulations, responds to requests for guidance, and works with agencies on supplemental regulations.

I ask unanimous consent that a copy of the bill be placed in the RECORD.

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

S. 1413

*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 "Office of Government Ethics Authorization Act of 1994".

**SEC. 2. GIFT ACCEPTANCE AUTHORITY.**

Section 403 of the Ethics in Government Act of 1978 (5 U.S.C. App. 5) is amended by—

(1) inserting "(a)" before "Upon the request"; and

(2) adding at the end thereof the following:

"(b)(1) The Director is authorized to accept and utilize on behalf of the United States, any gift, donation, bequest, or devise of money, use of facilities, personal property, or services for the purpose of aiding or facilitating the work of the Office of Government Ethics.

"(2) No gift may be accepted—

"(A) that attaches conditions inconsistent with applicable laws or regulations; or

"(B) that is conditioned upon or will require the expenditure of appropriated funds that are not available to the Office of Government Ethics.

"(3) The Director shall establish written rules setting forth the criteria to be used in determining whether the acceptance of contributions of money, services, use of facilities, or personal property under this subsection would reflect unfavorably upon the ability of the Office of Government Ethics or any employee to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.".

**SEC. 3. EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.**

The text of section 405 of the Ethics in Government Act of 1978 (5 U.S.C. App. 5) is amended to read as follows: "There are authorized to be appropriated to carry out the provisions of this title and for no other purpose such sums as may be necessary for the fiscal years beginning with fiscal year 1995 and ending with fiscal year 2002.".

**SEC. 4. EFFECTIVE DATE.**

This Act shall become effective upon October 1, 1994.

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By Mr. BINGAMAN:

S. 1414. A bill to amend the Federal Water Pollution Control Act to authorize the Administrator of the Environmental Protection Agency to award grants to improve wastewater treatment for certain unincorporated communities, and for other purposes; to the Committee on Environment and Public Works.

UNINCORPORATED COMMUNITY WASTEWATER TREATMENT ACT OF 1993

Mr. BINGAMAN. Mr. President, today I am introducing a bill that will help meet the wastewater treatment needs of small, semirural communities. These are communities that are too large to qualify for existing Federal rural water grants for construction of wastewater facilities, but are too small and too poor to shoulder the costs of financing these projects through loans or other alternative financing mechanisms.

The communities I especially have in mind are unincorporated communities near urban centers which face a unique combination of environmental, financial, and governmental problems. The communities are under environmental pressure as urban growth causes increased population. Household septic systems which once were adequate to handle wastewater treatment needs can no longer accommodate the density. However, these communities often lack the tax base and the governmental structure needed to fund the needed infrastructure improvements. They can also face high-system costs per household because of relatively low density, a high percentage of residents with lower incomes, and lack of access to funding programs intended for small, rural communities.

The problem is perhaps no more evident than in the South Valley in Bernalillo County, NM. Most of the 4,100 households in the South Valley have onsite water wells and septic tanks. A combination of soil characteristics and a very shallow water table makes the area susceptible to groundwater contamination. The individual septic tanks can easily leach into the water table, introducing dangerous levels of nitrate and contaminating the drinking water.

State and local governments are already contributing to finding solutions to problems such as found in South Valley. But these funds cannot meet all needs. I believe that the Clean Water Act should be amended to include a special grant program for small, unincorporated communities

facing extreme hardship in providing adequate wastewater treatment.

I ask unanimous consent that the full text of my bill be printed in the RECORD.

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

S. 1414

*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 "Unincorporated Community Wastewater Treatment Act of 1993".

**SEC. 2. FINDINGS.**

Congress finds that—

(1) as of the date of enactment of this Act, there is a severe lack of wastewater treatment facilities in small, semi-rural, unincorporated communities in the United States;

(2) the lack of facilities is leading to the pollution of rivers and ground water in the area; and

(3) the pollution presents a potential threat to the public health of the communities referred to in paragraph (1).

**SEC. 3. GRANTS TO UNINCORPORATED COMMUNITIES.**

Title V of the Federal Water Pollution Control Act (33 U.S.C. 1361 et seq.) is amended—

(1) by redesignating section 519 as section 520; and

(2) by inserting after section 518 following new section:

**"SEC. 519. GRANTS TO UNINCORPORATED COMMUNITIES.**

"(a) DEFINTIONS.—As used in this section:

"(1) CONSTRUCTION.—The term 'construction' has the same meaning provided in section 212(1).

"(2) NON-METROPOLITAN AREA.—The term 'non-metropolitan area' means an area no part of which is within an area designated as a metropolitan statistical area by the Office of Management and Budget.

"(3) TREATMENT WORKS.—The term 'treatment works' has the same meaning provided in section 212(2).

"(b) AUTHORIZATION FOR GRANT AWARDS.—Notwithstanding any other provision of law, the Administrator is authorized to award a grant for wastewater treatment to an unincorporated community for a wastewater treatment project that serves a population—

"(1) of 20,000 or fewer residents; and

"(2) with a median household income that is less than or equal to the median household income for non-metropolitan areas of the State in which the community is located.

"(c) USE OF GRANT.—A grant awarded under this section may be used for 1 or more of the following activities:

"(1) The acquisition or construction (including planning, design, repair, extension, improvement, alteration, or reconstruction) of a treatment works or any portion or any associated structure of a treatment works (including any associated collection line or interceptor sewer, notwithstanding any limitation otherwise imposed with respect to the provision of assistance for the line or sewer).

"(2) The acquisition of land, or any easement or other right-of-way, with respect to which the recipient of the grant is not the owner at the time of the acquisition, that is necessary to carry out the construction or operation of the treatment works referred to in paragraph (1).

"(3) The final disposal of residues resulting from the treatment of water or waste.

"(4) The disposal of wastewater by surface or underground methods (or both).

"(5) The disposal of wastewater through recycling or reclamation (or both).

"(d) COST-SHARING.—

"(1) FEDERAL SHARE.—The Federal share of a grant described in subsection (a) shall not exceed 75 percent of the total cost of the project that is the subject of the grant.

"(2) NON-FEDERAL SHARE.—Payment of the non-Federal share of a grant described in subsection (a) may be satisfied by any combination of public or private funds for in-kind services. The non-Federal share may include public funds authorized or expended for the project that is the subject of the grant during the period beginning on the date that is 3 years before the date of enactment of the Unincorporated Community Wastewater Treatment Act of 1993.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Environmental Protection Agency, to carry out this section, such sums as may be necessary for each of fiscal years 1994 through 2000.".

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By Mr. PRYOR (for himself, Mr. SIMON, Mr. BOREN, Mr. DURENBERGER, Mr. WALLOP, Mr. INOUYE, Mr. BURNS, Mr. HEFLIN, Mr. LEVIN, Mr. CHAFEE, Mr. BAUCUS, and Mr. COCHRAN):

S. 1415. A bill to amend the Internal Revenue Code of 1986 to clarify provisions relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes; to the Committee on Finance.

THE CHURCH RETIREMENT BENEFITS SIMPLIFICATION ACT OF 1993

Mr. PRYOR. Mr. President, I am pleased to introduce today the Church Benefits Simplification Act of 1993, legislation which I also introduced and held hearings on in the 101st and 102d Congresses. This act provides much needed clarification of the rules that apply to church retirement and welfare benefit plans and brings consistency to those rules. In addition, the act resolves significant problems churches face in administering their retirement and welfare benefit programs under current law.

In developing this important legislation, we have worked closely with leaders of the pension boards of 28 mainline Protestant and Jewish denominations. The employee benefit programs of these mainline denominations are among the oldest programs in our country. Several date from the 1700's, and their median age is in excess of 50 years. These programs provide retirement and welfare benefits for several hundred thousand ministers and lay workers employed by thousands of churches and church ministry organizations serving the spiritual needs of literally millions of members.

Church retirement benefits programs began in recognition of a denomination's mission to care for its church workers in their advanced years. Several church retirement and welfare benefit programs were initially formed to provide relief and benefits for retired, disabled, or impoverished ministers and families as particular cases of need were identified. As time passed, church denominations began to provide for the retirement needs of their ministers and lay workers on a current and systematic basis. Today, church retirement and welfare benefit programs provide benefits for ministers and lay workers employed in all forms of pastoral, healing, teaching, and preaching ministries and missions, including, among others, local churches, seminaries, old-age homes, orphanages, mission societies, hospitals, universities, church camps, and day care centers.

The goal of the act is to clarify the rules that apply to church employee benefit plans. Under current law, these rules are generally lengthy and complex and are, for the most part, designed for for-profit, commercial employers. Most denominations are composed of thousands of work units, each having only a few employees, and the budgets of these work units are marginal at best. These organizations rely almost completely on contributions from the offering plate to support their missions, including the salaries and retirement and welfare benefits of their ministers and lay workers. Unlike for-profit business entities, churches cannot pass operating costs on to customers by raising prices.

Churches are also much more loosely structured than most for-profit business organizations, and many denominations cannot impose requirements, on their constituent parts. For example, hierarchically organized denominations may be able to control the provision of employee benefits to ministers and lay workers, while in congregational denominations, such control is typically more difficult.

In addition, churches are tax-exempt and, unlike for-profit business organizations, have no need for tax deductions. Churches and church ministry organizations therefore lack the incentive of for-profit employers to maximize either the amount of the employer's tax deduction or the amount of income which the highly compensated employees who control a for-profit business can shelter from current taxation through plan contributions and tax-free fringe or welfare benefits.

Retirement and employee benefit tax laws do not always take the difference between churches and for-profit employers into account, with the result that churches have had to divert a significant amount of time and resources from their religious mission and ministries in attempting to identify and comply with rules that in many instances are unworkable or simply not

needed for church employee benefit plans.

If the act becomes law, the reduction in administrative burdens and consequent savings in related costs now imposed on churches and church ministry organizations will outweigh any possible gain from an employee benefits policy perspective. Unlike the for-profit sector where cost savings result in a better bottom-line for shareholders, savings in the church sector will find their way into mission and ministries that help people who needed help.

A 1993 study by Independent Sector, a national membership organization composed of over 600 tax-exempt organizations and corporate philanthropy departments, indicated that approximately half the funds contributed to churches is used in service to others. Religious congregations are the primary voluntary service providers for neighborhoods. Ninety-two percent of religious congregations have one or more programs in human services. Three-fifths of religious congregations offer family counseling, and more than one-third—almost 40 percent—give means or shelter to the poor. Some 74 percent donate for international relief or missionary activity, and almost 90 percent sponsor hospices, health programs, hospitals, or provide for the disabled, retarded, or people in crises. The Independent Sector study indicated that in 1991 religious congregations made $6.6 billion in direct grants to other groups and gave $15.9 billion for education, human services and health programs. These figures are well beyond the giving of all U.S. foundations and corporations combined.

It is my view that the Congress should do everything possible to ensure that churches can continue to maximize their contributions toward these important missions and ministries, rather than paying for costs of complying with rules that are unworkable or not needed for church employee benefit plans.

The cornerstone of the act is a recodification of the rules applicable to church retirement plans so that all of such rules in the Internal Revenue Code are identified, simplified, and separated from the rules that apply to for-profit employers. Retirement plan issues unique to churches will thus not be inadvertently affected when Congress is considering future Code changes which are applicable to for-profit employers but not appropriate for churches.

The act would also ensure that church retirement plans, whether described in the new section 401A—applicable only to those church section 401(a) plans that affirmatively decide to be subject to it—or section 403(b), are subject to the same coverage and related rules. In 1986, Congress determined that the section 403(b) plans of churches and so-called qualified church controlled organizations should not be subjected to coverage and related rules. The act would extend this same relief to church section 401(a) plans and would also eliminate the troublesome qualified church controlled organization approach in favor of a provision that only subjects church-related hospitals and universities to applicable coverage and related rules. The act, consistent with the law that now applies to church section 401(a) plans, would also clarify that the coverage rules that will apply to the section 403(b) programs of church-related hospitals and universities are those that were applicable prior to the enactment of the Employee Retirement and Income Security Act of 1974.

The act also would resolve a number of other problems many church pension boards face under current law. For example, under present law there is a question as to whether self-employed ministers and chaplains who work for nonchurch employers are able to participate in their denominations's retirement and welfare benefit programs. The act would make it clear that such ministers may participate in such programs.

The act would also;

Make it clear that the portion of a retired minister's pension which is treated as parsonage allowance is not subject to Self Employment Contribution Act, or SECA, taxes.

For the first time, subject church plans to definite, objective vesting schedules;

Solve several church employer aggregation problems.

Provide relief that will result in better retirement income for foreign missionaries;

Simplify the required distribution rules that apply to church retirement plans;

Eliminate an unworkable requirement under the so-called section 403(b) catch-up contribution rules; and

Make relief granted under section 457 consistent with coverage relief proposed for church retirement and welfare benefit plans.

Mr. President, I ask unanimous consent that the text of the act be printed in the RECORD.

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

S. 1415

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

(a) SHORT TITLE.—This Act may be cited as the "Church Retirement Benefits Simplification Act of 1993".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

**SEC. 2. NEW QUALIFICATION PROVISION FOR CHURCH PLANS.**

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by adding after section 401 the following new section:

**"SEC. 401A. QUALIFIED CHURCH PLAN.**

"(a) GENERAL RULE.—For purposes of all Federal laws, including this title, a qualified church plan shall be treated as satisfying the requirements of section 401(a), and all references in (or pertaining to) this title and such laws to a plan described in section 401(a) shall include a qualified church plan. Except as otherwise provided in this section, no paragraph of section 401(a) shall apply to a qualified church plan.

"(b) DEFINITION OF QUALIFIED CHURCH PLAN.—A plan is a qualified church plan if such plan meets the following requirements:

"(1) CHURCH PLAN REQUIREMENT.—The plan is a church plan (within the meaning of section 414(e)), and the election provided by section 410(d) has not been made with respect to such plan.

"(2) EMPLOYEE CONTRIBUTIONS ARE NONFORFEITABLE.—An employee's rights in the employee's accrued benefit derived from the employee's own contributions are nonforfeitable.

"(3) VESTING REQUIREMENTS.—The plan satisfies the requirements of subparagraph (A) or (B).

"(A) 10-YEAR VESTING.—A plan satisfies the requirements of this paragraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

"(B) 5- TO 15-YEAR VESTING.—A plan satisfies the requirements of this paragraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions which is not less than the percentage determined under the following table:

| "Years of service | Nonforfeitable percentage |
|---|---|
| 5 | 25 |
| 6 | 30 |
| 7 | 35 |
| 8 | 40 |
| 9 | 45 |
| 10 | 50 |
| 11 | 60 |
| 12 | 70 |
| 13 | 80 |
| 14 | 90 |
| 15 or more | 100. |

"(C) YEARS OF SERVICE.—For purposes of this paragraph, an employee's years of service shall be determined in accordance with any reasonable method selected by the plan administrator.

"(4) FUNDING REQUIREMENTS.—The plan meets the funding requirements of section 401(a)(7) as in effect on September 1, 1974.

"(5) ADDITIONAL REQUIREMENTS.—

"(A) The plan meets the requirements of paragraphs (1), (2), (8), (9), (16), (17), (25), (27), and (30) of section 401(a).

"(B) If the plan includes employees of an organization which is not a church, the plan meets the requirements of sections 401(a)(3) and 401(a)(6) (as in effect on September 1, 1974) and sections 401(a)(4), 401(a)(5), and 401(m).

For purposes of subparagraph (B), the plan administrator may elect to treat the portion

of the plan maintained by any organization (or organizations) described in subparagraph (B) as a separate plan (or plans).

"(c) DEFINITIONS AND SPECIAL RULES.—

"(1) CHURCH.—For purposes of this section, the term 'church' means a church or a convention or association of churches, including an organization described in section 414(e)(3)(A) and an organization described in section 414(e)(3)(B)(ii), other than—

"(A) an organization described in section 170(b)(1)(A)(ii) above the secondary school level (other than a school for religious training), or

"(B) an organization described in section 170(b)(1)(A)(iii)—

"(i) which provides community service for inpatient medical care of the sick or injured (including obstetrical care); and

"(ii) not more than 50 percent of the total patient days of which during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis, and care for the aged.

"(2) SATISFACTION OF TRUST PROVISION.—A plan shall not fail to be described in this section merely because such plan is funded through an organization described in section 414(e)(3)(A) if—

"(A) such organization is subject to fiduciary requirements under applicable State law;

"(B) such organization is separately incorporated from the church or convention or association of churches which controls it or with which it is associated;

"(C) the assets which equitably belong to the plan are separately accounted for; and

"(D) under the plan, at any time prior to the satisfaction of all liabilities with respect to participants and their beneficiaries, such assets cannot be used for, or diverted to, purposes other than for the exclusive benefit of participants and their beneficiaries (except that this paragraph shall not be construed to preclude the use of plan assets to defray the reasonable costs associated with administering the plan and informing employees and employers of the availability of the plan).

"(3) CERTAIN SECTIONS APPLY.—Section 401 (b), (c), and (h) shall apply to a qualified church plan.

"(4) FAILURE OF ONE ORGANIZATION MAINTAINING PLAN NOT TO DISQUALIFY PLAN.—If one or more organizations maintaining a church plan fail to satisfy the requirements of subsection (b), such plan shall not be treated as failing to satisfy the requirements of this section with respect to other organizations maintaining such plan.

"(5) CERTAIN EMPLOYEES NOT CONSIDERED HIGHLY COMPENSATED AND EXCLUDED EMPLOYEES.—For purposes of this section, no employee shall be considered an officer, person whose principal duties consist in supervising the work of other employees, or highly compensated employee if such employee during the year or the preceding year received compensation from the employer of less than $50,000. For purposes of this section, there shall be excluded from consideration employees described in section 410(b)(3)(A). The Secretary shall adjust the $50,000 amount under this paragraph at the same time and in the same manner as under section 415(d).

"(6) TIME FOR DETERMINATION OF APPLICABLE LAW.—Except where otherwise specified, the determination of whether a plan meets the requirements of subsection (b) shall be made in accordance with the provisions of this title as in effect immediately following enactment of the Church Retirement Benefits Simplification Act of 1993."

(b) EFFECT ON EXISTING PLANS.—A church plan (within the meaning of section 414(e) of the Internal Revenue Code of 1986) which is otherwise subject to the applicable requirements of section 401(a) of such Code and which has not made the election provided by section 410(d) of such Code shall not be subject to section 401A of such Code, and shall remain subject to the applicable requirements of section 401(a) of such Code, unless the board of directors or trustees of an organization described in section 414(e)(3)(A) of such Code, or other appropriate governing body responsible for maintaining the plan, adopts a resolution under which the church plan is made subject to section 401A of such Code.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall be effective for years beginning after December 31, 1992, except that the provisions of section 401A(b)(3) of the Internal Revenue Code of 1986 shall be effective for years beginning after December 31, 1994. No regulation or ruling under section 401(a) of such Code issued after December 31, 1992, shall apply to a qualified church plan described in section 401A of such Code unless such regulation or ruling is specifically made applicable by its terms to qualified church plans.

(2) PRIOR YEARS.—A church plan (within the meaning of section 414(e) of such Code) shall not be deemed to have failed to satisfy the applicable requirements of section 401(a) of such Code for any year beginning prior to January 1, 1993.

**SEC. 3. RETIREMENT INCOME ACCOUNTS OF CHURCHES.**

(a) IN GENERAL.—Section 403(b)(9) is amended to read as follows:

"(9) RETIREMENT INCOME ACCOUNTS PROVIDED BY CHURCHES, ETC.—

"(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title—

"(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

"(ii) amounts paid by an employer described in paragraph (1)(A) or by a church or a convention or association of churches, including an organization described in section 414(e)(3)(A) or 414(e)(3)(B)(ii), to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

"(B) RETIREMENT INCOME ACCOUNT.—For purposes of this paragraph, the term 'retirement income account' means a program established or maintained by a church, a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under this subsection for an employee described in paragraph (1) or an individual described in paragraph (13)(F), or their beneficiaries."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall be effective for years beginning after December 31, 1992.

(2) PRIOR YEARS.—A church plan (within the meaning of section 414(e)) shall not be deemed to have failed to satisfy the applicable requirements of section 403(b) for any year beginning prior to January 1, 1993.

**SEC. 4. CONTRACTS PURCHASED BY A CHURCH.**

(a) CLARIFICATION OF APPLICABLE NONDISCRIMINATION REQUIREMENTS.—Subparagraph (D) of section 403(b)(1) is amended to read as follows:

"(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12)(A), and".

(b) CERTAIN COVERAGE RULES APPLY.—Subparagraph (B) of section 403(b)(12) is amended to read as follows:

"(B) CERTAIN REQUIREMENTS.—If a contract purchased by a church is purchased under a church plan (within the meaning of section 414(e)) by—

"(i) an organization described in section 170(b)(1)(A)(ii) above the secondary school level (other than a school for religious training), or

"(ii) an organization described in section 170(b)(1)(A)(iii)—

"(I) which provides community service for inpatient medical care of the sick or injured (including obstetrical care), and

"(II) no more than 50 percent of the total patient days of which during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis, and care for the aged,

the plan meets the requirements of sections 401(a)(3) and 401(a)(6), as in effect on September 1, 1974, and sections 401(a)(4), 401(a)(5), 401(a)(17), and 401(m).

For purposes of this subparagraph, the plan administrator may elect to treat the portion of the plan maintained by any organization (or organizations) described in this subparagraph as a separate plan (or plans)."

(c) SPECIAL RULES FOR CHURCHES.—Section 403(b) is amended by adding the following new paragraph at the end thereof:

"(13) DEFINITIONS AND SPECIAL RULES.—

"(A) CONTRACT PURCHASED BY A CHURCH.—For purposes of this subsection, the term 'contract purchased by a church' includes an annuity described in section 403(b)(1), a custodial account described in section 403(b)(7), and a retirement income account described in section 403(b)(9).

"(B) CHURCH.—For purposes of this subsection, the term 'church' means a church or a convention or association of churches, including an organization described in section 414(e)(3)(A) or section 414(e)(3)(B)(ii).

"(C) VESTING.—In the case of a contract purchased by a church under a church plan (within the meaning of section 414(e))—

"(i) sections 403(b)(1)(C) and 403(b)(6) shall not apply;

"(ii) such contract is not described in this subsection unless an employee's rights in the employee's accrued benefit under such contract which is attributable to contributions made pursuant to a salary reduction agreement are nonforfeitable; and

"(iii) such contract is not described in this subsection unless the plan satisfies the requirements of either of the following:

"(I) The plan provides that an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

"(II) The plan provides that an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

| "Years of service | Nonforfeitable percentage |
|---|---|
| 5 | 25 |
| 6 | 30 |
| 7 | 35 |
| 8 | 40 |
| 9 | 45 |
| 10 | 50 |

| "Years of service | Nonforfeitable percentage |
|---|---|
| 11 | 60 |
| 12 | 70 |
| 13 | 80 |
| 14 | 90 |
| 15 or more | 100. |

For purposes of clause (iii), an employee's years of service shall be determined in accordance with any reasonable method selected by the plan administrator.

"(D) FAILURE OF ONE ORGANIZATION MAINTAINING PLAN NOT TO DISQUALIFY PLAN.—In the case of a contract purchased by a church under a church plan (within the meaning of section 414(e)), if one or more organizations maintaining the church plan fails to satisfy the requirements of this section, such plan shall not be treated as failing to satisfy the requirements of this section with respect to other organizations maintaining such plan.

"(E) CERTAIN EMPLOYEES NOT CONSIDERED HIGHLY COMPENSATED AND EXCLUDED EMPLOYEES.—For purposes of this subsection, no employee for whom a contract is purchased by a church shall be considered an officer, person whose principal duties consist in supervising the work of other employees, or highly compensated employee if such employee during the year or the preceding year received compensation from the employer of less than $50,000. For purposes of this subsection, there shall be excluded employees described in section 410(b)(3)(A). The Secretary shall adjust the $50,000 amount under this subparagraph at the same time and in the same manner as under section 415(d).

"(F) CERTAIN MINISTERS MAY PARTICIPATE.—For purposes of this subsection—

"(i) IN GENERAL.—The term 'employee' shall include a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry who is a self-employed individual (within the meaning of section 401(c)(1)(B)) or any duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry who is employed by an organization other than an organization described in section 501(c)(3).

"(ii) TREATMENT AS EMPLOYER AND EMPLOYEE.—A self-employed minister described in clause (i) shall be treated as his or her own employer which is an organization described in section 501(c)(3) and which is exempt from tax under section 501(a). Such an employee who is employed by an organization other than an organization described in section 501(c)(3) shall be treated as employed by an organization described in section 501(c)(3) and which is exempt from tax under section 501(a).

"(iii) COMPENSATION.—In determining the compensation of a self-employed minister described in clause (i), the earned income (within the meaning of section 401(c)(2)) of such minister shall be substituted for 'the amount of compensation which is received from the employer' under paragraph (3).

In determining the years of service of a self-employed minister described in clause (i), the years (and portions of years) in which such minister was a self-employed individual (within the meaning of section 401(c)(1)(B)) shall be included for purposes of paragraph (4).

"(G) TIME FOR DETERMINATION OF APPLICABLE LAW.—Except where otherwise specified, the determination of whether a contract purchased by a church meets the requirements of this subsection shall be made in accordance with the provisions of this title as in effect immediately following enactment of the Church Retirement Benefits Simplification Act of 1993."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall be effective for years beginning after December 31, 1992, except that the provisions of section 403(b)(13)(C)(iii) of the Internal Revenue Code of 1986 shall be effective for years beginning after December 31, 1994. No regulation or ruling issued under section 401(a) or 403(b) of such Code after December 31, 1992, shall apply to a contract purchased by a church unless such regulation or ruling is specifically made applicable by its terms to such contracts. For purposes of applying the exclusion allowance of section 403(b)(2) of such Code and the limitations of section 415 of such Code, any contribution made after December 31, 1994, which is forfeitable pursuant to section 403(b)(13)(C) of such Code shall be treated as an amount contributed to the contract in the year for which such contribution is made and not in the year the contribution becomes nonforfeitable.

(2) PRIOR YEARS.—A church plan (within the meaning of section 414(e) of such Code) shall not be deemed to have failed to satisfy the applicable requirements of section 403(b) of such Code for any year beginning prior to January 1, 1993.

**SEC. 5. CHANGE IN DISTRIBUTION REQUIREMENT FOR RETIREMENT INCOME ACCOUNTS.**

(a) IN GENERAL.—Subparagraph (A) of section 403(b)(11) is amended by inserting "or, in the case of a retirement income account described in paragraph (9), within the meaning of section 401(k)(2)" after "section 72(m)(7)".

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective for years beginning after December 31, 1988.

**SEC. 6. REQUIRED BEGINNING DATE FOR DISTRIBUTIONS UNDER CHURCH PLANS.**

(a) IN GENERAL.—Subparagraph (C) of section 401(a)(9) is amended by striking the last sentence and inserting the following new sentence: "For purposes of this subparagraph, the term 'church plan' has the meaning given such term by section 414(e)."

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective as if included in the provision of the Tax Reform Act of 1986 to which such amendment relates.

**SEC. 7. PARTICIPATION OF MINISTERS IN CHURCH PLANS.**

(a) IN GENERAL.—Section 414 is amended by adding the following new subsection:

"(u) SPECIAL RULES FOR MINISTERS.—Notwithstanding any other provision of this title, if a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry participates in a church plan (within the meaning of section 414(e)), then—

"(1) such minister shall be excluded from consideration for purposes of applying sections 401(a)(3), 401(a)(4), and 401(a)(5), as in effect on September 1, 1974, and sections 401(a)(4), 401(a)(5), 401(a)(26), 401(k)(3), 401(m), 403(b)(1)(D) (including section 403(b)(12)), and 410 to any stock bonus, pension, profit-sharing, or annuity plan (including an annuity described in section 403(b) or a retirement income account described in section 403(b)(9)) described in this part. For purposes of this part, the church plan in which such minister participates shall be treated as a plan or contract meeting the requirements of section 401(a), 401A, or 403(b) (including section 403(b)(9)) with respect to such minister's participation; and

"(2) such minister shall be excluded from consideration for purposes of applying an applicable section to any plan providing benefits described in an applicable section.

For purposes of paragraph (2), the term 'applicable section' means section 79(d), section 105(h), paragraphs (1), (2), and (3) of section 120(c), section 125(b), section 127(b)(2), and paragraphs (2), (3), and (8) of section 129(d)."

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective for years beginning before, on, or after December 31, 1992.

**SEC. 8. CERTAIN RULES AGGREGATING EMPLOYEES NOT TO APPLY TO CHURCHES, ETC.**

(a) IN GENERAL.—Section 414 is amended by adding the following new subsection:

"(v) CERTAIN RULES AGGREGATING EMPLOYEES NOT TO APPLY TO CHURCHES, ETC.—

"(1) IN GENERAL.—If the election provided by paragraph (3) is made, for purposes of sections 401(a)(3), 401(a)(4), and 401(a)(5), as in effect on September 1, 1974, and sections 401(a)(4), 401(a)(5), 401(a)(17), 401(a)(26), 401(h), 401(m), 410(b), 411(d)(1), and 416, subsections (b), (c), (m), (o), and (t) of this section shall not apply to treat the employees of church-related organizations as employed by a single employer, except in the case of employees of church-related organizations which are not exempt from tax under section 501(a) and which have a common, immediate parent.

"(2) DEFINITION OF CHURCH-RELATED ORGANIZATION.—For purposes of this subsection, the term 'church-related organization' means a church or a convention or association of churches, an organization described in section 414(e)(3)(A), an organization described in section 414(e)(3)(B)(ii), or an organization the employees of which would be aggregated with the employees of such organizations but for the election provided by paragraph (3).

"(3) ELECTION TO DISAGGREGATE.—The provisions of this subsection shall apply if a church-related organization makes an election for itself and other church-related organizations (in such form and manner as the Secretary may by regulations prescribe) on or before the last day of the first plan year beginning on or after January 1, 1996."

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective as if included in the provisions of Public Law 93–406, Public Law 98–369, and Public Law 99–514 to which such amendment relates.

**SEC. 9. SELF-EMPLOYED MINISTERS TREATED AS EMPLOYEES FOR PURPOSES OF CERTAIN WELFARE BENEFIT PLANS AND RETIREMENT INCOME ACCOUNTS.**

(a) IN GENERAL.—Section 7701(a)(20) is amended to read as follows:

"(20) EMPLOYEE.—For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees, for the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident or health insurance or accident or health plans, for the purpose of applying the provisions of section 101(b) with respect to employees' death benefits, for the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, and for purposes of applying section 125 with respect to cafeteria plans, the term 'employee' shall include a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry who is a self-employed individual (within the meaning of section 401(c)(1)(B)) or a full-time life insurance salesman who is considered an employee for the purpose of chapter 21, or in the case of services performed before January 1, 1951, who would be

considered an employee if his services were performed during 1951."

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective for years beginning before, on, or after December 31, 1992.

**SEC. 10. DEDUCTIONS FOR CONTRIBUTIONS BY CERTAIN MINISTERS TO RETIREMENT INCOME ACCOUNTS.**

(a) IN GENERAL.—Section 404(a) is amended by adding the following new paragraph:

"(10) CONTRIBUTIONS BY CERTAIN MINISTERS TO RETIREMENT INCOME ACCOUNTS.—In case contributions are made by a minister described in section 403(b)(13)(F) to a retirement income account described in section 403(b)(9) and not by a person other than such minister, such contributions shall be treated as made to a trust which is exempt from tax under section 501(a) which is part of a plan which is described in section 401(a) and shall be deductible under this subsection to the extent such contributions do not exceed the exclusion allowance of such minister, determined under section 403(b)(2)."

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective for years beginning after December 31, 1992.

**SEC. 11. MODIFICATION FOR CHURCH PLANS OF RULES FOR PLANS MAINTAINED BY MORE THAN ONE EMPLOYER.**

(a) IN GENERAL.—Section 413(c) is amended by adding the following new paragraph:

"(8) CHURCH PLANS MAINTAINED BY MORE THAN ONE EMPLOYER.—A church plan (within the meaning of section 414(e)) maintained by more than one employer, and with respect to which the election provided by section 410(d) has not been made, which commingles assets solely for purposes of investment and pooling for mortality experience to provide to participants annuities computed with reference to the balance in the participants' accounts when such accounts become payable shall not be treated as a single plan maintained by more than one employer under this subsection. The rules provided by this paragraph shall apply for purposes of applying section 403(b)(12) to such church plan."

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective for years beginning before, on, or after December 31, 1992.

**SEC. 12. SECTION 457 NOT TO APPLY TO DEFERRED COMPENSATION OF A CHURCH.**

(a) IN GENERAL.—Paragraph (13) of section 457(e) is amended to read as follows:

"(13) SPECIAL RULE FOR CHURCHES.—The term 'eligible employer' shall not include a church (within the meaning of section 401A(c)(1))."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1978.

**SEC. 13. CHURCH PLAN MODIFICATION TO SEPARATE ACCOUNT REQUIREMENT OF SECTION 401(h).**

(a) EXCEPTION TO SEPARATE ACCOUNT REQUIREMENT.—Section 401(h) is amended by adding the following new sentence at the end thereof: "Notwithstanding the preceding sentence, in the case of a pension or annuity plan that is a church plan (within the meaning of section 414(e)) which is maintained by more than one employer, paragraph (6) shall not apply to an employee who is a key employee for purposes of section 416 solely because such employee is described in section 416(1)(1)(A)(1) (relating to officers having an annual compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A))."

(b) APPLICATION OF SECTION 415(l).—Section 415(l)(1) is amended to read as follows:

"(1) IN GENERAL.—For purposes of this section, the following shall be treated as an annual addition to a defined contribution plan for purposes of subsection (c):

"(A) contributions allocated to any individual medical account which is part of a pension or annuity plan; and

"(B) the actuarially determined amount of prefunding for the insurance value of benefits which are—

"(i) described in section 401(h);

"(ii) paid under a pension or annuity plan that is a church plan (within the meaning of section 414(e));

"(iii) paid under a plan maintained by more than one employer; and

"(iv) payable solely to an employee who is a key employee for purposes of section 415 solely because such employee is described in section 416(1)(1)(A)(i) (relating to officers having an annual compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A)), his spouse, or his dependents.

Subparagraph (B) of section (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence."

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after March 31, 1984.

**SEC. 14. RULE RELATING TO INVESTMENT IN CONTRACT NOT TO APPLY TO FOREIGN MISSIONARIES.**

(a) IN GENERAL.—The last sentence of section 72(f) is amended to read as follows: "The preceding sentence shall not apply to amounts which were contributed by the employer, as determined under regulations prescribed by the Secretary, to provide pension or annuity credits, to the extent such credits are attributable to services performed before January 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on March 12, 1962, and on that date applicable to such services, or to provide pension or annuity credits for foreign missionaries (within the meaning of section 403(b)(2)(D)(iii))."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1992.

**SEC. 15. REPEAL OF ELECTIVE DEFERRAL CATCH-UP LIMITATION FOR RETIREMENT INCOME ACCOUNTS.**

(a) IN GENERAL.—Clause (iii) of section 402(g)(8)(A) is amended to read as follows:

"(iii) except in the case of elective deferrals under a retirement income account described in section 403(b)(9), the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary)."

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective as if included in the provision of the Tax Reform Act of 1986 to which such amendment relates.

**SEC. 16. CHURCH PLANS MAY ANNUITIZE BENEFITS.**

(a) IN GENERAL.—A retirement income account described in section 403(b)(9) of the Internal Revenue Code of 1986, a church plan (within the meaning of section 414(e) of such Code) that is a plan described in section 401(a) or 401A of such Code, or an account which consists of qualifed voluntary employee contributions described in section 219(e)(2) of such Code (as in effect before the date of the enactment of the Tax Reform Act of 1986) and earnings thereon, shall not fail to be described in such sections merely because it pays benefits to participants (and their beneficiaries) from a pool of assets administered or funded by an organization described in section 414(e)(3)(A) of such Code, rather than through the purchase of annuities from an insurance company.

(b) EFFECTIVE DATE.—This provision shall be effective for years beginning before, on, or after December 31, 1992.

**SEC. 17. CHURCH PLANS MAY INCREASE BENEFIT PAYMENTS.**

(a) IN GENERAL.—A retirement income account described in section 403(b)(9) of the Internal Revenue Code of 1986, a church plan (within the meaning of section 414(e) of such Code) that is a plan described in section 401(a) or 401A of such Code, or an account which consists of qualified voluntary employee contributions described in section 219(e)(2) of such Code (as in effect before the date of the enactment of the Tax Reform Act of 1986) and earnings thereon, shall not fail to be described in such sections merely because it provides benefit payments to participants (and their beneficiaries)—

(1) to take into account the investment performance of the underlying assets or favorable interest or mortality experience, or

(2) that increase in an amount not in excess of 5 percent per year.

(b) EFFECTIVE DATE.—This provision shall be effective for years beginning before, on, or after December 31, 1992.

**SEC. 18. RULES APPLICABLE TO SELF-INSURED MEDICAL REIMBURSEMENT PLANS NOT TO APPLY TO PLANS OF CHURCHES.**

(a) IN GENERAL.—Section 105(h) is amended by adding the following new paragraph:

"(11) PLANS OF CHURCHES.—This subsection shall not apply to a plan maintained by a church (within the meaning of section 401A(c)(1))."

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective for years beginning before, on, or after December 31, 1992.

**SEC. 19. RETIREMENT BENEFITS OF MINISTERS NOT SUBJECT TO TAX ON NET EARNINGS FROM SELF-EMPLOYMENT.**

(a) IN GENERAL.—Section 1402(a)(8) (defining net earning from self-employment) is amended by inserting ", but shall not include in such net earning from self-employment any retirement benefit received by such individual from a church plan (as defined in section 414(e))" before the semicolon at the end.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning before, on, or after December 31, 1992.

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By Mr. BRADLEY:

S. 1416. A bill to authorize appropriations for the Coastal Heritage Trail Route in the State of New Jersey, and for other purposes; to the Committee on Finance.

FUNDING REAUTHORIZATION FOR THE NEW JERSEY COASTAL HERITAGE TRAIL

Mr. BRADLEY. Mr. President, I introduce a simple funding reauthorization for the New Jersey Coastal Heritage Trail. This bill brings forth the funding authorization, which was for the first year's efforts, up to date and allows for future needs.

Since 1988, the National Park Service has been working with other Federal agencies, the State of New Jersey, and

local officials and citizens. Right now, the Park Service is putting the finishing touches on a series of trails that will link sites of special interest by one of several themes. These trails, which will be identified by maps, road signs, and wayside exhibits, will create a force that will add meaning and vitality to critical landmarks that too often become lost or overlooked.

Mr. President, this effort is a pioneering one to preserve and strengthen key elements of our collective heritage without an intensive Federal role or ownership. This is a new approach and is the first of its kind. It has taken time and resources. But, I feel strongly that the return to the public will more than compensate for the Federal expenditures. I urge the passage of this increased authorization.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1416

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Section 6 of Public Law 100-515 (16 U.S.C. 1244 note) is amended by striking "$250,000" and inserting in lieu thereof, "$2,500,000".

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By Mr. WOFFORD (for himself and Mr. BAUCUS):

S. 1417. A bill to amend the Federal Water Pollution Control Act to provide for training and certification of individuals in the operation of wastewater treatment works, and for other purposes; to the Committee on environment and Public Works.

WASTEWATER TREATMENT OPERATOR TRAINING AND CERTIFICATION ACT OF 1993

Mr. WOFFORD. Mr. President, today I am introducing the Wastewater Treatment Operator Training and Certification Act of 1993.

Water treatment during the last two decades has become a highly technical field. Chemical and engineering processes make wastewater treatment increasingly complex. Well-trained operators are essential not only to protect human health and the environment but also to protect the taxpayers' investments in municipal water treatment systems.

This legislation reauthorizes the existing training programs under the Clean Water Act. As a member of the Subcommittee on Clean Water, Fisheries and Wildlife, which is currently holding hearings on the reauthorization of the Clean Water Act, I believe it is important that the people who operate and maintain our Nation's water treatment facilities have the best training possible. This legislation creates public-private partnerships with our States and educational institutions in an effort to achieve that goal. The authorization levels for training here are far below those that Congress originally authorized in 1972.

I have received welcomed comments from the Pennsylvania Governor's Office as well as the Pennsylvania Departments of Environmental Resources and Community Affairs on the need to provide operator training. Pennsylvania already has a well-established training program, which has proven to be cost effective. In fact, our Operator Outreach Program has produced two recipients of regional and national awards.

As the Senate considers amendments to the Clean Water Act, I believe that the training of operators can enhance career opportunities, contribute to decreased water pollution, and protect public investment in water treatment plants.

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By Mr. WARNER:

S. 1418. A bill to ban the use of radar in commercial motor vehicles, and for other purposes; to the Committee on Commerce, Science, and Transportation.

RADAR DETECTORS BAN ACT OF 1993

Mr. WARNER. Mr. President, First I, send a bill to the desk for filing which will have the effect of removing from trucks in interstate commerce radar devices. We have suffered terrible tragedies recently on the Beltway. I am anxious to have the Congress address this issue immediately. I have spoken to the distinguished chairman of the subcommittee of the Senate, Mr. LAUTENBERG, about it, and he may have his own bill in which I will join with him.

Mr. President, I introduce legislation to improve the safety of our interstates and other highways by prohibiting the use of radar detectors in commercial vehicles.

The recent rash of accidents involving trucks on the Capital Beltway and other interstates around the metropolitan Washington area which have resulted in fatalities and severe injuries demands that we take immediate action to improve safety and reduce the fear of the motoring public.

There is no doubt that excessive speed by heavy commercial trucks is a major cause of traffic deaths and injuries.

According to the Insurance Institute for Highway Safety, more than 50 percent of truckers use radar detectors, and that those persons using these devices are more likely to travel at speeds above the legal limit.

One need only ask if radar detectors serve a legitimate purpose. I don't think they do. The purpose of radar detectors is simply to evade law enforcement.

The Capital Beltway is no longer a major east coast thoroughfare for interstate travel and commerce. For many commuters in the metropolitan area, it is the primary route of daily travel to and from work.

When construction on eight lanes of the beltway was completed in 1978, it's design capacity was for 93,000 cars at peak hours. Today, at peak hours, sections of the beltway carry over 200,000 cars per day.

The capacity of the beltway leaves no margin for error on the part of any drivers. Excessive speeds and routine lane changing is a deadly combination that occurs much to frequently on our Nation's highways.

Last year, over 39,000 Americans lost their lives on our highways. As tragic as that statistic is, another 3 million persons were injured in traffic accidents.

Clearly, prohibiting the use of radar detectors in commercial vehicles is not the only option to reducing traffic accidents. This action is, however, a reasonable and effective step that must be taken to save lives. I am pleased to state that this effort is endorsed by the American Trucking Association and the Advocates for Highway Safety.

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

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

ORGANIZATIONS, AGENCIES AND FIRMS WHO HAVE FILED COMMENTS IN SUPPORT OF THE BAN

Chiefs of Police and Sheriffs from:

Alexandria, VA; Alsip, IL; Arizona Western College, AZ; Arroyo Grande, CA; Arvada, CO; Beckley, WV; Berkeley Springs, WV; Boca Raton, FL; Bossier City, LA; Boston Metro Police, MA; Broward Co., FL; Bryan, OH; Buckhannon, WV; Burton, WV; Cameron Parish, LA; Charleston, SC; Cincinnati, OH; Clarksburg, WV; Clay Co., WV; Clendenin, WV; Collinsville, IL; and Concord, NC.

Crest Hill, IL; Dallas, TX; Dunbar, WV; Eagar, AZ; East Baton Rouge Parish, LA; Elmhurst, IL; Evanston, IL; Farmington, WV; Fayetteville, WV; Fort Worth, TX; Greensboro, NC; Iowa City, IA; Jemez Springs, NM; Lewisburg, WV; Lincoln Co., WV; Mammoth, AZ; Marlinton, WV; Martinsburg, WV; Mason, WV; Menomonee Falls, WI; Mingo Co., WV; Morgantown, WV; Moundsville, WV; Naperville, IL; New Haven, CT; and New Martinsville, WV.

North Andover, MA; North Miami Beach, FL; Oro Valley, AZ; Philippi, WV; Pine Grove, WV; Plano, TX; Prince William Co., VA; Ranson, WV; Redmond, WA; Rye, NY; San Jose, CA; Santa Barbara, CA; Scottsdale, AZ; Shinnston, WV; Show Low, AZ; Shreveport, LA; Sioux City, IA; Spokane, WA; Stonewood, WV; Surprise, AZ; Sutton, WV; Tallahassee, FL; Tallmadge, OH; Tarpon Springs, FL; Uwchlan Township, PA; Vienna, WV; Waukegan, IL; Wayne, WV; Whitesburg, WV; Wilmington, NC; and Yonkers, NY.

Companies and Organizations:

Adolf Carlson Insurance Agency, CT; Advocates for Highway & Auto Safety; Aetna Life & Casualty, CT; Affiliated Insurance Consultants, Inc., IL; Agency Insurance Brokers, Inc., NY; AIM Insurance Agency, PA; American Association of Motor Vehicle Administrators; American Automobile Assn.; AAA of Maine; American Driver & Traffic Safety Education Assn.; American Insurance Assn.; American Public Health Assn.; American Trauma Society; American Trucking Associations; Amerisure Cos., MI; Amica Mutual Insurance Co., RI; ANR Freight System, CO;

Automotive Safety for Children Program, James Whitcomb Riley Hospital for Children, IN; Bear Enterprises, MD; Bellevue Hospital Center, NY; Brady, Chapman, Holland & Associates, TX; Bridgeport Hospital, CT; Bum Foundation, PA; Charter Risk Retention Group Insurance Co., NE; Child, Savory-Haward, MA; and Coalition for Consumer Health & Safety.

Columbia University; Community Insurance Center, IL; Consumer Federation of America; Craft Insurance Group, NC; Dane Co. Driving Force, WI; Davis, Jones, Lamb Insurance Agency, Inc., IA; Downtown General Hospital, TN; Driver Prep. Centers, Inc., FL; Emergency Nurses CARE; Employers Mutual Cos., IA; Florida Treasure Coast Safety Council, Inc.; Flue-Cured Tobacco Coop. Stabilization Corp., NC; Friedman & Friedman Agency, NY; Fuchs Baking Co., FL; GEICO, DC; The Gem Agencies, TX; Grinnell Lithographic Co., NY; Hardesty Insurance, Inc., DE; Hudson Valley Tree, Inc., NY; Injury Prevention Resource & Research Center, NH; Injury Prevention Works, PA; Insurance Institute for Highway Safety; International Association of Chiefs of Police; and ITT Hartford Insurance Group, CT.

Johns Hopkins University; Injury Prevention Center; Lamb, Little & Co., IL; Lampe-Batkin Assoc., NY; Liberty Mutual Insurance Co., CT; Lou Stafford Insurance, Inc., OR; The Mariner Group, FL; Maryland Child Passenger Safety Assn.; Maryland SAFE KIDS Coalition; McDowell Insurance Inc., PA; McErlain & Assoc., Inc., PA; McKenzie & Mouk Insurance, LA; Merced Mutual Insurance Co., CA; Michigan Assn. of Chiefs of Police; Michigan Sheriff's Assn.; Michigan Stae Police Troopers Assn., Inc.; Montgomery Insurance Cos., MD; Motor Voters; Nansemond Insurance Agency, Inc., VA; Napa Valley RID, CA; National Assn. of Governors' Highway Safety Representatives; and National Assn. of Independent Insurers.

National Assn. of Pediatric Nurse Associates & Practitioners; National Commission Against Drunk Driving; National Safety Council; National Truck Underwriting Managers, Inc.; Nationwide Insurance Cos., OH; New Jersey Motor Truck Assn.; New Jersey State Safety Council; Nickles Bakery, OH; Norment & Castleberry, TX; North Coast Emergency Medical Services, CA; Northern Illinois Medican Center; Offenhauser & Co., AR; Parisan, Inc., AL; Pennsylvania Millers Mutual Insurance Co., PA; Pepsi-Cola Co.; Pickard Inc., IL; Polar-BEK, AL; and Police Foundation.

Progressive Commercial Vehicle Div., OH; Radio Flyer, Inc., IL; Relax Learn Live Traffic Seminars, CA; Safety Belt Safe USA, CA; Safety Council of NE Ohio; Safety Council of Palm Beach, FL; Sanford Insurance Agency, TX; San Francisco Injury Center, CA; Siskin Steel & Supply Co., TN; South Dakota Safety Council; State Farm Insurance Cos.; State Mutual Insurance Co., MI; State Troopers Fraternal Assn. of New Jersey; Thomas F. Keefe Insurance, MA; 3E Electrical Eng. & Equip., IA; Tobacco Growers Services, NC; Treiber Insurance, NY; Utica Fire Insurance Co., NY; Utica Natl. Insurance Group, NY; Wagoner-Hickok Agency, Inc., NY; The Weeks Agency, Inc., CT; Western Container Corp., TX; William Shanbrom & Assoc., CA; Wisconsin Highway Safety; Coordinators Assn.; and Yellow Freigh System, Inc.

State Agencies:

Alabama Dept. of Public Safety; Alabama Highway Patrol; Alaska Dept. of Public Safety; Arizona Highway Patrol Bureau; Arkansas State Police; California Highway Patrol; Connecticut Div. of State Police; Delaware Div. of State Police; Florida Highway Patrol; Georgia Dept. of Public Safety; Hawaii Dept. of Transportation; Idaho State Police; Illinois State Police; Indiana State Police; Iowa Dept. of Public Safety; Iowa Dept. of Transportation; Kansas Highway Patrol; Kentucky State Police; Louisiana Governor's Highway Safety Representative; and Louisiana State Police.

Massachusetts Passenger Safety Program; Massachusetts State Police; Michigan Dept. of State/State Safety Commission; Michigan Dept. of State Police Minnesota Dept. of Public Safety; Minnesota Dept. of Public Safety Minnesota State Patrol; Mississippi Dept. of Public Safety; Missouri Div. of Highway Safety Missouri State Highway Patrol; Nebraska State Patrol; Nevada Dept. of Transportation; New Jersey Div. of State Police; New Mexico Highway & Trans. Dept. Traffic Safety Bureau; New Mexico Dept. of Public Safety; New York State Police; North Carolina Div. of State Highway Patrol; Ohio Dept. of Public Safety; Oklahoma Dept. of Public Safety; Oregon Dept. of State Police Pennsylvania State Police; Rhode Island Div. of State Police; Rhode Island Governor's Office on Highway Safety.

South Carolina Highway Patrol; South Dakota Div. of Highway Patrol; Tennessee Public Service Commission; Texas Dept. of Public Safety; Utah Highway Patrol; Vermont Dept. of Motor Vehicles; Vermont Governor's Highway Safety Program; Virginia Dept. of Motor Vehicles; Virginia Dept. of State Police; Washington State Patrol; Washington Traffic Safety Commission; West Virginia Governor's Office of Community & Industrial Development; West Virginia State Police; and thousands of police officers and concerned citizens across the country.

WHAT IS GUARD?

GUARD (Group United Against Radar Detectors) is a coalition of organizations formed to educate the public about the highway safety problem resulting from radar detectors. Radar detectors are illegal for use by all vehicles in Virginia and the District of Columbia. They are illegal for use by commercial vehicles in Illinois and New York. The coalition was started in response to a growing number of drivers who use radar detectors to break the law by speeding without getting caught. Studies by the Insurance Corporation of British Columbia, Texas A&M University, the Insurance Institute for Highway Safety, the Missouri Highway Patrol and others have shown a strong relationship between speeding and accidents. GUARD also support the use of photo radar as a means of speed control.

Members of GUARD include:

Advocates for Highway and Auto Safety; Alliance Against Intoxicated Motorists; American Association of Motor Vehicle Administrators; American Driver and Traffic Safety Education Association; American Trucking Association; Amica Mutual Insurance Company; Auto-Owners Insurance Company; District of Columbia Insurance Federation; Farm Bureau Mutual Insurance Company; Farm Family Insurance Company; Foremost Corporation of America; GEICO Corporation; General Accident Insurance; Howard E. Clendenen, Inc.; Institute for Safety in Transportation Inc.; Institute of Police Traffic Management; International Association of Chiefs of Police; John Deere Insurance Company; and Kemper Group.

Keystone Insurance Company; Liberty Mutual Insurance Company; Los Angeles Traffic Advisory Group; Maryland Association of Women Highway Safety Leaders; Metropolitan Property and Liability Company; Michigan Driver and Traffic Safety Education Association; Mid-Continent Casualty Company; Motor Voters; National Association of Governors Highway Safety Representatives; National Association of Independent Insurers; National Association of Women Highway Safety Leaders; National Capital Area Transportation Federation; National Insurance Consumer Organization; National Safety Council; PEMCO Mutual Insurance Company; Secura Insurance; Shelter Insurance Companies; State Auto Insurance Group; Transamerica Insurance Group; University of Illinois School of Public Health; University of Michigan School of Public Health; University of New York School of Public Health; and Westfield Companies.

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By Mr. GRASSLEY:

S. 1419. A bill to provide for regional equity in funding resolution of failed savings associations, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

FAILED SAVINGS ASSOCIATIONS REGIONAL EQUITY ACT OF 1993

Mr. GRASSLEY. Mr. President, I recently received a letter from the Northeast-Midwest Congressional Coalition regarding an issue of great concern to my constituents. I rise today to introduce legislation to address this concern—the gross disparity that the Midwest has suffered throughout the course of the resolution of the savings and loan crisis.

From August 9, 1989, to June 18, 1993, the period covered by this bill, the Federal Government resolved 656 insolvent thrifts at an estimated cost of $84.4 billion. Of that number, 280 were State-chartered thrifts, costing an estimated $47.5 billion.

The cost of this bailout has been unfairly distributed at a significant price to the taxpayers of the Northeast-Midwest regions. The 18 States of the Northeast-Midwest region shoulder 46.5 percent of the Nation's total tax burden. Yet, the institutions of our States account for only 15.3 percent of the total cost of the savings and loan bailout.

Contrast this, for example, with the State of Texas. Texas pays just 6.1 percent of the Nation's taxes. Yet Texas thrifts—many of them State-chartered but federally insured—are responsible for 41.2 percent of the bailout's total cost from 1986 to 1992. In the period covered by this bill, between August 1989 and June 1993, Texas alone cost the American taxpayer $23.9 billion. That is 50 percent of the total bailout for that time period.

This bill focuses on State-chartered thrifts, which are chartered and supervised by the State while at the same time qualifying for Federal deposit insurance. The failure of State-chartered thrifts is most directly related to State regulatory actions and the costs should thus be partially carried by the State.

The Federal-State partnership worked well in the past. Unfortunately, some State regulators in the 1980's allowed thrifts to stray from their traditional role of providing mortgages to

homeowners. Some of these thrifts strayed into highly speculative ventures, often bordering on fraud. When these speculative ventures failed, and loan obligations could not be met, the savings and loans which had engaged in these high-risk activities were plunged into insolvency, leaving the American taxpayer holding the bag.

It is important to introduce some small measure of accountability and equity into this entire bailout. This bill will send a strong message to Governors, State legislators, and State regulators that future abuses will not be tolerated or go unchecked. In addition, it could reduce the burden on taxpayers in States which have not contributed excessively to the cost of the bailout due to irresponsible State regulation of the industry.

This bill requires States which had excessive costs due to the resolution of State-chartered thrifts to pay a Federal deposit insurance premium if the State's remaining thrifts are to maintain their eligibility for Federal deposit insurance in the future. The State deposit insurance premium would be determined by a formula reflecting the State's overall contribution to the cost of resolving State-chartered thrifts since 1988.

The Savings Association Insurance Fund [SAIF], created under the 1989 FIRREA Act which established the cleanup process, would receive the deposit payments to help defray the costs of capitalizing the SAIF.

The formula established under this bill requires that those States in which the 1989–93 share of total resolution costs is more than twice their 1980 deposits must pay excess costs. However, the bill only requires that these States pay one-quarter of those costs. If States do not pay, the language requires that these States' remaining thrifts become ineligible for Federal deposit insurance. High risk States which owe more than $1 billion can spread out their payments.

Besides bringing some regional equity to the bailout process, this bill also should prevent a future need for a similar bailout by sending a clear message that any future failure to adequately regulate, resulting in this kind of disaster, will not be tolerated.

The American law division of the Congressional Research Service has determined that the premium established under this bill does not constitute a tax. Any payment is entirely voluntary; thus, there is no concern with the constitutionality of this action. Since the Federal Government grants Federal deposit insurance to State-chartered thrifts, it is fully within its authority to establish a condition on a State—such as payment of a deposit insurance premium—if the State wishes to continue to receive the benefit of the deposit insurance.

The formula created in this bill doubles a State's share of deposits in the base year before holding the State accountable for excessive costs. This is intended to very narrowly define "excessive costs" to only cover those which are truly egregious. Thus, a State is found to have excessive costs only when its share of the national bailout costs of State-chartered institutions is more than double its share of deposits in 1980.

The year 1980 was chosen as the base year because it predates the explosion in deposits in State-chartered thrifts later in the decade. It was therefore before any trouble developed in the S&L industry.

Another means of achieving fairness under this bill is that it only holds States accountable for 25 percent of the excessive costs of bailing out State-chartered thrifts under its supervision.

This 25 percent accountability ratio is in recognition of the fact that the Federal Government should share some of the burden of bailing out these thrifts, since there remains a Federal/State partnership.

I ask unanimous consent that a table prepared by the Northeast/Midwest congressional coalition, which outlines the consequences of this bill to various States, be placed in the RECORD.

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

FINANCIAL IMPACT OF GRASSLEY BILL

[Figures for State chartered thrifts]

| State or region | 1980 deposits (thousands) | 1980 deposits (percent of U.S. total) | 1989–93 costs [1] (thousands) | 1989–93 costs [1] (percent of U.S. total) | Impact of amendment (thousands) |
|---|---|---|---|---|---|
| New England: | | | | | |
| Connecticut | $1,004,493 | 0.00468 | $66,000 | 0.00139 | 0 |
| Maine | 405,303 | .00189 | 0 | .00000 | 0 |
| Massachusetts | 0 | .00000 | 0 | .00000 | 0 |
| New Hampshire | 339,314 | .00158 | 23,000 | .00048 | 0 |
| Rhode Island | 555,084 | .00295 | 19,000 | .00040 | 0 |
| Vermont | 56,051 | .00026 | 0 | .00000 | 0 |
| Total | 2,360,245 | .01099 | 108,000 | .00228 | 0 |
| Mid-Atlantic: | | | | | |
| Delaware | 54,683 | .00025 | 0 | .00000 | 0 |
| Maryland | 949,226 | .00442 | 62,000 | .00131 | 0 |
| New Jersey | 15,658,995 | .07294 | 990,000 | .02086 | 0 |
| New York | 4,555,119 | .02122 | 0 | .00000 | 0 |
| Pennsylvania | 8,676,216 | .04041 | 1,133,000 | .02388 | 0 |
| Total | 29,894,239 | .13924 | 2,185,000 | .04604 | 0 |
| Midwest: | | | | | |
| Illinois | 12,971,203 | .06042 | 254,000 | .00535 | 0 |
| Indiana | 1,843,008 | .00858 | 21,000 | .00044 | 0 |
| Iowa | 2,204,881 | .01027 | 69,000 | .00145 | 0 |
| Michigan | 3,850,692 | .01794 | 0 | .00000 | 0 |
| Minnesota | 943,360 | .00439 | 0 | .00000 | 0 |
| Ohio | 16,430,113 | .07653 | 220,000 | .00464 | 0 |
| Wisconsin | 8,916,922 | .04153 | 35,000 | .00074 | 0 |
| Total | 47,160,179 | .21966 | 599,000 | .01262 | 0 |
| South: | | | | | |
| Alabama | 499,272 | .00233 | 0 | .00000 | 0 |
| Arkansas | 915,104 | .00426 | 130,000 | .00274 | 0 |
| D.C. | 0 | .00000 | 0 | .00000 | 0 |
| Florida | 6,364,674 | .02965 | 3,641,000 | .07673 | $206,840 |
| Georgia | 0 | .00000 | 0 | .00000 | 0 |
| Kentucky | 104,924 | .00049 | 0 | .00000 | 0 |
| Louisiana | 4,950,801 | .02306 | 1,042,000 | .02196 | 0 |
| Mississippi | 539,753 | .00251 | 190,000 | .00400 | 0 |
| North Carolina | 4,201,014 | .01957 | 53,000 | .00112 | 0 |
| Oklahoma | 906,531 | .00422 | 64,000 | .00135 | 0 |
| South Carolina | 999,742 | .00466 | 0 | .00000 | 0 |
| Tennessee | 267,743 | .00125 | 51,000 | .00107 | 0 |
| Texas | 21,487,496 | .10008 | 23,911,000 | .50387 | 3,602,999 |
| Virginia | 4,140,637 | .01929 | 101,000 | .00213 | 0 |
| West Virginia | 17,365 | .00008 | 0 | .00000 | 0 |

FINANCIAL IMPACT OF GRASSLEY BILL—Continued

[Figures for State chartered thrifts]

| State or region | 1980 deposits (thousands) | 1980 deposits (percent of U.S. total) | 1989–93 costs [1] (thousands) | 1989–93 costs [1] (percent of U.S. total) | Impact of amendment (thousands) |
|---|---|---|---|---|---|
| Total | 43,395,056 | .21144 | 29,183,000 | .61496 | 3,809,839 |
| West: | | | | | |
| Alaska | 7,197 | .00003 | 68,000 | .00143 | 16,205 |
| Arizona | 3,428,218 | .01597 | 5,179,000 | .10913 | 915,871 |
| California | 61,452,156 | .28623 | 9,429,000 | .19869 | 0 |
| Colorado | 4,058,954 | .01891 | 235,000 | .00495 | 0 |
| Hawaii | 447,214 | .00208 | 0 | .00000 | 0 |
| Idaho | 83,930 | .00039 | 0 | .00000 | 0 |
| Kansas | 2,808,356 | .01308 | 301,000 | .00634 | 0 |
| Missouri | 7,162,390 | .03336 | 101,000 | .00213 | 0 |
| Montana | 0 | .00000 | 0 | .00000 | 0 |
| Nebraska | 585,773 | .00273 | 0 | .00000 | 0 |
| Nevada | 1,521,716 | .00709 | 22,000 | .00046 | 0 |
| New Mexico | 1,241,100 | .00578 | 0 | .00000 | 0 |
| North Dakota | 465,908 | .00217 | 0 | .00000 | 0 |
| Oregon | 2,437,128 | .01135 | 0 | .00000 | 0 |
| South Dakota | 214,805 | .00100 | 0 | .00000 | 0 |
| Utah | 2,007,978 | .00935 | 32,000 | .00067 | 0 |
| Washington | 1,739,321 | .00810 | 5,000 | .00011 | 0 |
| Wyoming | 222,060 | .00103 | 8,000 | .00017 | 0 |
| Total | 89,884,204 | .41866 | 15,380,000 | .32410 | 932,076 |
| Northeast | 32,254,484 | .15023 | 2,293,000 | .04832 | 0 |
| Midwest | 47,160,179 | .21966 | 599,000 | .01262 | 0 |
| Northeast/Midwest | 79,414,663 | .36990 | 2,892,000 | .06094 | 0 |
| South | 45,395,056 | .21144 | 29,183,000 | .61496 | 3,809,839 |
| West | 89,884,204 | .41866 | 15,380,000 | .32410 | 932,076 |
| South and West | 135,279,260 | .63010 | 44,563,000 | .93906 | 4,741,915 |
| U.S. total | 214,693,923 | 1.00000 | 47,455,000 | 1.00000 | 4,741,915 |

[1] Actual time period is Aug. 9, 1989 to June 18, 1993.

Note.—Accountability was determined by finding which State's share of 1989–93 resolution costs were over double their share of 1980 deposits.

Source: Northeast-Midwest staff calculations based on Office of Thrift Supervision and Resolution Trust Corporation data.

By Mr. GLENN (for himself, Mr. BRADLEY, Mr. DURENBERGER, Mr. RIEGLE, Mr. DODD, Mrs. FEINSTEIN, Mr. ROBB, Mr. DECONCINI, Mr. KENNEDY, Mr. HATFIELD, Mr. NUNN, Ms. MOSELEY-BRAUN, Mr. CHAFEE, and Mr. BINGAMAN):

S. 1240. A bill to reauthorize the National Commission to Prevent Infant Mortality, and for other purposes; to the Committee on Labor and Human Resources.

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY REAUTHORIZATION ACT OF 1993

Mr. GLENN. Mr. President, I rise today to introduce legislation which would reauthorize the Commission to Prevent Infant Mortality. To offer a parody of Will Rogers, I never met a commission I really liked—except that the Commission to Prevent Infant Mortality is truly needed.

In 1986, Congress passed Public Law 99–660 for the explicit purpose of developing a national strategy to reduce this Nation's infant mortality rate. The improvement has been very slow and, in fact, this Nation still ranks as the worst among industrialized Western countries in terms of infant mortality statistics.

According to the Commission to Prevent Infant Mortality the basic fundamental means of preventing poor birth outcomes in the first place, such as early, comprehensive prenatal care, good nutrition during pregnancy, and adequate well-child care, are not available to all pregnant women and young children. Children born at risk are much more likely to require costly and long-term medical interventions, special education and other services. An investment now will save us money in the long term.

Mr. President, this Commission deserves to be reauthorized because there still exists a tremendous need to improve the accessibility of preventive prenatal and pediatric services. There is a continuing need to raise public awareness about the healthy behaviors, numerous financial and nonfinancial barriers which still exist in the service delivery system. The Commission continued to do a terrific job in attempting to make sure that the public has the information it needs to be motivated to make healthy choices.

The extensive private participation in Commission activities is also extremely important. Companies such as Prudential, AT&T, Honeywell, and others actually contribute more money to the Commission than does the Federal Government.

Funding for the Commission is included in the President's budget. The Commission's proposal for funding is $480,000 for the next 3 fiscal years and calls for the Commission to sunset on December 31, 1997.

In a letter to the Congress, Governor Lawton Chiles, the Commission Chairman, stated:

> The Commission has a strong track record of leadership and resourcefulness in addressing the range of issues associated with infant mortality and maternal and infant health overall. I believe it is a model of the direction this country must take if we are to improve the health and well-being of the Nation's youngest citizens and their families.

Mr. President, I ask unanimous consent that a copy of Governor Chiles' letter be included at the appropriate point in the RECORD, that the bill be printed in the RECORD, and that the following Senators be listed as cosponsors: Senator DURENBERGER, Senator BRADLEY, Senator FEINSTEIN, Senator RIEGLE, Senator DODD, Senator ROBB, Senator DECONCINI, Senator KENNEDY, Senator HATFIELD, Senator NUNN, Senator MOSELEY-BRAUN, Senator CHAFEE, and Senator BINGAMAN.

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

S. 1420

*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 Commission to Prevent Infant Mortality Reauthorization Act of 1993".

**SEC. 2. REFERENCES.**

A reference in this Act to "the Act" shall be a reference to the National Commission to Prevent Infant Mortality Act of 1986 (42 U.S.C. 285g note; Public Law 99–660; 100 Stat. 3752).

**SEC. 3. FINDINGS.**

The Congress finds that—

(1) infant mortality is largely preventable with early, regular, and comprehensive prenatal care, good nutrition, healthy behaviors during pregnancy, and preventive well baby care;

(2) while the United States' infant mortality rate is slowly improving, the Nation still lags behind most other developed nations, and the advances that are being made continue to be due mostly to improved technology that saves low birthweight and otherwise at-risk newborns rather than making sure all babies are born as healthy as possible in the first place;

(3) children born at low birthweight and otherwise at-risk not only are more likely to

die, but also are much more likely to suffer long-term disabilities and require costly medical interventions, special education, and other services;

(4) in 1988, the National Commission to Prevent Infant Mortality developed a strategic national plan to reduce infant mortality, and submitted such plan to the Congress and the President in a report entitled "Death Before Life: The Tragedy of Infant Mortality";

(5) the report's many recommendations centered on fundamental solutions to the problem of infant mortality that have existed for decades, including recommendations that all pregnant women and infants must have universal access to the range of necessary services, and that the health and well-being of mothers and children must become a high national priority;

(6) since issuing such report, the Commission has continued to promote specific actions, based on the report's recommendations, for Congress and all sectors of society to take to improve the health and well-being of all infants, children, and pregnant women;

(7) despite considerable effort and success by many throughout the Nation to improve the accessibility of services and to raise awareness about healthy behaviors, numerous financial and nonfinancial barriers still exist in the service delivery system, the public continues to lack the information and often motivation needed to make healthy choices, and the infant mortality rate, low birthweight rate, and other indicators continue to be far too high; and

(8) to help assure that the Nation reaches the goal of universal access to care and that the health and well-being of all infants, children, and pregnant women becomes a high national priority, the need for the Commission continues.

**SEC. 4. COMPOSITION OF COMMISSION.**

Section 203(b) of the Act is amended—

(1) in the matter preceding paragraph (1) by striking out "fifteen members" and inserting in lieu thereof "sixteen members";

(2) in paragraph (3) in the second sentence—

(A) by inserting "directly" before "responsible for administering the State medicaid program"; and

(B) by inserting "directly" before "responsible for administering the State maternal and child health programs"; and

(3) in paragraph (6) by striking out "Six at large members" and inserting in lieu thereof "Seven at large members".

**SEC. 5. DUTIES OF THE COMMISSION.**

Section 204 of the Act is amended to read as follows:

**"SEC. 204. DUTIES OF THE COMMISSION.**

"The Commission shall—

"(1) develop strategic plans to initiate and stimulate action on the recommendations in the report submitted by the Commission to the Congress and President in 1988 entitled, "Death Before Life: The Tragedy of Infant Mortality";

"(2) inform the Congress and others, through reports, conferences, briefings, public information campaigns, and other means of the specific actions that can be taken to improve the health and well-being of pregnant women, infants, and children;

"(3) serve as an information clearinghouse for the Congress and other interested parties on domestic and international model programs and cost effective strategies for—

"(A) improving the health and well-being of pregnant women and children in the areas of Federal and State legislation and program administration; and

"(B) organizing and delivering local services, raising public awareness, and conducting outreach to populations in need;

"(4) annually report and make recommendations on the demographic and related trends concerning the health of pregnant women, infants, and children to the Congress and the President; and

"(5) establish working relationships and networking linkages with organizations and other entities within and outside the Federal Government to promote the health and well-being of pregnant women, infants, and children.".

**SEC. 6. POWERS OF THE COMMISSION.**

Section 205 of the Act is amended by redesignating subsection (d) as subsection (f) and inserting after subsection (c) the following new subsections:

"(d) GRANTS.—To carry out its activities, the Commission may accept and expend private sector funds from corporations, nonprofit foundations, or individuals. The Commission may also accept and expend interagency transfer funds from agencies of the United States Government. The Commission shall report all grant raising, acceptance, and expending activities and the amount of all funds related to such activities to the Appropriations Committees of the Senate and the House of Representatives on an annual basis.

"(e) VOLUNTARY SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Commission may accept voluntary and uncompensated services.".

**SEC. 7. COMMISSION STAFF.**

Section 206 of the Act is amended—

(1) in subsection (b) by striking out "the rate payable for GS–18 of the General Schedule under section 5332 of such title" and inserting in lieu thereof "the rate payable for a position at level IV of the Executive Schedule under section 5315 of such title"; and

(2) in subsection (d) by striking out "the daily rate payable for GS–18 of the General Schedule under section 5332 of such title" and inserting in lieu thereof "the daily rate payable for a position at level IV of the Executive Schedule under section 5315 of such title".

**SEC. 8. REAUTHORIZATION OF COMMISSION.**

Sections 208 and 209 of the Act are amended to read as follows:

**"SEC. 208. TERMINATION OF THE COMMISSION.**

"The Commission shall terminate on December 31, 1997.

**"SEC. 209. AUTHORIZATION OF APPROPRIATIONS.**

"There are authorized to be appropriated to the Commission $480,000 in fiscal year 1995, $480,000 in fiscal year 1996, and $600,000 in fiscal year 1997. Sums appropriated pursuant to this section shall remain available through December 31, 1997.".

**SEC. 9. TECHNICAL AND CONFORMING AMENDMENT.**

The matter under the heading "NATIONAL COMMISSION TO PREVENT INFANT MORTALITY" under title IV of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1989 (Public Law 100–436; 102 Stat. 1709) is amended by striking out the second and third sentences.

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STATE OF FLORIDA,
OFFICE OF THE GOVERNOR,
*Tallahassee, FL, July 14, 1993.*

DEAR COLLEAGUE: I am writing to invite you to join Senator John Glenn in co-sponsoring the National Commission to Prevent Infant Mortality Reauthorization Act of 1993. I have enclosed a copy of the draft language for the bill for your information.

As you may recall, Congress created the Commission in late 1986 through public law 99–660 for the purpose of developing a national strategy to reduce this nation's unacceptably high rate of infant mortality. I have been pleased to chair the Commission since its establishment during my tenure in the U.S. Senate, and am proud of the work it has done to raise awareness about the problems and, most importantly, the solutions for our nation's infant mortality tragedy. In August 1988, the Commission issued its mandated report to Congress and the President, "Death Before Life: The Tragedy of Infant Mortality." Since that time, the Commission has worked hard not to let that report sit on a shelf gathering dust. Through our efforts, the Commission works to see that the report's recommendations are implemented. We help policymakers, health and education professionals, business and community leaders, and others understand what they can do on behalf of the nation's pregnant women, infants and children.

To give you further background on the Commission's current work and our plans, I have enclosed a copy of my testimony presented to Chairman Harkin concerning the Commission's appropriation request for fiscal year 1994. Congress has continued to support the Commission over the years with a modest appropriation, $446,000 this fiscal year. I hope you will agree that the Commission has been a hard-working and valuable asset for Congress.

I wish I could report that the nation's infant mortality problem is behind us and that we are on the right track in terms of improving women's access to prenatal care and breaking down barriers to preventive health care for infants and young children, and other initiatives that are vitally needed. Unfortunately, that is not the case. Although infant mortality is coming down—the 1990 rate was 9.1 deaths per 1,000 live births, this improvement is still due mainly to advanced medical technologies that can save the lives of babies born at risk. Although there are pockets of good news in most states, we as a nation still are not doing all we can to be sure all babies are born as healthy as possible in the first place and go on to get a good start in life. Significant racial and ethnic disparities persist. The African American infant mortality rate is twice the white rate and the gap is growing. The United States' ranking among all developed nations in terms of infant mortality has not improved for many years and has actually slipped over the past few decades.

Because of these continuing issues, Senator Glenn will be introducing the National Commission to Prevent Infant Mortality Reauthorization Act of 1993 within the next several days. This legislation will update the Commission's duties, authorize an appropriation of $480,000 for the next three fiscal years, and call for the Commission to sunset on December 31, 1997, allowing the Commission to complete a decade-long commitment to working with Congress, the Administration, the private sector, and others to address our infant mortality problem.

The Commission has a strong track record of leadership and resourcefulness in addressing the range of issues associated with infant mortality and maternal and infant health overall. I believe it is a model of the direction this country must take if we are to improve the health and wellbeing of the nation's youngest citizens and their families. I urge you to join Senator Glenn in co-sponsoring this important bill by contacting Bob Harris at 224–4751.

For further information about the Commission and its work, please call Mary Carpenter at 205-8364. Thank you in advance for your support.

Sincerely,

LAWTON CHILES,
*Chairman, National Commission to Prevent Infant Mortality.*

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By Mr. HATCH (for himself and Mrs. FEINSTEIN):

S. 1421. A bill to amend title 17, United States Code, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions; to the Committee on the Judiciary.

PERFORMANCE RIGHTS IN SOUND RECORDINGS ACT OF 1993

Mr. HATCH. Mr. President, I rise today, together with my distinguished colleague from California, Senator FEINSTEIN, to introduce the Performance Rights in Sound Recordings Act of 1993.

Despite that complicated title it is really a simple bill amending the Copyright Act to give those who create sound recordings the full copyright protections that current law gives to all other creators. Specifically, the bill provides that the copyright owners of sound recordings have the exclusive right to control all digital transmissions that may be made of their music.

Thus, like other copyright owners, such as film and video producers, those who create sound recordings will, on passage of this bill, be able to license the digital transmissions of their works or, should no acceptable license scheme be achievable, to prohibit such digital transmissions.

One common illustration of how this disparity in treatment operates in practice will demonstrate the irrationality of our current law: Many new recordings are released in video formats as well as in traditional audio only form. When the video is broadcast on television or cable, the composer of the music, the publisher of the music, the producer of the video, and the performer of the work are all entitled to a performance right royalty. However, when only the audio format is played on the radio—even though it may be identical to the video soundtrack—only the composer and publisher have performance rights that must be respected. The producer's and performer's interests are ignored.

It should be initially noted, Mr. President, that this bill does not impose new financial burdens on broadcasters or on any other broad class of users who traditionally perform sound recordings. Those users will instead continue to be subject only to those financial burdens that they voluntarily undertake. That is how the free market system works. This bill only levels the playing field by according to sound recording the same performance rights that all other works capable of performance have long enjoyed.

It should be remembered that sound recordings are not the only source of music available to broadcasters, nor is music programming the only format. Should those who are granted these new performance rights in the digital transmission of sound recordings be so unwise as to unfairly and unrealistically charge for licensing their works or to actually withhold their works from the public, then the detriment will fall principally on the very copyright owners that the law is designed to protect. All that this law does is to allow all parties to exercise their essential economic rights in a nondiscriminatory manner, a manner more closely resembling the free market system than current copyright law permits.

The basic issue raised by our bill is not new, Mr. President. The adoption of the Copyright Act of 1976 was the key event in the development of our current system of copyright. The importance of the performance right issue was recognized at that time though not ultimately addressed by the legislation. Congress did, however, request a study of the issue to be made by the Copyright Office, and that study, released in 1978, did conclude that a performance right in sound recordings was warranted. This was at a time, it should be noted, when few could have anticipated the widespread availability of digital technology and the possibility for flawless copying that is now plainly seen on the horizon.

A subsequent study of this issue was provided to the Subcommittee on Patents, Copyrights and Trademarks in October, 1991, in response to a joint request by Chairman DECONCINI and Representative HUGHES, chairman of the House Subcommittee on Intellectual Property. Their request was for an assessment of the effect of digital audio technology on copyright holders and their works. Again, the Copyright Office concluded that sound recordings should, for copyright purposes, be equated with other works protected by copyright. From this premise flows the inevitable conclusion that the producers and performers of sound recordings are entitled to a public performance right, just as are all other authors of works capable of performance. Thus, it should not be surprising that the Copyright Office recommended in 1991 that Congress enact legislation recognizing the performance right. Today's bill responds, at least in part, to that recommendation.

Currently, sales of recordings in record stores and other retail outlets represent virtually the only avenue for the recovery of the very substantial investment required to bring to life a sound recording. There are no royalties payable to the creators of the sound recording for the broadcast or other public performance of the work.

If the technological status quo could be maintained, it might well be that the current laws could be tolerated. But, we know that technological developments such as satellite and digital transmission of recordings make sound recordings vulnerable to exposure to a vast audience through the initial sale of only a potential handful of records. Since digital technology permits the making of virtually flawless copies of the original work transmitted, a potential depression of sales is clearly threatened, particularly when the copyright owner cannot control public performance of the work. And new technologies such as audio on demand and pay-per-listen will permit instant access to music, thus negating even the need to make a copy.

But, Mr. President, even if this economic argument were not persuasive, fairness and responsible copyright policy nonetheless dictate the recognition of the rights embodied in today's bill. As the Copyright Office has noted, "Even if the widespread dissemination by satellite and digital means does not depress sales of records, the authors and copyright owners of sound recordings are unfairly deprived by existing law of their fair share of the market for performance of their works." (Report on Copyright Implications of Digital Audio Transmission Services, Oct. 1991, pp. 156-157).

Mr. President, the bill that Senator FEINSTEIN and I are introducing today is about fairness, plain and simple. Unless Congress is prepared to create a hierarchy of artists based on a theory of rewarding some forms of creativity but not others, it must maintain a strict policy of nondiscrimination among artists. This should be true whether we are tempted to discriminate among artists based on the content of their creations, based on the nature of the works created, or based on the medium in which the works are made available to the public. As an eminent German authority on authors' rights has noted, governments that discriminate among artists place at liberty the rights of all artists everywhere.

For too long, American law has tolerated an irrational discrimination against the creators of sound recordings. Every other copyrighted work that is capable of performance—including plays, operas, ballets, films, and pantomimes—is entitled to the performance right. It is denied only for sound recordings.

It is frankly difficult, Mr. President, to understand the historical failure to accord to the creators of sound recordings the rights seen as fundamental to other creators. I acknowledge that in other nations some have advanced the theory that copyright protection should not extend to sound recordings. This theory is based on the view that the act of embodying a musical work on a disc or tape is more an act of technical recordation than a creative enterprise. But, this has not been the American view, nor the view of most nations

with advanced copyright systems. Since 1971, Congress has clearly recognized sound recordings as works entitled to copyright on an equal basis with all other works.

Thus, the joint authors of sound recordings—those who produce them and those who perform on them—must be seen as authors fully entitled to those rights of reproduction, distribution, adaptation, and public performance that all other authors enjoy. It is, I believe, no longer possible to deny the true creative work of the producers of sound recordings. While few are so well known as their stage and film counterparts, there are significant exceptions. In the field of operatic recording alone, one could cite legendary figures such as Walter Legge, Richard Mohr, or John Culshaw. As the New Grove Dictionary of Opera states with reference to the latter's landmark Wagner recordings of the 1950's, "Mr. Culshaw's great achievement was to develop the concept of opera recording as an art form distinct from live performance." (Vol. I, p. 1026; Macmillan Press, 1992). The events referred to occurred over 30 years ago, yet American law still fails fully to recognize the sound recording as an art form entitled to the full range of copyright protections enjoyed by live performances.

Similarly, the unique creative input of the performing artist as a joint author cannot be casually discounted as a proper subject of copyright protection. It has been said that the recording industry was almost single-handedly launched by the public demand for one performer's renditions of works largely in the public domain. Indeed, Enrico Caruso's recordings from the early years of this century are almost all still in print today. To take a more contemporary example, it could be noted that Willie Nelson authored a country music standard when he composed "Crazy," a song he has also recorded. But, Patsy Cline made the song a classic, by her inimitable performance of it.

It should be carefully noted, Mr. President, that today's bill is, frankly, compromise legislation. It does not seek to create a full performance right in sound recordings, a right that would extend to the more common analog mode of recording. Also, the digital right that the bill does create is limited to digital transmissions. Other public performances of digital recordings are still exempted from the public performance right that the bill would create.

I believe that these major limitations on the rights that we seek to create today will limit as mush as possible the dislocations and alterations of prevailing contractual arrangements in the music and broadcasting industries. I am sure I speak for Senator FEINSTEIN as well when I say that we are open to the consideration of additional means of ensuring that this bill does not have unintended consequences for other copyright owners, be they songwriters, music publishers, broadcasters, or others.

Mr. President, while today's bill is landmark legislation, it should also be noted that the bill only proposes to give the creators of sound recordings something approaching the minimum rights that more than 60 countries already give their creators. In so doing, the legislation should also have extremely beneficial consequences in the international sphere by strengthening America's bargaining position as it continues to campaign for strong levels of protection for all forms of intellectual property and by allowing American copyright owners to access foreign royalty pools that currently deny distributions of performance royalties to American creators due to the lack of a reciprocal right in the United States.

The absence of a performance right has long hindered efforts of U.S. trade negotiators as they work to address matters such as the Uruguay Round of the General Agreement on Tariffs and Trade [GATT] and the current efforts of the World Intellectual Property Organization to develop a new instrument to settle the rights of producers and performers of sound recordings. In each instance, U.S. negotiators are faced with the argument from our trading partners that the United States cannot expect other countries to provide increased protection when U.S. law is itself inadequate.

Furthermore, in many countries that do provide performance rights for sound recordings, there is often a refusal to share any collected royalties with American artists and record companies for the public performance of their recordings in those foreign countries. This is based on the argument that these rights should be recognized only on a reciprocal basis. For so long as foreign artists receive no royalties for the public performance of their works in the United States, American artists will continue to receive no royalties for the performance of American works in those foreign countries that insist on reciprocity.

The royalty pools we are talking about here, Mr. President, are in fact, considerable. The Recording Industry Association of America has estimated that in 1992 American recording artists and musicians were excluded from royalty pools that distributed performance royalties in excess of $120 million. It is likely that this figure has increased in recent years and will continue to grow.

The insistence of certain foreign nations on reciprocity of rights as a condition to the receipt of performance royalties is inconsistent with the fundamental obligation of those nations to provide national treatment under the Berne Convention on the Protection of Literacy and Artistic Property or under the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations. It is nonetheless an economic fact of life that seriously disadvantages American producers and performers and therefore must be dealt with. If passed, the Performance Rights in Sound Recordings Act should provide Americans who are entitled to royalties from foreign performances the right to recover those funds. Thus, the direct economic benefits to be derived from the legislation are considerable.

Before concluding, Mr. President, I would like to express my personal gratitude to the U.S. Copyright Office, its head, Ralph Oman, and its professional staff for their contributions over many years in raising the visibility of this issue and in educating all of us who follow copyright issues as to the subtleties of this complex area of the law. The leadership shown by the Copyright Office on this issue should be a model for all government agencies on how they can best serve the Congress in the development of legislation in specialized and complex areas of the law.

I would also like to thank my colleague from California, Senator FEINSTEIN, for joining me in introducing this important legislation and for drawing our attention to the significant economic consequences involved. I look forward to a detailed investigation of the subjects addressed by the bill.

Also, credit for leadership on this issue should be paid to Representative BILL HUGHES, chairman of the Subcommittee on Intellectual Property and Judicial Administration, who, together with Representative HOWARD BERMAN, has previously introduced similar legislation in the House of Representatives. I look forward to working with each of them as we attempt to secure passage of this important measure.

Mrs. FEINSTEIN. Mr. President, I rise today, along with the distinguished ranking member of the Judiciary Committee, Senator HATCH of Utah, to introduce the Performance Rights in Sound Recordings Act of 1993. The bill will—for the first time—grant full copyright protection to the owners of sound recordings so that they may control and legitimately profit from the digital transmission of their music.

More than 60 countries around the globe extend similar rights to producers and their artists, and have for many years. The extension of that right to American artists and companies is hardly a radical or unexamined concept. Indeed, the U.S. Copyright Office has recommended since 1978 that a performance right in sound recordings be granted in all public performances, not just digital transmissions, and recently reiterated the urgency of the need for such reform created by the advent of digital audio technology. It's time to heed this expert call.

Before pursuing this issue further, I want to thank Senator HATCH for suggesting that he and I collaborate in redressing what, for many years, has been an imbalance in the level of copyright protection afforded to parties in the music industry. I commend him for his concern, and look forward very much to collaborating with him, as well as with Chairman DECONCINI, on this and other intellectual property legislation in this Congress.

I also want to thank my colleagues in the other Chamber, Representative BILL HUGHES, chairman of the House Judiciary Committee's Intellectual Property Subcommittee, and Representative HOWARD BERMAN, my good friend from California, for their leadership in introducing an almost identical bill in the House of Representatives just a few weeks ago.

This bill is about equity, economics, and the need to expedite resolution of a complex issue. Without it, the owners of sound recordings will continue to be the only class of copyright holders without the full panoply of rights conveyed under long-standing copyright law. That inequity will not be corrected unless and until this legislation is passed.

Specifically, copyright owners of every other type of copyrighted work—movies, books, magazines, advertising, and artwork, for example—enjoy the exclusive right to authorize the public performance of their copyrighted work. Sound recordings, and the artists and companies that make them, however, have no such performance right.

Technical though it may be, this is more than an academic distinction. For decades artists and recording companies have had no ability to control, or profit from, the performance of their product—sound recordings.

When a song is played on the radio or, as is increasingly the case, over a new digital audio cable service, the artist who sings the song, the musicians and backup singers, and the record company whose investment made the recording possible have no legal right to control or to receive compensation for this public performance of their work. In that sense, they are treated very differently from songwriters and music publishers, who do receive compensation each and every time that the very same song is performed publicly over the radio.

Digital technology, however, has created a real need to correct that disparity in copyright law and, thus, for this legislation. Compact discs so faithfully reproduce original recordings that the sound quality from an ordinary radio now surpasses that of far more expensive stereo equipment marketed just a few years ago. Impressive as that is, the real revolution has come in the kind of signal that the consumer can now listen to at home. Ordinary—or analog—radio signals are waves and, as such, they vary in strength and break down over distance. That breakdown diminishes sound quality. The same technology that has given us CD's, however, now allows perfect reproductions of music to be digitized—turned into computer dots and dashes—that can be sent by satellite or over cable TV wires around the globe, and reassembled into concert hall-quality music in our homes.

The bottom line is that digital transmission technology could—and may well—make music recorded on compact disc as obsolete as CD's made the 45's and LP's that we and our children grew up with. That would be a tolerable evolution of the marketplace if artists and record companies were compensated for the use of their sound recordings by the new digital transmission services and by broadcasters who eventually switch over to digital radio. Right now, however, because of skewed copyright law, that's not the way the market works.

New subscription digital audio services are operating in cities, towns, and rural communities across the country. For a modest monthly fee, they deliver multiple channels of CD-quality music to customers in their homes—primarily through subscribers' cable TV wiring. As the market is now configured, these companies need merely go to a local record store, buy a single copy of a compact disc, and transmit it for a fee to tens of thousands—potentially millions—of subscribers. Just two companies already provide such service to more than 200,000 people.

The artists who made the music, and the companies that underwrote its production and promotion, don't see dime of the revenue realized by the digital programmer. And, without a right of public performance in digital sound recordings, they won't. That's just not fair.

Before concluding, I'd like to emphasize three points concerning this legislation.

First, as the text and our remarks make clear, Senator HATCH and I have no intention in this bill of changing copyright law with respect to the kind of transmission of sound recordings that we have all grown up with. So-called analog transmissions by broadcasters—even of CD's—categorically will not be affected by this bill.

Second, this legislation is not cast in stone. It is our express intention in introducing it to encourage all of the industries and individuals who will help shape our digital entertainment future to come forward, sit down together and—using this legislation as a base—remedy the imbalance in current law that the bill narrowly seeks to correct. Just as compromise was achieved by the industry in 1990 when the challenge of how to adapt to digital audio tape and recording devices was before us, so we expect compromise to be promptly attempted and achieved here. Senator HATCH and I will work closely with Senator DECONCINI to schedule hearings on the bill and to assure that, as ultimately considered by the Senate, it represents a fair and meaningful step forward for all concerned.

Third, and finally, it is not our intention that new copyright revenues for artists and recording companies reduce current royalties paid to parties—like music publishers and songwriters—who already possess performance rights in sound recordings of all kinds.

In an effort to assure that no governmental or judicial agency will assume otherwise, the Performance Rights in Sound Recordings Act of 1993—while otherwise identical to the H.R. 2576—contains a new section 3 intended to protect the existing rights. It does this in two ways: First, by exempting analog broadcasting—currently the primary source of public performance royalties for songwriters and music publishers; and second, by explicitly stating that royalties paid to sound recording copyright owners should not be taken into account in setting music performance royalty rates.

I am aware, however, that performing rights societies also are concerned that, if this legislation is adopted, the exclusive right granted to artists and recording companies could dilute or otherwise interfere with similar rights long held by songwriters and music publishers. While the bill introduced today does not address this issue, I look forward to determining in the course of hearings to be held on this legislation whether additional statutory protection for current rights holders is required. Such hearings, of course, also will provide an opportunity for all other relevant issues to be aired.

We are standing at the cusp of an exciting digital era. Technological advance, however, must not come at the expense of American creators of intellectual property. This country's artists, musicians and businesses that bring them to us are truly among our greatest cultural assets. This bill recognizes the important contributions that they make and provides protection for their creative works, both at home and abroad.

I am, once again, very pleased to be working with Senator HATCH—and look forward to working with the music community and other interested parties—to prospectively redress a long-standing imbalance in current copyright law. Both equity and economics demand that we do so in this Congress.

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By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1422. A bill to confer jurisdiction on the U.S. Claims Court with respect to land claims of Pueblo of Isleta Indian Tribe; to the Committee on the Judiciary.

ISLETA PUEBLO LAND CLAIM

Mr. BINGAMAN. Mr. President, I rise with my good friend and colleague, Senator DOMENICI, to introduce a modest measure of great importance to our constituents, the people of the Pueblo of Isleta in New Mexico. A similar bill has already been introduced in the House by our colleagues from New Mexico, Representatives SKEEN and SCHIFF.

This legislation will give the Pueblo of Isleta the long overdue opportunity to have its aboriginal land claims heard in the U.S. Claims Court. I was pleased to sponsor, along with Senator DOMENICI, a measure similar to this bill in the 102d Congress. Representatives SKEEN and SCHIFF introduced a companion measure, which passed the House last year. Unfortunately, the Senate adjourned last October before our colleagues had the opportunity to discuss the merits of this proposal.

I believe this modest measure deserves the Senate's support, and I plan to do my best to ensure passage of this legislation this year. Forty-two years ago, the Pueblo of Isleta received erroneous advice from the Bureau of Indian Affairs about the Pueblo's rights under the Indian Claims Commission Act of 1946 concerning claims to aboriginal land. Tribal leaders were told that without written documentation they would not have a valid claim against the United States. These assertions were made at a time when the tribe was dependent upon the Bureau of Indian Affairs for advice and assistance regarding land claims. As a result, the Pueblo of Isleta filed a very limited claim under the Indian Claims Commission Act in 1951, seeking recompense only for the taking of lands involved in Spanish land grants, which tribal leaders believed were well documented.

Pueblo spokesmen have told me their forefathers were informed that they could make a claim based on aboriginal use and occupancy of tribal lands. As a result, no aboriginal land claim was ever made. In fact, aboriginal use and occupancy was the basis for many Indian tribal claims under the 1946 act.

The measure we are introducing today promises nothing to the people of the Pueblo of Isleta but an opportunity to submit their claim based on aboriginal use and occupancy to the U.S. Claims Court. The legislation does not address the merits of the claim. If, however, the Pueblo of Isleta proves to the U.S. Claims Court that it does indeed have a valid claim of aboriginal land use and occupancy, then appropriate monetary compensation would be determined by the court.

Mr. President, the people of the Pueblo of Isleta are entitled to their day in court. This bill assures them of that right. I am pleased to introduce this legislation today with Senator DOMENICI, and I urge its swift consideration and passage.

I ask unanimous consent that the bill be read into the RECORD at the conclusion of our remarks.

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

S. 1422

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. JURISDICTION.**

Notwithstanding sections 2401 and 2501 of title 28, United States Code, and section 12 of the Act of August 13, 1946 (60 Stat. 1052), or any other law which would interpose or support a defense of untimeliness, jurisdiction is hereby conferred upon the United States Claims Court to hear, determine, and render judgment on any claim by Pueblo of Isleta Indian Tribe of New Mexico against the United States with respect to any lands or interests therein the State of New Mexico or any adjoining State held by aboriginal title or otherwise which were acquired from the tribe without payment of adequate compensation by the United States. As a matter of adequate compensation, the United States Claims Court may award interest at a rate of 5 percent per year to accrue from the date on which such lands or interests therein were acquired from the tribe by the United States. Such jurisdiction is conferred only with respect to claims accruing on or before August 13, 1946, and all such claims must be filed within three years after the date of enactment of this Act. Such jurisdiction is conferred notwithstanding any failure of the tribe to exhaust any available administrative remedy.

**SEC. 2. CERTAIN DEFENSES NOT APPLICABLE.**

Any award made to any Indian tribe other than the Pueblo of Isleta Indian Tribe of New Mexico before, on, or after the date of the enactment of this Act, under any judgment of the Indian Claims Commission or any other authority, with respect to any lands that are the subject of a claim submitted by the tribe under section 1 shall not be considered a defense, estoppel, or set-off to such claim, and shall not otherwise affect the entitlement to, or amount of, any relief with respect to such claim.

Mr. DOMENICI. Mr. President, the Isleta Pueblo in New Mexico, like the Zuni Pueblo before them, was apparently misinformed about their rights to file a claim for damages for the loss of their aboriginal lands. In May 1978, the President signed Public Law 95–280. This law enabled the Zuni Pueblo to be heard before the U.S. Court of Claims.

By introducing this bill for the Isleta Pueblo, I do not believe we are drawing any conclusions about the final outcome of any U.S. Court of Claims action. We are simply acknowledging the facts as they have been presented to us. In summary, the Isleta leaders have told me that their case was not heard by the relevant court because of poor advice given to the tribe by the Bureau of Indian Affairs. This parallels the Zuni case.

If these facts prove to be true, then the Isleta case deserves to be heard on its own merits. Today, we are asking our colleagues to consider the circumstances surrounding the Isleta Pueblo's right to file a claim in the U.S. Claims Court pursuant to the Indian Claims Commission Act. Obviously, the time for filing such a claim has run, therefore the provisions of this bill allow the Pueblo to have access to the U.S. Claims Court if we in the Congress find that there is sufficient evidence to reopen the court for a new hearing on the merits.

Like the Zuni case, we will have to review the 1951 records for evidence that the Isleta Pueblo leaders were truly deprived of their rights under the relevant statutes. I look forward to the hearing process so that the Isleta Pueblo will be able to make its case before the Congress for again having access to the U.S. Court of Claims.

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By Mr. CHAFEE (for himself and Mr. BRADLEY):

S. 1423. A bill to amend the Social Security Act to improve access to Medicaid benefits and to reduce State administrative burdens under the Medicaid Program; to the Committee on Finance.

MEDICAID ELIGIBILITY SIMPLIFICATION AND IMPROVEMENT ACT

Mr. CHAFEE. Mr. President, today, my colleague, Mr. BRADLEY, and I introduce legislation which improves the Medicaid Program and removes bureaucratic obstacles that reduce efficiency and are often barriers to care for Medicaid patients. These changes will insure that patients who are eligible for services receive better and more cost-effective care. We originally introduced this proposal in 1992.

Current Medicaid law and regulations make it difficult for Medicaid-eligible individuals to enroll in the program, and make it almost impossible for States to administer the program. The changes that we introduce today, though not high profile issues, will help simplify the procedures for existing eligibility groups and ease States administrative burden without compromising the underlying intent of the Medicaid Program.

Specifically, the legislation permits States to extend Medicaid coverage of prenatal car services to undocumented alien pregnant women. Under current law, States are required to cover delivery and other emergency services, but are prohibited from providing any prenatal care. States would be permitted to offer cost-effective prenatal care so that these infants, many of whom are fully eligible for Medicaid coverage once they are delivered, have a better chance of being born healthy. This change will ultimately reduce costs to both States and the Federal Government by reducing the number of children born prematurely or with serious illness.

The bill simplifies the Medicaid application process for legal aliens, permitting one adult within a household to attest to the citizenship status of all household members rather than having

each family member go to the eligibility office. This provision would make the Medicaid Program consistent with the Food Stamp Program and permit case workers to use a less burdensome process to get this information.

This legislation also protects the Medicaid coverage of SSI eligible children and adults in those months when Medicaid coverage is halted because of an extra paycheck. Although the overall annual income of the recipient will not have changed, often patients lose Medicaid eligibility for the month in which they receive an extra paycheck because their employer pays on a weekly or biweekly basis. This bureaucratic, paper generating procedure only adds to the administrative nightmare of the Medicaid Program. More importantly, however, is the adverse effect on patient care of the on-again, off-again Medicaid coverage.

In addition, the proposal allows States to offer Medicaid coverage to older children living in families with incomes up to 185 percent of the Federal poverty level, as well as extending reproductive health services for 18 months postpartum to women in families with incomes of up to 185 percent of poverty.

Mr. President, although these and other more technical provisions are not issues which will receive national attention, it is critical that we make these adjustments in the Medicaid Program in order to improve the delivery of services and to provide relief for the States which struggle to administer this program. I urge my colleagues to join with us in supporting this legislation.

I ask unanimous consent that the text of the bill and a summary be printed in the RECORD.

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

S. 1423

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; REFERENCE TO SOCIAL SECURITY ACT.**

(a) SHORT TITLE.—This Act may be cited as the "Medicaid Eligibility Simplification Act."

(b) REFERENCE TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

**SEC. 2. COVERAGE OF PREGNANCY RELATED SERVICES FOR ALIEN WOMEN DURING PREGNANCY.**

(a) IN GENERAL.—Section 1903(v) (42 U.S.C. 1396b(v)) is amended—

(1) in paragraph (1) by striking "paragraph (2)" and inserting "paragraphs (2) and (3)";

(2) in paragraph (2) by striking "only";

(3) by redesignating paragraph (3) as paragraph (4); and

(4) by inserting after paragraph (2) the following new paragraph:

"(3) Payment shall be made under this section for care and services that are furnished, at the option of the State, to an alien woman described in paragraph (1) during pregnancy if—

"(A) such care and services would be available to a woman described in section 1902(l)(1)(A), and

"(B) such alien woman otherwise meets the eligibility requirements for medical assistance under the State plan approved under this title (other than the requirement of the receipt of aid or assistance under title IV, supplemental security income benefits under title XVI, or a State supplementary payment).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after October 1, 1993.

**SEC. 3. SIMPLIFICATION OF APPLICATION PROCESS FOR ALIENS.**

(a) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

"(z) Notwithstanding any other provision of law, in order to meet the requirements of subsection (a)(46) and section 1137 a State may provide that the signature of an adult representative of each household that is applying for medical assistance under this title is sufficient to comply with any provisions of Federal law requiring household members to sign the application or statements in connection with the application process for such medical assistance, but only if such representative certifies in writing, under penalty of perjury, that the information contained in the application for medical assistance is true and that all members of the household applying for such medical assistance are either citizens or nationals of the United States or are eligible to receive such assistance under this title.".

(b) CONFORMING AMENDMENT.—Section 1902(a)(46) (42 U.S.C. 1936a(a)(46)) is amended by inserting "except as provided in subsection (z)," after "(46)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to applications for medical assistance under title XIX of the Social Security Act beginning on or after October 1, 1993.

**SEC. 4. ELIGIBILITY DETERMINATIONS FOR CERTAIN MONTHS IN THE CASE OF INDIVIDUALS WITH WEEKLY OR BIWEEKLY INCOME.**

(a) IN GENERAL.—Section 1611(c) (42 U.S.C. 1382(c)) is amended—

(1) in paragraph (1), by inserting "(subject to paragraph (8))" after "An individual's eligibility for a benefit under this title for a month"; and

(2) by adding at the end the following new paragraph:

"(8)(A) If an individual is paid or otherwise receives income in any month on a regular weekly or biweekly basis (or is deemed under section 1614(f) to have income so paid or received), the determination under paragraph (1) of an individual's eligibility for benefits under this title for such month shall be made by treating such amounts as having been paid or received on a monthly basis at the same annual rate if such treatment would result in the individual becoming eligible for such benefits.

"(B) For purposes of subparagraph (A)—

"(i) the annual rate of income being paid to or received by an individual on a weekly basis in any month is 52 times the amount of the weekly income during such month (or of the average weekly income, if there is a change in the actual weekly rate during such month), and the annual rate of income being paid to or received by an individual on a biweekly basis in any month is 26 times the amount of the biweekly income during such month (or of the average biweekly income, if there is a change in the actual biweekly rate during such month); and

"(ii) the amount of such income to be considered as being paid to or received by an individual on a regular monthly basis at the 'same annual rate' (in such month) is 1/12 of the annual rate determined under clause (i) with respect to the weekly or biweekly income involved.".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective with respect to determinations of eligibility beginning on or after October 1, 1993.

**SEC. 5. OPTIONAL REPORTING REQUIREMENTS UNDER MEDICAID TRANSITIONAL MEDICAL ASSISTANCE.**

(a) IN GENERAL.—Section 1925(b)(2)(B) (42 U.S.C. 1396r-6(b)(2)(B)) is amended—

(1) in clause (i), by striking "Each State shall" and inserting "A State may"; and

(2) in clause (ii), by striking "Each State shall" and inserting "A State may".

(b) CONFORMING AMENDMENTS.—Section 1925 (42 U.S.C. 1396r-6) is amended—

(1) in subsection (a)(2)(A), by inserting ", if any," after "subsection (b)(2)(B)(i)";

(2) in subsection (b)(1), by inserting ", if any," after "paragraph (2)(B)(i)";

(3) in subsection (b)(2)(A)(i), by inserting "if any," after "subparagraph (B)(i)," and "subparagraph (B)(ii),";

(4) in subsection (b)(2)(A)(ii), by inserting ", if any," after "subparagraph (B)(ii)";

(5) in subsection (b)(3)(A)(iii), by inserting "the State does not require the reporting of such information, or" after "unless"; and

(6) the last sentence of subsection (b)(3)(A), is amended to read as follows: "If a State requires a family to report information under paragraph (2)(B)(ii), the State shall make determinations under clause (iii)(III) for a family each time such a report is received.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to eligibility determinations for calendar quarters beginning on or after October 1, 1993.

**SEC. 6. PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN.**

(a) QUALIFIED PROVIDER.—Section 1920 (42 U.S.C. 1396r-1) is amended in subsection (b)(2) by inserting "any individual who is employed by the State and who is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A) or" after "the term 'qualified provider' means".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after October 1, 1993.

**SEC. 7. MODIFICATION TO INCOME REQUIREMENTS FOR PREGNANT WOMEN AND COVERAGE FOR REPRODUCTIVE HEALTH SERVICES.**

(a) COVERAGE FOR REPRODUCTIVE HEALTH SERVICES.—Section 1902(e)(6) (42 U.S.C. 1396a(e)(6)) is amended—

(1) by striking "(6) In the case" and inserting "(6)(A) In the case";

(2) by inserting "and, with respect to reproductive health services (as defined in subparagraph (B)), such woman shall be deemed to continue to be an individual described in subsection (a)(10)(A)(i)(IV) and subsection (l)(1)(A) without regard to such change of income through the last day of the month in which the 18-month period (beginning with

the month following the month in which occurs the last day of her pregnancy) ends" after "her pregnancy) ends"; and

(3) by adding at the end the following new subparagraph:

"(B) For purposes of this paragraph, the term "reproductive health services" means—

"(i) services related to contraception (including contraceptive supplies), voluntary sterilization, screening for sexually transmitted diseases and cancer of the reproductive system, preconceptional risk assessment and care, maternity care (including prenatal, delivery, and postnatal care), and

"(ii) services providing information and education necessary to the effectiveness of the services described in clause (i).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after October 1, 1993.

**SEC. 8. MEDICARE PREMIUMS AND COST-SHARING FOR MEDICALLY NEEDY INDIVIDUALS.**

(a) IN GENERAL.—Section 1905(p)(1)(B) (42 U.S.C. 1396d(p)(1)(B)) is amended by inserting "or, at the option of the State, who is eligible under section 1902(a)(10)(C)" after "paragraph (2)".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after October 1, 1993.

**SEC. 9. CLARIFICATION OF INCOME METHODOLOGY USED IN DETERMINING ELIGIBILITY OF CERTAIN MEDICALLY NEEDY INDIVIDUALS FOR MEDICAID BENEFITS.**

(a) IN GENERAL.—Section 1903(f) (42 U.S.C. 1396b(f)) is amended—

(1) by redesignating paragraph (4) as paragraph (5); and

(2) by inserting after paragraph (3) the following new paragraph:

"(4) With respect to the methodology to be used in determining income and resource eligibility for individuals under section 1902(a)(10)(C)(i)(III), the applicable income limitation described in paragraph (1)(B) shall be compared to the adjusted income of such individuals after the State income methodology has been applied, including methodology allowed under section 1902(r)(2).".

(b) CONFORMING AMENDMENT.—Section 1903(f)(1)(A) (42 U.S.C. 1396b(f)(1)(A)) is amended by striking "(4)" and inserting "(5)".

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SUMMARY OF MEDICAID ELIGIBILITY SIMPLIFICATION AND IMPROVEMENT ACT

1. Coverage of Undocumented Pregnant Women. Medicaid currently permits coverage of emergency medical services for undocumented aliens. For alien, undocumented pregnant women, this translates to labor and delivery services only. Medicaid is precluded from providing prenatal/pregnancy related services for these women. State agencies would like the option to provide these women coverage for pregnancy related services in the same amount, duration and scope as is currently available to other medical assistance-only pregnant women.

2. Optional Coverage of Older Children. States continue to want the option to cover older children up to 185% of poverty. This broad option would allow states to rationalize eligibility at the state level to improve access and reduce administrative burdens that arise from all current mandated threshold levels. States would have the flexibility to decide poverty level eligibility based on fiscal constraints balanced against administrative burden reductions. It would also allow states to implement the OBRA 90 mandate more quickly than the current law phase-in if they so choose.

3. Annualized Income for SSI Recipients. Persons who are categorically eligible for Medicaid as disabled by virtue of eligibility for Supplementary Security Income (SSI) payment face particular problems in continuity of Medicaid eligibility. The parental income of SSI children and spousal income for SSI adults is deemed to the SSI recipient and computed on a monthly basis. If the income is received on a weekly or biweekly basis, the deemed income could exceed the monthly maximum in months with more than two or four pay periods. This results in temporary suspension from SSI and therefore, Medicaid. Under current rules, Medicaid is required to terminate coverage until SSI eligibility is reestablished. This on-again, off-again eligibility adversely affects the clients. It is also an administrative burden on state agencies to take action to close these cases, then re-establish the case several weeks later. This has become a problem since the Social Security Administration has obtained the ability to project income and notify states in advance of pending terminations. Medicaid should be permitted to continue coverage of SSI recipients, where income in one month exceeds SSI monthly thresholds due to irregular pay periods, pending a true change in client financial circumstances.

4. Improvements to Medicaid Transitional Medical Assistance (TMA). States are required to provide up to 12 months of Medicaid TMA to families leaving AFDC due to increased income or hours of work, as enacted in the Family Support Act of 1988. This requirement became effective April 1990, and replaced earlier nine and six month transitional coverage for families leaving AFDC. State agencies are reporting that the number of families on transitional assistance are fewer than for similar previous periods. State agencies believe the problem lies in the client reporting requirements which are substantially greater than the requirements for previous transitional coverage and are without parallel in the transitional child care assistance provisions contained in the same Family Support Act.

The client reporting requirements under TMA rules require client information on the 21st day of the fourth month, the seventh month, and the ninth month. Families must report their gross income and child care costs associated with employment of the head of household. Failure to report by the 21st day of the fourth month means termination of coverage at the end of the sixth. Failure to report by the 21st day of the seventh or ninth months means termination at the end of the respective month.

States believe that failure to report is a major reason for the substantial attrition in the program. No other group of Medicaid clients have similar eligibility conditions placed on them. TMA under prior law was not so onerous on clients.

In addition to unnecessary client attrition, these provisions place considerable and unnecessary administrative burdens on state agencies. Multiple client notices are required prior to each client reporting deadline. Finally, because of high client attrition, the agency is required to do more eligibility determinations for individual family members to determine if any are otherwise eligible under other program categories prior to termination from the TMA program. State reporting and other administrative requirements are substantial especially since TMA attrition is high.

State administrative burdens would be greatly relieved and program goals better met if states were allowed the option to forego all the reporting and phasing of TMA coverage. In lieu of current law, states should have the option to offer a simple 12 month transitional coverage.

Few if any sites require premium payments in the second six month period of TMA because the administrative costs exceed the amount to be collected. Those states that do require premium payments (now or in the future) would require client reporting.

5. Poverty Guidelines. As the process of severing Medicaid eligibility from eligibility for AFDC and SSI continues, states and clients are experiencing greater difficulties with issuance of the poverty guidelines each year. There are several component problems that involve timing. The guidelines are published in February or March of each year, and it takes states some time to implement new poverty levels because of systems changes and distribution of new guidelines to local offices. Social Security, SSI and Title II recipients receive their Cost of Living Adjustments (COLAs) in January of each year. To address the problem of potential Medicaid ineligibility resulting from increased payments during the period when old poverty thresholds are in effect, Congress enacted various hold harmless provisions for Qualified Medicare Beneficiaries (QMBs) and Title II recipients. While the intent was good, the implementation has proven to be administratively difficult and costly for states. The hold harmless provision also does not help QMBs who may try to come into the Medicaid system at the start of the year, whose incomes may be in excess of old poverty guidelines. It is possible that clients who were denied eligibility due to excess income will have to re-apply later in the Spring which is burdensome both to clients and eligibility workers.

Even though the guideline no longer require retroactive effective dates, they are still considered to be effective immediately. Immediate effective dates are not workable in the states.

Poverty guidelines should be required to be issued on the same time schedule as COLAs are announced (November of each year). COLA calculations are made using third quarter CPI/W (wages) information while poverty guidelines are calculated using CPI/U annual summative data from the fourth quarter. The difference in the annual percentage increase between the two measures is minimal year to year. HHS could continue to use CPI/U data but use CPI/U data from April through September annually. There is nothing in statute that requires the use of summative CPI/U data. Statute, Sec. 652(a) and 673 of OBRA 1981 (P.L. 97-35), requires using CPI data (and does not specify CPI/U data) annually or at another interval as the Secretary decides. Statute does require that updated poverty guidelines be issued within 30 days of when the necessary data becomes available. This change would allow states to input new COLAs and review cases prior to January 1st of each year, so that all systems can be up and running at the start of each new year.

6. Eligibility Workers as Presumptive Providers. Sec. 1920(c) specifies the provider who is qualified to make a presumptive eligibility determination for a pregnant woman. The statute limits a qualified presumptive

provider to maternal and child health clinics, federally qualified health centers, Indian health centers and other specified health service providers. Some states have not adopted the presumptive eligibility option because of the limited pool of potential presumptive provider types. States should have the option of specifying state eligibility workers as qualified presumptive providers. This change would allow states to cover pregnant women quickly without being at risk for eligibility errors during the presumptive period until final determination is made and ensure coverage of prenatal care during the period of time the client application is pending approval. This option could also work well in conjunction with outstationed eligibility workers. This amendment could facilitate client eligibility and provide states with added flexibility to tailor programs to local needs.

7. Simplified Application for Aliens. The Immigration Reform and Control Act (IRCA, P.L. 99-603) requires that each adult member of a household applying for federal assistance benefits declare in writing that they are a citizen or national of the U.S. or if not a citizen or national, that they have immigration status satisfactory to receive public assistance benefits. This change was affected through Sec. 1137 of the Social Security Act. The 1990 Leland Act, amended food stamp program law to permit one individual in the household to attest to the status of all household members. This change was requested and enacted in the food stamp program to facilitate eligibility and reduce the state administrative burden. The Medicaid statute should be amended in a similar manner to avoid confusion among both eligibility workers handling both programs and among applicants seeking assistance in both programs. Sec. 1930(v) should be amended to state that only one adult household representative be required to attest to the citizenship/immigration status of all household members. Without such a change, Medicaid programs are liable for Eligibility Quality Control errors if all signatures are missing on joint program applications.

8. Modifications to Alien Verification System. Current law (Sec. 1137(d) of the Social Security Act) requires that any individual who is not a U.S. citizen or national must produce proper INS documentation in the form of alien registration documentation or other documentation that contains the individual's alien admission number or alien file numbers(s). Once produced, the state must use that information to verify the individual's alien status with the INS through the automated verification system or via mail. If an individual has no official documentation, they can produce other documents deemed reasonable by the state agency (rent receipts, other documents depending on alien status and nationality). The state must then photocopy and submit all this information to the INS for verification. Verification with INS must be done for each household member applying for benefits, regardless of whether proper/official documentation was produced by the applicant.

If a client has "proper" INS documentation, there should be no further requirement to reverify this information. This requirement has proven to be administratively burdensome on states and acts as a barrier to Medicaid enrollment. Official documentation should be considered official documentation. To our knowledge, eligibility workers are not required to reverify driver's license numbers and request reverification of birth certificates for citizens or nationals upon application. If the INS issues documents to an individual, other federal programs should respect those documents.

There are many other problems with the relationship between federal assistance program alien verification requirements and INS requirements that merit further exploration in the future. In the interim however, state agencies should have the option not to submit valid INS documentation for reverification.

9. Optional Use of SSA Offices for Social Security Related Eligibility Determinations. Many state agencies continue to believe that the QMB and QWDI programs within Medicaid would be more effective if SSA field offices could be designated to take QWDI and QMB applications and make determinations. These groups, by virtue of their Medicare status are eligible for Medicaid. Medicaid eligibility standards for these groups are uniform across the country. These clients are far more likely to visit the SSA field office than the SSA welfare office. Sec. 1905(p) and (s) should be amended to permit initial processing of QMB and QWDI applications at SSA field offices. Other relevant sections would also have to be amended.

10. FFP for Payment of Medicare Premiums and Cost-Sharing for Medically Needy Clients. The Medicare Catastrophic Coverage Act (MCCA) originally amended Sec. 1905(p) to require Medicaid coverage of Medicare premiums, coinsurance and deductibles for all elderly with incomes below 100 percent of federal poverty who were not otherwise eligible for Medicaid.

Prior to enactment of the 1988 Catastrophic provisions, many states had been paying for Part B Medicare Coverage for elderly and disabled Medicaid beneficiaries. Prior to enactment of MCCA, there was no FPP available for those expenditures. States requested that the law be amended to permit federal reimbursement for Medicaid coverage of Medicare premiums and cost-sharing for clients who were dually eligible because it did not seem equitable to entitle higher income people (those with income too high to be eligible for Medicaid but income levels still below 100 percent of poverty) to Medicare coverage while not permitting, through Medicaid, access to his coverage for lower income elderly and disabled.

Congress responded to this request in the Fall of 1988, in the Technical and Miscellaneous Revenue Act of 1988 (Sec. 8434(a)) by deleting language in Sec. 1905(p) that had specified a QMB as someone not otherwise eligible for Medicaid benefits, thereby making almost all Medicare-eligible Medicaid clients Qualified Medicare Beneficiaries.

Problems remain however for those states that chose to buy-into Medicare for their medically needy aged, blind, disabled populations. HCFA interprets statute such that the medically needy cannot be considered QMBs because their unadjusted, prespenddown income can be in excess of the 100% of poverty standard. Therefore, Medicaid payments of Medicare premium and cost sharing are not eligible for federal match. The only way a state can claim FFP for these Medicare payments is to claim such costs only for those clients whose prespenddown, unadjusted income is below 100% of poverty. To make this distinction would be an administrative boondoggle.

To the best of our knowledge, not all states with medically needy programs purchase Part B or Part A coverage for their clients because of the complexity of spenddown, the sometimes erratic eligibility and whether the client receives automatic Part A coverage. Because not all states purchase Medicare coverage for their clients, and because client payment of coverage may be crucial to meeting spenddown requirements to gain Medicaid coverage, states should have the option to claim, as medical assistance, the costs of Medicare coverage for Medicaid medically needy clients.

11. Less Restrictive Income Methodologies. This issue arose originally in 1981, when HCFA decided that states could no longer employ methods of counting and disregarding income that were less restrictive than either the AFDC or SSI programs for purposes of determining Medicaid medically needy eligibility. In 1984, Congress enacted a moratorium on further HCFA action to deny the use of less restrictive methodology. The moratorium expired in February of 1989. Prior to expiration of the moratorium, Congress enacted Section 1902(r)(2) as part of the Medicare Catastrophic Act in the summer of 1988. Section 1902(r)(2) codifies the ability of states to utilize less restrictive methods of counting income and resources.

At the expiration of the moratorium, states submitted Medicaid state plan amendments for approval of less restrictive medically needy income methodologies that had been in use during the moratorium. HCFA has disapproved submitted plans. HCFA's disapproval of state plans is based on an unusual interpretation of statute. HCFA contends two points: if a state adds back in all disregarded income and the unadjusted income then exceeds 133⅓% of the AFDC standard, the client is not eligible; and a state simply cannot employ any less restrictive methodology if the state's medically needy standard is at the maximum allowed by law—133⅓% of the AFDC payment standard. Through its interpretation of statute, HCFA has effectively nullified statutory authority to employ less restrictive methods of counting income. HCFA policy was promulgated by a March 1989 Medicaid Manual Transmittal and again through September 26, 1989 proposed rules.

This interpretation is problematic. First, states typically disregard in-kind or otherwise unavailable income (room and board, a bag of groceries) that has no consistent value. Roughly fifteen states with medically needy programs believe that cash grant programs and Medicaid medically needy programs serve sufficiently different goals to warrant different income counting methodologies. Secondly, HCFA consistently confuses income methodologies (the process of counting income) and income standards (133⅓% of the AFDC standard). Income should be counted, using a methodology, to arrive at an adjusted income which is then compared against a standard. HCFA insists that it is essentially unadjusted income that must be compared against the standard, and that the standard—if it is at the maximum 133⅓%—nullifies the use of any alternative methodology.

If HCFA is successful, clients in fifteen states will most likely either be made ineligible for Medicaid or have to further impoverish themselves in order to be eligible. This issue can be resolved by codifying the use of alternative methodologies, consistent with 1902(r)(2). This proposal should be budget neutral since it would preserve current practice.

12. Highest vs. Most Frequent Payment. Another issue pertinent to Medicaid medically needy eligibility again arises from the September 26, 1989 proposed rules put forward by HCFA. HCFA is proposing to change longstanding policy by now requiring that

the medically needy income standard be based on 133⅓% of the AFDC payment amount most frequently made to a family of the same size. Statute permits, and states have practiced, a medically needy income standard based on 133⅓% of the highest payment amount for a family of the same size. Several states use differing AFDC payment amounts based on cost of living differences across a state. Although subtle, the distinction is important. In some states, the most frequent payment amount may not be the highest payment amount. In states where the number of rural AFDC recipients exceeds the number of urban recipients, and where the highest payment amount occurs in the urban area, medically needy eligibility would then be based statewide on the rural payment amount which is "most frequent" but not the highest. Since HCFA would require use of a single payment standard, states will be required to lower their medically needy income standards in real terms. Clients in several states will be adversely affected. Again, it is a case where HCFA is reinterpreting a statute which has remained unchanged. A state should have the ability to base their medically needy income standard on 133⅓% of the highest AFDC payment made to a family of similar size. This is consistent with sections 1902(a)(17) and 1903(f)(1)(B)(i) of the Act. We anticipate this clarification would be cost neutral since it would preserve current practice.

13. 209(b) Institutional Spend-Down. In the proposed rules published September 26, 1989, HCFA indicated the intent is to re-interpret statute and practice that has been in place since 1972. Three 209(b) states currently allow individuals to spend-down to within state income limits to be come Medicaid eligible. HCFA is now interpreting this practice as contrary to Congressional intent and would insist that these states abandon their 209(b) status and instead develop medically needy programs. As a results, thousands of current eligible would be made ineligible. States would be required to develop medically needy programs, at a cost of tens of millions of dollars, while still not making everyone who was eligible under the old rules eligible under the new rules. HCFA maintains that 209(b) states are not permitted to have a spend-down program for the aged, blind and disabled because it is not permitted in statute. In fact, 1902(f)—the basis for 209(b) status—specifically requires 209(b) states to allow spend-down to the state's eligibility threshold.

14. Pregnant women up to 133% of poverty. Current Medicaid regulation requires that pregnant women up to 133% of poverty be enrolled in the Medicaid program. These women remain eligible for Medicaid benefits for approximately 60 days post-partum. After 60 days, women who no longer meet the state's financial criteria for participation in the Medicaid program lose eligibility for health benefits under Medicaid.

As a result of program restrictions, postpartum women are no longer Medicaid eligible for family planning visits to health care providers after 60 days. Many women who are ready for counseling and services do not have coverage to do so with any health care provider. Medicaid coverage should be expanded to women up to 185% of poverty and for 18 months post-partum for reproductive health service only.

Mr. BRADLEY. Mr. President, I rise as an original cosponsor of legislation by Senate CHAFEE that will help eliminate some of the bureaucratic barriers that prevent persons living in poverty from being able to receive basic health care services under Medicaid. Many of these barriers prevent pregnant women, who are living in extreme poverty, from receiving prenatal care and well baby care—services we know will help reducer health care costs and that ensure a healthy start for our young children.

I would like to cite one example of the type of problem that persons who are eligible for Medicaid may face in simply trying to cope with the administrative hassles of gaining and maintaining their eligibility. We know that in many professions, workers are paid at irregular intervals, rather than exactly the same paycheck every single month. Yet because of the way Medicaid counts income, persons who receive too much money during a brief period, but which does not exceed any annual limits, may be thrown off of Medicaid. A month or two later, they must again suffer through the lengthy, demoralizing, and sometimes demeaning process to regain their eligibility, because their paycheck may vary seasonally.

This process simply prevents them from receiving basic health care services, during which time they may be forced to receive care in an emergency room as the only available alternative. This results not only in greater hassles for the patient, and greater costs for our society, but also more of both for the State agency who must process several eligibility determinations for the same individual. This bill would correct this absurdity by calculating income in a manner that is consistent with the limits under Medicaid, but does not create rigid and inappropriate barriers that make no sense.

Each of the several provisions in this bill addresses an effort to try to make sure that persons eligible for Medicaid, in particular those essential services to pregnant women, are able to get the services they need. It sounds so simple, but in reality, it is not. We know how Medicaid rates are so low that many doctors refuse to accept those patients. We know how many persons living in poverty may not seek access to primary care services that encourage and maintain good health. We also know that our Federal programs designed to address many of these problems are so fragmented that even those who can benefit from them can't make it through the bureaucratic minefield to do so.

This bill begins a much needed process to identify those barriers and to make those changes in Medicaid that can simplify the excessive bureaucracy and get services to those persons in need. I thank the Senator from Rhode Island for his leadership on this issue and his introduction of this important piece of legislation.

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By Mr. DORGAN:

S. 1424. A bill to amend chapter 4 of title 23, United States Code, to establish a national program concerning motor vehicle pursuits by law enforcement officers, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE NATIONAL POLICE PURSUIT POLICY ACT OF 1993

Mr. DORGAN. Mr. President, one morning last January a chase broke out in the city of Arlington, VA. A teenager in a stolen vehicle, allegedly drunk, was fleeing from the police in a high speed chase. As the stolen car and the police cruiser raced through Falls Church, VA, the fleeing teen ran a red light and crashed into a car containing a family on its way to Sunday morning church. This high speed chase, one of many that happen every year, ended in tragedy: one elementary principal and his two daughters, ages 12 and 8, were killed and the drunk driver of the fleeing car was hospitalized.

Public outrage erupted after this incident, and rightly so. A spokesman for the Arlington police quoted angry callers, saying: "A stolen car is not worth a life." Mr. President, it seems to me that we need to ask ourselves: "Is a stolen car or a traffic violation worth the cost of an innocent life?" Unfortunately, this question is not being adequately answered by hundreds of police officers who on a regular basis pursue stolen cars and lawbreakers at reckless speeds through city streets.

I rise today, Mr. President, to introduce the National Police Pursuit Policy Act of 1993. It is my hope that this legislation, if enacted, would help prevent tragic losses like the episode that occurred last January in Arlington. The human losses resulting from high speed police pursuits in the last several years have continued to mount. Although we are finally seeing some initiative being taken by various States and local communities, there is still no coordinated effort in this country to attack this problem.

Every year several hundreds of Americans are killed or injured as a result of high speed chases that are started when motorists, whether out of fright, panic, or guilt, flee at high speeds instead of stopping when a police vehicle turns on its lights and siren. Some police become determined to apprehend the fleeing motorist at all costs. The result is that the safety of the general public—the dangers that will be created by a high speed chase in city traffic through stop signs and traffic lights—becomes secondary to catching someone whose initial offense may have been no greater than driving a car with a broken tail light. Tragically, as in the high speed chase last January in Virginia, many people are dying unnecessarily from these ill-advised pursuits.

What needs to happen is for every single law enforcement jurisdiction in the United States to adopt a reasoned, well-balanced pursuit policy. Police officers should be trained to comply with

their departments' pursuit policies and regularly retrained if needed to guarantee that all citizens, both civilians and police, receive the benefit of uniform awareness of this problem. A drive across country should not be pot luck regarding one's chances of being maimed or killed by a police pursuit. We must strive for universal attention to this public safety problem.

In addition, we need to focus on the people who are initiating these chases—the people who are fleeing from police. The punishment for fleeing the police should be certain and severe. People should be aware that if they flee they will pay a big price for doing so.

The legislation that I am introducing today would require the enactment of State laws making it unlawful for the driver of a motor vehicle to take evasive action if pursued by police and would establish a standard minimum penalty of 3 months imprisonment and the seizure of the driver's vehicle. In addition, my bill would require each public agency in every State to establish a hot pursuit policy and provide that all law enforcement officers receive adequate training in accordance with that policy.

I believe that these requirements, if passed, will demonstrate strong Federal leadership in responding to this problem. I am happy to be able to note that one important aspect of this issue, a severe underreporting of the accidents and deaths caused by police pursuits, has been addressed under provisions enacted in the Intermodal Surface Transportation Efficiency Act of 1991. Under that statute, the Secretary of Transportation is required to begin to collect accident statistics from each State, including statistics on deaths and injuries caused by police pursuits.

Mr. President, the problem of hot pursuits is not an easy issue to solve. I understand that it will always be difficult for police officers to judge when a chase is getting out of hand and the public safety will be best served by holding back. However, it can't help but improve the situation if we do everything we can to ensure that police officers are trained on how best to make these difficult judgments and if we send a message to motorists that if you flee, you will do time in jail and lose your car.

I ask unanimous consent that the full text of this bill be printed in the RECORD and I urge my colleagues to support this important measure.

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

S. 1424

*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 Police Pursuit Policy Act of 1992".

**SEC. 2. FINDINGS.**

Congress finds that—

(1) accidents occurring as a result of high speed motor vehicle pursuits by law enforcement officers are becoming increasingly common across the United States;

(2) the extent of this problem, which is evident despite significant underreporting, makes it essential for all law enforcement agencies to develop and implement both policies and training procedures for dealing with these pursuits;

(3) a high speed motor vehicle pursuit by a law enforcement officer should be treated like the firing of a police firearm because it involves the use in the community of a deadly force with the potential for causing harm or death to pedestrians and motorists;

(4) to demonstrate leadership in response to this national problem, all Federal law enforcement agencies must develop policies and procedures governing motor vehicle pursuits, and provide assistance to State and local law enforcement agencies in instituting such policies and training; and

(5) such policies should reasonably balance the need for prompt apprehension of dangerous criminal with the threat to the safety of the general public posed by high speed pursuits.

**SEC. 3. MOTOR VEHICLE PURSUIT REQUIREMENTS FOR STATE HIGHWAY SAFETY PROGRAMS.**

Section 402(b)(1) of title 23, United States Code, is amended by adding at the end the following new subparagraph:

"(F) on and after July 31, 1995, have in effect throughout the State—

"(i) a law (I) that makes it unlawful for the driver of a motor vehicle to increase speed or take any other evasive action if a law enforcement officer signals the driver to stop the motor vehicle, and (II) that provides, for that any driver who commits such an unlawful act, a minimum penalty of imprisonment for 3 months and seizure of the driver's vehicle; and

"(ii) a requirement that each public agency in the State which employs law enforcement officers who in the course of employment may conduct a motor vehicle pursuit (I) shall have in effect a policy, which meets the requirements established by the Secretary, concerning the manner and circumstances in which such a pursuit should be conducted, (II) shall train all law enforcement officers of the agency in accordance with such policy, and (III) shall transmit to the State in such fiscal year a report containing information on each motor vehicle pursuit conducted by a law enforcement officer of the agency.".

**SEC. 4. REPORTING REQUIREMENT.**

Not later than 180 days after the date of enactment of this Act, the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of the Treasury, the Chief of the Capitol Police, and the Administrator of General Services shall each transmit to Congress a report containing—

(1) the policy of the respective department or agency on motor vehicle pursuits by law enforcement officers of the department or agency; and

(2) a description of procedures being used to train law enforcement officers of the department or agency in implementation of such policy.

The policy of a department or agency contained in a report required by this section shall meet the requirements of section 402(b)(1)(F) of title 23, United States Code, as added by section 3 of this Act.

By Mr. CONRAD (for himself, Mr. DASCHLE, and Mr. DORGAN):

S. 1425. A bill to establish a National Appeals Division of the Department of Agriculture to hear appeals of adverse decisions made by certain agencies of the Department, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE USDA NATIONAL APPEALS DIVISION ACT OF 1993

Mr. CONRAD. Mr. President, I am introducing a bill, cosponsored by Senators DASCHLE and DORGAN, to establish a fair, objective, and streamlined appeals process for six U.S. Department of Agriculture [USDA] agencies. The bill is entitled the USDA National Appeals Division [NAD] Act of 1993.

This bill will consolidate appeals systems of the Agricultural Stabilization and Conservation Service [ASCS], the Community Credit Corporation [CCC], the Farmers Home Administration [FmHA], the Federal Corp Insurance Corporation [FCIC], the Rural Development Administration [RDA], previously part of [FmHA], and the Soil Conservation Service [SCS]. Congressman TIM JOHNSON is introducing companion legislation in the House today.

I have worked on this issue for 4 years. I have held three hearings in my subcommittee on Agricultural Credit, in which we heard very compelling testimony about the urgent need for this legislation. This bill is supported by the American Agriculture Movement, American Association of Crop Insurers, Center for Rural Affairs, Council for Rural Housing and Development, National Association of Home Builders, National Association of Corn Growers, National Association of Wheat Growers, National Family Farm Coalition, National Farmers Organization, National Farmers Union, and National Rural Housing Coalition. The bill has evolved through extensive discussions with these groups, USDA participants and their representatives, staff of the existing USDA appeals systems and the affected USDA agencies, the Administrative Conference of the United States, and others. It represents a compromise in which I have attempted to balance their diverse concerns and meet our shared goal of retaining an informal and efficient appeals process.

I want to thank all the participants in the painstaking development of this legislation. Their help has been invaluable. In particular, I want to commend the courage and commitment of the FmHA National Appeals Staff [FmHA-NAS] employees who worked with my staff and me. In some cases, they risked their jobs to bring the severe problems of that appeals system to my attention. Despite very strong pressure from FmHA program staff and appeals staff, they have remained independent and committed to providing fair and objective hearings for appellants.

I introduced a version of this bill, S. 3119, in 1992. Secretary of Agriculture

Mike Espy, while serving as a Member of the House of Representatives, sponsored the companion bill in 1992, H.R. 5742. The Secretary and his staff contributed significantly to the development of this bill. I hope that Secretary Espy will include this bill as part of the USDA reorganization plan.

Many Members of Congress are familiar with the serious problems their constituents have with the appeals systems of these agencies, particularly FmHA, RDA, and ASCS. This legislation would resolve those problems. It would establish a fair and objective appeals process in which the public could have confidence. It would improve the quality of ASCS, CCC, FmHA, FCIC, RDA, and SCS decisions. It would streamline the appeals process for USDA participants and consolidate the administrative costs of four appeals systems into one.

NAD would be very similar in structure and purpose to the current FmHA-NAS, and have many of the same authorities as the ASCS National Appeals Division [ASCS-NAD]. Here is how it would work. USDA participants appealing ASCS, SCS, and CCC adverse decisions would first have the opportunity to have informal hearings before the relevant county or State committees, or other ASCS or SCS employees, when applicable. This bill would make no change in the current county or State committee appeals process. Participants appealing FmHA and RDA adverse decisions could have an informal meeting with the FmHA or RDA decisionmaker after requesting a NAD appeal hearing, but prior to that hearing.

If participants are not satisfied with the decisions under the informal hearing or meeting process, they could proceed to the NAD appeals process. Participants appealing FCIC adverse decisions would go directly to the NAD appeals process. The NAD appeals process would consist of a hearing before an NAD hearing officer in the State, which could be conducted over the telephone, and an optional review of the hearing officer's determination by the NAD Director if requested by the appellant. Appellants who are appealing multiple agencies' adverse decisions could appeal them all at once, at one hearing.

If the head of the agency that issued the original adverse decision, asserted the NAD determination on that adverse decision violated statute or regulations, he or she could also request a review of that determination by the NAD Director.

The NAD's final determination would be administratively final, conclusive, and binding on the relevant agency, and would have to be implemented within 30 days.

While NAD would be very similar to the current FmHA-NAS and ASCS-NAD, it would have some essential differences. It would be independent of program officials and employees who make and implement policy within the agencies. Thus, it would eliminate the inherent conflict of interest that currently exists when an agency head both runs a program and issues final determinations on appeals of adverse decisions of the agency. This conflict of interest is deepened by the fact that the head of each of these agencies currently controls the regulation process for their respective appeals systems, determines which adverse decisions are appealable, and evaluates the job performance of the Directors of the ASCS and FmHA appeals system. In addition, as I learned in my hearings on this issue, the ASCS and FmHA appeals system Directors cannot testify independently before Congress, but must have their testimony cleared by the agency heads.

Mr. President, there is no independence for these existing appeals systems. Under my bill, there would be clear independence. NAD staff would be free to make determinations based on the statute and regulations without pressure from agency officials and employees. The determinations would be administratively final.

Providing an appeals system with this independence and authority to issue administratively final decisions is not a new concept. There are numerous other Federal appeals systems that have such independence and authority. Examples of such systems include the Administrative Review Staff of the USDA Food and Nutrition Service, the State Food Stamp Appeals Board, the Financial Assistance Appeals Board of the Department of Energy, the Social Security Appeals Council, and the Benefits Review Board of the Department of Labor.

This bill would improve the appeals process in other ways. It would provide one-stop shopping for appellants who are appealing multiple agencies' adverse decisions, because they may appeal them all at one hearing.

It would make the NAD determinations administratively final, and require their implementation, so that an agency could not delay implementation or overturn an appeal determination months, or more than a year, after it is made.

This bill would stop the revolving door where an appellant wins an appeal, but then is denied by an agency again for the same reasons, and must appeal again.

It would clearly spell out accountability, by requiring that job performance criteria for agency employees include responsibility for causing unnecessary appeals or failing to implement decisions, and requiring sanctions against employees who perform poorly.

ASCS, SCS, and FmHA have over 7,700 county offices, as well as numerous State and district offices. FCIC and RDA have a total of 17 regional offices. Officials, employees, and committee members in these offices and the national offices issue hundreds of thousands of decisions annually. SCS decisions will become increasingly important as farmers try to comply with conservation laws, and as the penalties for violations become increasingly harsh. Ensuring that quality decisions are issued is a continuous challenge.

Because NAD's staff would review agencies' program decisions daily, NAD would be an ideal resource for identifying problems with the implementation of the statute and regulations by the agencies. This bill would allow NAD to issue reports on such problems to improve program quality in all these agencies. This kind of objective review of field decisions will improve the quality of the agencies decisions and is crucial to ensuring that participants are treated fairly, equitably, and consistently around the country.

Current statutes prohibit courts from reviewing ASCS findings of facts and determinations. If ASCS finds that the earth is flat, the courts cannot overturn that finding. These archaic statutes were enacted prior to the Administrative Procedures Act [APA], which generally makes all executive agency decisions reviewable by courts. This bill would update the ASCS to the APA era, by making its findings of fact and determinations reviewable by courts.

This bill would also allow USDA State-certified mediation programs to mediate disputes involving wetland determinations, farm program compliance, farm creditors, rural water loans, grazing on national forest lands, and pesticides. These mediation programs are very successful, and their expanded use will result in cost-effective resolution of a variety of agricultural disputes.

Mr. President, some will say that this legislation is not needed. They will say that the current appeals systems are working fine. They will say if appellants feel they have not received fair and objective reviews of adverse decisions, they already have a remedy—they can sue the government.

Mr. President, I do not believe that is a responsible answer to a very serious problem. That is not the way Government should operate. Many of the farm program participants, particularly FmHA and RDA borrowers, do not have the money to sue the Government. In fact, FmHA controls the annual crop income of many FmHA borrowers, and can deny the release of funds for attorney's fees. Such borrowers, and many other farm program participants, have no recourse in reality if the Government fails to implement the law. Government is here to serve the people fairly, and to implement the law and regulations correctly. It is not to run unchecked simply because the public it serves cannot afford the necessary

court costs to correct wrongful Government actions.

Mr. President, the Government, and the public, will both benefit from the establishment of a fair, rational, and objective appeals process. We urge our colleagues to support this badly-needed legislation.

President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1425

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "USDA National Appeals Division Act of 1993".

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



**SEC. 2. DEFINITIONS.**

As used in this Act (unless the context clearly requires otherwise):

(1) ADVERSE DECISION.—

(A) IN GENERAL.—The term "adverse decision" means an administrative decision made by a decisionmaker that is adverse to an appellant, including a denial of equitable relief, except that the term shall not include a decision made by the Board of Contract Appeals with respect to a contract appeal.

(B) FAILURE TO ISSUE DECISION.—The failure of an agency to issue a decision on the request or right of an appellant to participate in, or receive payments, loans, or other benefits in accordance with, any of the programs administered by an agency—

(i) shall be considered an adverse decision if the decision is not issued within a period prescribed by statute or regulation; or

(ii) may be considered an adverse decision if—

(I) a period is not prescribed by statute or regulation; or

(II) the decision is not issued within a reasonable period of time.

(2) AGENCY.—The term "agency" means—

(A) the Agricultural Stabilization and Conservation Service;

(B) the Commodity Credit Corporation;

(C) the Farmers Home Administration;

(D) the Federal Crop Insurance Corporation;

(E) the Rural Development Administration;

(F) the Soil Conservation Service;

(G) a State or county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)); or

(H) a successor to an agency referred to in subparagraphs (A) through (G).

(3) APPELLANT.—The term "appellant" means any person or entity—

(A) whose request or right to participate in, or receive payments, loans, or other benefits in accordance with, any of the programs administered by an agency is affected by an adverse decision made by a decisionmaker; and

(B) who appeals the adverse decision in accordance with this Act.

(4) CASE RECORD.—The term "case record" means all the materials maintained by the Secretary that concern the appellant, including materials so maintained that are used to make the adverse decision.

(5) DECISION-MAKER.—The term "decision-maker" means—

(A) an officer or employee of an agency; or

(B) in the case of a State or county committee referred to in paragraph (2)(G), the State or county committee,

who makes an adverse decision that is appealed by an appellant.

(6) DEPARTMENT.—The term "Department" means the United States Department of Agriculture.

(7) DIRECTOR.—The term "Director" means the Director of the Division.

(8) DIVISION.—The term "Division" means the National Appeals Division established by this Act.

(9) EMPLOYEE.—The term "employee" means an individual employed by an agency, including an individual who enters into a contract with an agency to perform services for the agency.

(10) EX PARTE COMMUNICATION.—The term "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, except that the term shall not include a request for a status report on any matter or proceeding.

(11) FINAL DETERMINATION.—The term "final determination" means a determination of an appeal by the Division that is administratively final, conclusive, and binding.

(12) FINAL DETERMINATION NOTICE.—The term "final determination notice" means a written determination on an appeal sent to an appellant under paragraph (8) of section 7(b) or subsection (d) or (e)(4) of section 8.

(13) FUNCTION.—The term "function" means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(14) HEARING OFFICER.—The term "hearing officer" means an individual employed by the Division who hears and determines appeals.

(15) HEARING RECORD.—The term "hearing record" means the transcript of a hearing, any audio tape or similar recording of a hearing, any information from the case record that a hearing officer considers relevant or that is raised by the appellant or agency, and all documents and other evidence presented to a hearing officer.

(16) IMPLEMENT.—The term "implement" means to effectuate fully and promptly a final determination of the Division not later than 30 calendar days after the effective date of the final determination specified in section 7(h)(2).

(17) PARTICIPANT.—The term "participant" means any person whose application for or right to participate in, or receive payments, loans, or other benefits in accordance with, any of the programs administered by an agency is affected by an adverse decision made by a decisionmaker.

(18) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(19) STATE DIRECTOR.—The term "State director" means the individual who is primarily responsible for carrying out the program of an agency within a State.

**SEC. 3. NATIONAL APPEALS DIVISION.**

(a) ESTABLISHMENT.—The Secretary shall establish and maintain a National Appeals Division, within the Office of the Secretary, to carry out this Act.

(b) DIRECTOR.—

(1) IN GENERAL.—

(A) APPOINTMENT.—The Division shall be headed by a Director, appointed by the Secretary from among individuals (including individuals who are attorneys and individuals who are not attorneys) with substantial experience in practicing administrative law. The position of the Director shall be a Senior Executive Service position (as defined in section 3132(a)(2) of title 5, United States Code) that shall be filled by a career appointee (as defined in section 3132(a)(4) of such title) or noncareer appointee (as defined in section 3132(a)(7) of such title).

(B) REMOVAL.—The Secretary may only remove the Director for maladministration, malfeasance, neglect of duty, or otherwise in accordance with statutes and regulations governing Federal employee personnel.

(2) POWERS.—

(A) IN GENERAL.—To carry out this Act, the Secretary shall promulgate procedural regulations and policies governing the conduct of the business of the Division consistent with this Act and chapters 5 and 6 of title 5, United States Code, including—

(i) the conduct of appeals;

(ii) the standard of review;

(iii) guidelines for the type of evidence that is necessary to justify an adverse decision by an agency;

(iv) the conduct of reviews of appeals;

(v) the appeals process; and

(vi) other actions affecting the procedural rights of appellants.

(B) REGULATIONS.—In promulgating regulations under subparagraph (A), the Secretary shall ensure and enhance the independence, integrity, and efficiency of the Division, the Director, hearing officers, and other employees of the Division.

(C) DELEGATION.—The Secretary may delegate the authority of the Secretary to promulgate the regulations to the Director.

(D) APPEALABLE DECISIONS.—If a decisionmaker determines that an adverse decision is not appealable and the participant appeals the determination to the Director, the Director shall determine whether the decision is appealable.

(3) DIRECTION, CONTROL, AND SUPPORT.—The Director shall be free from the direction and control of any person other than the Secretary, and shall not receive administrative support (except on a reimbursable basis) from any person other than the Office of the Secretary.

(4) LEVEL V OF EXECUTIVE SCHEDULE.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

"Director, National Appeals Division, Department of Agriculture.".

(c) LEGAL COUNSEL.—

(1) IN GENERAL.—The Director shall employ legal counsel to advise the Director and hearing officers of the Division with respect to such legal questions as the Director considers appropriate for the Division. A legal

counsel shall not serve as a counsel to any other division or agency of the Department.

(2) CONSTRUCTION.—Paragraph (1) is not intended to affect the role of the Office of General Counsel in representing the Department in civil or criminal actions or as a liaison between the Department and the Department of Justice.

(d) DIRECTOR, HEARING OFFICERS, AND OTHER EMPLOYEES.—

(1) IN GENERAL.—The Director shall appoint such hearing officers and other employees as are necessary for the administration of the Division.

(2) POWERS OF THE DIRECTOR AND HEARING OFFICERS.—To carry out this Act, the Director and hearing officers—

(A) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available that relate to programs and operations with respect to which an appeal has been taken;

(B) may request such information or assistance as may be necessary for carrying out the duties and responsibilities established under this Act from any Federal, State, or local governmental agency or unit of the agency;

(C) may, or shall at the request of an appellant with good cause shown, require the attendance of witnesses, the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to the proper resolution of appeals;

(D) may permit testimony to be taken by deposition, if it is inconvenient for a witness to attend a hearing;

(E) may, if appropriate, require the attendance of witnesses and production of documentary evidence by subpoena, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court;

(F) may administer oaths and affirmations, whenever necessary in the process of hearing appeals; and

(G) in the case of the Director, may enter into contracts and other arrangements for reporting and other services and make such payments as may be necessary to carry out this Act.

(3) EXCLUSIVE EMPLOYMENT.—An employee of the Division shall have no duties other than those that are necessary to carry out this Act.

(4) DIRECTION AND CONTROL.—

(A) HEARING OFFICERS.—Hearing officers—

(i) shall be generally supervised by the Director; and

(ii) shall not receive administrative support (except on a reimbursable basis) from offices other than the Division.

(B) OTHER EMPLOYEES.—All other employees of the Division—

(i) shall report to the Director; and

(ii) shall not be under the direction or control of, or receive administrative support (except on a reimbursable basis) from, offices other than the Division.

(5) EX PARTE COMMUNICATIONS.—

(A) IN GENERAL.—While a proceeding is in adjudicative status within the Division, except to the extent required for the disposition of ex parte matters as authorized by law—

(i) no person not employed by the Division, and no employee or agent of the Division who performs investigative or prosecuting functions in adjudicative proceedings shall make or knowingly cause to be made to any member of the Division or to any other employee who is or who reasonably may be expected to be involved in the decisional process in the proceeding, an ex parte communication relevant to the merits of the proceeding or a factually related proceeding; and

(ii) no member of the Division or any other employee who is or who reasonably may be expected to be involved in the decisional process in the proceeding shall make or knowingly cause to be made to any person not employed by the Division, or to any employee or agent of the Division who performs investigative or prosecuting functions in adjudicative proceedings, an ex parte communication relevant to the merits of the proceeding or a factually related proceeding.

(B) PROCEDURES.—

(i) IN GENERAL.—The Director or any other employee who is or who may reasonably be expected to be involved in the decisional process who receives or who makes or knowingly causes to be made, a communication prohibited by subparagraph (A) shall promptly provide to the Director—

(I) all such written communications;

(II) memoranda stating the substance of and circumstances of all such oral communications; and

(III) all written responses, and memoranda stating the substance of all oral responses, to the materials described in subclauses (I) and (II).

(ii) HEARING RECORD.—The Director shall make relevant portions of any such materials part of the hearing record, except that the materials shall not be considered by the Division as part of the hearing record for purposes of decision unless introduced into evidence in the proceeding.

(iii) PARTIES.—The Director shall also send copies of the materials to or otherwise notify all parties to the proceeding.

(C) DIVISION EMPLOYEES.—The prohibitions of subparagraph (A) shall not apply to a communication between—

(i) any member of the Division or any other employee who is or who reasonably may be expected to be involved in the decisional process; and

(ii) any employee who has been directed by the Division or requested by the Division to assist in the decision of the adjudicative proceeding, other than an employee who performs an investigative or prosecuting function in the proceeding or a factually related proceeding.

(e) RESOURCES AND PERSONNEL.—The Secretary shall ensure that—

(1) the Division has resources and personnel that are adequate to hear and determine all initial appeals in the State of residence of an appellant on a timely basis and to otherwise carry out this Act; and

(2) hearing officers, and employees who assist the Director in reviewing appeals and determinations, receive training and retraining adequate for the duties on initial employment and at regular intervals after initial employment.

(f) DELEGATION AND REVIEW.—The Secretary may not delegate to any other person (other than the Director) the authority of the Secretary with respect to the Division.

(g) REPORTS AND STUDIES.—

(1) IN GENERAL.—The Director shall issue such reports, and conduct and provide such studies, to the Secretary and the head of an agency as the Director determines are necessary to identify and resolve problems of the agency with respect to implementation of—

(A) statutes, policies, procedures, and regulations of the agency, based on final determinations of the Division; and

(B) final determinations of the Division.

(2) SUBMISSION OF REPORTS TO CONGRESS.—Not later than 30 days after receipt of the reports, the Secretary shall transmit the reports unaltered to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, together with any report by the Secretary or the relevant agency head containing any comments the Secretary or relevant agency head considers appropriate.

(3) AVAILABILITY TO PUBLIC.—The reports and studies referred to in paragraph (1) shall be made available to the public.

(h) INDEX OF DETERMINATIONS.—

(1) IN GENERAL.—The Director shall develop a subject-matter index of all significant final determinations of the Division that are considered by the Director to—

(A) be precedential; or

(B) otherwise establish a principle that—

(i) governs recurring cases with similar facts;

(ii) develops Division policy and exceptions to the policy in areas in which the law is unsettled;

(iii) deals with important emerging trends; or

(iv) provides examples of the appropriate resolution of major types of cases not otherwise indexed.

(2) AVAILABILITY TO PUBLIC.—The Director shall publicize the index and make the index and the final determinations so indexed available to the public.

(3) PUBLIC INFORMATION.—A final determination of the Division shall be subject to the requirements of section 552 of title 5, United States Code.

**SEC. 4. NOTICE AND OPPORTUNITY FOR HEARING.**

(a) IN GENERAL.—Not later than 10 working days after an adverse decision affecting a participant, the Secretary shall provide the participant with written notice of—

(1) the decision, including all of the reasons, facts, and conclusions underlying the adverse decision;

(2) the right of the participant to have an informal hearing or meeting with the decisionmaker on the adverse decision;

(3) the availability of any State mediation program under section 501 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101) to assist the participant in resolving a dispute with the agency that issued the adverse decision;

(4) the availability of any formal administrative appeals within an agency and any requirement to exhaust the administrative appeals;

(5) the right of the participant to have a hearing by the Division on the adverse decision not later than 45 calendar days after receipt of the request of the participant for a hearing, except that the Director may establish an earlier deadline for a hearing on an appeal relating to a time sensitive decision, such as a decision relating to a release of normal income security or an operating loan;

(6) if the decisionmaker asserts that the adverse decision is nonappealable, an opportunity to request a determination by the Director concerning whether an adverse decision is appealable; and

(7) a description of the procedure to—

(A) exhaust all formal administrative appeals within the agency;

(B) appeal the adverse decision to the Division (including any deadlines for filing an appeal); and

(C) if the decisionmaker asserts that the adverse decision is not appealable, request a

determination by the Director of whether the decision is appealable.

(b) RECORDS.—The Secretary shall maintain all of the materials on which an adverse decision is based with respect to a participant at least until the expiration of the period during which the participant may seek administrative or judicial review of the decision.

(c) JOINDER.—

(1) IN GENERAL.—A borrower or applicant who applies for a loan on which a guarantee is requested, or who has received a guaranteed loan, under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) and who is directly and adversely affected by a decision of the Secretary, may appeal the decision under this Act without the lender joining in the appeal.

(2) RENTAL HOUSING.—A tenant in rental housing of an agency who is individually, directly and adversely affected by a decision of the Secretary, may appeal the decision under this Act without the landlord joining in the appeal.

(3) THIRD PARTIES.—

(A) IN GENERAL.—If appropriate to protect the rights of a participant (other than the appellant) that may be directly, substantially, and adversely affected by a decision of the Division, a hearing officer may invite the participant to participate in a hearing if the final determination resulting from the hearing would, as a practical matter, foreclose the participant from protecting the rights of the participant that may be adversely affected by the final determination.

(B) PROCEDURAL RIGHTS FOR PARTICIPANTS.—If the participant elects to participate in the hearing, the participant shall have the same procedural rights as the appellant with regard to the hearing and other procedures described in this Act.

(C) NO APPEAL RIGHTS FOR NONPARTICIPANTS.—If tne participant is invited to participate in a hearing by the hearing officer and the participant elects not to participate in the hearing, the participant may not institute an appeal with respect to the implementation of any final determination resulting from the hearing.

(D) BASIS FOR INVITING PARTICIPANTS.—The decision to invite a participant under subparagraph (A) shall be made at the discretion of the hearing officer taking into account—

(i) any request to participate made by the participant;

(ii) any request by the appellant to include or exclude the participant;

(iii) any request by the decisionmaker to include or exclude the participant;

(iv) the opportunity the participant would have to appeal the decision in a separate proceeding and whether the appeal would be adequate to protect the rights of the participant; and

(v) such other factors as may be specified in regulations issued by the Director.

(d) BASIS FOR DECISIONS.—A decisionmaker—

(1) shall base an adverse decision on the information that is available to the decisionmaker at the time the initial adverse decision is made; and

(2) may not base any subsequent adverse decision on information that was previously available to the decisionmaker if that information could have been used to support the initial adverse decision.

**SEC. 5. INFORMAL HEARINGS AND MEETINGS; APPEALABLE DECISIONS.**

(a) INFORMAL HEARINGS.—If an officer or employee of the Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, or Soil Conservation Service makes an adverse decision, the appropriate State or county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)), or (if applicable) an officer or employee of the Agricultural Stabilization and Conservation Service or the Soil Conservation Service, may, at the request of the participant, hold an informal hearing on the decision.

(b) INFORMAL MEETINGS.—If the Farmers Home Administration or the Rural Development Administration makes an adverse decision, the decisionmaker may, at the request of the appellant, hold an informal meeting with the appellant after the appellant has requested a hearing, and before any hearing on the decision of the decisionmaker by the Division. At a reasonable time prior to the informal meeting, the decisionmaker shall provide to the appellant, and any representative of the appellant, access to materials in accordance with section 6(a).

(c) APPEALABLE DECISIONS.—In a case described in paragraph (5) or (6) of section 4(a), the determination of the Director as to whether an adverse decision is appealable shall be administratively final, conclusive, and binding.

**SEC. 6. ACCESS TO MATERIALS.**

(a) IN GENERAL.—An appellant shall have the right to have—

(1) access to all of the materials in the case record, including a reasonable opportunity to inspect and reproduce the record at an office of the agency located in the area of the appellant;

(2) representation by an attorney or a person who is not an attorney during the inspection and reproduction of records under paragraph (1) and at any informal meeting or hearing or Division hearing; and

(3) witnesses present at the hearing.

(b) CHARGES.—The Secretary may charge an appellant for any reasonable costs incurred in the reproduction of records under subsection (a)(1).

**SEC. 7. HEARINGS.**

(a) CONDUCT OF HEARING.—At a minimum, at a hearing conducted under this Act, the appellant shall be given a full opportunity to present argument, oral and written evidence, facts, and information relevant to the matter at issue.

(b) HEARINGS.—

(1) TIMING.—An appellant shall have the right to have a hearing by the Division on an adverse decision not later than 45 calendar days after receipt of the request of the participant for a hearing, except that the Director may establish an earlier deadline for a hearing on an appeal relating to a time sensitive decision, such as a decision relating to a release of normal income security or an operating loan.

(2) DE NOVO HEARING.—A hearing before a hearing officer shall be de novo. An appellant shall have a full opportunity to present information relevant to the appeal.

(3) HEARING OFFICERS.—A hearing officer within the Division in a State shall hear and determine a formal appeal of an adverse decision, that is subject to this Act and is made by a county supervisor, county committee, State committee, district director, State director, or other officer or employee of an agency, in a fair and impartial manner and free of undue influence. The determination shall be based on information from the hearing record and the applicable statutes and regulations described in subsection (g).

(4) LOCATION OF HEARINGS.—A hearing shall be held in the State of residence of the appellant or at a location that is otherwise convenient to the appellant and the Division.

(5) TELEPHONE.—At the request of an appellant, a hearing may be conducted over the telephone.

(6) WAIVER OF HEARING.—An appellant may waive the right to a hearing on an adverse decision. If an appellant waives the right to a hearing, the hearing officer shall issue a determination based on a review of the case record of the appellant and on information submitted by the appellant or the agency to the hearing officer.

(7) BURDEN OF PROOF.—An agency shall bear the burden of justifying an adverse decision of the agency at a hearing, including the burden of proving the justifying evidence and the basis for the decision in statutes and regulations.

(8) DETERMINATION NOTICE.—The hearing officer shall issue a determination notice on the appeal of the adverse decision not later than 30 calendar days after a hearing or after receipt of the request of the appellant to waive a hearing, except that the Director may establish an earlier deadline for a determination notice relating to a time sensitive decision, such as a decision relating to a release of normal income security or an operating loan.

(9) REVIEW BY DIRECTOR.—

(A) REFERRAL.—A determination of a hearing officer shall, on request and election of the appellant, be referred to the Director for review.

(B) ACTIONS.—Not later than 30 calendar days after the referral to the Director, the Director shall—

(i) review the hearing record and the determination;

(ii) uphold the determination, issue a new determination, require that a new hearing be held on one or more of the issues considered at the original hearing, or take any combination of the actions described in this clause; and

(iii) issue a determination notice.

(c) PRODUCTION OF RECORD.—

(1) VERBATIM RECORDING.—Each hearing before a hearing officer in the Division shall be recorded verbatim by voice recorder, stenographer, or other method.

(2) PERSONAL RECORD.—An appellant or agency representative may record a hearing with a voice recorder or stenographer for personal use. A record made under this paragraph shall be excluded from consideration during any review of the determination of the hearing officer.

(3) AVAILABILITY TO APPELLANT.—A transcript of the hearing, together with a copy of any audio recording of the hearing under paragraph (1) and copies of all documents and evidence submitted, shall be made available to the appellant, on request, if the decision of the hearing officer is appealed.

(d) USE OF RECORD.—If the decision of a hearing officer is appealed, the hearing officer shall certify the hearing record and otherwise provide the certified hearing record to the Director. The hearing record, and any additional information from any further appeal proceedings, shall be retained by the Division at least until the expiration of the period during which the appellant may seek judicial review of the adverse decision or final determination notice.

(e) NEW INFORMATION.—

(1) HEARING.—A hearing officer shall consider information presented at the hearing without regard to whether the evidence was known to the decisionmaker at the time the adverse decision was made. The hearing officer shall leave the record open for a reasonable period of time and allow the submission of information after the hearing to the extent necessary to prevent the appellant or

the decisionmaker from being prejudiced by new facts, information, arguments, or evidence presented or raised by the decisionmaker or appellant.

(2) REVIEW.—The Director may, under extraordinary circumstances, consider new information in reviewing a determination under this section or section 8. An appellant and the decisionmaker shall receive and have the opportunity to comment on the new information. If a determination of a hearing officer is reviewed by the Director, and new information is considered, the hearing officer shall have the opportunity to comment on the new information.

(f) FINDINGS OF FACT.—The Director shall not reverse the determination of a hearing officer or the Director under this section or section 8 as to a finding of fact that is based on oral testimony or inspection of evidence unless—

(1) the finding of fact is clearly erroneous; or

(2) the Director is considering new information under subsection (e)(2) with respect to the finding of fact.

(g) CONSIDERATION OF STATUTES AND REGULATIONS.—In considering the merits of an appeal, a hearing officer and the Director shall base a determination on and consider applicable statutes, and regulations published in the Code of Federal Regulations, in effect and available to the public on the date the decision appealed from was made. The Director shall have the same authority as the Secretary to grant equitable relief.

(h) FINALITY.—

(1) IN GENERAL.—Except as provided in subsection (b) of section 7 and in section 8, the determination of a hearing officer or the Director shall be administratively final, conclusive, and binding on the relevant agency.

(2) EFFECTIVE DATE OF FINAL DETERMINATIONS.—A final determination made by the Division under this Act shall be effective as of—

(A) in the case of the Agricultural Stabilization Service, the Commodity Credit Corporation, the Federal Crop Insurance Corporation or the Soil Conservation Service, the date of filing an application or the date of the transaction or event in question, whichever is applicable; and

(B) in the case of the Farmers Home Administration and the Rural Development Administration the date of the original adverse decision.

**SEC. 8. ADMINISTRATIVE APPEAL REVIEW.**

(a) REVIEW OF DECISION OF HEARING OFFICER OR DIRECTOR.—In extraordinary circumstances, if an agency head believes that the decision of a hearing officer or the Director is contrary to a statute or regulation of the agency, the agency head may request (in writing) that the Director review the decision of the hearing officer or the Director.

(b) REQUESTS FOR REVIEW.—

(1) TIMING.—A request for review under subsection (a) shall be made within 10 working days after receipt by the decisionmaker of the decision of the hearing officer or Director. If the relevant agency head fails to make a request for review in accordance with this section, the decision of the hearing officer or the Director shall be administratively final and shall be promptly implemented.

(2) CONTENTS.—A request for review shall include a full description of—

(A) the extraordinary circumstances justifying the request for review; and

(B) the reasons that the relevant agency head claims the decision is contrary to applicable statutes or regulations of the relevant agency and the citations for the statutes or regulations.

(3) COPY TO APPELLANT AND HEARING OFFICER.—A copy of the request shall be provided to the appellant and the hearing officer at the same time the request is provided to the Director. The hearing officer shall immediately forward the case record to the Director on receipt of a copy of the request.

(c) TIMING OF DETERMINATIONS BY DIRECTOR.—On receiving a request for review and the case record, the Director shall determine within 5 working days after receipt whether the request has merit.

(d) REQUESTS WITHOUT MERIT.—If the Director determines that the request does not have merit, the Director shall notify the relevant agency head, the appellant, and the hearing officer, in writing, that the determination of the hearing officer or Director is a final determination.

(e) REQUESTS WITH MERIT.—

(1) IN GENERAL.—If the Director determines that a request by the relevant agency head has merit, within 10 working days after the receipt of the request for review and receipt of the case record (subject to paragraph (4)), the Director shall—

(A)(i) conduct a review of the decision (based on the hearing record), the assertions raised by the relevant agency head in the letter of the relevant agency head requesting an administrative appeal review, any additional argument submitted by the appellant or the hearing officer pursuant to paragraph (2), and (in extraordinary circumstances) any new information submitted by the relevant agency head or the appellant; and

(ii) issue a final decision on the appeal; or

(B) if the Director determines the hearing record is inadequate, remand the decision for further proceedings to complete the hearing record or, at the option of the Director, to hold a new hearing.

(2) OPPORTUNITY FOR COMMENT.—In a review conducted under paragraph (1)(A), an appellant and the hearing officer (if the decision being reviewed was made by a hearing officer) shall have the opportunity to—

(A) provide written rebuttal to a claim of the relevant agency head, and in extraordinary circumstances provide new information with regard to the review of the Director; and

(B) comment in writing with regard to the review.

(3) NEW HEARING.—If the Director remands a decision to a hearing officer and directs the hearing officer to conduct a new hearing on the decision under paragraph (1)(B), the hearing officer shall make a new determination with respect to the decision based on the case record and the hearing record (as modified on remand).

(4) NOTICE OF FINAL DETERMINATION.—The Director shall notify the hearing officer, any relevant agency head, and the appellant, in writing, of the final determination or other disposition of the request for review.

(5) EXTENSION OF DEADLINE.—The period of time for a review may be extended by the Director to the extent that an appellant or hearing officer has requested and received additional time during which to submit arguments, rebuttal, or new information.

(6) FINALITY.—Subject to section 9, the determination of the Director shall be administratively final and shall be promptly implemented. The relevant agency may not request a second review as to the determination of the hearing officer or the Director on the same issues.

(f) RECOMMENDATIONS.—The Director or a hearing officer may include recommendations in a final determination notice.

**SEC. 9. JUDICIAL REVIEW.**

A final determination of the Division under the process provided for in this Act shall be reviewable and enforceable by a United States district court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code.

**SEC. 10. IMPLEMENTATION OF FINAL DETERMINATIONS OF DIVISION.**

(a) IN GENERAL.—Except as provided in sections 7(c) and 8, on the return of a case to a State pursuant to the final determination of a hearing officer or the Director, the State committee, county committee, or employee of the relevant agency shall implement the final determination.

(b) ACTIONS BY RELEVANT AGENCY HEAD.—The relevant agency head shall correct implementation problems, and shall make available to the public a report on the status of implementation of final determinations of the relevant agency head that reversed or modified an adverse decision of the agency.

(c) IMPLEMENTATION.—

(1) STATE DIRECTOR.—A State director shall be—

(A) responsible for reviewing all appeal requests of adverse decisions of the State director or subordinates, prior to hearings, to determine whether the adverse decisions should be modified or withdrawn by the decisionmaker, rather than proceed with the appeals;

(B) required to implement final determinations of a hearing officer or the Director that affect appellants in the State; and

(C) responsible for monitoring and ensuring the implementation of final determinations that reverse and modify adverse decisions.

(2) AGENCY HEADS.—Relevant agency heads shall be responsible for—

(A) the performance of State directors under paragraph (1); and

(B) the implementation of all final determinations of the Division that reverse or modify adverse decisions of the agency.

(d) PROTECTION OF APPELLANTS' RIGHTS.—

(1) IN GENERAL.—No officer or employee of the Federal Government shall make or engage in threats or intimidation, or solicit action, to prevent any potential appellant from exercising the rights of the appellant under this Act or make, solicit, or engage in retaliation or retribution for the exercise of a right of an appellant under this Act.

(2) CORRECTIVE ACTION.—If an officer or employee of the Federal Government violates paragraph (1), the Secretary shall take corrective action (including the imposition of sanctions, when necessary).

(e) IMPLEMENTATION PROBLEMS.—

(1) IN GENERAL.—The Secretary shall assign employees within the Office of the Secretary whom appellants may contact concerning problems with the implementation of final determinations of the Division. The employees shall investigate and, to the extent practicable, resolve the implementation problems.

(2) IDENTITY OF EMPLOYEES.—The Secretary shall notify the Director of the name, business address, and telephone numbers of employees assigned under paragraph (1). The Director shall include this information in the final determination notice of the Director to an appellant.

(3) LETTER TO APPELLANT.—Not later than 30 calendar days following the issuance of a final determination, the appropriate assigned employee shall mail a letter to the appellant soliciting confirmation from the appellant that the final determination has

been implemented or, if the appellant believes that the decision has not been implemented, a description of the failure to implement the decision.

(4) DECISION NOT IMPLEMENTED.—If the appellant indicates that the decision has not been implemented, the assigned employee shall immediately undertake to ensure that the final determination is implemented in accordance with this Act.

(5) DESCRIPTION OF IMPLEMENTING STEPS.—On determining that the final determination has been implemented, the relevant agency head shall provide the appellant and the assigned employee with a description of the steps taken by the relevant agency to implement the final determination.

**SEC. 11. EVALUATION OF EMPLOYEES.**

(a) IN GENERAL.—The Secretary shall promulgate regulations that include in an annual review the evaluation of the performance of employees and officials of each agency in accordance with subsection (b).

(b) PERFORMANCE.—As part of the review and evaluation, a decisionmaker, a State director, or the relevant agency head shall be considered to have performed poorly if the decisionmaker, State director, or relevant agency head—

(1) takes action that leads to numerous appeals that result in—

(A) adverse decisions that are reversed or modified; or

(B) administrative appeal reviews that are determined to not have merit by the Division;

(2) fails to properly implement decisions;

(3) fails to satisfactorily perform the reviewing and monitoring responsibilities required under section 10(c); or

(4) threatens or intimidates, or engages in retaliation or retribution against, an appellant in violation of section 10(d).

(c) SANCTIONS.—If a decisionmaker, State director, or relevant agency head has performed poorly (as described in subsection (b) or paragraph (2) or (4) of subsection (d)), the Secretary shall issue sanctions against the decisionmaker, State director, or relevant agency head, respectively, which may include a formal reprimand or dismissal.

(d) EVALUATIONS.—

(1) IN GENERAL.—The Director shall establish policies that, with regard to the hearing and determinations of appeals, provide for the evaluation of hearing officers, the Director, and other employees involved in the review of appeals and determinations or supervision of employees of the Division, or both, by parties outside the Department, which may include peers. The policies shall be made available to the public.

(2) PROCESS.—The evaluation process shall ensure and enhance the independence, integrity, and efficiency of the employees and the Director.

(3) CONSULTATION.—The policies shall be developed in consultation with the Administrative Conference of the United States, appropriate organizations of administrative law judges, the Director of the Office of Personnel Management, the Judicial College located at the University of Nevada at Reno, and hearing officers.

(e) BASIS FOR REVERSALS.—In conducting the evaluation of the number of appeals decided against the decisionmaker, the Secretary should consider mitigating circumstances, such as whether the reversal was based solely on—

(1) new information not previously available to the decisionmaker;

(2) erroneous advice from a superior to the decisionmaker;

(3) published agency interpretations or procedures that were determined to be invalid by the Division; or

(4) the failure of a superior to provide clear instructions to the decisionmaker.

**SEC. 12. PROHIBITION ON ADVERSE ACTION WHILE APPEAL PENDING.**

(a) IN GENERAL.—The Secretary may not take an adverse action against an appellant relating to an appeal while any proceeding authorized or required under this Act is pending. In particular, the Secretary may not take any action that would prevent the implementation of a final determination in favor of the appellant.

(b) WITHHOLDING.—This section shall not preclude the Secretary from withholding a payment if the eligibility for, or amount of, the payment is an issue on appeal, except that ongoing assistance to existing borrowers and grantees shall not be discontinued pending the outcome of an appeal.

**SEC. 13. REGISTRY OF ADVOCATES.**

(a) IN GENERAL.—The Director shall establish a registry consisting of individuals (including individuals who are attorneys and individuals who are not attorneys) who are available to represent appellants during the appeals process and who apply to the Director to be included in the registry.

(b) USE OF REGISTRY.—The Director shall provide information contained in the registry to an appellant upon request. The Director may not recommend individuals included in the registry.

**SEC. 14. RELATIONSHIP TO OTHER LAWS.**

(a) OTHER RIGHTS.—This Act is not intended to supersede or deprive a recipient of assistance from the relevant agency of any rights that the recipient may have under any other law, including section 510(g) of the Housing Act of 1949 (42 U.S.C. 1480(g)).

(b) EQUITABLE RELIEF.—This Act is not intended to affect the authority of an agency head to grant equitable relief.

**SEC. 15. TRANSFER OF FUNCTIONS.**

(a) IN GENERAL.—There are transferred to the Division established by this Act all functions exercised before the effective date of this Act (including all related functions of any officer or employee) of or relating to—

(1) the National Appeals Division established by section 426(c) of the Agricultural Act of 1949 (7 U.S.C. 1433e(c)) (in effect before the amendment made by section 18(a)(3));

(2) the National Appeals Division established by subsections (d) through (g) of section 333B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983b) (in effect before the amendment made by section 18(b)(1));

(3) appeals of decisions made by the Federal Crop Insurance Corporation; and

(4) appeals of decisions made by the Soil Conservation Service.

(b) CONSTRUCTION.—

(1) IN GENERAL.—If other provisions of this Act or law conflict with this section, the other provisions of this Act or law shall apply.

(2) TRANSFER OF FUNCTIONS ONLY.—This section applies only to and during the transfer of functions in accordance with subsection (a).

(c) DETERMINATIONS OF CERTAIN FUNCTIONS.—If necessary, the Secretary shall make any determination of the functions that are transferred under this section.

(d) PERSONNEL PROVISIONS.—

(1) APPOINTMENTS.—

(A) IN GENERAL.—Except as provided in section 3, the Secretary may appoint and fix the compensation of such officers and employees (including investigators and attorneys) as may be necessary to carry out the respective functions transferred under this section.

(B) CIVIL SERVICE.—Except as otherwise provided by law, the officers and employees shall be appointed in accordance with the civil service laws and the compensation of the officers and employees fixed in accordance with title 5, United States Code.

(2) EXPERTS AND CONSULTANTS.—

(A) IN GENERAL.—To carry out this section, the Secretary may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate the experts and consultants for each day (including travel time) at rates not in excess of the rate of pay for level IV of the Executive Schedule under section 5315 of such title.

(B) TRAVEL EXPENSES.—To carry out this section, the Secretary may pay experts and consultants who are serving away from their homes or regular places of business travel expenses and per diem in lieu of subsistence at rates authorized by sections 5702 and 5703 of such title for persons in Government service employed intermittently.

(e) DELEGATION AND ASSIGNMENT.—

(1) IN GENERAL.—Except if otherwise expressly prohibited by law or otherwise provided by this Act, the Secretary may delegate any of the functions transferred by this section and any function transferred or granted after the effective date of this Act to such officers and employees of the Department as the Secretary may designate, and may authorize successive redelegations of the functions as may be necessary or appropriate.

(2) CONTINUING RESPONSIBILITY.—No delegation of functions by the Secretary under this section or under any other provision of this section is intended to relieve the Secretary of responsibility for the administration of the functions.

(f) RULES.—The Secretary is authorized to prescribe, in accordance with chapters 5 and 6 of title 5, United States Code, such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Department.

(g) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, employee positions, assets, liabilities, contracts, property, records, unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred in accordance with this section.

(2) USE OF FUNDS.—Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(h) INCIDENTAL TRANSFERS.—

(1) IN GENERAL.—The Secretary, at such time as the Secretary shall provide, is authorized to make such determinations as may be necessary with regard to the functions transferred by this section, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the functions, as may be necessary to carry out this section.

(2) TERMINATION OF AFFAIRS.—The Secretary shall provide for the termination of

the affairs of all entities terminated by this section and for such further measures and dispositions as may be necessary to effectuate the purposes of this section.

(i) SAVINGS PROVISIONS.—

(1) CONTINUING EFFECT OF LEGAL DOCUMENTS.—An order, determination, rule, regulation, permit, agreement, grant, contract, certificate, license, registration, privilege, or other administrative action—

(A) that has been issued, made, granted, or allowed to become effective by the President, any Federal agency or official of a Federal agency, or by a court of competent jurisdiction, in the performance of functions that are transferred under this section; and

(B) that is in effect at the time this section takes effect, or was final before the effective date of this section and is to become effective on or after the effective date of this section,

shall continue in effect according to the terms of the action until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary or other authorized official, a court of competent jurisdiction, or by operation of law.

(2) PROCEEDINGS NOT AFFECTED.—Nothing in this subsection is intended to prohibit the discontinuance or modification of a proceeding under the same terms and conditions and to the same extent that the proceeding could have been discontinued or modified if this section had not been enacted.

(3) SUITS NOT AFFECTED.—This section is not intended to affect a suit commenced before the effective date of this section. In the suit, a proceeding shall be had, an appeal taken, and a judgment rendered in the same manner and with the same effect as if this section had not been enacted.

(4) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against a transferred office, or by or against any individual in the official capacity of the individual as an officer of a transferred office, shall abate by reason of the enactment of this section.

(j) SEPARABILITY.—If a provision of this section or the application of this section to any person or circumstance is held invalid, neither the remainder of this section nor the application of the provision to other persons or circumstances shall be affected.

(k) TRANSITION.—The Secretary is authorized to utilize—

(1) the services of the officers, employees, and other personnel of a transferred office with respect to functions transferred by this section; and

(2) funds appropriated to the functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this section.

(l) REFERENCES.—Each reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to—

(1) the head of a transferred office with regard to functions transferred under this section shall be deemed to refer to the head of the office to which the functions are transferred; and

(2) a transferred office with regard to functions transferred under this section shall be deemed to refer to the office to which the functions are transferred.

(m) ADDITIONAL CONFORMING AMENDMENTS.—Not later than 180 days after the effective date of this section, if the Secretary determines (after consultation with the appropriate committees of Congress and the Director of the Office of Management and Budget) that additional technical and conforming amendments to Federal statutes are necessary to carry out the changes made by this section, the Secretary shall prepare and submit to Congress recommended legislation containing the amendments.

**SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this Act for fiscal year 1993, and each subsequent fiscal year.

**SEC. 17. STATE MEDIATION PROGRAMS.**

(a) QUALIFYING STATES.—Section 501 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101) is amended—

(1) by striking "agricultural loan" each place it appears; and

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking "and their creditors," and inserting "their creditors, and (with respect to other than agricultural loan matters) the Department of Agriculture,"; and

(ii) by striking "an agricultural" and inserting "the agricultural"; and

(B) in paragraph (5), by inserting before "receive" the following: ", and all persons directly affected by actions of the Department of Agriculture involving wetlands determinations, farm program compliance, disputes between farmers and their creditors, rural water loan programs, grazing on national forest lands, and pesticides,".

(b) PARTICIPATION OF FEDERAL AGENCIES.—Section 503 of such Act (7 U.S.C. 5103) is amended—

(1) by striking "agricultural loan" each place the term appears; and

(2) in subsection (a)(1)—

(A) in the matter preceding subparagraph (A), by striking "that makes, guarantees, or insures agricultural loans";

(B) in each of subparagraphs (A) and (B), by inserting ", in any matter involving agricultural loans" before the semicolon; and

(C) in subparagraph (B), by striking ", on the date of the enactment of this Act,".

(c) REPORT.—Subtitle A of title V of such Act (7 U.S.C. 5101 et seq.) is amended by adding at the end the following new section:

**"SEC. 507. REPORT ON EXPANDED STATE MEDIATION PROGRAMS.**

"Not later than 2 years after the date of the enactment of this section, the Secretary of Agriculture shall report to the Congress on the matters described in section 505 with respect to all State mediation programs receiving matching grants under this subtitle.".

(d) CONFORMING AMENDMENTS.—

(1) WAIVER OF FARM CREDIT MEDIATION RIGHTS BY BORROWERS.—Section 4.14E of the Farm Credit Act of 1971 (12 U.S.C. 2202e) is amended by striking "agricultural loan".

(2) WAIVER OF FMHA MEDIATION RIGHTS BY BORROWERS.—Section 358 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2006) is amended by striking "agricultural loan".

**SEC. 18. CONFORMING AMENDMENTS.**

(a) ASCS.—

(1) FINALITY OF FARMERS PAYMENTS AND LOANS.—Section 385 of the Agricultural Act of 1938 (7 U.S.C. 1385) is amended—

(A) by striking the first sentence; and

(B) by striking "such payment" the first place it appears and inserting "payment under the Soil Conservation Act (16 U.S.C. 590a et seq.), payment under the wheat, feed grain, upland cotton, extra long staple cotton, and rice programs authorized by the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) and this Act, loan, or price support operation, or the amount thereof,".

(2) DETERMINATIONS BY SECRETARY.—Section 412 of the Agricultural Act of 1949 (7 U.S.C. 1429) is repealed.

(3) APPEALS.—Section 426 of the Agricultural Act of 1949 (7 U.S.C. 1433e) is amended to read as follows:

**"SEC. 426. APPEALS.**

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

"(1) ASCS.—The term 'ASCS' means the Agricultural Stabilization and Conservation Service, or any successor agency in the United States Department of Agriculture.

"(2) COUNTY COMMITTEE.—The term 'county committee' means a county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

"(3) NATIONAL APPEALS DIVISION.—The term 'National Appeals Division' means the National Appeals Division established in accordance with section 3 of the USDA National Appeals Division Act of 1993.

"(4) STATE COMMITTEE.—The term 'State committee' means a State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

"(b) RIGHT TO APPEAL.—Any participant in any of the programs under this Act or any other Act administered by ASCS shall have the right to appeal to the National Appeals Division any adverse determination made by any State committee or county committee, by employees or agents of the committees, by other personnel of the ASCS, or by agents of the Commodity Credit Corporation, under this Act or under any other Act administered by the ASCS.

"(c) APPEAL PROCEDURE.—

"(1) IN GENERAL.—The appeal shall be made in accordance with the USDA National Appeals Division Act of 1993 (including section 5 of such Act) and this section.

"(2) CONDITIONS OF APPEAL.—Any participant who believes that a proper determination has not been made with respect to the implementation of any program administered by the ASCS concerning the participant may appeal the determination as follows:

"(A) If the determination was rendered by a county committee, the participant may appeal the determination to the applicable State committee.

"(B) If the determination was rendered by a State committee, the participant may appeal the determination to the National Appeals Division.

"(C) If the determination was rendered by any other employee or agent of the ASCS or the Commodity Credit Corporation, the participant may appeal the determination to the National Appeals Division.

"(D) ASCS may reverse or modify a decision made by a State committee or county committee at any time prior to commencement of the appeal of an appellant to the National Appeals Division, except that nothing in this subparagraph is intended to affect a procedure of a State committee or county committee.

"(d) COURT REVIEW.—A final decision of the Department of Agriculture under the process provided for in this section shall be reviewable by a United States district court of competent jurisdiction.

"(e) PARTICIPANT.—For the purposes of this section, the term 'participant' means any person whose right to participate in, or receive payments or other benefits in accordance with, any of the programs under this Act or any other Act administered by the

ASCS is adversely affected by a determination of any State committee or county committee, by employees or agents of the committees, by other personnel of the ASCS, or by agents of the Commodity Credit Corporation under this Act or under any other Act administered by the ASCS.

"(f) DECISIONS OF STATE AND COUNTY COMMITTEES.—

"(1) FINALITY.—All decisions of a State or county committee, or employee of the committee, made in good faith in the absence of misrepresentation, false statement, fraud, or willful misconduct shall be final, unless such decisions are (not later than 90 days after the date of issuance of the decision) appealed under this section or modified under subsection (c)(2)(D).

"(2) RECOVERY OF AMOUNTS.—No action shall be taken to recover amounts found to have been disbursed thereon in error unless the participant had reason to believe that the decision was erroneous.

"(g) REGULATIONS.—The Secretary shall issue such regulations as are determined necessary to implement this section, including regulations governing the conduct of appeals made before State committees and county committees.".

(b) FMHA.—

(1) NATIONAL APPEALS DIVISION.—Section 333B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983b) is amended by striking subsections (d) through (g).

(2) LEASE OR PURCHASE AGREEMENTS.—Section 335(e)(9) of such Act (7 U.S.C. 1985(e)(9)) is amended by inserting after "appealable under" the following: "the USDA National Appeals Division Act of 1993 (including section 5 of such Act) and".

(3) HOMESTEAD PROPERTY.—The second sentence of section 352(c)(3) of such Act (7 U.S.C. 2000(c)(3)) is amended by inserting after "described in" the following: "the USDA National Appeals Division Act of 1993 (including section 5 of such Act) or".

(4) DEBT RESTRUCTURING AND LOAN SERVICING.—Section 353 of such Act (7 U.S.C. 2001) is amended—

(A) in subsection (h), by inserting after "filed under" the following: "the USDA National Appeals Division Act of 1993 and"; and

(B) in the first sentence of subsection (j), by inserting after "under" the following: "the USDA National Appeals Division Act of 1993 and".

(c) FCIC.—

(1) CLAIMS FOR LOSSES.—The last sentence of section 508(f) of the Federal Crop Insurance Act (7 U.S.C. 1508(f)) is amended by inserting before the period at the end the following: "or within 1 year after the claimant receives a final determination notice from an administrative appeal made in accordance with the USDA National Appeals Division Act of 1993, whichever is later".

(2) APPEALS.—Section 508 of such Act is amended by adding at the end the following new subsection:

"(n) APPEALS.—Any participant (as defined in section 2(16) of the USDA National Appeal Division Act of 1993) under this Act shall have the right to appeal to the National Appeals Division established in accordance with section 3 of the USDA National Appeals Division Act of 1993 any adverse determination made by the Corporation. The appeal shall be made in accordance with such Act.".

**SEC. 19. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as provided in subsections (b) and (c), this Act and the amendments made by this Act shall become effective on the earlier of—

(1) the date that is 180 days after the date of enactment of this Act; or

(2) the date the Director issues final regulations pursuant to subsection (b).

(b) REGULATIONS.—The Director shall—

(1) not later than 90 days after the date of enactment of this Act, promulgate proposed regulations to implement this Act and the amendments made by this Act, in a manner consistent with provisions of section 553 of title 5, United States Code, permitting public comment;

(2) issue final regulations to implement this Act and the amendments made by this Act, not later than October 1, 1993, or 180 days after the date of enactment of this Act, whichever is later; and

(3) issue final regulations—

(A) providing for the transfer of all pending appeals within the jurisdiction of agencies referred to in section 2(2) to the Division on the effective date prescribed in subsection (a);

(B) providing for the transfer of case records with respect to the appeals; and

(C) otherwise providing for the orderly transfer of all pending appeals and reviews from the agencies to the Division.

(c) IMPLEMENTATION; PROTECTION OF APPELLANTS' RIGHTS.—Subsections (c) and (d) of section 10 shall become effective on the date of enactment of this Act.

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By Mr. CONRAD (for himself, Mr. INOUYE, and Mr. BINGAMAN):

S. 1426. A bill to amend title XVIII of the Social Security Act and the Budget and Emergency Deficit Control Act of 1985 with respect to essential access community hospitals, the rural transition grant program, durable medical equipment, adjustments to discretionary spending limits, standards for Medicare supplemental insurance policies, expansion and revision of Medicare select policies, psychology services in hospitals, payment for anesthesia services furnished directly or concurrently in providers, improve reimbursement for clinical social worker services, and for other purposes; to the Committee on Finance.

ESSENTIAL MEDICARE AMENDMENTS OF 1993

Mr. CONRAD. Mr. President, today I am introducing legislation that includes several priority items that I believe Congress should consider this year. Most of the items in my bill were not included in the conference agreement on the budget reconciliation bill because of Byrd rule considerations. However, my proposal also includes some provisions that were not included in either the House or Senate reconciliation bill, but which I believe merit consideration.

My bill includes provisions that are extremely important to rural hospitals, vital to the protection of Medicare beneficiaries from fraud and abuse, and necessary to improve the treatment of certain health care providers under the Medicare Program. The bill would reauthorize and expand the Essential Access Community Hospitals—EACH-Peach Program; reauthorize the rural transition grant program; protect Medicare beneficiaries from overcharges; improve consumer access to needed health care insurance policies; expand the current Medicare select program to all 50 States; improve the treatment of certified nurse anesthetists under Medicare; create a separate fee schedule for payments to clinical social workers; and provide for the adjustment of discretionary spending limits as they relate to Medicare payment practices.

One provision I would like to highlight is the expansion of the Essential Access Community Hospitals Program, often referred to as "EACH-Peach." This provision is vitally important to small rural hospitals in my State and in many other parts of rural America. EACH-Peach is structured to promote cooperation between a rural primary care hospital, which provides emergency and other outpatient services, and an essential access community hospital, which is a full service hospital facility that provides inpatient care. The program helps keep remotely located health facilities open, rather than allow hospital closures to deny rural residents access to health care services.

During the last 6 years, North Dakota has lost four rural hospitals—Rollette, Beach, New Rockford, and Hankinson. At the end of July, we lost another important hospital in Mohall, ND. Unless some sort of facility can be maintained in Mohall, residents of that community will be about 50 miles away from the nearest medical facility. EACH-Peach could enable facilities like the one in Mohall to stay open and provide nearby residents with needed access to emergency and outpatient care. I fear that without enactment of this provision, more and more medical facilities that are critically needed by remote rural communities may be lost.

My bill also reauthorizes the Rural Transition Grant Program, which has been highly beneficial for North Dakota hospitals, as well as facilities throughout rural America. Like EACH-Peach, the Rural Transition Grant Program has been enormously helpful to many rural health facilities that are trying to restructure and remain viable.

Another provision of my proposal allows discretionary spending caps under the budget to be adjusted where funding increases are provided for Medicare payment safeguards and claims payment services. This proposal would enable Congress to increase payment safeguards, which more than pay for themselves, without worrying about cutting into other programs.

Next, my proposal includes two provisions that expand consumer access to needed health care insurance policies. First, it expands the so-called Medicare select policy to all 50 States. The Medicare select provision, which has been advocated by Senator CHAFEE and Representatives NANCY JOHNSON and EARL

POMEROY in the House of Representatives, expands the managed care options available to Medicare beneficiaries so they will be more in line with the choices available to individuals with private sector insurance.

Legislation passed in 1990 created 10 standard Medicare supplementary benefit packages that could be offered nationwide. However, the legislation limited the ability of managed care networks to offer the packages to Medicare beneficiaries in 15 States, including North Dakota. This proposal would expand the option that was made available to North Dakota and the 14 other States to every State in the Union, and help contain the unnecessary cost growth now occurring under Medicare.

The second provision corrects a flaw in the same 1990 Medigap insurance reform law that has been sought by the National Association of Insurance Commissioners, the American Association of Retired Persons, and many others concerned about the availability of insurance to older Americans. While the 1990 law took important steps to eliminate questionable sales practices involving Medigap insurance, it has had the unintentional effect of preventing many retirees from purchasing Medigap supplemental insurance. This provision would correct that unintended consequence.

My bill also includes three provisions that are needed to improve the treatment of certain care providers under Medicare.

First, it provides for new criteria to be developed for determining payment requirements for anesthesiologists who medically direct certified nurse anesthetists. This provision will help eliminate unnecessary duplication in anesthesia services while maintaining the accountability for payment that currently exists in the system.

Second, my bill directs the Secretary of Health and Human Services to establish a separate fee schedule for social worker services, so that clinical social workers will not have their fees based on those of other nonphysician providers. As Senator INOUYE has pointed out, the current methodology is the only example under Medicare where one nonphysician's reimbursement rate is tied to that of another nonphysician provider. This provision will simply ensure that social workers are paid on their own merit.

Third, my bill ensures that the Medicare Program does not conflict with State laws that allow psychologists to supervise the care of their patients in the inpatient setting. Currently, while certain state laws allow psychologists to supervise such care, Medicare only reimburses where inpatients are supervised by a physician. This flaw should be corrected.

Finally, my bill includes a number of provisions of the Medicare Beneficiary Protection Act, which I cosponsored with Senator PRYOR back in March. A few important provisions of that legislation, which are estimated to save hundreds of millions of dollars, were included in the reconciliation bill. However, the Byrd rule required that the no-cost provisions that I am including in my bill be dropped. Those provisions are critically important to protect Medicare beneficiaries from being overcharged for the services they receive.

I hope that Congress, when it reconvenes in September, will act swiftly to enact these essential changes in the Medicare Program.

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By Mr. KERRY:

S. 1427. A bill to provide the necessary authority to manage the activities in Antarctica of United States scientific research expeditions and United States tourists, and to regulate the taking of Antarctic marine living resources, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE ANTARCTIC SCIENTIFIC RESEARCH, TOURISM, AND MARINE RESOURCES ACT OF 1993

Mr. KERRY. Mr. President, today I am introducing the Antarctic Scientific Research, Tourism, and Marine Resources Act of 1993.

The purpose of the legislation is to enable the United States to implement the protocol on environmental protection to the Antarctic Treaty. This treaty was negotiated by the parties of the Antarctic Treaty system and signed in October, 1991. The Senate gave its consent to the protocol on October 7, 1992. However, the protocol is not self-executing; implementing legislation must be enacted to give its provisions the effect of law in the United States.

The protocol recognizes the need to enhance the protection of the Antarctic environment, and dependent and associated ecosystems. In addition, the protocol reaffirms the designation of Antarctica as a special conservation area to protect its unique environmental qualities. These environmental qualities are equally important to advance of Antarctic scientific research. Consequently, the protocol acknowledges the unique opportunities Antarctica offers for scientific monitoring of and research on processes of global as well as regional importance. The protocol also acknowledges the impact of the growing number of tourists who travel to the Antarctic to witness its wild beauty and rugged terrain, but who also are responsible for environmental damage.

The bill's provisions reflect an attempt to balance two goals: first, to protect the Antarctic environment and resources; and second, to minimize interference with scientific research. Key elements of the legislation would: maintain the role of the National Science Foundation [NSF] as lead agency in the Antarctic; institute a ban on Antarctic mining and incineration; require secondary sewage treatment by 1995; issue NSF permits for Antarctic activities—with the concurrence of other agencies; incorporate article three planning, monitoring, and assessment principles; require Federal agencies and tourism operations to prepare environmental assessments; protect Antarctic living resources; authorize citizen suits; and prevent marine pollution. The bill exceeds environmental safeguards of the protocol by banning incineration; raising sewage discharge standards; and requiring permits for tourism and U.S. base operations.

As one of the founders of the Antarctic Treaty system, the United States has an obligation to enact strong implementing legislation, and where appropriate to go beyond the minimum standards established by the protocol. The Antarctic Scientific Research, Tourism, and Marine Resources Act of 1993 serves these purposes. I ask unanimous consent that the summary of the bill I am introducing today be printed in the RECORD immediately following my statement.

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

THE ANTARCTIC SCIENTIFIC RESEARCH, TOURISM, AND MARINE RESOURCES ACT

The purpose of the bill is to enable the United States to implement the Protocol on Environmental Protection to the Antarctic Treaty, which was signed in October 1991, and approved by the Senate on October 7, 1992.

The bill calls for comprehensive environmental consideration in the conduct of scientific research, tourism, and other activities in the Antarctic. As under current law, the Director of the National Scientific Foundation (NSF), would continue to operate as the lead agency in managing Antarctic scientific activities. The Secretary of Commerce would be charged with enforcing the indefinite ban on Antarctic mineral resource activities, and regulating tourism and other nongovernmental activities. The Administrator of the Environmental Protection Agency (EPA) would be charged with overall responsibility for implementing the provisions of Annex III of the Protocol dealing with waste disposal and waste management. The Secretary of State would designate up three arbitrators to serve on the Antarctic Tribunal to be established under the Protocol. The President would appoint a U.S. representative to the newly created International Committee for Environmental Protection, and would resolve disputes among agencies regarding environmental concerns.

The bill prohibits certain activities which are potentially harmful to the Antarctic environment. These activities include mining, incineration, and both governmental and nongovernmental activities that are inconsistent with the Protocol. Also, by 1995, discharge of sewage into the ocean must meet secondary treatment standards. The bill provides for civil and criminal penalties for violations of these provisions, and allows for citizen suits.

The bill requires consideration of Article Three principles in the planning, permitting,

and conduct of activities. The bill requires each federal agency planning an Antarctic activity to conduct a review, in consultation with the Director, for conformance with the Protocol. Environmental assessments or impact statements would be required for activities with at least a minor or transitory impact. The Secretary of Commerce, in consultation with the Director, would be tasked with developing procedures for assessing the impacts of tourism and other nongovernmental activities.

Permits are required for tourist operations or other nongovernmental expeditions by vessel or aircraft, the operation of a U.S. facility in Antarctica, and activities for which there is a specific permitting requirement under the Protocol. Under the permitting system proposed in the bill, NSF would forward permit applications to the appropriate federal agency which normally exercises permitting authority for the matter. The concurrence of the Secretary of Commerce is required for permits dealing with tourist activities; the building, or decommissioning of United States facilities; introduction or taking of an Antarctic marine living resource; or an activity that the Director determines will have more than a minor or transitory impact. Activities which are authorized under a permit issued by the NSF are considered to be in compliance with Article Three.

Finally, the bill amends the Antarctic Marine Living Resources Convention Act and the Act to Prevent Pollution from Ships to implement provisions of the Protocol for the protection of living resources and the marine environment.

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By Mr. SIMON (for himself, Mrs. MURRAY, Mr. RIEGLE, Ms. MOSELEY-BRAUN, and Mrs. BOXER):

S. 1428. A bill to amend the Public Health Service Act to provide for programs regarding women and the human immunodeficiency virus, and for other purposes; to the Committee on Labor and Human Resources.

S. 1429. A bill to amend the Public Health Service Act to establish programs of research with respect to women and cases of information with the human immunodeficiency virus, and for other purposes; to the Committee on Labor and Human Resources.

WOMEN AND AIDS LEGISLATION

• Mr. SIMON. Mr. President, women have been virtually ignored in the search for answers and cures for HIV. Ironically, this is true even though the evidence indicating women are anatomically more vulnerable to the disease than men is growing. Today I am introducing legislation to address the critical problem of women with HIV—women who are all too often misdiagnosed, diagnosed too late, or not diagnosed at all.

A report released by the U.N. development programme recently found that women in their teens and early twenties are the fastest growing group of sexually active people being infected with the AIDS virus. The report also found that in most of the Third World AIDS is overwhelmingly a heterosexually transmitted disease. In some areas there are even more women infected than men. I am afraid this is what we have to look forward to in this country as well if we do not act now.

The Centers for Disease Control [CDC] has predicted that by the end of the year, AIDS will be one of the five leading causes of death in women of reproductive age in this Nation. American women are coming down with AIDS four times as fast as American men, according to the CDC. In many areas around the United States the incidence of HIV in women is nearly equal to that of men. By 1996, it is expected that AIDS will be the leading cause of death in African-American women of reproductive age.

These statistics are devastating. Yet despite them, most AIDS research, treatment, and prevention programs focus predominantly on men. This is significant not only in light of the evidence regarding women's increased vulnerability to AIDS, but also because AIDS appears to manifest itself differently in women than in men, often appearing first in a woman's reproductive tract. In addition, women at high risk of contracting the HIV virus often do not acknowledge the risks. In a recent CDC study, about 80 percent of women who went to public clinics for the treatment of intravenous drug use or sexually transmitted diseases did not believe that they were at risk for HIV infection. This startling report demonstrates the critical need for preventive services for high-risk women.

In response to this serious problem, I am introducing two bills to remedy the neglect of the growing AIDS epidemic among women. One bill will provide for research on HIV infection in women; the other will improve outreach and access to preventive health services for women with HIV/AIDS in this country. Congresswoman CONNIE MORELLA has already introduced similar legislation on the House side and I am pleased to be able to join her in this effort.

A major focus of the research bill is the creation of barrier and chemical methods of protection from sexually transmitted diseases that might increase a woman's risk of contracting AIDS and from AIDS itself. Some scientists believe we could be less than 10 years away from an AIDS virucide. In addition, there is funding to expand existing studies on HIV in women and for support services allowing women to enroll in clinical trials that will include sex-specific examinations.

There is also funding for those who provide health care services to women, to help educate them about HIV, and test them for the disease. Many public clinics and community health centers already have unfunded prevention programs. This bill will allow more providers to reach more women, both those who use their facilities and those in the community who are not currently using their services.

AIDS is not a disease that affects only a select population of the United States. This disease has shown no prejudice. Our tragic neglect of women in this country with HIV and AIDS is coming back to haunt us. Nearly 80,000 women are currently affected and this number will continue to increase unless this Congress takes action. I thank my colleagues Senators MURRAY, RIEGLE, MOSELEY-BRAUN, and BOXER for their early cosponsorship of these bills, and I urge other Senators to join us.

Mr. President, I ask unanimous consent that the text of the bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1428

*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 "Women and HIV Outreach and Prevention Act".

**SEC. 2. PREVENTIVE HEALTH PROGRAMS REGARDING WOMEN AND HUMAN IMMUNODEFICIENCY VIRUS.**

Title XXV of the Public Health Service Act (42 U.S.C. 300ee et seq.) is amended by adding at the end the following part:

"PART C—PROGRAMS FOR WOMEN

**"SEC. 2531. PREVENTIVE HEALTH SERVICES.**

"(a) IN GENERAL.—The Secretary may make grants for the following purposes:

"(1) Providing to women preventive health services that are related to acquired immune deficiency syndrome, including—

"(A) counseling on the prevention of infection with, and the transmission of, the etiologic agent for such syndrome; and

"(B) screening women for infection with such agent.

"(2) Providing appropriate referrals regarding the provision of other services to women who are receiving services pursuant to paragraph (1), including, as appropriate, referrals for treatment for such infection, referrals for treatment for substance abuse, mental health services, referrals regarding pregnancy, childbirth, and pediatric care, and referrals for housing services.

"(3) Providing follow-up services regarding such referrals, to the extent practicable.

"(4) Improving referral arrangements for purposes of paragraph (2).

"(5) In the case of a woman receiving services pursuant to any of paragraphs (1) through (3), providing to the partner of the woman the services described in such paragraphs, as appropriate.

"(6) With respect to the services specified in paragraphs (1) through (5)—

"(A) providing outreach services to inform women of the availability of such services; and

"(B) providing training regarding the effective provision of such services.

"(b) MINIMUM QUALIFICATIONS OF GRANTEES.—The Secretary may make a grant under subsection (a) only if the applicant for the grant is a grantee under section 329, section 330, or section 1001, or is another public or nonprofit private entity that provides health or voluntary family planning services to a significant number of low-income women in a culturally sensitive and language appropriate manner.

"(c) CONFIDENTIALITY.—The Secretary may make a grant under subsection (a) only if the applicant for the grant agrees to maintain the confidentiality of information on individuals regarding screenings pursuant to

subsection (a), subject to complying with applicable law.

"(d) APPLICATION FOR GRANT.—The Secretary may make a grant under subsection (a) only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out such subsection.

"(e) EVALUATIONS AND REPORTS.—

"(1) EVALUATIONS.—The Secretary shall, directly or through contracts with public or private entities, provide for evaluations of projects carried out pursuant to subsection (a).

"(2) REPORTS.—Not later than 1 year after the date on which amounts are first appropriated under subsection (f), and annually thereafter, the Secretary shall submit to the Congress a report summarizing evaluations carried out under paragraph (1) during the preceding fiscal year.

"(f) AUTHORIZATIONS OF APPROPRIATIONS.—

"(1) TITLE X CLINICS.—For the purpose of making grants under subsection (a) to entities that are grantees under section 1001, and for the purpose of otherwise carrying out this section with respect to such grants, there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

"(2) COMMUNITY AND MIGRANT HEALTH CENTERS; OTHER PROVIDERS.—For the purpose of making grants under subsection (a) to entities that are grantees under section 329 or 330, and to other entities described in subsection (b) that are not grantees under section 1001, and for the purpose of otherwise carrying out this section with respect to such grants, there are authorized to be appropriated $20,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

**"SEC. 2532. PUBLIC EDUCATION.**

"(a) IN GENERAL.—The Secretary may make grants for the purpose of developing and carrying out programs to educate women on the prevention of infection with, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

"(b) MINIMUM QUALIFICATIONS OF GRANTEES.—The Secretary may make a grant under subsection (a) only if the applicant involved is a public or nonprofit private entity that is experienced in carrying out health-related activities for women, with a priority given to such entities that have successfully targeted women of color.

"(c) APPLICATION FOR GRANT.—The Secretary may make a grant under subsection (a) only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out such subsection.

"(d) EVALUATIONS AND REPORTS.—

"(1) EVALUATIONS.—The Secretary shall, directly or through contracts with public or private entities, provide for evaluations of projects carried out pursuant to subsection (a).

"(2) REPORTS.—Not later than 1 year after the date on which amounts are first appropriated under subsection (e), and annually thereafter, the Secretary shall submit to the Congress a report summarizing evaluations carried out under paragraph (1) during the preceding fiscal year.

"(e) AUTHORIZATIONS OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.".

**SEC. 3. TREATMENT OF WOMEN FOR SUBSTANCE ABUSE.**

Subpart 1 of part B of title V of the Public Health Service Act (42 U.S.C. 290bb et seq.), as amended by section 108 of Public Law 102-321 (106 Stat. 336), is amended by inserting after section 509 the following section:

"TREATMENT OF WOMEN FOR SUBSTANCE ABUSE

"SEC. 509A. (a) IN GENERAL.—The Director of the Center for Substance Abuse Treatment may make awards of grants, cooperative agreements, and contracts for the purpose of carrying out programs—

"(1) to provide treatment for substance abuse to women, including women with dependent children;

"(2) to provide to such women counseling on the prevention of infection with, and the transmission of, the etiologic agent for acquired immune deficiency syndrome; and

"(3) to provide such counseling to women who are the partners of individuals who engage in such abuse.

"(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out subsection (a), there are authorized to be appropriated $20,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.".

**SEC. 4. EARLY INTERVENTION SERVICES FOR WOMEN.**

Section 2655 of the Public Health Service Act (42 U.S.C. 300ff-55) is amended—

(1) by striking "For the purpose of" and inserting "(a) IN GENERAL.—For the purpose of"; and

(2) by adding at the end the following subsection:

"(b) PROGRAMS FOR WOMEN.—For the purpose of making grants under section 2651 to provide to women early intervention services described in such section, and for the purpose of providing technical assistance under section 2654(b) with respect to such grants, there are authorized to be appropriated $20,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.".

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S. 1429

*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 "Women and AIDS Research Initiative Amendments of 1993".

**SEC. 2. ESTABLISHMENT OF GENERAL PROGRAM OF RESEARCH REGARDING WOMEN AND ACQUIRED IMMUNE DEFICIENCY SYNDROME.**

Part B of title XXII of the Public Health Service Act (42 U.S.C. 800cc-11 et seq.) is amended by adding at the end the following section.

**"SEC. 2321. RESEARCH REGARDING WOMEN.**

"(a) IN GENERAL.—With respect to cases of infection with the human immunodeficiency virus, the Secretary shall establish a program for the purpose of conducting biomedical and behavioral research on such cases in women, including research on the prevention of such cases. The Secretary may conduct such research directly, and may make grants to public and nonprofit private entities for the conduct of the research.

"(b) CERTAIN FORMS OF RESEARCH.—In carrying out subsection (a), the Secretary shall provide for research on—

"(1) the manner in which the human immunodeficiency virus is transmitted to women, including the relationship between cases of infection with such virus and other cases of sexually transmitted diseases, and clinical trials which examine the question of how the level of HIV infection can be prevented by finding and treating sexually transmitted diseases in women;

"(2) measures for the prevention of exposure to and the transmission of such virus, including research on—

"(A) the prevention of any sexually transmitted disease that may facilitate the transmission of the virus;

"(B) rapid, inexpensive, easy-to-use sexually transmitted disease diagnostic tests for women;

"(C) inexpensive single dose therapy for treatable sexually transmitted diseases;

"(D) the development of methods of prevention for use by women; and

"(E) the development and dissemination of prevention programs and materials whose purpose is to reduce the incidence of substance abuse among women;

"(3) the development and progression of symptoms resulting from infection with such virus, including research regarding gynecological infections as well as breast changes, hormonal changes, and menses and menopause changes, whose occurrence becomes probable as a result of the deterioration of the immune system;

"(4) the treatment of cases of such infection, including clinical research; and

"(5) behavioral research on the prevention of such cases and research on model educational programs for such prevention.

"(c) CLINICAL TRIALS.—

"(1) GYNECOLOGICAL EVALUATIONS.—In clinical trials under this title in which women participate as subjects, the Secretary shall ensure that—

"(A) each female subject who is infected with the human immunodeficiency virus—

"(i) undergoes a gynecological examination as part of the evaluation of the medical status of the woman prior to participation in the trial; and

"(ii) receives appropriate follow-up services regarding such examination; and

"(B) the results of the gynecological examinations are analyzed to determine the relationship between gynecological conditions and the infection with such virus.

"(2) STANDARD TREATMENTS FOR GYNECOLOGICAL CONDITIONS.—The Secretary shall conduct or support clinical trials under subsection (a) to determine whether standard methods of treating gynecological conditions are effective in the case of such conditions that arise as a result of infection with the human immunodeficiency virus.

"(3) EFFECTIVENESS OF CERTAIN TREATMENT PROTOCOLS.—With respect to cases of infection with the human immunodeficiency virus, the Secretary shall conduct or support clinical trials under subsection (a) to determine whether treatment protocols approved for men with such cases are effective for women with such cases.

"(4) SUPPORT SERVICES.—

"(A) In conducting or supporting clinical trials under this title in which women participate as subjects, the Secretary shall provide the women with such transportation, child care, and other support services (including medical and mental health services, treatment for drug abuse, and social services), including services addressing domestic violence as may be necessary to enable the women to participate as such subjects.

"(B) Services under subparagraph (A) shall include services designed to respond to the particular needs of women with respect to

participation in clinical trials under this title, including, as appropriate, training of the individuals who conduct the trials.

"(d) PREVENTION PROGRAMS.—

"(1) SEXUAL TRANSMISSION.—

"(A) With respect to preventing the sexual transmission of the human immunodeficiency virus, the Secretary shall conduct or support research under subsection (a) on barrier methods for the prevention of sexually transmitted diseases, including HIV disease, that women can use without their sexual partner's cooperation or knowledge.

"(B) In carrying out subparagraph (A), the Secretary shall give priority to identified research needs and opportunities identified at the National Institutes of Health sponsored meeting on Development of Topical Microbicides that was held in May of 1993, including research on—

"(i) the early stages in infectious processes;

"(ii) the identification, formulation and preclinical evaluation of new preparations;

"(iii) clinical testing for safety and efficacy; and

"(iv) studies concerning the acceptability and compliance of safe, effective microbicides.

"(2) EPIDEMIOLOGICAL RESEARCH.—The Secretary shall conduct or support epidemiological research under subsection (a) to determine the factors of risk regarding infection with the human immunodeficiency virus that are particular to women, including research regarding—

"(A) the use of various contraceptive methods;

"(B) the use of tampons;

"(C) the relationship between such infection and other sexually transmitted diseases;

"(D) the relationship between such infection and various forms of substance abuse (including use of the form of cocaine commonly known as crack); and

"(E) the relationship between such infection and sexual activity.

"(e) INTERAGENCY STUDY.—With respect to the study being carried out by the Secretary (as of June 1993) through various agencies of the Public Health Service for the purpose of monitoring the progression in women of infection with the human immunodeficiency virus, and determining whether such progression is different in women than in men, which study is known as the Women's Interagency HIV Study, the following applies:

"(1) The Secretary shall ensure that not less than 5,000 women with such infection are included in the study.

"(2) The Secretary shall provide for an increase in the number of sites at which the study is to be conducted.

"(3) The Secretary shall ensure that the study period is for a minimum of 8 years.

"(4) With respect to the human cells commonly known as CD4 cells, the Secretary shall ensure that the study adequately addresses the relationship between the number of such cells and other markers in women with such infection and the development of serious illnesses in such women. For purposes of the preceding sentence, the study shall address gynecological conditions, and other conditions particular to women, that are not currently included in the list of conditions arising from such infection that, for surveillance purposes, is maintained by the Director of the Centers for Disease Control and Prevention.

"(f) DEFINITION.—For purposes of this section, the term 'human immunodeficiency virus' means the etiologic agent for acquired immune deficiency syndrome.

"(g) AUTHORIZATIONS OF APPROPRIATIONS.—

"(1) CLINICAL TRIALS.—

"(A) For the purpose of carrying out subsection (c)(1), there are authorized to be appropriated $20,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1996.

"(B) For the purpose of carrying out subsection (c)(2), there are authorized to be appropriated $10,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1996.

"(C) For the purpose of carrying out subsection (c)(3), there are authorized to be appropriated $10,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1996.

"(D) For the purpose of carrying out subsection (c)(4), there are authorized to be appropriated $15,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

"(2) PREVENTION PROGRAMS.—

"(A) For the purpose of carrying out subsection (d)(1), there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1996.

"(B) For the purpose of carrying out subsection (d)(2), there are authorized to be appropriated $10,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1996.

"(3) INTERAGENCY STUDY.—For the purpose of carrying out subsection (e), there are authorized to be appropriated $15,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1996.".

Mr. RIEGLE. Mr. President, I am speaking today in support of the Women and HIV Outreach And Prevention Act and the women and AIDS research initiative amendments, both of which I am cosponsoring with Senator SIMON.

In Michigan, women number about 12 percent of the AIDS caseload. Although they number only about 15 percent of the caseload nationwide, they are the fastest growing group in the epidemic. In 1992, new AIDS cases in men increased by 2.5 percent while the increase in women was 9.8 percent.

AIDS and HIV are especially serious in women because the likelihood that the virus will be transmitted to their children. Almost 80 percent of women with AIDS are of reproductive age, and HIV-infected women transmit the virus during pregnancy to between 25 and 35 percent of their children.

Since AIDS has traditionally been seen as a male-dominated disease, however, women have been excluded from most research on HIV and AIDS, and less is known about the disease's progression in women. For example, the early stages of HIV infection produce different symptoms in women than they do in men. Women, therefore, are often diagnosed later and miss opportunities for early treatment.

The fact that the disease is increasing among women underscores the need for HIV education aimed specifically at women and biomedical research that pays more attention to the specifics of how the disease affects women.

The HIV Outreach and Prevention Act authorizes grants to provide women with preventive and followup health services related to HIV and AIDS, and it authorizes outreach services to inform women about prevention and transmission of the virus.

The women and AIDS research initiative creates programs to conduct biomedical and behavioral research on the prevention and transmission of HIV in women and on the development and treatment aspects of the disease that are unique to women.

The time has come for us to recognize that women are increasingly affected by this disease and that programs designed specifically for women must be supported. I urge my colleagues to support both of these pieces of legislation.

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By Mr. GRAHAM:

S. 1430. A bill to designate the Federal building in Miami, FL, as the "David W. Dyer Federal Justice Building"; to the Committee on Environment and Public Works.

DAVID W. DYER FEDERAL JUSTICE BUILDING

• Mr. GRAHAM. Mr. President, today I am introducing legislation to name the new Federal Justice Building in Miami, FL, for U.S. Circuit Judge David W. Dyer.

At age 83, Judge Dyer is one of the most distinguished jurists in the State of Florida. His public service career spans more than 50 years, beginning in World War II when he rose to the rank of major in the U.S. Army.

In 1961, President John F. Kennedy appointed him to the U.S. District Court for the Southern District of Florida, which at that time included Tampa and Jacksonville as well as Miami. In 1962, when the district's boundaries were pared down, he became the first chief judge of the reconfigured southern district.

Judge Dyer served as chief judge until 1966, when President Lyndon B. Johnson appointed him to the U.S. Court of Appeals for the Fifth Circuit. Thus, he became the first judge on the court of appeals who was from Miami.

In 1977, Judge Dyer assumed his present position of senior judge, first as a member of the Fifth Circuit and now the Eleventh Circuit Court of Appeals. To this day, he continues to maintain a moderate appellate caseload and sit occasionally as a district court judge.

Judge Dyer had the opportunity to serve on the fifth circuit through the tumultuous period of the 1960's, when the Federal judiciary was called upon to implement the constitutional ideal of equal justice under the law in housing, education, and public accommodations in the South. It is a proud time in our legal history, brought about through the extraordinary courage and sacrifice of the judges of the fifth circuit, among them David W. Dyer.

Judge Dyer has served his community and State in many other ways. He is a past president of the Dade County Bar Association, which is the largest in Florida. He is a former member of the board of governors and executive committee of the Florida Bar, as well as the board of governors of the Maritime Law Association.

He has been honored as a member of Wig and Robe of the University of Miami School of Law and has received an honorary doctorate of law degree from the Stetson University College of Law.

Beyond his many tangible achievements in his most distinguished career, Judge Dyer has served as a model and inspiration for two generations of lawyers. He has shown through example what integrity of character, probity of judgment, and courage of conviction can achieve in implementing our highest ideals.

The legislation I am introducing today would name the new Federal Justice Building in Miami the "David W. Dyer Federal Justice Building." Passage of this bill would be but a token of the appreciation that America and its system of laws owe to Judge Dyer. I ask that the bill be printed in the RECORD following my remarks and am hopeful that the Senate will grant its swift approval.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1430

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DESIGNATION.**

The Federal building at 99 Northeast Fourth Street in Miami, Florida, is designated as the "David W. Dyer Federal Justice Building".

**SEC. 2. LEGAL REFERENCES.**

Any reference in any law, regulation, document, record, map, or other paper of the United States to the Federal building referred to in section 1 is deemed to be a reference to the "David W. Dyer Federal Justice Building".●

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By Mr. DECONCINI:

S. 1431. A bill to establish a Commission on Crime and Violence; to the Committee on the Judiciary.

NATIONAL COMMISSION ON CRIME AND VIOLENCE IN AMERICA

● Mr. DECONCINI. Mr. President, I introduce legislation which will create a National Commission on Crime and Violence in America. This Commission will review the effectiveness of traditional and contemporary criminal justice approaches in preventing and controlling crime and violence. It will examine all aspects of our criminal justice system and develop a comprehensive crime control and antiviolence plan that will serve as a blueprint for the 1990's.

On June 1–2, 1993, I chaired 2 days of comprehensive hearings in Arizona under the auspices of the Judiciary Subcommittee on Juvenile Justice to gather information on the growing problem of youth violence. In those hearings, I heard from over 45 witnesses, including community and neighborhood activists, law enforcement, judges, government officials, teachers, and current and former gang members.

I have also organized and participated in community roundtables in Tucson and Phoenix to discuss this disturbing issue. I intend to continue to conduct these community roundtables to hear from those who not only read about the violence epidemic in the paper, but live it every day. Because these roundtables bring together representatives from all sectors of the community, the diversity of opinions and outlooks provide an excellent forum for effective problem identifications and solutions.

There are many reasons for establishing a National Commission on Crime and Violence in America. For example, in this country there is one murder every 21 minutes, one forcible rape every 5 minutes, one robbery every 46 seconds, one aggravated assault every 29 seconds, one motor vehicle theft every 19 seconds, and one burglary every 10 seconds.

Our current criminal justice system needs to be reformed before we lose control of our streets and neighborhoods. Our citizens should not be forced to tolerate a level of violence which is 5 times higher than Canada's and 10 times that of England. If the status quo is unchanged, 100,000 Americans will be murdered in the next 4 years.

Unfortunately, young adults in this country are most seriously affected by the surge in violent crime. Polls have demonstrated that the largest fear of American parents is that students will have guns at school. As many as 7 parents in 10 no longer consider their children safe at home, on neighborhood streets or in school. One parent in six knows a child who has been shot and one parent in five knows a child who carries a gun. My own State of Arizona had recently seen a staggering increase in violent youth crimes. In 1991, 2,093 teenagers under 18 were arrested for violent crimes, up 89 percent in Arizona from 1989.

Our Nation's youth grow up in a much more dangerous environment than any previous generation. In 1940, the main problems in public schools were talking out of turn, chewing gum, making noise, running in halls, cutting in line, and littering. In 1990, students face quite a different dilemma—robbery, assault, suicide, pregnancy, and drug and alcohol abuse are the rule of the day.

The Commission will convene hearings throughout the country to hear testimony from a cross-section of our citizens. The hearing will reach beyond the traditional criminal justice community to ensure the development of a comprehensive crime control plan.

After conducting a comprehensive study of the economic and social factors which contribute to crime and violence, the Commission will propose specific recommendations for legislative and administrative actions to eliminate these problems. These recommendations will include improvement in the coordination of Federal, State, local, and international crime control efforts. They will also address prison overcrowding to ensure that the most serious offenders are kept off of our streets.

The Commission will be composed of 22 members. The President will appoint six, the Speaker of the House of Representatives will appoint eight, and the President pro tempore of the Senate will appoint eight. The members of the Commission will be specially qualified to serve because of their education, training, expertise and/or experience.

The Commission will examine the impact of changes in Federal immigration laws and the increased growth in crime and violence on our borders. In addition, it will review the problem of youth gangs and present recommendations to reduce their involvement in violent crimes. Furthermore, the use of assault weapons and highpower firearms in violent crimes will also be examined.

The establishment of the National Commission on Crime and Violence in America will have a number of positive effects. First, it will identify the prevalent flaws in our criminal justice system. Second, it will provide a quality forum to address changes for the future. Third, it will specifically address the emergency of new problems, such as youth involvement in violence. Finally, it will develop a comprehensive crime control and antiviolence plan that will provide effective guidance for the criminal justice system in the 1990's.

Mr. President, I urge my colleagues to support this legislation, I ask unanimous consent that the full text of my bill be printed at this point in the RECORD.

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

S. 1431

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ESTABLISHMENT OF COMMISSION ON CRIME AND VIOLENCE.**

(a) ESTABLISHMENT.—There is established a commission to be known as the "National Commission on Crime and Violence in America" (referred to as the "Commission").

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 22 members, of whom—

(A) 6 shall be appointed by the President;

(B) 8 shall be appointed by the Speaker of the House of Representatives, of whom 2 shall be appointed on the recommendation of the minority leader; and

(C) 8 shall be appointed by the President pro tempore of the Senate, of whom 6 shall be appointed on the recommendation of the majority leader and 2 shall be appointed on the recommendation of the minority leader.

(2) GOALS IN MAKING APPOINTMENTS.—In appointing members of the Commission, the President, Speaker, President pro tempore, and the majority and minority leaders shall seek to ensure that—

(A) the membership of the Commission reflects the racial, ethnic, and gender diversity of the United States; and

(B) members are specially qualified to serve on the Commission by reason of their education, training, expertise, or experience in—

(i) sociology;

(ii) psychology;

(iii) law;

(iv) law enforcement;

(v) social work; and

(vi) ethnography and urban poverty, including health care, housing, education, and employment.

(3) DEADLINE.—Members of the Commission shall be appointed within 60 days after the date of enactment of this Act.

(4) TERM.—Members shall serve on the Commission through the date of its termination under section 7.

(5) MEETINGS.—The Commission—

(A) shall have its headquarters in the District of Columbia; and

(B) shall meet at least once each month for a business session.

(6) QUORUM.—Twelve members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(7) CHAIRPERSON AND VICE CHAIRPERSON.—Not later than 15 days after the members of the Commission are appointed, the members shall designate a Chairperson and Vice Chairperson of the Commission.

(8) VACANCIES.—A vacancy in the Commission shall be filled not later than 30 days after the Commission is informed of the vacancy in the manner in which the original appointment was made.

(9) COMPENSATION.—

(A) NO PAY, ALLOWANCE, OR BENEFIT.—Members of the Commission shall receive no pay, allowances, or benefits by reason of their service on the Commission.

(B) TRAVEL EXPENSES.—A member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

**SEC. 2. DUTIES.**

The Commission shall—

(1) review the effectiveness of traditional criminal justice approaches in preventing and controlling crime and violence;

(2) examine the impact that changes to Federal and State law have had in controlling crime and violence;

(3) examine the impact of changes in Federal immigration laws and policies and increased development and growth along United States international borders on crime and violence in the United States, particularly among our Nation's youth;

(4) examine the problem of youth gangs and provide recommendations on how to reduce youth involvement in violent crime;

(5) examine the extent to which assault weapons and high power firearms have contributed to violence and murder in the United States;

(6) convene hearings in various parts of the country to receive testimony from a cross section of criminal justice professionals, business leaders, elected officials, medical doctors, and other citizens that wish to participate;

(7) review all segments of the criminal justice system, including the law enforcement, prosecution, defense, judicial, corrections components, in developing the crime control and antiviolence plan;

(8) develop a comprehensive and effective crime control and antiviolence plan that will serve as a blueprint for action in the 1990's;

(9) bring attention to successful models and programs in crime prevention, crime control, and antiviolence;

(10) reach out beyond the traditional criminal justice community for ideas when developing the comprehensive crime control and antiviolence plan;

(11) recommend improvements in the coordination of Federal, State, local, and international border crime control efforts;

(12) make a comprehensive study of the economic and social factors leading to or contributing to crime and violence and specific proposals for legislative and administrative actions to reduce crime and violence and the elements that contribute to crime and violence; and

(13) recommend means of allocating finite correctional facility space and resources to the most serious and violent offenders, with the goal of achieving the most cost-effective crime control and protection of the community and public safety, after—

(A) examining the issue of disproportionate incarceration rates among black males and any other minority group disproportionately represented in Federal and State correctional populations; and

(B) considering increased use of alternatives to incarceration that offer a reasonable prospect of equal or better crime control at equal or less cost than incarceration.

**SEC. 4. STAFF AND SUPPORT SERVICES.**

(a) DIRECTOR.—

(1) APPOINTMENT.—After consultation with the members of the Commission, the Chairperson shall appoint a director of the Commission (referred to as the "Director").

(2) COMPENSATION.—The Director shall be paid the rate of basic pay for level V of the Executive Schedule.

(b) STAFF.—With the approval of the Commission, the Director may appoint such personnel as the Director considers to be appropriate.

(c) CIVIL SERVICE LAWS.—The staff of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(d) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(e) STAFF OF FEDERAL AGENCIES.—Upon the request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, personnel of that agency to the Commission to assist in carrying out its duties.

(f) PHYSICAL FACILITIES.—The Administrator of the General Services Administration shall provide suitable office space for the operation of the Commission. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for proper functioning.

**SEC. 5. POWERS.**

(a) HEARINGS.—The Commission may conduct public hearings or forums at its discretion, at any time and place it is able to secure facilities and witnesses, for the purpose of carrying out its duties.

(b) DELEGATION OF AUTHORITY.—Any member or agent of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take by this section.

(c) INFORMATION.—The Commission may secure from any Federal agency or entity in the executive or legislative branch such materials, resources, statistical data, and other information as is necessary to enable it to carry out this Act. Upon request of the Chairperson or Vice Chairperson of the Commission, the head of a Federal agency or entity shall furnish the information to the Commission to the extent permitted by law.

(d) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

**SEC. 6. REPORTS.**

(a) MONTHLY REPORTS.—The Commission shall submit monthly activity reports to the President and the Congress.

(b) INTERIM REPORT.—Not later than 1 year before the date of its termination, the Commission shall submit an interim report to the President and the Congress containing—

(1) a detailed statement of the findings and conclusions of the Commission;

(2) recommendations for legislative and administrative action based on the Commission's activities to date;

(3) an estimation of the costs of implementing the recommendations made by the Commission; and

(3) a strategy for disseminating the report to Federal, State, and local authorities.

(c) FINAL REPORT.—Not later than the date of its termination, the Commission shall submit to the Congress and the President a final report with a detailed statement of final findings, conclusions, recommendations, and estimation of costs and an assessment of the extent to which recommendations included in the interim report under subsection (b) have been implemented.

(d) PRINTING AND PUBLIC DISTRIBUTION.—Upon receipt of each report of the Commission under this section, the President shall—

(1) order the report to be printed; and

(2) make the report available to the public.

**SEC. 7. TERMINATION.**

The Commission shall terminate on the date that is 2 years after the date on which members of the Commission have met and designated a Chairperson and Vice Chairperson.●

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By Mr. HOLLINGS (for himself, Mr. BREAUX, Mr. KERRY, Mr. ROBB, and Ms. MIKULSKI):

S. 1432. A bill to amend the Merchant Marine Act, 1936, to establish a National Commission to Ensure a Strong

and Competitive U.S. Maritime Industry; to the Committee on Commerce, Science, and Transportation.

MARITIME COMPETITIVENESS ACT OF 1993

Mr. HOLLINGS. Mr. President, I rise today out of concern for the current state of our U.S.-flag maritime industry and what may lie ahead for its future. I have just received disturbing reports that the administration may be considering options which would literally destroy the U.S. shipping industry. This comes at a time when the industry is at its lowest point. In fact, the largest American shipping companies, American President Lines and Sea-Land, have just applied to the Department of Transportation to reflag a substantial portion of their fleets in foreign countries.

Apparently, these options or recommendations are under discussion as part of the National Performance Review. This review is an effort to streamline Government and make it more efficient—both goals which I, of course, do support. I do not support, however, the streamlining of American industries out of existence.

The options that are reported to be under consideration cut to the heart of the U.S. maritime industry. They include:

Closing the U.S. Merchant Marine Academy;

Not extending operating differential subsidy;

Disallowing title XI loan guarantees for ship construction;

Opening the U.S.-flag fleet to foreign built and repaired ships, foreign investors, and foreign crews;

Eliminating the Jones Act and the Passenger Vessel Act of 1986;

Eliminating cargo preference;

Eliminating antitrust immunity for shipping conferences;

Eliminating tariff-filing requirements; and

Separating the national defense issues from the industrial issue of maritime reform.

If these programs were to be eliminated, there would be nothing left of the U.S. maritime industry.

Although all of the recommendations that have been proposed are terribly disturbing to me, none is more troubling than the one that decouples the defense issues from the maritime issues. I simply do not understand how anyone can say that our merchant shipping fleet is not essential for our national defense. Every uniformed military person to whom I have talked who has any responsibility for the transportation of military cargo has told me privately that it is essential that we have the U.S.-flag merchant marine. However, when the Defense Department testifies on Capitol Hill, its statements contain no such assertions.

The policy wonks at the Defense Department must be the ones responsible for a policy that states that we do not need U.S.-flag ships or a U.S. shipbuilding industry. They would rather own and operate their own gray hulled ships which they will hold in reserve and call into service only when they are needed. In fact, the Navy announced last week that it was awarding a $1 billion contract to convert five foreign-built ships. This policy makes no sense to me.

Some would say that the United States can rely on ships owned by friendly nations. However, who is to say that friends today will not be foes tomorrow? Some people do not seem concerned about relying on the foreign crews that operate these ships. Do they honestly think these foreign nationals will voluntarily subject themselves to the dangers of war simply because the United States asks them to? I do not think so. They refused to go into the Persian Gulf, and they will refuse to go elsewhere.

Even if we could rely on our friends to supply us with ships and crews in time of war, how are we supposed to operate our own military reserve ships? The U.S.-flag commercial ships will be gone, and the U.S. citizens crews will be gone with them. There will be no pool of experienced mariners from which we can draw to operate these ships.

The U.S. maritime industry not only is essential for our national defense, but it also is vital to our economic security. Without a U.S.-flag commercial fleet, our manufacturers, importers, and exporters would be at the mercy of the trade practices of foreign nations, such as Japan.

In response to the precipitous decline of the United States maritime industry and the apparent inability of the U.S. Government to address that decline, I am introducing legislation today that quickly will establish a commission to take a close look at the issues confronting the industry and make recommendations to ensure its survival. Commissioners would be appointed based on their expertise in areas related to the U.S. maritime industry. In particular, the commission will address the factors that prevent U.S.-flag carriers from being globally competitive in ship operating and shipbuilding. These include U.S. laws and regulations pertaining to taxes, environmental protection, worker safety, and vessel construction, and operation. Additionally, the commission will review the adequacy of our merchant marine for national security purposes. Within 60 days after it is consulted, the commission will issue a report to the President and Congress which will include its recommendations for the revitalization of the industry.

This legislation is necessary to ensure that the issue of maritime reform is given fair consideration. The U.S. maritime industry is critical to our national interest. In fact, Gen. Colin Powell, Chairman of the Joint Chiefs of Staff, said it best in the commencement address that he gave to the U.S. Merchant Marine Academy on June 15, 1992:

We are a maritime nation. Our strategy demands that we have access to foreign markets, to energy, to mineral resources and to the oceans. We must be able to project power across the seas. This means that not only do we need a strong navy, but a strong maritime industry as well.

Mr. President, I ask unanimous consent that the text of the bill I am introducing, along with my statement, be printed in the CONGRESSIONAL RECORD.

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

S. 1432

*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 "Maritime Competitiveness Act of 1993".

**SEC. 2. FINDINGS.**

The Congress finds the following:

(1) Since early in our Nation's history, it has been the policy of the United States to maintain a strong United States maritime industry that—

(A) includes an operating fleet of modern United States-flag vessels that is sufficient to carry the domestic waterborne commerce of the United States and a substantial portion of the waterborne export and import foreign commerce of the United States, and to provide shipping service essential for maintaining the flow of such domestic and foreign waterborne commerce at all times;

(B) includes a fleet of vessels under United States registry that is adequate to serve as a naval auxiliary in time of war or national emergency;

(C) has a labor force composed of highly trained and efficient United State citizens; and

(D) includes a United States shipbuilding industry with the most modern and efficient facilities.

(2) The United States maritime industry has declined to the point that this long-standing national policy is imperiled.

(3) There is a growing sentiment in favor of reforming the maritime laws and governmental practices in order to revitalize the industry.

(4) Without such reform, it is foreseeable that the remaining United States-flag carriers will shift their operations to foreign-flag vessels and the Nation's shipbuilding industry and other sectors of the maritime industry will continue to decline.

(5) A focused review of the United States maritime industry and impediments to its success should be undertaken in order to lay a solid foundation for reform.

**SEC. 3. AMENDMENT TO MERCHANT MARINE ACT, 1936.**

The Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.), is amended by adding at the end the following new title:

"TITLE XIV—NATIONAL COMMISSION ON MARITIME INDUSTRY COMPETITIVENESS

**"SEC. 1401. ESTABLISHMENT.**

"There is established a commission to be known as the 'National Commission to Ensure a Strong and Competitive United States

Maritime Industry' (hereinafter referred to as the 'Commission').

**"SEC. 1402. FUNCTIONS.**

"(a) INVESTIGATION AND STUDY.—The Commission shall make a complete investigation and study of the condition of the United States maritime industry, and impediments to a strong and competitive United States maritime industry.

"(b) POLICY RECOMMENDATIONS.—Based on the results of the investigation and study to be conducted under subsection (a), the Commission shall recommend to the President and Congress those policies which should be adopted to—

"(1) achieve the national goal of a strong and competitive United States maritime industry which will help to provide for the national defense and economic security;

"(2) revitalize the fleet of United States-flag vessels and maintain that fleet at a level sufficient to contribute to the national defense and the economic security of the Nation;

"(3) foster a viable United States shipbuilding industry to provide an industrial base for meeting present and future military and civilian shipbuilding needs; and

"(4) reduce the loss of seafaring and shipbuilding jobs for United States citizens so as to ensure the existence of a reliable maritime labor force.

**"SEC. 1403. SPECIFIC MATTERS TO BE ADDRESSED.**

"The Commission shall specifically investigate and study under section 1402(a) the following:

"(1) CURRENT CONDITION OF UNITED STATES MARITIME INDUSTRY.—The current condition of the United States maritime industry, including how the condition of the industry is likely to change over the next 10 years.

"(2) NATIONAL DEFENSE.—The adequacy of the United States maritime industry to ensure the national defense.

"(3) MARITIME LABOR.—Whether there is an adequate number of skilled mariners and shipyard workers, the level of training of United States mariners at training facilities in the United States, and the effect of wage rates on the global competitiveness of the United States maritime industry.

"(4) IMPEDIMENTS TO A STRONG AND COMPETITIVE MARITIME INDUSTRY.—Whether the Federal Government should take any legislative or administrative actions to improve the condition of the United States maritime industry, including whether any changes are needed in the legal and administrative policies which govern—

"(A) support for United States-flag vessel operations;

"(B) the taxes and user fees imposed on United States maritime enterprises;

"(C) the regulatory requirements imposed on United States-flag vessels and their operators, including environmental, vessel construction, and safety standards; and

"(D) incentives to encourage investment in United States-flag vessel operations and United States shipbuilding.

"(5) INTERNATIONAL MARITIME POLICY.—Whether the policies and strategies followed by the United States in international maritime policy are promoting the ability of the United States maritime industry to achieve long-term competitive success in international markets, including—

"(A) the Government's general negotiating policy;

"(B) the desirability of multilateral rather than bilateral negotiations;

"(C) the rights granted foreign investors to invest in United States-flag shipping and United States shipbuilding; and

"(D) the effect of subsidies and other financial assistance by foreign governments to their vessel operators and shipbuilders.

**"SEC. 1404. MEMBERSHIP; ADMINISTRATIVE MATTERS.**

"(a) APPOINTMENT.—The Commission shall be composed of 15 voting members and 11 nonvoting members as follows:

"(1) 5 voting members and 1 nonvoting member appointed by the President.

"(2) 3 voting members and 3 nonvoting members appointed by the majority leader of the Senate.

"(3) 2 voting members and 2 nonvoting members appointed by the minority leader of the Senate.

"(4) 3 voting members and 3 nonvoting members appointed by the Speaker of the House of Representatives.

"(5) 2 voting members and 2 nonvoting members appointed by the minority leader of the House of Representatives.

"(b) QUALIFICATIONS.—Voting members appointed pursuant to subsection (a) shall be appointed from among individuals who are experts in commercial shipping, international trade, and related disciplines and who can represent United States-flag vessel operators (including domestic passenger vessel operators), seafaring and shipbuilding labor, shipbuilders, shippers, and the financial community with expertise in maritime matters.

"(c) TERMS OF OFFICE.—Members shall be appointed for the life of the Commission.

"(d) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

"(e) TRAVEL EXPENSES.—Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

"(f) CHAIRMAN.—The President, in consultation with the majority leader of the Senate and the Speaker of the House of Representatives, shall designate the Chairman of the Commission from among its voting members.

"(g) COMMISSION PANELS.—The Chairman shall establish such panels consisting of voting members of the Commission as the Chairman determines appropriate to carry out the functions of the Commission.

"(h) STAFF.—The Commission may appoint and fix the pay of such personnel as it considers appropriate.

"(i) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any department or agency of the United States may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this title.

"(j) ADMINISTRATIVE SUPPORT SERVICES.—Upon request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its duties under this title.

"(k) STAFF AND OTHER SUPPORT.—Upon the request of the Commission or a panel of the Commission, the Secretary of Transportation shall provide the Commission or panel with staff and other support to assist the Commission or panel in carrying out its responsibilities.

"(l) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information (other than information required by any statute of the United States to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this title. Upon request of the Commission, the head of that department or agency shall furnish such nonconfidential information to the Commission.

**"SEC. 1405. REPORT.**

"Not later than 60 days after the date on which the initial appointments of members to the Commission are completed, the Commission shall transmit to the President and Congress a report on the activities of the Commission, including recommendations made by the Commission under section 1402(b).

**"SEC. 1406. TERMINATION.**

"The Commission shall terminate on the 30th day after the date of transmittal of the report under section 1405. All records and papers of the Commission shall thereupon be delivered by the Administrator of General Services for deposit in the National Archives.".

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By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 1433. A bill to suspend temporarily the duty on 5-(N,N-dibenzylglycl)-salicylamide, 2-[N-benzyl-N-tert-butylamino]-4'-hydroxy-3'-hydromethylacetophenone hydrochloride, flutamide, and loratadine; to the Committee on Finance.

DUTY SUSPENSION LEGISLATION

• Mr. BRADLEY. Mr. President, I rise to reintroduce legislation to temporarily suspend the duties on a compilation of imported chemicals on behalf of the Schering-Plough Corp. of Madison, NJ. Similar legislation has been introduced on the House side as H.R. 1590 by Representatives ARCHER and SUNDQUIST.

This legislation would suspend the import duties on four chemicals. These chemicals are used to produce finished pharmaceutical products used in the treatment of patients who suffer from hypertension, bronchospasms, allergies, or prostatic cancer.

According to the International Trade Commission, there are no domestic producers of these chemicals. The legislation enables Schering-Plough Corp. to import the chemicals at reasonable prices, making its products more competitive in the international market and more affordable for domestic consumers.

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

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

S. 1433

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SUSPENSIONS OF DUTY ON 5-(N,N-DIBENZYLGLYCYL)-SALICYLAMIDE, 2-[N-BENZYL-N-TERT-BUTYLAMINO]-4'-HYDROXY-3'-HYDROMETHYL-ACETOPHENONE HYDROCHLORIDE, FLUTAMIDE, AND LORATADINE.**

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new headings:

| | | | | | |
|---|---|---|---|---|---|
| "9902.31.12 | 5-(N,N-dibenzyl-glycyl)-salicylamide (LBH-B/C, CAS No. 30566–92–8) (provided for in subheading 2922.30.3000) | Free | No Change | No change | On or before 12/31/96 |
| "9902.31.13 | 2-(N-benzyl-N-tert-butylamino)-4'-hydroxy-3'hydromethylaceto- phenone hydrochloride (Glycyl Hydrochloride, CAS No. 24085–08–3) (provided for in subheading 2922.30.3000). | Free | No change | No change | On or before 12/31/96 |
| "9902.31.14 | Flutamide (CAS No. 13311–84–7) (provided for in subheading 2924.29.3950) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.15 | Loratadine (CAS No. 79794–75–5) (provided for in subheading 2933.90.2600) | Free | No change | No change | On or before 12/31/93". |

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.•

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By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 1434. A bill to suspend temporarily the duty on certain chemicals; to the Committee on Finance.

DUTY SUSPENSION LEGISLATION

• Mr. BRADLEY. Mr. President, I rise to introduce legislation to temporarily suspend the duties on a compilation of imported chemicals on behalf of Biocraft Laboratories, Inc., of Fair Lawn, NJ. Joining me is my colleague Senator DANFORTH. Similar legislation was introduced during the last Congress by Senator DANFORTH, and has been introduced on the House side this year as H.R. 1745 by Congresswoman ROUKEMA and Congressman VOLKMER.

Biocraft Laboratories, Inc., manufacturers and markets generic drugs. Most of the chemicals in this bill are intermediate materials used to manufacture the generic drugs; the others are bulk drug substances. According to the International Trade Commission, Biocraft cannot obtain these essential chemicals from the domestic market.

The costs associated with importing these intermediate products make up a large percentage of the production cost of Biocraft's generic drugs. This suspension would allow Biocraft to offer these generic drugs to the public at lower prices. Since generic drugs are often used to cut costs in military and veterans' hospitals, and for Medicare and Medicaid recipients, the lower prices will also help to reduced Government-assisted health care costs.

| | | | | | |
|---|---|---|---|---|---|
| "9902.31.12 | (R) -α-Amino-1, cyclohexadiene-1-acetic acid (CAS No. 26774–88–9) (provided for in subheading 2922.49.50 | Free | No change | No change | On or before 12/31/96." |
| "9902.31.13 | (R)-α-Amino-4- hydroxybenzene-acetic acid (CAS No. 22818–40–2) (provided for in subheading 2922.50.30) | Free | No change | No change | On or before 12/31/96." |
| "9902.31.14 | (R)-α-Aminobenzeneacetic acid (CAS No. 875–74–1) (provided for in subheading 2922.49.35) | Free | No change | No change | On or before 12/31/96." |
| "9902.31.15 | N,N'- Bis(trimethyl-silyl)urea (CAS No. 18297–63–7) (provided for in subheading 2931.00.50) | Free | No change | No change | On or before 12/31/96." |
| "9902.31.18 | Penicillin V potassium (CAS No. 132–98–9) (provided for in subheading 2941.10.50) | Free | No change | No change | On or before 12/31/96." |
| "9902.31.19 | Penicillin G potassium (CAS No. 113–98–4) (provided for in subheading 2941.10.20) | Free | No change | No change | On or before 12/31/96." |

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

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

S. 1434

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. TEMPORARY DUTY SUSPENSIONS.**

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new headings:

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.•

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By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 1435. A bill to suspend temporarily the duty on certain chemicals; to the Committee on Finance.

S. 1436. A bill to extend the suspension of duties on certain chemicals; to the Committee on Finance.

DUTY SUSPENSION LEGISLATION

• Mr. BRADLEY. Mr. President, I rise to reintroduce two pieces of legislation to temporarily suspend the duties on a compilation of imported chemicals on behalf of Lonza, Inc., a company based in Fair Lawn, NJ. Similar bills have been introduced on the House side as H.R. 1070 and H.R. 1071 by Representative TORRICELLI.

Lonza, Inc., manufactures and markets a diverse line of inorganic, organic, and specialty chemicals tailored to the performance requirements of specific segments of the chemical industry. The chemicals in this bill range in usage from a nutrient supplement for baby food, to an antibacterial wound cleanser, to a combatant of alcoholism.

According to the International Trade Commission, there are no domestic producers of these chemicals. The legislation enables Lonza, Inc., to import the chemicals at reasonable prices, making its products more competitive in the international market and more affordable for consumers here at home.

| | | | | | |
|---|---|---|---|---|---|
| "9902.31.12 | Malonic acid (provided for in subheading 2917.19.50) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.13 | 4,4,4-Trifluoro-3-axobutanoic acid, Ethyl estar and 4,4,4- Trifluoro-3-oxobutanoic acid, methyl ester (provided for in subheading 2918.30.50) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.14 | 2-Chloro-N,N-dimethylethyl-amine hydro-chloride, 2-(diethylamino) ethyl chloride hydrochloride, and dimethyl-aminoisopropyl chloride hydrochloride (provided for in subheading 2921.19.50) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.15 | 4,4-Methylenebis-(2,6-diethylaniline) (provided for in subheading 2921.51.50) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.16 | 2-Amino-5-Chlorobenzo-phenone (provided for in subheading 2922.30.35) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.17 | 3-Aminocrotonic acid, methyl estar (provided for in subheading 2922.49.50) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.18 | Tetramethyl-guanidine (provided for in subheading 2925.20.50) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.19 | 1,3-Phenylenebis (1-methylethyl-idenebis) Cyanic acid 1,4-phenylene ester (provided for in subheading 2929.90.10) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.20 | Calcium Lactobionate (provided for in subheading 2932.90.50) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.21 | 2-Methyl-5-Ethyl-pyridine (provided for in subheading 2933.39.20) | Free | No change | No change | On or before 12/31/96 |
| "9502.31.22 | Piperidinoethyl Chloride Hydrochloride (provided for in subheading 2933.39.47) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.23 | 2-Amino-4-Chloro-6-Methoxy-pyrimidine and 2-Amino-4,6-Dimethoxy-pyrimidine (provided for in subheading 2933.59.90) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.24 | Morpholinoethyl Chloride Hydrochloride (provided for in subheading 2934.90.50) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.25 | Physostigmine Salicylate (Eserine Salicylate) (provided for in subheading 2939.90.10) | Free | No change | No change | On or before 12/31/96 |
| "9902.31.26 | Lobeline Sulphate (provided for in subheading 2939.90.50 | Free | No change | No change | On or before 12/31/96 |
| "9902.31.27 | D-Arabinose (provided for in subheading 2940.00.00) | Free | No change | No change | On or before 12/31/96". |

Mr. President, I ask unanimous consent that the text of the bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1435

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. TEMPORARY DUTY SUSPENSIONS.**

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new headings:

**SEC. 2. EFFECTIVE DATE.**

The amendment made by section 1 applied with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

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S. 1436

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SUSPENSION OF DUTIES ON CERTAIN CHEMICALS.**

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by striking "12/31/92" and inserting "12/31/96" in each of the following headings:

(1) Heading 9902.29.49 (relating to Benzethonium chloride).

(2) Heading 9902.29.59 (relating to 2,2—Bis(4-cyanatophenyl)propane).

(3) Heading 9902.29.62 (relating to Paraldehyde, USP grade).

(4) Heading 9902.29.63 (relating to Aminomethylphenylpyrazole (Phenylmethylaminopyrazole).

(5) Heading 9902.29.67 (relating to 3-Methyl-1-(p-tolyl)-2-pyrazolin-5-one (p-Tolylmethylpyrazolone)).

(6) Heading 9902.29.69 (relating to 3-Methyl-5-pyrazolone).

(7) Heading 9902.29.71 (relating to Barbituric acid).

(8) Heading 9902.30.13 (relating to 4,4'-Methylenebis-(2,6-dimethyl-phenylcyanate)).

(9) Heading 9902.30.29 (relating to 4,4'-Methylenebis-(3-chloro-2,6-diethylaniline)).
(10) Heading 9902.30.30 (relating to 4,4'-Methylenebis-(2,6-diisoprophylaniline)).
(11) Heading 9902.30.57 (relating to L-Carnitine).
(12) Heading 9902.30.59 (relating to Acetoacet-para-toluidide).
(13) Heading 9902.30.63 (relating to Acetoacetsulfanilic acid, potassium salt).
(14) Heading 9902.30.72 (relating to 1,1-Ethylidenebis-(phenyl-4-cyanate)).
(15) Heading 9902.30.73 (relating to 2,2'-Bis(4-cyanatophenyl)-1,1,1,3,3,3-hexafluoropropane (CAS No. 32728-27-1)).
(16) Heading 9902.30.74 (relating to 4,4'-Thiodiphenyl cyanate).
(17) Heading 9902.30.86 (relating to 6-Methyluracil).
(18) Heading 9902.30.92 (relating to Ethyl 2-(2-aminothiazol-4-yl)-2-hydroxyiminoacetate).
(19) Heading 9902.30.93 (relating to Ethyl 2-(2-aminothiazol-4-yl)-2-methoxyiminoacetate).
(20) Heading 9902.36.06 (relating to Metaldehyde).
(21) Heading 9902.39.11 (relating to Hydrocarbon novolac cyanate ester).

**SEC. 2 EFFECTIVE DATE.**

(a) IN GENERAL.—the amendments made by section 1 shall apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

(b) RETROACTIVE PROVISION.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon a request filed with the appropriate customs officer on or before the 90th day after the date of the enactment of this Act, any entry, or withdrawal from warehouse for consumption, of an article to which an amendment made by section 1 applies—

(1) that was made after December 31, 1992, and before the 15th day after the date of the enactment of this Act; and

(2) and with respect to which there would have been a lower duty if an amendment made by section 1 applied to such entry or withdrawal,

shall be liquidated or reliquidated as though such entry or withdrawal had occurred on such 15th day.•

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By Mr. DOLE (for himself, Mr. LAUTENBERG, and Mr. HATFIELD):

S. 1437. A bill to amend section 1562 of title 38, United States Code, to increase the rate of pension for persons on the Medal of Honor roll; to the Committee on Veterans' Affairs.

MEDAL OF HONOR PENSION

Mr. DOLE. Mr. President, today, I rise to introduce a bill that will increase the special pension for those living members of the Army, Navy, Air Force, and Coast Guard Congressional Medal of Honor roll.

Serving in the U.S. military has held a place of greatest honor throughout history. Since the birth of our Nation, brave individuals have answered the high call to service. While all men and women who have served in the U.S. Armed Forces are worthy of praise, there exists a select group of soldiers who have earned a special reward.

I am speaking of those men who have been awarded our Nation's highest military honor, the Congressional Medal of Honor. Our distinguished colleague from Nebraska, Senator BOB KERREY, was awarded the Medal of Honor for his action in Vietnam. Senator KERREY's fellow recipients include men from all walks of life; from farmers to corporate presidents and laborers to lawyers. These men have all shown courage and servitude to our Nation above and beyond the call of duty.

Each and every one of them has served their country with dignity and honor. They fought to preserve the spirit of American democracy, and to ensure freedom for all American citizens. These men set themselves apart from the others by acting heroically in crisis situations. Yet they will tell you they were just doing their duty. They will give credit to those that were with them and will tell you to remember those left behind.

There is no record of the lives they saved through their action and bravery, but it is clear to anyone who reads the names on the honor roll that the cost of their sacrifice was often their own life, for the vast majority of the Medals of Honor are awarded posthumously.

Today, there are only 204 survivors whose names appear on the Medal of Honor roll. It is an unfortunate fact that some of these men are actually living below the poverty line. In my view, this is wrong, and I believe that it's time we correct it.

Title 38 of the United States Code allocates a nontransferable pension of $200 a month to surviving members of the Medal of Honor roll. However, this pension has not been adjusted in over 10 years and that $200 is equivalent to less than $50 in today's economy. Current legislation must keep up with our changing economy.

The legislation that I introduce today will raise the monthly pension from $200 to $500. These 204 veterans have not asked for a thing. It is the nature of those that have the courage to be listed on the Medal of Honor roll that they would ask nothing of the Nation for which they gave so much.

I believe it is our responsibility to remember and reward these 204 Americans who gave to their Nation outstanding service. I ask my colleagues to join with me to take this opportunity for our Nation to show its appreciation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1437

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. INCREASE IN RATE OF SPECIAL PENSION FOR PERSONS ON THE MEDAL OF HONOR ROLL.**

(a) IN GENERAL.—Section 1562 of title 38, United States Code, is amended by striking out "$200" and inserting in lieu thereof "$500".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to months beginning after the date of the enactment of this Act.

**SEC. 2. PERMANENT EXTENSION OF PROCEDURES APPLICABLE TO LIQUIDATION SALES UPON DEFAULT OF HOME LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS.**

(a) INCLUSION OF RESALE LOSSES IN NET-VALUE CALCULATION.—Paragraph (1)(C) of section 3732(c) of title 38, United States Code, is amended by inserting "(including losses sustained on the resale of the property)" after "resale".

(b) PERMANENT EXTENSION OF AUTHORITY.—Paragraph (11) of such section is repealed.

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By Mr. STEVENS:

S. 1438. A bill to encourage States to enact and enforce laws ensuring that motor vehicles yield the right-of-way to pedestrians, and for other purposes; to the Committee on Commerce, Science, and Transportation.

PEDESTRIAN RIGHT-OF-WAY LEGISLATION

Mr. STEVENS. Mr. President, Hippocrates once said that "walking is man's best medicine." Fortunately, Hippocrates never had to walk alongside the modern automobile.

For a growing number of Americans, what was once a leisurely stroll has now become a death-defying feat. Drivers of motor vehicles systematically ignore the danger they pose to innocent pedestrians. And the cost to society is enormous.

Every 6 minutes a pedestrian is killed or injured by a motor vehicle. Roughly 7,000 pedestrians are killed each year, and over 100,000 are injured. These numbers are shocking, but not surprising. Who among us has not stepped into a marked crosswalk, only to narrowly avoid being hit by a car?

The number of fatalities, on its face, is terrible. But on closer inspection, the situation is even more tragic.

The Federal Highway Administration has told us that the three groups most at risk of being involved in a pedestrian accident are young children, people with disabilities, and the elderly.

Among youth, those most in danger are poor and minority children. The Centers for Disease Control found that poor children are 2 to 3 times more likely to be involved in a pedestrian accident than other children. That same study noted that minority children are 1.5 times more at risk than white children.

The statistics on people with disabilities are equally troubling. Wheelchair users, people who use walking aids, and those with severe visual impairment all run a higher than average risk of death or injury from pedestrian accidents.

And finally, the greatest risk of being involved in a pedestrian accident falls on Americans aged 70 and over. Sadly, they are also the most likely to die of their injuries.

While the human cost is high, pedestrian fatalities pose an even greater burden to society. A National Highway Traffic Safety Administration study shows that crashes involving pedestrians cost our economy over $1 million each hour. On a yearly basis, pedestrian accidents cause $10 billion in injuries, vehicle damage, insurance costs and lost productivity.

These facts are simply unacceptable.

Studies show time and again that when a pedestrian accident is the driver's fault, it is most often due to the motorist's failure to yield the right-of-way.

Too many drivers take for granted the privilege of being issued a driver's license. Otherwise law-abiding citizens think nothing of violating our traffic laws. For many, speed limits, stop lights and stop signs are no more than an optional nuisance.

And, with few exceptions, States refuse to devote the necessary resources to ensure the safety of pedestrians.

In an effort to put an end to this tragedy, I am introducing today the Safe Transit of Pedestrians Act of 1993, or as I call it, the STOP Act. The STOP Act simply requires States to enact and enforce laws ensuring that cars will stop for pedestrians.

Many States have pedestrian right-of-way laws—but few enforce them. In those that do, drastic improvements in driver behavior have been noted. I spent a portion of my life in California. As soon as a pedestrian steps foot in the roadway in California, traffic comes to an immediate halt. That type of driver behavior should be the rule nationwide.

The STOP Act has already received a great deal of support. Endorsements have come from the American Public Health Association, the Pedestrian Federation of America, the Bicycle Federation of America, and others.

Mr. President, in the time that it has taken me to introduce this bill, another pedestrian has been killed or injured somewhere in America.

The time has come for us to demand that America's drivers stop for pedestrians. For our children, for our friends, and for our families, this needless cycle of death and injury must finally come to an end.

I ask unanimous consent that the text of the bill be printed at the conclusion of my remarks.

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

S. 1438

*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 "Safe Transit of Pedestrians Act of 1993".

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds that—

(1) approximately 7,000 pedestrians are killed, and 100,000 pedestrians are injured, annually in the United States by motor vehicles;

(2) accidents involving pedestrians cost the economy of the United States more than $10,000,000,000 per year because of injuries, vehicle damage, insurance costs, and lost productivity;

(3) poor children, minority children, the elderly, and people with disabilities are subject to the greatest degree of risk of being involved in a pedestrian accident; and

(4) even in States where motor vehicles must yield the right-of-way to pedestrians, pedestrian deaths and injuries continue because pedestrian right-of-way laws are not effectively enforced.

(b) PURPOSES.—The purposes of this Act are—

(1) to stop the large number of pedestrian deaths and injuries caused by motor vehicles;

(2) to save billions of dollars attributable to damage caused by pedestrian accidents each year; and

(3) to ensure that motor vehicle operators exercise due care when driving near pedestrians.

**SEC. 3. SPEED LIMITS.**

Section 154 of title 23, United States Code, is amended—

(1) in subsection (a), by striking "The Secretary" and inserting the following: "Subject to subsection (j), the Secretary"; and

(2) by adding at the end the following new subsection:

"(j) ADJUSTMENT OF SPEED LIMITS.—Notwithstanding any other provision of law, after September 30, 1995, if a State does not have in effect, and is not enforcing to the maximum extent practicable, a State law that ensures that the driver of a motor vehicle yields the right-of-way to, and stops for, a pedestrian who is legally in the roadway and is exercising due care—

"(1) paragraph (1) of subsection (a) shall be applied with respect to the State by substituting '50' for 'fifty-five'; and

"(2) paragraphs (2) and (3) of subsection (a) shall be applied with respect to the State by substituting '50' for '65'.".

**SEC. 4. REGULATIONS.**

Not later than 1 year after the date of enactment of this Act the Secretary of Transportation shall, after providing public notice and opportunity for comment, issue regulations to carry out this Act and the amendments made by this Act.

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By Mr. LIEBERMAN:

S. 1439. A bill to provide for the application of certain employment protection laws to the Congress, and for other purposes; to the Committee on Governmental Affairs.

CONGRESSIONAL ACCOUNTABILITY ACT

• Mr. LIEBERMAN. Mr. President, I rise to introduce the Congressional Accountability Act. This bill, if enacted, would apply to Congress and its support offices all of the laws regarding civil rights, labor practices, disability, family medical leave, health, safety, and freedom of information that currently apply to the executive branch and its private sector.

This bill sends an important signal that the Congress is serious about change, and serious about restoring this great institution's credibility with the American people.

It builds upon the important advances made in title III of the 1991 Civil Rights Act, which created the Senate Office of Fair Employment Practices. It would create an independent, nonpartisan Board of Directors, in keeping with the separation of powers, which would oversee the application of the aforementioned laws to Congress.

Mr. President, a similar version of this bill has been introduced in the House of Representatives by my friend and fellow Representative from Connecticut, Representative SHAYS. Representative SHAYS has gathered over 217 cosponsors for his bill, and it has been well-received by Members of the House on both sides of the isle.

This legislation is not designed to stir partisan animosities. The time has come for Congress to understand the full effects of the laws it passes, and I hope that by doing this we will pass better laws. I look forward to the report of the Senate task force on congressional coverage that will be issued soon, and I hope that the task force, the leadership, and the Joint Committee on the Organization of Congress can work with me and Representative SHAYS to speed these reforms along.

Mr. President, I send this bill to the desk and ask for its immediate consideration.•

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By Mr. BURNS:

S. 1440. A bill to amend the Endangered Species Act of 1973 with commonsense amendments to strengthen the act, enhance wildlife conservation and management, augment funding, and protect fishing, hunting, and trapping.

ENDANGERED SPECIES REAUTHORIZATION LEGISLATION

Mr. BURNS. Mr. President, I rise today to introduce the following amendments to reauthorize the Endangered Species Act. These amendments provide a commonsense approach to administration of the act and will eliminate the abuse and misinterpretation of the intent of the act. We still have a long way to go in bringing common sense, technical reality, and economics into administration of this act.

One of the most important concepts of this proposed legislation is to designate critical habitat and then manage it. We cannot have preservation or conservation without management. Without management, we will see habitats degraded by wildlife populations putting greater demands on their own habitat and food supply.

Reauthorization of the Endangered Species Act has gotten the attention of a lot of folks across the country because administration of this act is effecting everyone, in the hip pocket, emotionally, and in the technical decisionmaking process. One of the most important issues that must be addressed is the way this act, and other laws that deal with clean water, wetlands, and wildlife habitat are administered.

Most people know that habitat for fish, wildlife, vegetation and people often conflict with each other. At the same time, land, fish and wildlife management and use of, or competition for, diverse habitats occur throughout the world. These amendments focus on real habitat needs, by addressing the significance of critical, or a better term—limiting habitat for each species.

I mention this because in my home State of Montana, we have one of the best examples of ecosystem management in the world. I want to emphasize this point, that ecosystem management as it has been practiced for the past 60-odd years, is one of the most blatant mismanagement mistakes in this country.

This has all been done for the sake of preserving natural conditions for the wrong reasons instead of managing the land for the good of the wildlife. I am speaking of course about the northern range of Yellowstone National Park. These lands were not traditional home ranges for the number of elk and bison that now have to reside there. The norm is poor range conditions for the sake of natural conditions.

By enacting this legislation that provides for the flexibility of management prescriptions, the very existence of most species will be preserved.

Another important part of this legislation is the issue of a taking as it relates to habitat and protection of a species. Lets face it, most critters are mobile and adaptable to variations in their ecological niche. Common sense, technology, adaptability, and management are key to species survival in the competitive world of nature.

Foreign laws and management practices also need recognition. Lets not forget that the economic value of a species will dictate how well it is protected from poaching and the black market. I want to mention this in the same context as recovery because it is very important to set recovery goals and timeframes in a reasonable manner.

The last item that I want to mention is the way in which we designate endangered species. The biggest problems facing recovery of endangered species are the inconsistency in administration between the agencies, emotional and political listing instead of depending solely on science, and the perpetual economic impact of the entire issue.

This legislation brings a commonsense approach to listing and delisting criteria. The legislation provides for peer review of technical information before any agency could go forth with a listing based on their discretion and without the best scientific and commercial information to support their findings. Further, it will be advantageous to set reasonable timeframes for the process.

As we go forth in the next few months debating the endangered species, let us not lose track of the facts, particularly the fact that man, as the steward of the land, must also be part of the formula.

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By Mr. BIDEN:

S. 1441. A bill to reform habeas corpus; to the Committee on the Judiciary.

HABEAS CORPUS REFORM ACT OF 1993

Mr. BIDEN. Madam President, it was my intention this evening to rise on the floor to keep a commitment that I made to introduce a crime bill of 1994. It is 480-some pages long. I have it here in my hand.

Madam President, 99 percent of this legislation, this omnibus crime bill, has been worked out in detail in agreement with the House. But I spoke with the President of the United States tonight who would like me to withhold introducing it to-night, even though we have worked tirelessly with the Attorney General's office, the White House, and the leadership in the House of Representatives, as well as here, and it is a reasonable request.

He would like me to have 100 percent agreement with the House and, hopefully, when we return on September 7, introduce a bill that is the same in the House and the Senate that the White House will endorse so it will be a jointly introduced bill.

I am hopeful we can do that. So since there is no action we could take tonight were I to introduce this bill, I will withhold and hope that sometime this week there is a prospect that the President of the United States will have a joint meeting and a press conference to announce at least the outlines of this legislation in some considerable detail.

But, Madam President, I am going to introduce, because it has full support of the White House and the Attorney General and many others, the one piece of this crime bill that caused it from not passing over the last 4 years, where there is now agreement.

I rise tonight to introduce the Habeas Corpus Reform Act of 1993. The introduction of this bill results from an extraordinary process. In 1991, the Senate passed a bill that included substantial aid to State and local law enforcement: The death penalty, habeas corpus reform, the Brady bill and other significant anticrime measures. The crime bill that came out of the conference, as the Presiding Officer knows, that is the meeting between the House and the Senate to iron out their differences, the conference enjoyed the support of virtually every major law enforcement group in the Nation, including the Fraternal Order of Police, the National Association of Police Organizations, the International Association of Chiefs of Police, the National Sheriffs Association, the International Brotherhood of Police Officers, among others.

Nonetheless, the Republicans, at the urging of President Bush, refused to let this U.S. Senate vote on this bill. The House passed this conference report once in 1989 and they filibustered this legislation and twice in 1992 the Republicans filibustered this major anticrime legislation.

In short, the Republicans kept the Senate from voting on the conference report. That is their right. I am not being critical of that. The sole reason, though, cited for not allowing essentially this bill I have in my hand and was prepared to introduce tonight in detail, the sole reason for that not passing as long ago as 2 years, the sole rationale for the filibuster that was suggested was their objection of the State prosecutors, State attorneys general and the DA's, the district attorneys of the Nation.

I know the Presiding Officer, a prosecutor in the U.S. attorney's office, understands and knows those folks very well. They came along, these two very well-respected organizations—Democrats and Republicans members of both organizations—they came along and they said we cannot support this omnibus crime bill because of the habeas corpus provisions that BIDEN and others have in the bill.

So, Madam President, that was the rationale offered by my Republican colleagues as to why they could not support the bill. No one said it was because of the Brady bill. No one said it was because of guns. No one said it was because of anything else other than the failure to have the support of the attorneys general of the United States and the district attorneys of the various locales throughout America.

And so, Madam President, although I thought those objections to the habeas corpus were wrong, but I believed it was so important to get the American people a crime bill that I offered to take out the habeas corpus provisions over the last 2 years. I said:

OK, we agree to everything else but habeas corpus. Why don't we just take habeas reform out and work on that separately and adopt the conference report without habeas corpus?

Well, my Republican friends said to that, "No, we are still going to filibuster. We do not want to vote on that even though the part we do not like, habeas corpus, you take out of the bill."

In my view, the failure to adopt the conference report of the so-called crime bill meant that the Congress did nothing to respond to the violence that consumes our streets, our homes, our schools, and our place of work, and I think that was tragic.

So this year with a new President, the first thing I did with candidate Clinton, and then with President-elect Clinton, and then with President Clinton was follow up on his request, his unrelenting request, that I reintroduce

a crime bill and that we move forward on crime.

So at the outset of this Congress, Madam President, to address the only objection raised by those who filibustered the conference report for the last 2 years, I did something that I hope people think is reasonable. I invited those prosecutors, I invited the National Association of Attorneys General, National District Attorney's Association, and I invited the leadership and some who were not leaders in those organizations to sit down with me and help me write a habeas corpus provision that met their concerns about reducing the unnecessary delay in the habeas corpus petition process without compromising the concern that the petition review process be fair.

For many weeks—and without exaggeration—I can say I personally and the leadership of both of those organizations—not their staffs—the principals, sat in my office for hour upon hour.

Our staffs sat for a minimum 200 or more—easily 200 hours—I am not exaggerating—working out just this one provision on habeas corpus, every jot and title, every period, every "i," every comma, every single piece. It took 5 months of good faith negotiation, and literally tens, if not hundreds, of hours of detailed negotiations. And finally, Madam President for many weeks, as I said—and I might point out, not only in my office but the Department of Justice, the Attorney General himself and the top personnel, Phil Heymann, the Deputy Attorney General, sat in as well with the district attorneys and we met every day on habeas corpus reform.

The bill I introduced tonight reflects the results of that work.

The new habeas corpus reform act limits State inmates to a single Federal habeas corpus appeal subject to a first time every 6-month time limit. Every indigent capital defendant will be provided at all stages from trial through the end of the State proceedings with counsel meeting tough specific standards of knowledge and experience in capital offenses.

I wish to thank personally the following people, who all took a political risk in sitting down to try to do something for this country. A man who I have an inordinate amount of respect for, a man who is of the opposite party, Pennsylvania Attorney General Ernie Preate. Ernie Preate is running for Governor of Pennsylvania, I think, and Ernie Preate nonetheless sat down with Democrats and Republicans because he is a leader on this issue, and hammered out a compromise along with Delaware Attorney General Charlie Oberly and New Jersey Attorney General Robert Del Tufo, the principals involved from the Attorneys General side in hammering out this laborious negotiation.

And then District Attorney Robert Macy of Oklahoma, one tough customer, Madam President, a man who was not at all shy about his views on habeas corpus, and I doubt whether anyone in the world would dare look at him and say he is not a law and order man. This is a man who even wears a black suit and a string tie. I means he worries me just looking at him, talk about being tough. But he is smart, he is tough, and he has decided that the district attorneys, representing them as their President, want to play a part in making sure there was tough habeas corpus reform legislation but that was nonetheless fair in giving wide berth to the great writ, to make sure innocent people got their opportunity to prove their innocence. And he is the chairman of the board now of the District Attorneys Association.

I also want to thank William O'Malley, of Brockton, MA, now the president of the National District Attorneys Association, and Lynn Abraham, the district attorney for the city of Philadelphia, the fourth, I think, largest district attorney's office in the United States, maybe fifth. I think Houston may be the fourth now. I am not sure of that. But she is one tough lady, who has been a prosecutor her whole life and is known for being tough. They all drove relatively hard bargains, Madam President, as you might guess. Think of your former incarnation as a prosecutor. Imagine being able to get——

Mr. FORD. Ninety three.

Mr. BIDEN. No, more district attorneys, I think. There are hundreds of district attorneys nationwide, and there are 50 attorneys general in the United States of America, some appointed, some elected by their various States. Imagine getting all those people to agree. You think we have trouble getting 100 Senators together to agree on a complicated piece of legislation. There are on the order of 600 to 700 prosecutors who objected the last 2 years to this legislation.

Well, Madam President, I am proud to say the support of the Nation's prosecutors was forthcoming. Each of the people I named was instrumental in reaching the habeas corpus reform provisions of the bill that I introduce today. The support of the Nation's prosecutors I hope now finally is convincing proof of the merits of this proposal. The cops always supported it, from the beginning. Literally, more than 500,000 cops in the Nation, they supported it from the beginning. Now, the other prosecutor organizations in all of the United States of America have come along and support it.

Madam President, I ask unanimous consent to include in the RECORD the entire text of a letter dated August 5, 1993, from the National District Attorneys Association President O'Malley to me.

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

NATIONAL DISTRICT
ATTORNEYS ASSOCIATION,
*Alexandria, VA, August 5, 1993.*

Hon. JOSEPH R. BIDEN, Jr.,
*Chairman, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.*

DEAR SENATOR BIDEN: Six weeks ago when you and Attorney General Janet Reno asked the National District Attorneys Assocation to work with you in redrafting a federal habeas corpus reform package, we were hopeful but frankly not optimistic. As you know, for years, there was a widely held consensus that reform was needed to curtail abuse of habeas procedure by reducing unnecessary delay and avoiding endlessly repetitive litigation. There was, however, broad disagreement on how to accomplish these goals.

After meeting with you personally and after extensive work by staff, I am pleased that we can announce together today that the NDAA, you as Chairman of the Senate Judiciary Committee, and the Office of the Attorney General of the United States, have agreed upon a reform package that we all believe meets the goals outlined above.

We believe the proposal improves the administration of justice and is worthy of support. In the NDAA's view, the proposal's potential for reducing delay and repetitious litigation in both capital and non-capital cases is so significant that it outweighs the objections many have to mandatory counsel standards in death penalty cases. In short, we believe the proposal is fair to defendants while at the same time promoting finality of convictions so that victims and their families will not continue to be victimized.

I join with District Attorney Robert Macy of Oklahoma City, Oklahoma, Chairman of our Board, in looking forward to working with you in gaining passage of this breakthrough reform measure.

Sincerely,

WILLIAM C. O'MALLEY.
*President.*

Madam President, I hope that my Republican colleagues will now join me and support a bill that will made a real impact on the Nation's ability to fight the violence and crime that victimizes millions of innocent Americans every year.

As I indicated, and I will conclude with this, it was my intent to introduce this entire anticrime package tonight. But at the President's request, I will wait to do this so that we can spend the August recess working out with our House colleagues the remaining details of the bill which literally makes up no more than 2 percent of this entire legislation. For that reason, I will wait to unveil the remaining provisions of this bill after the Congress returns in September.

I hope we can end the gridlock and deal with the crime issue. I am convinced my Republican colleagues want to do that. I am convinced my Republican colleagues feel as strongly about dealing with crime problem as I do. And so I hope we will not waste our time fighting each other when we should be spending it on behalf of the American public beginning the process of passing a bill that will truly help them win in the war against crime.

As I said, now for the first time the two leading associations, the district attorneys and the attorneys general—now it means all law enforcement organizations in America of any consequences are signed on to this compromise legislation.

I hope my Republican colleagues will read it over the recess and maybe decide to join us.

I might point out nothing beyond this compromise in this whole bill is written in stone. I am anxious to meet with my Republican colleagues before I introduce it if they are interested in working out a bipartisan anticrime bill.

I thank the Chair for the time and the indulgence this late at night. Especially after such an important vote, this all seems anticlimactic

The PRESIDING OFFICER. The minority leader, the Senator from Kansas.

Mr. DOLE. Let me say, first, to the distinguished Senator from Delaware, as he knows, we have introduced a comprehensive crime bill, and it is always our hope that we can come together and work to resolve the differences. So we will be looking forward to reading the Senator's bill on habeas corpus and hopefully he will have a chance to look at ours over the recess.

Mr. BIDEN. I will.

Mr. DOLE. It is not just the Senate Democrats and the House Democrats who will pass a crime bill, we hope. We hope it is going to be a broad bipartisan bill, and we will be looking forward to working with our colleagues.

Mr. BIDEN. If the Senator will yield for just a second, I look forward to that. I hope we can do on a bipartisan basis what the attorneys general and the DA's did on a bipartisan basis and agree on an approach. I am confident we can.

I thank the Chair.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1441

*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 "Habeas Corpus Reform Act of 1993".

**SEC. 2. FILING DEADLINES.**

(a) IN GENERAL.—Section 2242 of title 28, United States Code, is amended—

(1) by amending the heading to read as follows:

**"§ 2242. Filing of habeas corpus petition; time requirements; tolling rules";**

(2) by inserting "(a)(1)" before the first paragraph, "(2)" before the second paragraph, "(3)" before the third paragraph, and "(4)" before the fourth paragraph;

(3) by amending the third paragraph, as designated by paragraph (3), to read as follows:

"(3) Leave to amend or supplement the petition shall be freely given, as provided in the rules of procedure applicable to civil actions."; and

(4) by adding at the end the following new subsections:

"(b) An application for habeas corpus relief under section 2254 shall be filed in the appropriate district court not later than 180 days after—

"(1) the last day for filing a petition for writ of certiorari in the United States Supreme Court on direct appeal or unitary review of the conviction and sentence, if such a petition has not been filed within the time limits established by law;

"(2) the date of the denial of a writ of certiorari, if a petition for a writ of certiorari to the highest court of the State on direct appeal or unitary review of the conviction and sentence is filed, within the time limits established by law, in the United States Supreme Court; or

"(3) the date of the issuance of the mandate of the United States Supreme Court, if on a petition for a writ of certiorari the Supreme Court grants the writ and disposes of the case in a manner that leaves the sentence undisturbed.

"(c)(1) Notwithstanding the filing deadline imposed by subsection (b), if a petitioner under a sentence of death has filed a petition for post-conviction review in State court within 270 days of the appointment of counsel as required by section 2258, the petitioner shall have 180 days to file a petition under this chapter upon completion of the State court review.

"(2) The time requirements established by subsection (b) shall not apply unless the State has provided notice to a petitioner under sentence of death of the time requirements established by this section. Such notice shall be provided upon the final disposition of the initial petition for State post-conviction review.

"(3) In a case in which a sentence of death has been imposed, the time requirements established by subsection (b) shall be tolled—

"(A) during any period in which the State has failed to appoint counsel for State post-conviction review as required in section 2258;

"(B) during any period in which the petitioner is incompetent; and

"(C) during an additional period, not to exceed 60 days, if the petitioner makes a showing of good cause.

"(d)(1) Notwithstanding the filing deadline imposed by subsection (b), if a petitioner under a sentence other than death has filed—

"(A) a petition for post-conviction review in State court; or

"(B) a request for counsel for post-conviction review,

before the expiration of the period described in subsection (b), the petitioner shall have 180 days to file a petition under this chapter upon completion of the State court review.

"(2) The time requirements established by subsection (b) shall not apply in a case in which a sentence other than death has been imposed unless—

"(A) the State has provided notice to the petitioner of the time requirements established by this section and of the availability of counsel as described in subparagraph (B); such notice shall be provided orally at the time of sentencing and in writing at the time the petitioner's conviction becomes final, except that in a case in which the petitioner's conviction becomes final within 30 days of sentencing, the State may provide both the oral and the written notice at sentencing; in all cases, the written notice to petitioner shall include easily understood instructions for filing a request for counsel for State post-conviction review; and

"(B)(i) the State provides counsel to the petitioner upon the filing of a request for counsel for State post-conviction review; or

"(ii) the State provides counsel to the petitioner, if a request for counsel for State post-conviction review is not filed, upon the filing of a petition for post-conviction review.

"(3) The time requirements established by subsection (b) shall be tolled in a case in which a sentence other than death has been imposed—

"(A) during any period in which the petitioner is incompetent; and

"(B) during an additional period, not to exceed 60 days, if the petitioner makes a showing of good cause.

"(e) An application that is not filed within the time requirements established by subsection (b) shall be governed by section 2244(b).".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 153 of title 28, United States Code is amended by amending the item relating to section 2242 to read as follows:

"2242. Filing of habeas corpus petition; time requirements; tolling rules.".

**SEC. 3. STAYS OF EXECUTION IN CAPITAL CASES.**

Section 2251 of title 28, United States Code, is amended—

(1) by inserting "(a)(1)" before the first paragraph and "(2)" before the second paragraph; and

(2) by adding at the end the following new subsections:

"(b) In the case of a person under sentence of death, a warrant or order setting an execution shall be stayed upon application to any court that would have jurisdiction over a habeas corpus petition under this chapter. The stay shall be contingent upon the exercise of reasonable diligence by the applicant in pursuing relief with respect to the sentence and shall expire if—

"(1) the applicant fails to file for relief under this chapter within the time requirements established by section 2242;

"(2) upon completion of district court and court of appeals review under section 2254, the application is denied and—

"(A) the time for filing a petition for a writ of certiorari expires before a petition is filed;

"(B) a timely petition for a writ of certiorari is filed and the Supreme Court denies the petition; or

"(C) a timely petition for certiorari is filed and, upon consideration of the case, the Supreme Court disposes of it in a manner that leaves the capital sentence undisturbed; or

"(3) before a court of competent jurisdiction, in the presence of counsel, and after being advised of the consequences of the decision, the applicant competently and knowingly waives the right to pursue habeas corpus relief under this chapter.

"(c) If any 1 of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution unless the applicant has filed a habeas corpus petition that satisfies, on its face, section 2244(b) or 2256. A stay granted pursuant to this subsection shall expire if, after the grant of the stay, 1 of the conditions specified in subsection (b) (2) or (3) occurs.".

**SEC. 4. LIMITS ON NEW RULES; STANDARD OF REVIEW.**

(a) LIMITS ON NEW RULES.—

(1) IN GENERAL.—Chapter 153 of Title 28, United States Code, as amended by section

306(a), is amended by adding at the end the following new section:

**"§ 2257. Law applicable**

"(a) Except as provided in subsection (b), in a case subject to this chapter, the court shall not announce or apply a new rule to grant habeas corpus relief.

"(b) A court considering a claim under this chapter shall apply a new rule when—

"(1) the new rule places a class of individual conduct beyond the power of the criminal lawmaking authority to proscribe or prohibits the imposition of a certain type of punishment for a class of persons because of their status or offense; or

"(2) the new rule constitutes a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding.

"(c) As used in this section, a 'new rule' is a rule that changes the constitutional or statutory standards that prevailed at the time the petitioner's conviction and sentence became final on direct appeal.".

(2) TECHNICAL AMENDMENT.—The chapter analysis for chapter 153 of title 28, United States Code, as amended by section 306(b), is amended by adding at the end the following new item:

"2257. Law applicable.".

(b) STANDARD OF REVIEW.—Section 2254(a) of title 28, United States Code, is amended by adding at the end the following: "Except as to Fourth Amendment claims controlled by Stone v. Powell, 428 U.S. 465 (1976), the Federal courts, in reviewing an application under this section, shall review de novo the rulings of a State court on matters of Federal law, including the application of Federal law to facts, regardless of whether the opportunity for a full and fair hearing on such Federal questions has been provided in the State court. In the case of a violation that can be harmless, the State shall bear the burden of proving harmlessness.".

**SEC. 5. LIMITS ON SUCCESSIVE PETITIONS.**

Section 2244(b) of title 28, United States Code, is amended to read as follows:

"(b)(1) A claim presented in a habeas corpus petition that was not timely presented in a prior petition shall be dismissed unless—

"(A) the petitioner shows that—

"(i) the failure to raise the claim previously was the result of interference by State officials with the presentation of the claim, in violation of the Constitution or laws of the United States;

"(ii) the claim relies on a new rule that is applicable under section 2257 and was previously unavailable; or

"(iii) the factual predicate for the claim could not have been discovered previously through the exercise of reasonable diligence; and

"(B) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to—

"(i) undermine the court's confidence in the factfinder's determination of the applicant's guilt of the offense or offenses for which the sentence was imposed; or

"(ii) demonstrate that no reasonable sentencing authority would have found an aggravating circumstance or other condition of eligibility for a capital or noncapital sentence, or otherwise would have imposed a sentence of death.

"(2) Notwithstanding other matters pending before the court, claims for relief under this subsection from a case in which a sentence of death was imposed shall receive a prompt review in a manner consistent with the interests of justice.".

**SEC. 6. NEW EVIDENCE.**

(a) IN GENERAL.—Chapter 153 of title 28, United States Code, as amended by section 304(a)(1), is amended by adding at the end the following new section:

**"§ 2256. Capital cases; new evidence**

"For purposes of this chapter, a claim arising from a violation of the Constitution, laws, or treaties of the United States shall include a claim by a person under sentence of death that is based on factual allegations that, if proven and viewed in light of the evidence as a whole, would be sufficient to demonstrate that no reasonable factfinder would have found the petitioner guilty of the offense or that no reasonable sentencing authority would have found an aggravating circumstance or other condition of eligibility for the sentence. Such a claim shall be dismissed if the facts supporting the claim were actually known to the petitioner during a prior stage of the litigation in which the claim was not raised. Notwithstanding any other provision of this chapter, the claim shall not be subject to section 2244(b) or the time requirements established by section 2242. In all other respects, the claim shall be subject to the rules applicable to claims under this chapter.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 153 of title 28, United States Code, as amended by section 304(a)(2), is amended by adding at the end the following new item:

"2258. Capital cases; new evidence.".

**SEC. 7. CERTIFICATES OF PROBABLE CAUSE.**

The third paragraph of section 2253, title 28, United States Code, is amended by adding at the end the following: "However, an applicant under sentence of death shall have a right of appeal without a certificate of probable cause, except after denial of a habeas corpus petition filed under section 2244(b).".

**SEC. 8. PROVISION OF COUNSEL.**

(a) IN GENERAL.—Chapter 153 of title 28, United States Code, as amended by section 304(a)(1), is amended by adding at the end the following new section:

**"§ 2258. Counsel in capital cases; State court**

"(a) COUNSEL.—(1) A State in which a sentence of death may be imposed under State law shall provide legal services to—

"(A) indigents charged with offenses for which capital punishment is sought;

"(B) indigents who have been sentenced to death and who seek appellate, post-conviction, or unitary review in State court; and

"(C) indigents who have been sentenced to death and who seek certiorari review of State court judgments in the United States Supreme Court.

"(2) This section shall not apply or form a basis for relief to nonindigents.

"(b) COUNSEL CERTIFICATION AUTHORITY.—A State in which a sentence of death may be imposed under State law shall, within 180 days after the date of enactment of this subsection, establish a State counsel certification authority, which shall be comprised of members of the bar with substantial experience in, or commitment to, the representation of criminal defendants in capital cases, and shall be comprised of a balanced representation from each segment of the State's criminal defense bar, such as a statewide defender organization, a capital case resource center, local public defender's offices and private attorneys involved in criminal trial, appellate, post-conviction, or unitary review practice. If a State fails to establish a counsel certification authority within 180 days after the date of enactment of this subsection, a private cause of action may be brought in Federal district court to enforce this subsection by any aggrieved party, including a defendant eligible for appointed representation under this subsection or a member of an organization eligible for representation on the counsel certification authority. If the court finds that the State has failed to establish a counsel certification authority as required by this subsection, the court shall grant appropriate injunctive and declaratory relief, except that the court shall not grant relief that disturbs any criminal conviction or sentence, obstructs the prosecution of State criminal proceedings, or alters proceedings arising under this chapter.

"(c) DUTIES OF AUTHORITY; CERTIFICATION OF COUNSEL.—The counsel certification authority shall—

"(1) establish and publish standards governing qualifications of counsel, which shall include—

"(A) knowledge and understanding of pertinent legal authorities regarding issues in capital cases;

"(B) skills in the conduct of negotiations and litigation in capital cases, the investigation of capital cases and the psychiatric history and current condition of capital clients, and the preparation and writing of legal papers in capital cases;

"(C) the minimum qualifications required by subsection (d); and

"(D) any additional qualifications relevant to the representation of capital defendants;

"(2) establish application and certification procedures for attorneys who possess the qualifications established pursuant to paragraph (1);

"(3) establish application and certification procedures for attorneys who do not possess all the qualifications established pursuant to paragraph (1) but who possess, in addition to the minimum qualifications required by subsection (d), additional resources (such as an affiliation with a publicly funded defender organization) and experience that enable them to provide quality legal representation comparable to that of an attorney possessing the qualifications established pursuant to paragraph (1);

"(4) establish application and certification procedures, to be used on a case by case basis, for attorneys who do not necessarily possess the minimum qualifications required by subsection (d), but who possess other extraordinary experience and resources that enable them to provide quality legal representation comparable to that of an attorney possessing the qualifications established pursuant to paragraph (1);

"(5) publish a current roster of attorneys certified pursuant to paragraphs (2) and (3) to be appointed in capital cases;

"(6) establish and publish standards governing the performance of counsel in capital cases, including standards that proscribe abusive practices and mandate sound practices in order to further the fair and orderly administration of justice;

"(7) monitor the performance of attorneys certified pursuant to this subsection; and

"(8) delete from the roster the name of any attorney who fails to meet the qualification or performance standards established pursuant to this subsection.

"(d) MINIMUM COUNSEL STANDARDS.—All counsel certified pursuant to paragraph (2) or (3) of subsection (c) or appointed pursuant to subsection (f) shall possess, in addition to any qualifications required by State or local law, the following minimum qualifications:

"(1) familiarity with the performance standards established by the counsel certification authority;

"(2) familiarity with the appropriate court system, including the procedural rules regarding timeliness of filings and procedural default; and

"(3) in the case of counsel appointed for the trial or sentencing stages, at least 2 of the qualifications listed in subparagraph (A) and 1 of the qualifications listed in subparagraph (B), or 1 of the alternative qualifications listed in subparagraph (C):

"(A) QUALIFYING TRIAL EXPERIENCE (MUST HAVE 2).—Prior experience within the last 10 years as—

"(i) lead or sole counsel in 12 jury trials, of which no fewer than 5 were criminal jury trials;

"(ii) lead or sole counsel in 3 criminal jury trials in which the charge was murder or aggravated murder;

"(iii) co-counsel in 5 criminal jury trials in which the charge was murder or aggravated murder;

"(iv) lead or sole counsel in no fewer than 5 criminal jury trials involving crimes of violence against persons, punishable by imprisonment of over 1 year,

which were tried to a verdict or to a deadlocked jury.

"(B) QUALIFYING CAPITAL TRIAL EXPERIENCE (MUST HAVE 1).—

"(i) lead or sole counsel within the last 5 years in the trial of at least 1 capital case that was tried through sentencing;

"(ii) co-counsel in the trial of no fewer than 2 capital cases (1 of which occurred within the last 5 years) that were tried through sentencing;

"(iii) successful completion within the preceding 2 years of a training program in capital trial litigation that has been certified by the counsel certification authority or, if the authority has not certified a program, successful completion of an at least 12-hour training program in capital trial litigation for which continuing legal education (CLE) credit is available, and which the CLE authority in the State has certified as comporting with the objectives and requirements of this section.

"(C) ALTERNATIVE QUALIFYING EXPERIENCE FOR TRIAL.—Notwithstanding subparagraphs (A) and (B), an attorney shall be eligible for certification pursuant to paragraph (2) or (3) of subsection (c) or appointment pursuant to subsection (f) if the attorney—

"(i) has conducted 5 evidentiary hearings and has been employed for more than 1 year by a capital resource center, a unit or its equivalent that specializes in capital cases within a public defender office, or a public interest law office specializing in capital litigation; or

"(ii) has conducted 5 evidentiary hearings and has been certified by the State capital litigation resource center as competent to be assigned to a capital trial;

"(4) in the case of counsel appointed for appellate or unitary review, at least 1 of the qualifications listed in subparagraph (A) and 1 of the qualifications listed in subparagraph (B), or 1 of the alternative qualifications listed in subparagraph (C):

"(A) QUALIFYING APPELLATE EXPERIENCE (MUST HAVE 1).—Prior experience within the past 5 years as—

"(i) lead or sole counsel in no fewer than 10 appeals, of which no fewer than 5 were criminal appeals;

"(ii) lead or sole counsel in at least 6 criminal felony appeals;

"(iii) lead or sole counsel in 3 criminal or felony appeals, at least 1 of which was an appeal of a murder or aggravated murder conviction,

which were fully briefed.

"(B) QUALIFYING CAPITAL APPELLATE EXPERIENCE (MUST HAVE 1).—

"(i) lead or sole counsel within the last 5 years in the appeal or unitary review of at least 1 capital case;

"(ii) co-counsel in the appeal or unitary review of no fewer than 2 capital cases, 1 of which occurred within the last 5 years;

"(iii) successful completion within the preceding 2 years of a training program in the litigation of capital appeals that has been certified by the counsel certification authority or, if the authority has not certified a program, successful completion of an at least 12-hour training program in capital litigation with a focus on appeals for which continuing legal education (CLE) credit is available, and which the CLE authority in the State has certified as comporting with the objectives and the requirements of this section.

"(C) ALTERNATIVE QUALIFYING EXPERIENCE FOR APPEALS.—Notwithstanding subparagraphs (A) and (B), an attorney shall be eligible for certification pursuant to paragraph (2) or (3) of subsection (c) or for appointment pursuant to subsection (f) if the attorney—

"(i) has been employed for more than 1 year by a capital resource center, a unit or its equivalent that specializes in capital cases within a public defender office, or a public interest law office specializing in capital litigation; or

"(ii) has been certified by the State capital litigation resource center as competent to be assigned to a capital appeal; and

"(5) in the case of counsel appointed for post-conviction proceedings, at least 2 of the qualifications listed in subparagraph (A) and at least 1 of the qualifications listed in subparagraph (B), or 1 of the alternative qualifications listed in subparagraph (C):

"(A) QUALIFYING POST-CONVICTION EXPERIENCE (MUST HAVE 2).—Prior experience within the past 10 years as—

"(i) lead or sole counsel in no fewer than 3 post-conviction proceedings;

"(ii) co-counsel in no fewer than 5 post-conviction proceedings;

"(iii) 1 of the trial qualifications listed in paragraph (3)(A);

"(iv) 1 of the appellate qualifications listed in paragraph (4)(A).

"(B) QUALIFYING CAPITAL POST-CONVICTION EXPERIENCE (MUST HAVE 1).—

"(i) lead or sole counsel within the last 5 years in the trial (through sentencing), appeal, or post-conviction review of at least 1 capital case;

"(ii) co-counsel in the trial (through sentencing), appeal, or post-conviction review of no fewer than 2 capital cases, 1 of which occurred within the last 5 years;

"(iii) successful completion during the preceding 2 years of a training program in the litigation of capital post-conviction proceedings that has been certified by the counsel certification authority or, if the authority has not certified a program, successful completion of an at least 12-hour training program in capital litigation with a focus on post-conviction proceedings for which continuing legal education (CLE) credit is available, and which the CLE authority in the State has certified as comporting with the objectives and requirements of this section.

"(C) ALTERNATIVE QUALIFYING EXPERIENCE FOR POST-CONVICTION PROCEEDINGS.—Notwithstanding subparagraphs (A) and (B), an attorney shall be eligible for certification pursuant to paragraph (2) or (3) of subsection (c) or appointment pursuant to subsection (f) if the attorney—

"(i) has conducted 3 evidentiary hearings and has been employed for more than 1 year by a capital litigation resource center, by a unit or its equivalent that specializes in capital cases within a public defender office, or by a public interest law office specializing in capital litigation; or

"(ii) has conducted 3 evidentiary hearings and has been certified by the State capital litigation resource center as competent to be assigned to a capital post-conviction proceeding.

"(e) APPOINTMENT OF CERTIFIED COUNSEL.—(1) The State court shall appoint at least 2 attorneys to represent an indigent at trial, and at least 1 attorney to represent an indigent at the appellate, unitary or post-conviction review stage, including—

"(A) a lead counsel who is named on the roster published pursuant to subsection (c)(5);

"(B) a defender organization or resource center, which shall designate appropriate attorneys affiliated with the organization, including a lead counsel who is named on the roster; or

"(C) a lead counsel certified pursuant to subsection (c)(4).

"(2) The State court may appoint additional attorneys upon a showing of need.

"(f) APPOINTMENT OF NONCERTIFIED COUNSEL.—(1) If there is no roster of attorneys published pursuant to subsection (c)(5), or if no attorney on the roster can accept the appointment and if no attorney certified pursuant to subsection (c)(4) has been appointed, the State court shall appoint at least 2 attorneys to represent an indigent at trial, and at least 1 attorney to represent an indigent at the appellate, unitary or post-conviction review stage, including—

"(A) a lead counsel who possesses the minimum qualifications required by subsection (d); or

"(B) a defender organization or resource center, which shall designate appropriate attorneys affiliated with the organization, including a lead counsel who possesses the qualifications required by subsection (d).

"(2) No attorney shall be appointed pursuant to this subsection unless the State court has first conducted an evidentiary hearing on the record in which the court determines, after the attorney gives sworn testimony and presents documentary proof that the attorney possesses each of the qualifications required by subsection (d), that the attorney possesses the requisite qualifications. In making its determination, the court, shall, to each qualification required by subsection (d), shall make a specific finding on the record that the attorney possesses the qualification.

"(g) No attorney may be denied certification pursuant to paragraph (2) or (3) of subsection (c) or appointment pursuant to subsection (f) solely because of prior employment as a prosecutor.

"(h) Prior to appointing counsel pursuant to this section, the State court shall inquire as to whether counsel maintains a workload which, by reason of its excessive size, will interfere with the rendering of quality representation or create a substantial risk of a breach of professional obligations.

"(i) If a person entitled to an appointment of counsel declines to accept an appointment, the State court shall conduct, or cause to be conducted, a hearing, at which the person and counsel proposed to be appointed shall be present, to determine the person's competence to decline the appointment, and whether the person has competently and knowingly declined it.

"(j) If a State court fails to appoint counsel in a proceeding specified in subsection (a), or if a State court in a proceeding described in subsection (a)—

"(1) fails to appoint the number of counsel required in subsection (e);

"(2) appoints counsel whose name is not on the roster published pursuant to subsection (c)(5);

"(3) appoints counsel who has failed to present a certification issued pursuant to subsection (c)(4); or

"(4) when subsection (f) applies, fails to hold the hearing, receive the requisite testimony and proof, or make the determination required by subsection (f),

a Federal court, in a proceeding under this chapter, shall neither presume findings of fact made at such proceeding to be correct nor decline to consider a claim on the ground that it was not raised in such proceeding at the time or in the manner prescribed by State law. In no circumstances other than those described in this subsection shall a determination of noncompliance with this section provide a basis for relief to a petitioner proceeding under this chapter.

"(k) No attorney appointed to represent a prisoner in State post-conviction proceedings shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made, unless the prisoner and attorney expressly request continued representation.

"(l) Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the highest State court with jurisdiction over criminal cases shall, after notice and comment, establish a schedule of hourly rates for the compensation of attorneys appointed pursuant to this section that are reasonable in light of the qualifications of attorneys appointed and the local practices for legal representation in cases reflecting the complexity and responsibility of capital cases. For each attorney appointed pursuant to this section, the State court shall separately order compensation at the rates set by the highest State court for the hours the attorneys reasonably expended on the case and for reasonable expenses paid for investigative, expert, and other reasonably necessary services. Any aggrieved party may bring a private cause of action in Federal district court to enforce the provisions of this subsection for the establishment of a schedule of reasonable hourly rates for the compensation of attorneys. In such an action, the Federal court shall not independently determine the appropriate rates, but shall decide whether the hourly rates as scheduled by the State court are within the range of reasonableness consistent with the criteria stated in this subsection. If the hourly rates as scheduled are not within the range of reasonableness, or if no schedule of rates has been established, the court shall grant appropriate injunctive or declaratory relief, except that the court shall not grant relief that disturbs any criminal conviction or sentence, obstructs the prosecution of State criminal proceedings, or alters proceedings arising under this chapter.

"(m) The ineffectiveness or incompetence of counsel appointed pursuant to this section during State or Federal post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254. This limitation shall not preclude the appointment of different counsel at any phase of State or Federal post-conviction proceedings.

"(n) Nothing in this section changes the constitutional standard governing claims of ineffective assistance of counsel pursuant to the sixth amendment to the Constitution of the United States. A determination of noncompliance with this section (as opposed to the facts which support such a determination) shall not provide a basis for a claim of constitutionally ineffective assistance of counsel.

"(o) The requirements of this section shall apply to any appointment of counsel made after the effective date of this Act in any trial, direct appeal, or unitary review of a capital indigent. Counsel shall be appointed as provided in this section in any post-conviction proceeding commenced after the effective date of this Act. In no case shall counsel appointed for a proceeding commenced before the effective date of this Act be subject to the requirements of this section, nor shall any person whose counsel was appointed for any trial, appeal, post-conviction or unitary review before the effective date of this Act be entitled to any relief, including application of subsection (j), based on a claim that counsel was not appointed in conformity with subsection (e) or (f).".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 153 of title 28, United States Code, as amended by section 304(a)(2), is amended by adding at the end the following new item:

"2258. Counsel in capital cases; State court.".

**SEC. 9. CAPITAL LITIGATION FUNDING.**

(a) GRANTS UNDER THE EDWARD BYRNE GRANT PROGRAM.—

(1) IN GENERAL.—Part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following new section:

"HABEAS CORPUS LITIGATION

"SEC. 511A. Notwithstanding any other provision of this title, the Director shall provide grants to the States, from the funding allocated pursuant to section 511, for the purpose of supporting litigation pertaining to Federal habeas corpus petitions in capital cases. The total funding available for such grants within any fiscal year shall be equal to the funding provided to capital resource centers, pursuant to Federal appropriation, in the same fiscal year.".

(2) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. preceding 3701) is amended by inserting after the item relating to section 511 the following new item:

"Sec. 511A. Habeas corpus litigation.".

(b) GRANTS FOR STATE CAPITAL LITIGATION.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 103(a) is amended—

(1) by redesignating part R as part S;

(2) by redesignating section 1801 as section 1901; and

(3) by inserting after part Q the following new part:

**"PART R—GRANTS FOR STATE CAPITAL LITIGATION**

**"SEC. 1801. GRANT AUTHORIZATION.**

"The Director of the Bureau of Justice Assistance shall make grants to States from amounts appropriated to carry out this part for the use by States and by local entities in the States to comply with section 2258 of title 28, United States Code.

**"SEC. 1802. STATE APPLICATIONS.**

"(a) IN GENERAL.—(1) To request a grant under this part, the Chief Executive of a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(2) An application under paragraph (1) shall include assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

"(b) STATE OFFICE.—The office designated under section 507—

"(1) shall prepare an application under this section; and

"(2) shall administer grant funds received under this part, including review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

**"SEC. 1803. REVIEW OF STATE APPLICATIONS.**

"(a) IN GENERAL.—The Director shall make a grant under section 1801 to carry out the activities described in the application submitted by an applicant under section 1802 upon determining that—

"(1) the application is consistent with the requirements of this part; and

"(2) before the approval of the application, the Bureau has made an affirmative finding in writing that the proposed activities have been reviewed in accordance with this part.

"(b) APPROVAL.—Each application submitted under section 1802 shall be considered to be approved, in whole or in part, by the Director not later than 45 days after first received unless the Director informs the applicant of specific reasons for disapproval.

"(c) DISAPPROVAL NOTICE AND RECONSIDERATION.—The Director shall not disapprove any application without first affording the applicant reasonable notice and opportunity for reconsideration.

**"SEC. 1804. DISTRIBUTION OF FUNDS.**

"For fiscal years 1994, 1995, and 1996, the Federal share of a grant made under this part may not exceed 75 percent of the total costs of the activities described in the application submitted under section 1702 for the fiscal year for which the project receives assistance under this part. Thereafter, the Federal share of a grant made under this part may not exceed 50 percent.

**"SEC. 1805. EVALUATION.**

"(a) IN GENERAL.—(1) A State that receives a grant under this part shall submit to the Director an evaluation not later than March 1 of each year in accordance with guidelines issued by the Director.

"(2) The Director may waive the requirement specified in subsection (a) if the Director determines that such evaluation is not warranted in the case of any particular State.

"(b) DISTRIBUTION.—A State or local entity may use not more than 5 percent of the funds it receives under this part to develop an evaluation program under this section.".

(c) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 103(b), is amended by striking the matter relating to part R and inserting the following:

"PART R—GRANTS FOR STATE CAPITAL LITIGATION

"Sec. 1801. Grant authorization.
"Sec. 1802. State applications.
"Sec. 1803. Review of State applications.
"Sec. 1804. Distribution of funds.
"Sec. 1805. Evaluation.

"PART S—TRANSITION; EFFECTIVE DATE; REPEALER".

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus

Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)), as amended by section 103(c), is amended by adding at the end the following new paragraph:

"(12) There are authorized to be appropriated such sums as are necessary to carry out activities under part R.".

**SEC. 10. CERTIFICATION OF COMPLIANCE.**

(a) IN GENERAL.—Subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 501 et seq.) is amended by adding at the end the following new section:

"CERTIFICATION OF COMPLIANCE

"SEC. 509A. In any application for a grant under this subpart, a State in which a sentence of death may be imposed shall certify whether it will comply with the provisions of section 2258 of title 28, United States Code. If the State chooses not to certify that it will comply with the provisions of that section, the amount of funds that the State is eligible to receive under that subpart shall be reduced by 75 percent. If the State certifies that it will comply with the provisions of section 2258 of title 28, United States Code, the amount of funds that the State is eligible to receive under that subpart shall not be reduced by virtue of any failure or alleged failure to carry out any of the requirements of that section. The sole enforcement mechanisms for the requirements set forth in that section shall be those provided in that section, to which the State shall be deemed to have consented by certifying that it will comply with the provisions of that section.".

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. preceding 3701) is amended by inserting after the item relating to section 509 the following new item:

"Sec. 509A. Certification of compliance.".

**SEC. 11. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date that is 180 days after the date of enactment of this Act.

(b) SECTION 2258(b) OF TITLE 28, UNITED STATES CODE.—Section 2258(b) of title 28, United States Code, as added by section 208(a), shall take effect on the date of enactment of this Act.

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By Mr. SHELBY:

S.J. Res. 123. Joint resolution to designate the week beginning November 6, 1994, as "National Elevator and Escalator Safety Awareness Week"; to the Committee on the Judiciary.

NATIONAL ESCALATOR SAFETY AWARENESS WEEK

• Mr. SHELBY. Mr. President, I am pleased today to introduce a resolution designating the week of November 6, 1994, as "National Escalator Safety Awareness Week." The purpose of this legislation is to draw the American public's attention to the potential for injury on elevators and escalators and how to prevent these injuries.

There are approximately 700,000 elevators, escalators, and moving walkways in use in this country with a ridership of over 75 billion passengers. The vertical transportation industry has consistently devoted its energies to providing safe equipment. Nevertheless, it is estimated by the Consumer Product Safety Commission that nearly 15,000 injuries occur each year. Usually, the victims are young children or the elderly.

Congressional designation of the week of November 6, 1994, as "National Elevator and Escalator Safety Awareness Week" will aid the efforts of such organizations as the Elevator and Escalator Safety Foundation to educate our citizens about proper and safe use of vertical transportation. This legislation calls for no funding. Rather it provides an important focus on an important problem which is preventable through education. I invite my colleagues to support this effort by cosponsoring this resolution.•

By Mr. BURNS:

S.J. Res. 127. Joint resolution proposing an amendment to the Constitution prohibiting the imposition of retroactive taxes on the American people; to the Committee on the Judiciary.

CONSTITUTIONAL AMENDMENT PROHIBITING RETROACTIVE TAX INCREASES

Mr. BURNS. Mr. President, well, the tax bill has passed. And, as we all know, the package contains a lot of tax increases on the American people.

That's bad enough. But what's worse is that many of the income tax increases have been in effect since last January—before the current administration even took office.

So, here we are, 8 months into the tax year. And Congress has just passed a bill to hike taxes that is retroactive.

This is going to come as an unwelcome surprise to a lot of folks when tax time rolls around. I am especially concerned about the small businessowners who will find out that they owe the Government more than they thought they did.

Waiving penalties for underwithholding is not enough—tax increases should not be retroactive. These new taxes—as much as I object to them—should only go into effect once the bill has been signed into law.

That is why I am introducing this joint resolution that will make retroactive tax increases unconstitutional.

I hope my colleagues will agree with me that this constitutional amendment is a necessary safeguard against arbitrary tax increases.

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## ADDITIONAL COSPONSORS

S. 257

At the request of Mr. BUMPERS, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 257, a bill to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes.

S. 265

At the request of Mr. MACK, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 265, a bill to increase the amount of credit available to fuel local, regional, and national economic growth by reducing the regulatory burden imposed upon financial institutions, and for other purposes.

S. 340

At the request of Mr. HEFLIN, the names of the Senator from Utah [Mr. HATCH], the Senator from Michigan [Mr. LEVIN], and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 340, 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, and for other purposes.

S. 348

At the request of Mr. RIEGLE, the names of the Senator from Idaho [Mr. CRAIG] and the Senator from Washington [Mrs. MURRAY] were added as cosponsors of S. 348, a bill to amend the Internal Revenue Code of 1986 to permanently extend qualified mortgage bonds.

S. 455

At the request of Mr. HATFIELD, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 455, a bill to amend title 31, United States Code, to increase Federal payments to units of general local government for entitlement lands, and for other purposes.

S. 469

At the request of Mr. WARNER, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 469, a bill to require the Secretary of the Treasury to mint coins in commemoration of the Vietnam Women's Memorial.

S. 483

At the request of Mr. SHELBY, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 483, a bill to provide for the minting of coins in commemoration of Americans who have been prisoners of war, and for other purposes.

S. 549

At the request of Mr. DOMENICI, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 549, a bill to provide for the minting and circulation of one-dollar coins.

S. 565

At the request of Mr. WARNER, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 565, a bill to amend the Internal Revenue Code of 1986 to improve disclosure requirements for tax-exempt organizations.

S. 669

At the request of Mrs. KASSEBAUM, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 669, a bill to permit labor-management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes.

S. 784

At the request of Mr. HATCH, the names of the Senator from Maryland [Ms. MIKULSKI] and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 784, a bill to amend the Federal Food, Drug, and Cosmetic Act to establish standards with respect to dietary supplements, and for other purposes.

S. 916

At the request of Mr. CRAIG, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 916, a bill to amend the Davis-Bacon Act and the Copeland Act to provide new job opportunities, effect significant cost savings by increasing efficiency and economy in Federal procurement, promote small and minority business participation in Federal contracting, increase competition for Federal construction contracts, reduce unnecessary paperwork and reporting requirements, clarify the definition of prevailing wage, and for other purposes.

S. 1037

At the request of Mrs. MURRAY, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 1037, a bill to amend the Civil Rights Act of 1991 with respect to the application of such Act.

S. 1090

At the request of Mr. BROWN, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 1090, a bill to rescind unauthorized appropriations for fiscal year 1993.

S. 1111

At the request of Mr. KERREY, the names of the Senator from Alabama [Mr. HEFLIN], the Senator from Nebraska [Mr. EXON], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of S. 1111, a bill to authorize the minting of coins to commemorate the Vietnam Veterans' Memorial in Washington, DC.

S. 1118

At the request of Mr. HATFIELD, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from Missouri [Mr. DANFORTH], and the Senator from Indiana [Mr. COATS] were added as cosponsors of S. 1118, a bill to establish an additional national education goal relating to parental participation in both the formal and informal education of their children, and for other purposes.

S. 1125

At the request of Mr. DODD, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1125, a bill to help local school systems achieve goal 6 of the national education goals, which provides that by the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning, by ensuring that all schools are safe and free of violence.

S. 1145

At the request of Mr. JEFFORDS, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 1145, a bill to prohibit the use of outer space for advertising purposes.

S. 1184

At the request of Mr. BROWN, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 1184, a bill to limit the amount of indirect costs that may be incurred in conducting federally sponsored university research and development to 50 percent of the modified total direct costs related to such research and development.

S. 1190

At the request of Mr. BINGAMAN, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 1190, a bill to require the Secretary of Health and Human Services to establish an America Cares Program to provide for the establishment of demonstration projects for the provision of vouchers and cash contributions for goods and services for homeless individuals, to provide technical assistance and public information, and for other purposes.

S. 1209

At the request of Mr. KEMPTHORNE, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1209, a bill to provide for a delay in the applicability of certain regulations to certain municipal solid waste landfills under the Solid Waste Disposal Act, and for other purposes.

S. 1256

At the request of Mr. DOLE, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 1256, a bill to amend the Foreign Assistance Act of 1961 to examine the status of the human rights of people with disabilities worldwide.

S. 1268

At the request of Mr. WOFFORD, the names of the Senator from California [Mrs. BOXER], the Senator from Colorado [Mr. CAMPBELL], the Senator from South Dakota [Mr. DASCHLE], the Senator from Arizona [Mr. DECONCINI], the Senator from California [Mrs. FEINSTEIN], the Senator from Iowa [Mr. HARKIN], the Senator from Massachusetts [Mr. KERRY], the Senator from Ohio [Mr. METZENBAUM], the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Illinois [Mr. SIMON], and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of S. 1268, a bill to amend the Employee Retirement Income Security Act of 1974 with respect to rules governing litigation contesting termination or reduction of retiree health benefits.

S. 1276

At the request of Mr. LEAHY, the names of the Senator from West Virginia [Mr. BYRD] and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of S. 1276, a bill to extend for three years the moratorium on the sale, transfer or export of anti-personnel landmines abroad, and for other purposes.

S. 1322

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1322, a bill to extend the suspension of duty on certain collapsible umbrellas.

S. 1326

At the request of Mr. CAMPBELL, the names of the Senator from North Dakota [Mr. DORGAN] and the Senator from North Dakota [Mr. CONRAD] were added as cosponsors of S. 1326, a bill to establish a forage fee formula on lands under the jurisdiction of the Department of Agriculture and the Department of the Interior.

S. 1345

At the request of Mr. BINGAMAN, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 1345, a bill to provide land-grant status for tribally controlled community colleges, tribally controlled postsecondary vocational institutions, the Institute of American Indian and Alaska Native Culture and Arts Development, Southwest Indian Polytechnic Institute, and Haskell Indian Junior College, and for other purposes.

SENATE JOINT RESOLUTION 75

At the request of Mr. ROTH, the names of the Senator from Minnesota [Mr. WELLSTONE], the Senator from Indiana [Mr. COATS], the Senator from Idaho [Mr. CRAIG], the Senator from South Carolina [Mr. THURMOND], the Senator from Missouri [Mr. DANFORTH], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of Senate Joint Resolution 75, a joint resolution designating January 2, 1994, through January 8, 1994, as "National Law Enforcement Training Week."

SENATE JOINT RESOLUTION 107

At the request of Mr. BINGAMAN, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Hawaii [Mr. INOUYE], the Senator from Missouri [Mr. BOND], the Senator from Louisiana [Mr. JOHNSTON], the Senator from New York [Mr. D'AMATO], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Alabama [Mr. SHELBY], the Senator from Virginia [Mr. WARNER], the Senator from Maryland [Ms. MIKULSKI], the Senator from New York [Mr. MOYNIHAN], the Senator from California [Mrs. FEINSTEIN], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from Ohio [Mr. METZENBAUM], the Senator from Nevada [Mr. REID], the Senator from Connecticut [Mr. DODD], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of Senate Joint Resolution 107, a joint resolution

to designate the first Monday in October of each year as "Child Health Day."

SENATE JOINT RESOLUTION 120

At the request of Mr. COVERDELL, the names of the Senator from Alabama [Mr. SHELBY], the Senator from Indiana [Mr. COATS], the Senator from Colorado [Mr. BROWN], the Senator from Montana [Mr. BURNS], the Senator from Virginia [Mr. WARNER], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of Senate Joint Resolution 120, a joint resolution proposing an amendment to the Constitution prohibiting the imposition of retroactive taxes on the American people.

SENATE CONCURRENT RESOLUTION 30

At the request of Mr. BROWN, the names of the Senator from Florida [Mr. MACK], the Senator from California [Mrs. BOXER], the Senator from Maine [Mr. COHEN], the Senator from Washington [Mrs. MURRAY], the Senator from Massachusetts [Mr. KERRY], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from North Carolina [Mr. HELMS], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of Senate Concurrent Resolution 30, a concurrent resolution congratulating the Anti-Defamation League on the celebration of its 80th anniversary.

SENATE RESOLUTION 107

At the request of Mr. WELLSTONE, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of Senate Resolution 107, a resolution to express the sense of the Senate that comprehensive and equitable mental health and substance abuse benefits should be included in any comprehensive health care bill passed by Congress.

## SENATE CONCURRENT RESOLUTION 34—RELATIVE TO ACCOUNTING STANDARDS

Mr. BRADLEY submitted the following concurrent resolution; which was referred to the Committee on Banking, Housing, and Urban Affairs:

S. CON. RES. 34

Whereas the Financial Accounting Standards Board is reconsidering the proper accounting treatment for stock compensation plans, including broad-based employee stock option plans and employee stock purchase plans;

Whereas the Board has suggested that stock options granted under stock compensation plans should be reported by companies on their income statements as expenses, similar to cash compensation or health benefits;

Where improved financial reporting and disclosure of employee compensation if of paramount importance;

Whereas all 6 of the largest accounting firms have urged that the current stock option accounting standards be left in place;

Whereas the potential distortion that may result from implementing the Board's proposal may detract from recent attempts to provide better and clearer information to the public;

Whereas new business in new-growth sectors, such as hightechnology industries, often lack financial resources and must rely on stock options to attract qualified employees;

Whereas the Board's proposal will reduce incentives to grant stock options, thereby limiting an important element in the feasible compensation mix of these companies and posing a threat to entrepreneurship in general;

Whereas employee ownership in American companies has greatly expanded through the use of stock compensation plans, and a majority of the emerging growth companies distrubute stock options to most or all of their employees;

Whereas a rule recently promulgated by the Securities and Exchange Commission increases the disclosure obligations of public companies, thereby improving financial reporting and disclosure of employee compensation, especially for high-level executives;

Whereas stock compensation plans have the potential to stimulate American productivity and enhance American competitiveness;

Whereas discouraging the use of stock options will reduce the ability of new businesses to obtain proper financing and reduce America's ability to compete in the world economy; and

Whereas one function of Congress is to discern how Federal policies affect the general public and to ensure that the general economic health of the country is not unduly harmed by these policies: Now, therefore, be it

*Resolved by the House of Representatives (the Senate concurring)*, That it is the sense of the Congress that—

(1) the accounting standards proposed by the Financial Accounting Standards Board will have grave economic consequences, particularly for businesses in new-growth sectors, which rely heavily on entrepreneurship; and

(2) the Board should not change the current accounting rules under Accounting Principles Board Decision 25 by requiring that businesses deduct from profits the value of stock options.

Mr. BRADLEY. Mr. President, I rise today to address a very technical but very important issue regarding the accounting treatment of stock options granted to employees. The bottom-line concern in this debate is whether, in the blind pursuit of technical accounting purity, we will kill the goose that lays the golden egg by unduly burdening our entrepreneurial high-technology sector.

The Financial Accounting Standards Board [FASB], an independent, nongovernmental panel that sets standards for the accounting industry, recently proposed a requirement that companies deduct from their reported earnings the value of stock options granted to employees. They are in the process of receiving public comment on that proposal. The resolution I am submitting today simply asks the Financial Accounting Standards Board to reconsider that proposal in light of the threat it poses to entrepreneurial activity in the United States.

The stated rationale for FASB's action is to improve disclosure of employee compensation—especially for high-level executives. While this is a laudable goal, the effect of this proposal will be to stifle entrepreneurship by significantly raising the cost of granting stock options to low- and mid-level employees without materially improving compensation disclosure for high-level employees.

The truth is that we may be trying to fix something that simply isn't broken. The Securities Exchange Commission has already stiffened proxy information requirements regarding the compensation awarded to top corporate executives. And this proxy information already includes information about noncash compensation and the estimated value of stock option grants to top employees. Further, under our current accounting rules, shareholders already have access to information about the effect of stock options on corporate profits. Under APB 25, companies must reflect the impact of stock options under the line item "Earnings per Share." This information portrays the potentially dilutive effect that stock options can have on existing shareholders.

Finally, if the concern is that shareholders do not have access to cost information regarding these options, the answer is not to require an immediate hit on corporate earnings. This type of information can easily be provided by adding footnote disclosures that precisely describe what costs are involved. This approach has been supported by an unprecedented coalition of the Business Roundtable, the Council of Institutional Investors, and the Big Six accounting firms. When the Fortune 500, their shareholders, and their accountants can all agree on something, it is time for Congress to take notice.

This is truly a case where the cure is worse than the illness. Stock options have played an invaluable role in the creation of our thriving high-technology industry. Startup firms often lack the financial resources to attract, retain, and motivate employees. For this reason, they often offer employees stock in the venture, sharing some of the upside benefit in return for the employee's foregoing higher immediate compensation. This has been the history of many of our most successful companies, including Microsoft and Apple Computer. If FASB's proposal is adopted, the cost of using these options will go up dramatically. Independent analyses suggest that high-technology companies will report earnings of from 30 to 50 percent less than they do today. This will increase their stock price volatility and, consequently, their cost of capital. FASB's proposal would place companies in the position

of choosing between a drastic reduction in reported earnings or simply not using employee stock options.

And contrary to critics' claims, the primary group that will be harmed will not be the top executives. They will still get their compensation packages. This proposal will aim directly at employee stock option plans offered to all employees. FASB's proposal will eliminate one of the most promising tools American corporations have to motivate their workers, for little gain and at a permanent cost to our economy.

I urge my colleagues to join me in this resolution. I also ask that a letter of support from the American Electronics Association, the National Venture Capital Association, and the Industrial Biotechnology Association be included in the RECORD.

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

AUGUST 6, 1993.

Hon. BILL BRADLEY,
*U.S. Senate, Washington, DC.*

DEAR SENATOR BRADLEY: The American Electronics Association, the Biotechnology Industry Organization, and the National Venture Capital Association commend and strongly endorse your resolution urging the Financial Accounting Standards Board (FASB) not to move forward with its stock valuation proposal.

Your resolution expresses the Sense of the Senate that FASB should not move forward with its proposal to force companies to value outstanding stock options and employee stock purchase plans on their financial statements.

Stock options are the primary vehicle by which our companies attract, retain, and motivate employees. Very often, high technology companies issue options to all employees. They encourage management and employees to work together to achieve excellence, and are the lifeblood of our companies.

By virtue of an accounting change, the FASB proposal would devastate the profitability of high technology companies and their ability to issue options. In a May, 1993 report, the Wyatt Group Company, an international human resources company, said the proposal would reduce the profitability of high tech companies by close to 50 percent. Reporting greatly lower profits will limit our ability to raise investment capital and to offer options to our employees.

The FASB proposal is opposed by industry, the Administration, shareholder groups, the "Big 6" accounting firms, and the investment community. Your resolution makes it clear that the United States shares their concerns.

We appreciate your outstanding leadership on this issue and stand ready to assist you in your efforts in any way that we can.

J. Richard Iverson, President and CEO, American Electronics; Dan Kingsley, President, National Venture Capital Association; Carl Feldbaum, President, Biotechnology Industry Organization.

## SENATE CONCURRENT RESOLUTION 35—RELATIVE TO REGULATIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Mr. WOFFORD submitted the following concurrent resolution; which was referred to the Committee on Labor and Human Resources:

S. CON. RES. 35

To express the sense of Congress with respect to certain regulations of the Occupational Safety and Health Administration.

Whereas it is in the public interest to reduce the frequency of workplace accidents and the human and economic costs associated with such injuries;

Whereas workplace accidents involving powered industrial trucks are often the result of operation by poorly trained, untrained, or unauthorized operators;

Whereas Federal regulations promulgated by the Occupational Safety and Health Administration and codified at 29 C.F.R. 1910.178 require that operators of powered industrial trucks be trained and authorized;

Whereas existing regulations lack any guidelines to measure whether operators of powered industrial trucks are in fact trained and authorized;

Whereas operator training programs have been demonstrated to reduce the frequency and severity of workplace accidents involving powered industrial trucks; and

Whereas a petition to amend existing regulations to specify the proper components of a training program for operation of powered industrial trucks has been pending before the Occupational Safety and Health Administration since March 1988: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That the Occupational Safety and health Administration is requested to publish, within one year of the date of enactment of this Resolution, proposed regulations amending the regulation published as section 1910.178 of title 29, Code of Federal Regulations, to specify the components of an adequate operator training program and to provide that only trained employees be authorized to operate powered industrial trucks.

## SENATE CONCURRENT RESOLUTION 36—RELATIVE TO THE NORTH AMERICAN FREE-TRADE AGREEMENT

Mr. RIEGLE (for himself, Mr. ROCKEFELLER, Mr. SIMON, and Ms. MOSELEY-BRAUN) submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 36

Expressing the sense of Congress that United States truck safety standards are of paramount importance to the implementation of the North American Free-Trade Agreement.

Whereas the North American Free-Trade Agreement in requiring the United States, Mexico, and Canada to "harmonize" their trucking safety standards should ensure the continuing application of vital United States safety standards;

Whereas the North American Free-Trade Agreement will permit Mexican trucking companies and Mexican drivers to operate in Texas, New Mexico, Arizona, and California after 3 years and throughout the United States after 6 years;

Whereas the United States truck driver fatigue rules limit drivers to 10 hours per day behind the wheel, Canada allows 13 hours without rest, and Mexico has no limitations on truck driver time;

Whereas front brakes are required on United States trucks but are not required on Mexican trucks, and the lack of front brakes reduces stopping ability and increases a truck's susceptibility to jackknifing;

Whereas the United States maximum gross vehicle weight limit is 80,000 pounds without a special permit, compared to 137,000 pounds in Canada and 171,000 pounds in Mexico;

Whereas Mexico does not have a truck driver records system and the Canadian system does not link with the United States system, thereby making it impossible for enforcement officials in the United States to identify suspended or revoked drivers, or drivers with disqualifying offenses such as drunk, drugged, or reckless driving; and

Whereas only the United States requires industry-wide random testing for drugs and alcohol: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That it is the intent of the Congress that the Secretary of Transportation, in carrying out harmonization negotiations under the auspices of the Land Transportation Standards Subcommittee established under article 913 of the North American Free-Trade Agreement, shall uphold all United States truck safety standards, including truck sizes and weights, and safety standards such as truck driver hours of service, front brake and other safety equipment requirements, and the truck driver record system.

Mr. RIEGLE. Mr. President, I rise today because I am profoundly disturbed that if the North American Free-Trade Agreement is passed, the lives of millions of American car drivers and their passengers will be put at risk by heavier, dangerous trucks coming from Mexico.

The NAFTA, if it passes, will allow Mexican drivers to pick up a load at a Mexican factory and drive directly to their destinations anywhere in the United States or Canada. Right now, Mexican trucks must offload their cargo at the United States border, where it is onloaded to an American truck and driven to its destination in the States.

However, there are fundamental differences in the way Mexico regulates trucks and truck drivers and the way the United States regulates them.

First, Mexico doesn't require its trucks to have front brakes. Without them, trucks cannot stop as fast and are more susceptible to jackknifing.

Second, Mexico allows trucks to weigh up to 171,000 pounds, more than double our limit of 80,000 pounds. The heavier weight of Mexican trucks also reduces their ability to stop quickly and maneuver.

Third, Mexican drivers can legally drive as long as they want—a policy some have called "drive 'til you drop." By contrast, U.S. drivers can only drive up to 10 hours a day, greatly reducing the possibility of fatigue.

Fourth, Mexico's driver records system is woefully inadequate. Unlike the United States, no comprehensive, computer system exists for tracking the histories of drivers. As a result, Mexican drivers who have had their licenses suspended or revoked for drunk, drugged, or reckless driving or for any other reason, will likely go undetected

as they drive into the United States, posing a threat to other vehicles.

Finally, Mexican truck drivers can be as young as 18 while United States truck drivers must be 21 or over.

While negotiators from Mexico, Canada, and the United States have said that they will make the trucking standards of the three countries uniform, I am extremely worried that the United States will be pressured to lower its standards down to Mexico's rather than the reverse.

During the United States-Canada Free-Trade Agreement, truck standards were harmonized in principle before that agreement was implemented. By contrast, only after NAFTA is implemented will the three countries' trucking standards be harmonized. What leverage do we have then to make sure our safety standards aren't compromised? None whatsoever.

Clearly, endangering the safety of everyone who uses our road and highway system is unacceptable. Even for those of my colleagues who support the NAFTA—which I strongly oppose—risking the lives of millions of Americans cannot be worth whatever supposed benefits the NAFTA brings.

For this reason, I am today introducing this resolution, which expresses the sense of Congress that U.S. truck safety standards are of paramount importance and that the NAFTA should uphold all of them. Senators ROCKEFELLER, MOSELEY-BRAUN, and SIMON are original cosponsors of this resolution.

## SENATE CONCURRENT RESOLUTION 37—RELATIVE TO SPACE LAUNCH VEHICLE TECHNOLOGIES

Mr. BINGAMAN (for himself, Mr. MCCAIN, and Mr. GLENN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 37

**SECTION 1. SENSE OF CONGRESS RELATING TO THE PROLIFERATION OF SPACE LAUNCH VEHICLE TECHNOLOGIES.**

(a) FINDINGS.—The Congress finds the following:

(1) The United States has joined with other nations in the Missile Technology Control Regime (MTCR) which restricts the transfer of missiles or equipment or technology that could contribute to the design, development or production of missiles capable of delivering weapons of mass destruction.

(2) Missile technology is indistinguishable from and interchangeable with space launch vehicle technology.

(3) Transfers of missile technology or space launch vehicle technology cannot be safeguarded in a manner that would provide timely warning of diversion for military purposes.

(4) It has been United States policy since agreeing to the guidelines of the Missile Technology Control Regime to treat the sale or transfer of space launch vehicle technology as restrictively as the sale or transfer of missile technology.

(5) Previous Congressional action on missile proliferation, notably title XVII of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1738), has explicitly supported this policy through such actions as the statutory definition of the term "missile" to mean "a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems".

(6) There is strong evidence that emerging national space launch programs in the Third World are not economically viable.

(7) The United States has successfully dissuaded countries from pursuing space launch vehicle programs in part by offering to cooperate with them in other areas of space science and technology.

(8) The United States has successfully dissuaded other MTCR adherents, and countries who have agreed to abide by MTCR guidelines, from providing assistance to emerging national space launch programs in the Third World.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Congress supports the strict interpretation by the United States of the Missile Technology Control Regime concerning—

(A) the inability to distinguish space launch vehicle technology from missile technology under the regime; and

(B) the inability to safeguard space launch vehicle technology in a manner that would provide timely warning of its diversion to military purposes; and

(2) the United States and the governments of other nations adhering to the Missile Technology Control Regime should be recognized for—

(A) the success of such governments in restricting the export of space launch vehicle technology and of missile technology; and

(B) the significant contribution made by the imposition of such restrictions to reducing the proliferation of missile technology capable of being used to deliver weapons of mass destruction.

(c) DEFINITIONS.—In this section:

(1) The term "Missile Technology Control Regime" or "MTCR" means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto.

(2) The term "MTCR Annex" means the Guidelines and Equipment and Technology Annex of the Missile Technology Control Regime, and any amendments thereto.

Mr. BINGAMAN. Mr. President, over the past two months the efforts of the Clinton administration to control the spread of missile technology have clearly made significant progress. These efforts, of course, build on those of the Bush administration, which also enjoyed important successes last year.

I have in mind the announcement made by the Government of South Africa on June 30, 1993, that it was abandoning its Space Launch Vehicle [SLV] Program, which the United States had sanctioned in the fall of 1991 for having imported foreign missile technology that exceeded the guidelines of the missile technology control regime [MTCR]. I also have in mind the announcement on July 17, 1993, by the State Department that Russia had agreed to freeze its sale of SLV technology to India and would henceforth adhere to the guidelines of the MTCR in all of its missile technology export activities.

These two announcements follow similar actions last year by the Governments of Argentina and Taiwan. Last year Argentina terminated its Condor II Program, which had been intended for use both as a missile and as a space launch vehicle, and Taiwan announced that it would forego development of a space launch vehicle as well.

This encouraging trend is not an accident. In each case, the United States and other MTCR members made the case that development of space launch vehicles would raise serious security concerns, would entail the violation of MTCR guidelines covering the transfer of missile technology, and would be very unprofitable financially.

These points were recently driven home in a study released by the RAND Corp., entitled "Emerging National Space Launch Programs: Economics and Safeguards." Authored by Brian Chow, this study concluded that emerging national space launch vehicle programs in the Third World are not economically viable and that "it is not possible to safeguard such space launch vehicle programs against technical transfers to ballistic missile development." The study also concludes that "if the United States and other nations wish to slow the proliferation of ballistics missiles, they should not assist these emerging launch programs" and that "the United States and other major launch-providing nations should make a commitment to launch any country's payloads at a reasonable price and in a timely manner."

Obviously this study's conclusions are consistent with the policy which our country has been pursuing for some time through three different administrations. The study's conclusions are consistent with the statutes governing U.S. policy toward missile proliferation, notably title XVII of the fiscal year 1991 Defense Authorization Act, on which I worked with then-Senator GORE, Senator MCCAIN, Senator GLENN, Senator PELL, Senator HELMS, Senator SARBANES, and then-Senator Garn.

Those provisions embody the notion that space launch vehicle technology is indistinguishable from missile technology and cannot be safeguarded in a manner that would provide timely warning of diversion to military uses. Indeed, the definition of "missile" in both the Arms Export Control Act and the Export Administration Act reads as follows: "the term 'missile' means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems." The reference to "any other unmanned

delivery system of similar capability" was, among other things, a reference to space launch vehicle technology.

My colleagues and I had sought to make this point very clear because a 1989 State Department report to Congress had suggested the possibility of aiding emerging space launch programs in the Third World, and we wanted to make our opposition to such an approach crystal clear. In my statement describing our amendment on August 3, 1990, I told the Senate:

However, we should not, and I wish to emphasize this, we should not be providing space launch vehicles or related technology as an incentive not to proliferate, as suggested in a State Department report submitted to Congress last year. it is simply too difficult to prevent such technology from being used for missile purposes. Timely warning of diversion to military uses would be lost.

The sense-of-the-Congress resolution Senator MCCAIN, Senator GLENN, and I are introducing today is intended both to congratulate the administration for its recent successes in controlling missile proliferation and to restate Congress' support for treating transfers of space launch vehicle technology as restrictively as transfers of other missile technology.

My sense is that the Clinton administration, in no small measure due to the efforts of the Vice President, has been doing an excellent job of making missile nonproliferation a real priority in its national security policy. As Senator MCCAIN and I wrote to the Vice President on June 25:

We know that maintaining nonproliferation as a priority in our national security policy is often difficult. In the past actions by both the executive branch and the Congress have too frequently contradicted their rhetoric on nonproliferation. We are sure from our past collaboration that you are playing the key role in this administration in insuring that actions and rhetoric coincide.

I would ask unanimous consent that the full text of this letter be included at the end of my remarks.

Mr. President, our insistence on a strict interpretation of the missile technology control regime both in law and policy over the last few years is now clearly paying dividends that deserve to be recognized. Our resolution does that. Our resolution is also intended to signal to those in the career State Department bureaucracy, who first proposed in 1989 that our policy on transfers of space launch vehicle technology be relaxed and who apparently continue to do so, that we intend to stay the course and we hope they will desist from their efforts to undermine the Clinton administration's nonproliferation policy. Particularly in light of the string of recent successes I cited earlier, it would make no sense to change course now.

Let me conclude by reading the closing paragraph of the RAND report I cited earlier:

Space launch suppliers need not maintain the view that proliferation of space launch capabilities is irreversible. The miserable economics and the difficulties in obtaining technical assistance might kill many of them. That all the major launch suppliers are either members or abiders of MTCR provides an unprecedented opportunity to form a unified position and refrain from providing space launch and ballistic missile assistance to others. The United States and other MTCR members should not give up prematurely. They should discourage emerging national space launch development instead of hoping that it can be safeguarded. Otherwise, the MTCR members might end up promoting missile proliferation instead of slowing it.

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

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

U.S. SENATE,
*Washington, DC, June 25, 1993.*

The VICE PRESIDENT,
*The White House, Washington, DC.*

DEAR MR. VICE PRESIDENT: Congratulations on the firm position the administration is taking with regard to the Russian sale of missile technology, including production equipment, to India. As your two prime collaborators in the drafting of the Missile Technology Control Act of 1991, we are following this case very closely as a measure of the seriousness with which the Clinton administration plans to deal with the threat posed by proliferation of missile technology.

It strikes us that you are utilizing precisely the right combination of incentives and sanctions in the effort to convince the Russians to fulfill their commitments to abide by the Missile Technology Control Regime's controls on exports of missile technology. It is also heartening to see your administration reject the counsel that space launch vehicles are not missiles or could be safeguarded in some fashion. As you well know, at the heart of the Missile Technology Control Act is the notion that what counts is capability, and that space launch vehicles and missiles are indistinguishable, except for easily interchangeable payloads. It is the same notion that is at the heart of the Nuclear Non-Proliferation Act of 1978 with respect to reprocessing and enrichment technology.

We know that maintaining non-proliferation as a priority in our national security policy is often difficult. In the past actions by both the executive branch and the Congress have too frequently contradicted their rhetoric on non-proliferation. We are sure from our past collaboration that you are playing the key role in this administration in insuring that actions and rhetoric coincide.

Best regards.

Sincerely,

JOHN MCCAIN
JEFF BINGAMAN.

Mr. MCCAIN. Mr. President, the sense-of-the-Congress resolution that Senator BINGAMAN, Senator GLENN, and I are introducing today is intended as a message to every official in the U.S. Government that deals with the issue of proliferation.

It is a constant temptation to give priority to the diplomatic issue of the moment, to compromise and avoid controversy, and to put trade before national security. Proliferation, however, is not an area where we can give way to that temptation. Proliferation is simply too dangerous. It risks replacing the structured nuclear confrontation of the cold war with unstructured chaos. It threatens our national interest, that of our allies, and that of humanity.

President Bush and President Clinton have both publicly supported this policy. At the same time, it is not always clear that Presidential policy is being supported with the necessary energy and force at the working level within the bureaucracy and the key departments charged with enforcing this policy and the law.

This is why I wrote Secretary Christopher in early June about our possible failure to firmly enforce our policy and law regarding the missile technology control regime in the case of China. It is why I recently joined Senator BINGAMAN in calling upon the inspector general of the State Department to investigate the quality of enforcement in that Department.

More is involved, however, than the missile technology control regime. While our bill reinforces the need to firmly enforce the missile technology control regime, its spirit is equally applicable to controls affecting chemical, biological, and nuclear weapons. These controls must be enforced even when the case is difficult, and even when they conflict with other priorities.

If they are not so applied, the future is all to predictable. More missiles will fall on defenseless cities, more chemical weapons will be used on helpless civilians, biological weapons will leave the laboratory and join in the killing, and we will again see hellfire from nuclear weapons.

International arms control regimes are vital. They are symbols of international consensus and international law. They are important steps toward a new world order, and they provide the framework for rolling back proliferation as well as preventing it.

International arms control regimes, however, will never be adequate or effective unless nations individually enforce the letter and spirit of that regime, and all of today's arms control regimes lack adequate inspection and enforcement provisions. This makes U.S. leadership, and our example, absolutely critical. If we falter, the world falters, and slides toward a new form of Armageddon.

This is why Senator BINGAMAN, Senator GLENN, and I urge our colleagues to join us in supporting this bill, and in a continuing effort to ensure there is no ambiguity anywhere in the executive branch regarding our firm bipartisan support for enforcement of the missile technology control regime.

No aspect of politics, trade, or diplomatic convenience can ever be an excuse for threatening the future of our children, the Nation, and world.

Mr. President, I respectfully request that the text of my letter to Secretary Christopher and of the letter that Senator BINGAMAN and I sent to the inspector general of the State Department be included in full in the RECORD.

There being no objection, the letters where ordered to be printed in the RECORD, as follows:

U.S. SENATE,
*August 2, 1993.*

Mr. SHERMAN M. FUNK,
*Inspector General,*
*U.S. Department of State,*
*Washington, DC.*

DEAR MR. FUNK: We are writing to ask you to conduct an investigation of the State Department's implementation of the missile technology control provisions contained in Sections 1701, 1702, and 1703 of the National Defense Authorization Act of Fiscal Year 1991.

As key authors of these provisions, we are concerned that the State Department has failed to properly comply with both the letter and intent of the law. In our capacity as legislators, we must know how well the law is being administered, if only to gauge the potential necessity of new legislation. In the last three years, Congress has held numerous hearings concerning the implementation of the missile technology control provisions of the Fiscal Year 1991 law. The Executive branch, and the State Department in particular, has been consistently vague in answering inquiries and discussing the details of its actions in specific cases. For this reason we request your help.

The law states the President must notify Congress of sanctionable activities by foreign entities, or decide to waive sanctions, in each case. The law describes in great detail a series of steps that must be taken by the Secretaries of State, Commerce, and Defense to ensure that all decisions are fully coordinated.

A number of incidents over the last three years suggest that none of these provisions are being fully complied with. We would like four separate issues explored.

I. EXPORT LICENSE REFERRALS

Noncompliance has been clearest with regard to export license referrals. In 1990, Congress became aware the State Department had unilaterally approved an import license for the hardening of several large Brazilian rocket motor casings (a MTCR covered activity). The hardening was needed to complete Brazil's VLS project, an intermediate range rocket listed on our government's missile projects of concern list.

Although State claimed that their issuance of this license was a mistake, there is reason to doubt this assertion. At the time, State was reportedly trying to change U.S. policy on space launch vehicle (SLV) technology exports from a policy which treated such exports as restrictively as missile technology, to a permissive scheme that would allow this technology to be exported if the recipients agreed to certain monitoring procedures and gave certain assurances.

Other agencies, which disagreed with making such a change, feared that allowing these rocket casings to be hardened would serve State as a precedent.[1] Additionally, State promised to suspend the license when it received specific instructions to do so from the Missile Technology Advisory Group (MTAG), in May. Yet, the Department took no action from May through early July, despite urgent requests to do so by senior Defense Department officials, until it was clear that all of the rocket casings sent to the U.S. had been hardened, presenting the U.S. with a fait accompli.

This is but one incident. We believe it is critical that you determine; how many other export license cases State has either approved or denied since November 1990 without the knowledge or participation of the Defense or Commerce Departments and in violation of section 71 of the Arms Export Control Act, and, what cases were they? What SLV related transfers has State approved since November 1990 to nations or organizations, who are not members of the MTCR or with which we did not have space cooperative agreements, prior to April 1987?

II. INTERAGENCY COORDINATION/DETERMINATION OF SANCTIONABILITY

In a case highlighted in the trade press earlier this year, the State Department unilaterally approved a number of missile technology licenses (including approvals involving the Russian space firm, Krunichev) over the objections of the Commerce and Defense Departments. According to press reports, Krunichev was involved in sanctionable missile technology transfers to India. The State Department denied that this was clear at the time. Last month, State threatened to sanction Krunichev for just such activity.

This case raises a number of further questions we would like examined. Since November 1990, how many examples are there of the State Department approving MTCR related export licenses over other agencies' objections, or without full interagency coordination? Did the State Department change its judgment concerning the sanctionability of Krunichev on the basis of information that was unavailable beforehand? Who is responsible for determinations of sanctionable activity, and how are these determinations made? What are the procedures for appealing or reversing particular determinations?

III. EXECUTIVE BRANCH WILLINGNESS TO IMPOSE SANCTIONS

There have been numerous press reports of Russia and the People's Republic of China making MTCR related transfers to nations in South West Asia and the Middle East. These cases raise concerns that the State Department and Executive branch may have chosen not to impose, or to waive, sanctions in cases where sanctions were arguably justified.

We are particularly concerned about the nature of any compromises the Department agreed to in the case of Russian sales to India or other non-MTCR signatures; and the Department's treatment of China's complex relations with North Korea, Pakistan, Iran, and Syria.

It is also now clear that many German, Austrian, and British firms sold missile technology to Iraq. No firm in any of these nations has ever been identified under the law for sanctionable activities elsewhere. Accordingly, we would like you to determine whether there have been any suspect transfers from these nations which the State Department or other Executive branch agencies recommended for sanctions at the MTAG or Missile Technology Export Committee (MTEC), which are both chaired by State, or relevant nonproliferation interagency meetings (other than Great Wall industries and Glavkosmos).

If recommendations were made regarding the suspect transfers which occurred, what precisely did they entail, when were they made, and what happened to both the recommendations and the transferd? Was the letter and spirit of the law enforced in each case? Has there ever been interagency criteria used to establish when action or inaction is appropriate in such cases and, if so, what was the criteria?

IV. COORDINATION WITH THE COMMERCE DEPARTMENT

Finally, important questions need to be raised with regard to dual-use MTCR related cases, under the jurisdiction of the Department of Commerce. Under the law, the State Department is required to compile a list of countries of concern. Such a list would establish which MTCR related exports requiring a U.S. export license would have to be referred to the Department of Defense for coordination. The goal of this provision is to assure that the departments of State, Defense, and Commerce were aware of all cases which each believed required their coordination. Nevertheless, despite repeated Congressional requests for copies of this list, no such list has been produced. Has State coordinated a list of countries of concern, and who are they?

We understand it is standard practice at the Commerce Department not to refer any MTCR related cases for interagency review if the export is intended for a MTCR nation. Apparently, other agencies have protested this practice for years, fearing that without such interagency referral Commerce would automatically approve exports that could result in illicit retransfers (e.g., from such nations as Germany to countries of concern). If this is Commerce Department practice, State Department tolerance of such a practice, in its role as chair of MTAG and MTEC, is most troubling since the MTCR itself requires review of export cases on a case-by-case basis. Such review is supposed to be U.S. policy.

This raises several questions. Has U.S. policy been consistent concerning the review of MTCR exports to MTCR nations? Does the State Department, in its role as chair of MTAG and MTEC, oppose the Commerce Department's current practice? Does Commerce refer such dual use MTCR cases to the MTAG and MTEC for decision? How many of these cases has Commerce approved and how many has Commerce denied without referral to the interagency process?

CONCLUSION

We believe receiving a case by case review of the answers to these questions is critical for the Congress to carry out its constitutional responsibilities, and essential to assure that officials in the new administration responsible for implementing the law get off to a statutorily sound start. Given the sensitive nature of the answers to some of the more specific questions asked, it may be necessary to produce both a classified and unclassified report. We look forward to working with you. If you have any questions please feel free to contact Tony Cordesman (Senator McCain, 224-2235) or Ed McGaffigan (Senator Bingaman, 224-5521), of our staffs.

JOHN MCCAIN,
*U.S. Senator.*
JEFF BINGAMAN,
*U.S. Senator.*

[1] It should be noted the law makes no distinction between SLV and missile technology and is premised on the notion that neither missile nor SLV technology could be safeguarded in a manner that would provide timely warning of diversion to military purposes and that illicit transfers of either should be sanctioned in a similar fashion.

U.S. SENATE,
*June 10, 1993.*

Hon. WARREN M. CHRISTOPHER,
*Secretary of State,*
*U.S. Department of State, Washington, DC.*

DEAR SECRETARY CHRISTOPHER: The announcement by Winston Lord that the People's Republic of China (PRC or China) was continuing missile sales to Pakistan on June 9, 1993, raises issues about China's role in proliferation that go far beyond the case in point. I am deeply concerned that we may face a broad pattern of Chinese activity in selling the technology for weapons of mass destruction that continues in spite of China's accession to agreements like the Missile Technology Control Regime (MTCR) and Nuclear Non-Proliferation Treaty (NPT).

I am also concerned that in our efforts to maintain friendly relations with China, and to avoid disturbing the flow of trade, we may be placing too much reliance on informal diplomacy, failing to properly inform the Congress and the public of China's action, and failing to properly enforce legislation that I cosponsored with Vice President Gore to enforce the MTCR and block sales to Iran and Iraq.

To be specific, I am concerned that the PRC may be systematically violating the MTCR in sales and technology transfers that affect Iran, Pakistan, and Syria, and where some form of de facto cooperation or technology transfer is taking place between China and North Korea. I am also concerned that in contravention of various agreements and assurances, China may be selling technology to these countries that can be used for the production of nuclear, chemical, and biological weapons.

I realize that Senator Pell and Senator Helms have written you regarding some specific instances where China may have violated its agreements, but I am concerned with both the broader pattern of Chinese actions and the need for formal and unclassified assurances as to our knowledge of Chinese actions, our policy towards, and our enforcement of all relevant U.S. law and sanctions. I am also concerned that Mr. Lord made his statement regarding Chinese transfers to Pakistan so soon after the renewal of our MFN agreement with China.

I would be grateful, therefore, if you could provide me with an unclassified summary of our knowledge of Chinese actions involving the transfer of missile, chemical weapons, biological weapons, and nuclear technology; our specific policy in response to any such transfer, and whether any Chinese actions violate or potentially violate the MTCR, laws relating to transfers to Iran, or other U.S. law.

In providing that summary, I would like to make sure that the following issues are addressed in detail:

All aspects of Chinese transfers to Pakistan, including (a) whether the M–11 missile is being transferred in spite of the fact its range and payload exceed the MTCR limit, (b) transfer of the M–9 missile or related technology, (c) transfer of missile production and guidance system technology, including cruise missile technology, dual use technology, and surface-to-air and anti-ship missile technology that are capable of being used as surface to surface missiles, (d) cooperation in any aspect of nuclear weapons related technology including so-called dual use items, (e) cooperation in any aspect of chemical weapons technology, including dual use technology, and (f) cooperation in any aspect of biological weapons technology, including dual use technology.

All aspects of Chinese transfers to Syria, including (a) transfers of technology to Iran, Pakistan, and North Korea that may be reaching Syria, (b) transfer of the M–9 missile or related technology, including any technology transfers by the Won Yuan Industry Corporation or its subsidiaries and the China Precision Machinery and Export Corporation, (c) transfer of missile production and guidance system technology, including cruise missile technology, dual use technology, and surface-to-air and anti-ship missile technology that are capable of being used as surface to surface missiles, (d) cooperation in any aspect of nuclear weapons related technology including so-called dual use items, (e) cooperation in any aspect of chemical weapons technology, including dual use technology, and (f) cooperation in any aspect of biological weapons technology, including dual use and DNA technology.

All aspects of Chinese transfers to Iran, including (a) transfers of technology to Syria, Pakistan, and North Korea that may be reaching Iran, (b) transfer of the R–17, M–11 or M–9 missile or related technology, (c) transfer of missile production and guidance system technology, including cruise missile technology, dual use technology, and surface-to-air and anti-ship missile technology that are capable of being used as surface to surface missiles, and warhead technology of the kind sold by the Great Wall Industry Corporation, (d) cooperation in any aspect of nuclear weapons related technology including so-called dual use items, the sale of power reactors, and transfer of calutron technology (e) cooperation in any aspect of chemical weapons technology, including dual use technology and potential feed stocks, and (f) cooperation in any aspect of biological weapons technology, including dual use technology and DNA technology.

All aspects of Chinese transfers to North Korea, including (a) transfers of technology to North Korea that may be reaching Syria, Pakistan, and Iran, (b) past or current transfers of technology that may have contributed to the development of North Korea's variants of the SCUD and new 1,000 kilometer range (Na Dong) missiles, (c) transfer of missile production and guidance system technology, including cruise missile technology, dual use technology, and surface-to-air and anti-ship missile technology that are capable of being used as surface to surface missiles, (d) cooperation in any aspect of nuclear weapons related technology including so-called dual use items, the sale of power reactors, and transfer of calutron, cascade, and chemical separation technology (e) cooperation in any aspect of chemical weapons technology, including dual use technology and potential feed stocks, and (f) cooperation in any aspect of biological weapons technology, including dual use technology and DNA technology.

Any similar transfers of technology to Libya or Iraq.

I realize that full answers to these questions may require a classified annex to any reply. I believe that it is critical, however, that each of these issues be addressed in unclassified form to the maximum extent possible. I also believe that such unclassified answers are needed because the Department of State and ACDA have consistently failed to comply with law and spirit of legislation requiring unclassified reporting on this subject—an issue that is now under investigation by the Inspector General of the Department of State.

If possible, I would like to have your response by June 18, 1993.

Sincerely,

JOHN MCCAIN,
*United States Senator.*

## SENATE CONCURRENT RESOLUTION 38—RELATING TO THE REPRINTING OF THE BOOK "THE UNITED STATES CAPITOL: A BRIEF ARCHITECTURAL HISTORY"

Mr. FORD (for Mr. MITCHELL and Mr. DOLE) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 38

*Resolved by the Senate (the House of Representatives concurring),* That there shall be printed as a Senate document, the book entitled "The United States Capitol: A Brief Architectural History", prepared by the Office of the Architect of the Capitol.

SEC. 2. Such document shall include illustrations, and shall be in such style, form, manner, and binding as directed by the Joint Committee on Printing after consultation with the Secretary of the Senate.

SEC. 3. In addition to the usual number of copies, there shall be printed—

(1) 56,500 copies for the use of the Commission on the Bicentennial of the United States Capitol; or

(2) such number of copies as does not exceed a total production and printing cost of $69,206.

## SENATE CONCURRENT RESOLUTION 39—RELATING TO THE REPRINTING OF THE BOOK "HISTORY OF THE UNITED STATES CAPITOL"

Mr. FORD (for Mr. MITCHELL and Mr. DOLE) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 39

*Resolved by the Senate (the House of Representatives concurring),* That there shall be printed as a Senate document, the book entitled "Glenn Brown's History of the United States Capitol," as prepared under the auspices of the Architect of the Capitol, with support from the United States Capitol Preservation Commission and the United States Capitol Historical Society.

SEC. 2. Such document shall include illustrations, and shall be in such style, form, manner, and binding as directed by the Joint Committee on Printing after consultation with the Secretary of the Senate.

SEC. 3. In addition to the usual number of copies, there shall be printed—

(1) 6,500 copies for the use of the Senate and the House of Representatives, to be allocated as determined jointly by the Secretary of the Senate and the Clerk of the House of Representatives; or

(2) such number of copies as does not exceed a total production and printing cost of $112,265.

## SENATE CONCURRENT RESOLUTION 40—RELATING TO THE REPRINTING OF THE BOOK "CONSTANTINO BRUMIDI: ARTIST OF THE CAPITOL"

Mr. FORD (for Mr. MITCHELL and Mr. DOLE) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 40

*Resolved by the Senate (the House of Representatives concurring),* That there shall be printed as a Senate document, the book entitled "Constantino Brumidi: Artist of the Capitol," as prepared by the Office of the Architect of the Capitol.

SEC. 2. Such document shall include illustrations, and shall be in such style, form, manner, and binding as directed by the Joint Committee on Printing after consultation with the Secretary of the Senate.

SEC. 3. In addition to the usual number of copies, there shall be printed—

(1) 15,000 copies for the use of the Senate and the House of Representatives, to be allocated as determined jointly by the Secretary of the Senate and the Clerk of the House of Representatives; or

(2) such number of copies as does not exceed a total production and printing cost of $55,489.

## SENATE CONCURRENT RESOLUTION 41—RELATING TO THE REPRINTING OF THE BOOK "THE CORNERSTONES OF THE CAPITOL"

Mr. FORD (for Mr. MITCHELL and Mr. DOLE) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 41

*Resolved by the Senate (the House of Representatives concurring),* That there shall be printed as a Senate document, the book entitled "The Cornerstones of the United States Capitol", prepared by the Office of the Architect of the Capitol.

SEC. 2. Such document shall include illustrations and shall be in such style, form, manner, and binding as directed by the Joint Committee on Printing after consultation with the Secretary of the Senate.

SEC. 3. In addition to the usual number of copies, there shall be printed—

(1) 50,000 copies for the use of the Commission on the Bicentennial of the United States Capitol; or

(2) such number of copies as does not exceed a total production and printing cost of $59,697.

## SENATE RESOLUTION 140—AUTHORIZING THE TESTIMONY OF SENATE EMPLOYEES

Mr. FORD (for Mr. MITCHELL for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 140

Whereas, in the case of United States v. Dean, Cr. No. 92-0181, Independent Counsel Arlin M. Adams has requested the trial testimony of Kenneth A. McLean, a former Senate employee on the staff of the Committee on Banking, Housing, and Urban Affairs;

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 may, by the 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 may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §288b(a) and 288c(a)(2) (1988), the Senate may direct its counsel to represent committees, Members, officers and employees of the Senate with respect to subpoenas or orders issued to them in their official capacity: Now, therefore, be it

*Resolved,* That Kenneth A. McLean, and any other present or former Senate employee whose testimony may be required, is authorized to testify in the trial of United States v. Deborah Dean, Cr. No. 92-0181 (D.D.C.), except as to matters for which a privilege should be asserted.

SEC. 2. That the Senate Legal Counsel is directed to represent Kenneth A. McLean, and any other present or former Senate employee, in connection with the testimony authorized under section 1.

## SENATE RESOLUTION 141—RELATING TO U.S. SENATE VERSUS DURENBERGER

Mr. FORD (for Mr. MITCHELL, for himself and Mr. DOLE) submitted the following resultion; which was considered and agreed to:

S. RES. 141

Whereas, in the case of United States v. Durenberger, et al., Cr. No. 3-93-65, pending in the United States District Court for the District of Minnesota, Senator Dave Durenberger is charged with conspiring to submit false claims to the Senate and his codefendants are charged with making false statements to the Select Committee on Ethics in affidavits that Senator Durenberger submitted to the Committee;

Whereas, this case places in issue Senator Durenberger's privilege under the Speech or Debate Clause, Article I, Section 6, Clause 1 of the Constitution, to be free from questioning in any other place about his communications to the Ethics Committee;

Whereas, pursuant to sections 703(c), 706(a), 709(1), and 713(a) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(c), 288e(a), 288h(1), and 2881(a) (1988), the Senate may direct its Counsel to appear as amicus curiae in the name of the Senate in any legal action which places in issue the powers and responsibilities of Congress under the Consititution, including the privilege of Members to be free from questioning in any other place about any speech or debate: Now, therefore, be it

*Resolved,* That the Senate Legal Counsel is directed to appear as amicus curiae in the name of the Senate in United States v. Durenberger, et al., to defend the constitutional privilege of Senators under the Speech or Debate Clause to be free from questioning in any other place about their communications to the Select Committee on Ethics.

## AMENDMENTS SUBMITTED

## NATIONAL SKILL STANDARDS ACT OF 1993 GOAL 2000 EDUCATE AMERICA ACT

### BINGAMAN AMENDMENT NO. 773

(Ordered to lie on the table.)

Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill (S. 1150) to improve learning and teaching by providing a national framework for education reform; to promote the research, consensus building, and systemic changes needed to ensure equitable educational opportunities and high levels of educational achievement for all American students; to provide a framework for reauthorization of all Federal education programs; to promote the development and adoption of a voluntary national system of skill standards and certifications; and for other purposes, as follows:

On page 4, line 25, insert ", American Indian and other" after "disadvantaged students,".

On page 6, line 1, insert ", American Indian and other" after "disadvantaged students,".

On page 6, between lines 16 and 17, insert the following:

(5) the term "Indian tribe" means any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

On page 6, line 17, strike "(5)" and insert "(6)".

On page 6, line 22, strike "(6)" and insert "(7)".

On page 7, line 3, strike "(7)" and insert "(8)".

On page 7, line 9, strike "(8)" and insert "(9)".

On page 7, line 14, strike "(9)" and insert "(10)".

On page 7, line 17, strike "(10)" and insert "(11)".

On page 7, line 22, strike "(11)" and insert "(12)".

On page 8, line 1, strike "(12)" and insert "(13)".

On page 8, line 4, strike "(13)" and insert "(14)".

On page 16, line 8, strike "18" and insert "19".

On page 16, strike line 10, and insert the following:

(1) three members, one of whom shall be an elected leader of an Indian tribe;

On page 22, strike lines 2 and 3, and insert the following:

be presented in a form, and include data, that—

(A) is understandable to parents and the general public; and

(B) does not exceed a level of functional literacy, except that the provisions of this subparagraph shall not apply if the Secretary certifies to the Congress that the Nation has achieved the National Education Goal described in section 102(5).

On page 28, line 12, insert ", Indian tribal," after "State".

On page 28, line 24, insert ", Indian tribal," after "State".

On page 50, line 3, insert ", Indian tribal," after "State".

On page 50, line 10, insert ", Indian tribal," after "State".

On page 50, line 16, insert ", Indian tribal," after "State".

On page 51, line 13, insert ", Indian tribal," before "and local".

On page 51, line 14, insert ", Indian tribal," before "and local".

On page 59, line 24, insert ", Indian tribes," after "demonstrated effectiveness,".

On page 60, line 23, insert ", Indian tribes," after "business leaders,".

On page 90, line 13, insert ", and Indian tribes," after "rural communities".

On page 93, strike lines 8 through 15, and insert the following:

(b) SECRETARY OF THE INTERIOR.—

(1) IN GENERAL.—The funds reserved for the Secretary of the Interior under section 304(a)(1)(B) shall be made available to the Secretary of the Interior pursuant to an agreement between the Secretary and the Secretary of the Interior containing such terms and assurances, consistent with the provisions of this title, as the Secretary determines shall best achieve the provisions of this title. The agreement shall, at a minimum, contain assurances that—

(A) a panel, as set forth in paragraph (3), shall be established;

(B) a reform and improvement plan designed to increase student learning and assist students in meeting the National Education Goals, meeting the requirements pertaining to State improvement plans described in section 306, and providing for the fundamental restructuring and improvement of elementary and secondary education in schools funded by the Bureau of Indian Affairs (hereafter in this subsection referred to as the "Bureau"), shall be developed by such panel; and

(C) the provisions of, and activities required under, such State improvement plans, including the requirements for timetables for opportunity-to-learn standards, shall be carried out in the same timeframes and under the same conditions stipulated for the States in sections 305 and 306, except that for such purposes, the term "local educational agency" shall be interpreted to mean "school funded by the Bureau".

(2) DUTIES.—The same conditions afforded the States in section 213 of this Act shall apply to the Bureau regarding the voluntary submission of standards to the National Education Standards and Improvement Council for review and certification.

(3) PLAN SPECIFICS.—The reform and improvement plan shall include, in addition to the requirements described in paragraph (1), specific provisions for—

(A) opportunity-to-learn standards pertaining to residential programs and transportation costs associated with programs located on or near reservations or serving students in off-reservation residential boarding schools;

(B) review and incorporation of the National Education Goals and the voluntary national content standards and the voluntary national opportunity-to-learn standards developed under part B of title II of this Act, except that such review shall include the issues of culture and language differences; and

(C) provision for coordination of the efforts of the Bureau with the efforts for school improvement of the States and local educational agencies in which the schools funded by the Bureau are located.

(4) PANEL.—To carry out the provisions of this section, and to develop the plan for systemwide reform and improvement required under the agreement described in paragraph (1), the Secretary of the Interior shall establish a panel coordinated by the Assistant Secretary of the Interior for Indian Affairs. Such panel shall consist of—

(A) the Director of the Office of Indian Education Programs of the Bureau and 2 heads of divisions of such Bureau as the Assistant Secretary shall designate;

(B) a designee of the Secretary of Education; and

(C) a representative nominated by each of the following:

(i) The organization representing the majority of teachers and professional personnel in Bureau operated schools.

(ii) The organization representing the majority of nonteaching personnel in Bureau operated schools, if such organization is not the same organization described in clause (i).

(iii) School administrators of Bureau-operated schools.

(iv) Education line officers located in Bureau area or agency offices serving Bureau-funded schools.

(v) The organization representing the majority of Bureau-funded contract or grant schools not serving students on the Navajo Reservation.

(vi) The organization representing the majority of Bureau-funded contract or grant schools serving students on the Navajo Reservation.

(vii) The organization representing the school boards required by statute for Bureau-operated schools not serving students on the Navajo Reservation.

(viii) The organization representing the school boards required by statute for Bureau-operated schools serving students on the Navajo Reservation.

(5) SPECIAL RULE.—A majority of the members of such panel, including members designated under paragraph (6), shall be from the categories or groups described in paragraph (4)(C).

(6) ADDITIONAL MEMBERS.—In addition, the members of the panel described in paragraph (4) shall designate for full membership on the panel 4 additional members of the panel—

(A) 1 of whom shall be a representative of a national organization which represents primarily national Indian education concerns; and

(B) 3 of whom shall be chairpersons (or their designees) of tribes with Bureau-funded schools on their reservations (other than those specifically represented by organizations or groups described in paragraph (4)), except that preference for not less than 2 of such members shall be given to tribes with—

(i) a significant number of Bureau-funded schools on their reservations; or

(ii) a significant percentage of children enrolled in Bureau-funded schools.

Mr. BINGAMAN. Mr. President, I rise to submit an amendment to S. 1150, the Goals 2000: Educate America Act.

The Goals 2000 Act, S. 1150, sets forth a comprehensive blueprint for helping the Nation meet the problems and challenges of our education system, from preschool through higher education. As many of my colleagues know, the Senate Labor and Human Resources Committee favorably reported this measure to the full Senate early this summer, and it is now pending on the Senate calendar. We will discuss its provisions on the Senate floor this fall.

The amendment I am filing today will help ensure that American Indian students, their parents, Indian tribal leaders, and Indian educators are included in this landmark effort to reform, improve, and strengthen our Nation's education and work force training systems.

Mr. President, I am pleased that this important education initiative contains so many provisions I have advocated and worked to enact over the past 3 years. This legislation will codify the National Education Goals, set several years ago by the President and the Nation's Governors, and it authorizes the National Education Goals Panel, of which I am proud to be a member. For a number of years, I have advocated the need to establish realistic, measurable National Education Goals, and I have introduced legislation on this subject in previous Congresses. I am pleased to be a cosponsor of the Goals 2000: Educate America Act.

I am concerned, however, that S. 1150 does not go far enough to ensure the inclusion and participation of a very important segment of our Nation's population: American Indian children, their parents, and their tribal leaders. As a Senator from New Mexico, a State rich in diverse cultures and unique heritage, I believe it is essential that we do all we can do ensure that all segments of our society—from the inner cities of New York to the pueblos of New Mexico—are included in the national effort to attain the ambitious goals set forth in this legislation.

The amendment I am submitting offers American Indians a voice in the process to reach national consensus on education reform, including the development of content and performance standards and assessment measures. To more effectively meet the needs and challenges of schools funded or operated by the Federal Bureau of Indian Affairs; the amendment establishes a special panel on Indian education under the Secretary of the Interior. This panel will assist the Secretary in developing a comprehensive education reform and improvement plan. The panel will be comprised of teachers and organizational representatives from Bureau of Indian Affairs' schools and, most important, elected Indian tribal leaders, who are exercising their right to self-determination and assuming more responsibility for the education of Indian children through Public Law 93-638 contracts. It is essential, I believe, that Indian tribes have a key role in the development of the plan required under S. 1150, because of their critical and growing role in their children's education systems.

Mr. President, restructuring our education system will not be a simple task. We face many challenges, but we do have several advantages. President Clinton has made a strong commitment to education reform, and we have

a nation of diverse and dedicated people willing to work together to make our education system the strongest in the world.

## CATAWBA INDIAN TRIBE OF SOUTH CAROLINA LAND CLAIMS SETTLEMENT ACT OF 1993

### MOYNIHAN AMENDMENT NO. 774

Mr. FORD (for Mr. MOYNIHAN) proposed an amendment to the bill (S. 1156) to provide for the settlement of land claims of the Catawba Tribe of Indians in the State of South Carolina and the restoration of the Federal trust relationship with the tribe, and for other purposes, as follows:

After section 15 of the committee amendment insert the following new section:

**SEC. 15A. TAX TREATMENT OF INCOME AND TRANSACTIONS.**

Notwithstanding any provision of the State Act, Settlement Agreement or this Act (including any amendment made under section 15(f)) any income or transaction otherwise taxable shall remain taxable under the general principles of the Internal Revenue Code of 1986.

## UTAH SCHOOLS AND LANDS IMPROVEMENT ACT OF 1993

### HATCH (AND BENNETT) AMENDMENT NO. 775

Mrs. KASSEBAUM (for Mr. HATCH, for himself and Mr. BENNETT) proposed an amendment to the bill (S. 184) to provide for the exchange of certain lands within the State of Utah, and for other purposes, as follows:

In paragraph (3) of section 7(b), strike "$25,000,000" and insert "$50,000,000".

In section 9, at the end of subsection (c), add the following new paragraph:

(3) Transfer of any mineral interests to the State of Utah shall be subject to such conditions as the Secretary shall prescribe to ensure due diligence on the part of the State of Utah to achieve the timely development of such resources.

## INDIAN TRIBAL JUSTICE ACT

### MCCAIN AMENDMENT NO. 776

Mrs. KASSEBAUM (for Mr. MCCAIN) proposed an amendment to the bill (H.R. 1268) to assist the development of tribal judicial systems, and for other purposes, as follows:

Strike out all after the enacting clause and insert the following:

**TITLE I—GENERAL PROVISIONS**

**SEC. 101. SHORT TITLE.**

This Act may be cited as the "Indian Tribal Justice Systems Act".

**SEC. 102. FINDINGS.**

Congress finds and declares that—

(1) there is a government-to-government relationship between the United States and each Indian tribe;

(2) the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government;

(3) Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes;

(4) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems;

(5) tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments;

(6) Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate forums for the adjudication of disputes affecting personal and property rights;

(7) traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this Act;

(8) tribal justice systems are inadequately funded and the lack of adequate funding impairs their operation; and

(9) tribal government involvement in and commitment to improving tribal justice systems is essential to the accomplishment of the goals of this Act.

**SEC. 103. DEFINITIONS.**

For purposes of this Act:

(1) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(2) The term "Courts of Indian Offenses" means the courts established pursuant to part 11 of title 25, Code of Federal Regulations.

(3) The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native entity, which administers justice under the authority of the United States or the inherent authority of the native entity and which is recognized as eligible for the special programs and services provided by the United States to Indian tribes because of their status as Indians.

(4) The term "judicial personnel" means any judge, magistrate, court counselor, court clerk, court administrator, bailiff, probation officer, officer of the court, dispute resolution facilitator, or other official, employee, or volunteer within the tribal justice system.

(5) The term "Office" means the Office of Tribal Justice Support within the Bureau of Indian Affairs.

(6) The term "Secretary" means the Secretary of the Interior.

(7) The term "tribal organization" means any organization defined in section 4(l) of the Indian Self-Determination and Education Assistance Act.

(8) The term "tribal justice system" means the entire justice system of an Indian tribe, including but not limited to traditional methods and forums for dispute resolution, lower courts, appellate courts (including intertribal appellate courts), alternative dispute resolution systems, and circuit rider systems, established by inherent tribal authority without regard to whether they constitute a court of record.

**TITLE II—TRIBAL JUSTICE SYSTEMS**

**SEC. 201. OFFICE OF TRIBAL JUSTICE SUPPORT.**

(a) ESTABLISHMENT.—There is hereby established within the Bureau the Office of Tribal Justice Support. The purpose of the Office shall be to further the development, operation, and enhancement of tribal justice systems and Courts of Indian Offenses.

(b) TRANSFER OF EXISTING FUNCTIONS AND PERSONNEL.—All functions performed before the date of the enactment of this Act by the Branch of Judicial Services of the Bureau and all personnel assigned to such Branch as of the date of the enactment of this Act are hereby transferred to the Office of Tribal Justice Support. Any reference in any law, regulation, executive order, reorganization plan, or delegation of authority to the Branch of Judicial Services is deemed to be a reference to the Office of Tribal Justice Support.

(c) FUNCTIONS.—Except as otherwise provided in title III, in addition to the functions transferred to the Office pursuant to subsection (b), the Office shall perform the following functions:

(1) Provide funds to Indian tribes and tribal organizations for the development, enhancement, and continuing operation of tribal justice systems.

(2) Provide technical assistance and training, including programs of continuing education and training for personnel of Courts of Indian Offenses.

(3) Study and conduct research concerning the operation of tribal justice systems.

(4) Promote cooperation and coordination between tribal justice systems, the Federal judiciary, and State judiciary systems.

(5) Oversee the continuing operations of the Courts of Indian Offenses.

(d) NO IMPOSITION OF STANDARDS.—Nothing in this Act shall be deemed or construed to authorize the Office to impose justice standards on Indian tribes.

(e) ASSISTANCE TO TRIBES.—(1) The Office shall provide training and technical assistance to any Indian tribe or tribal organization upon request. Technical assistance and training which may be provided by the Office shall include, but is not limited to, assistance for the development of—

(A) tribal codes and rules of procedure;

(B) tribal court administrative procedures and court records management systems;

(C) methods of reducing case delays;

(D) methods of alternative dispute resolution;

(E) tribal standards for judicial administration and conduct; and

(F) long-range plans for the enhancement of tribal justice systems.

(2) Technical assistance and training provided pursuant to paragraph (1) may be provided through direct services, by contract with independent entities, or through grants to Indian tribes and tribal organizations.

(f) INFORMATION CLEARINGHOUSE ON TRIBAL JUSTICE SYSTEMS.—The Office shall establish and maintain an information clearinghouse (which shall include an electronic data base) on tribal justice systems, including, but not limited to, information on staffing, funding, model tribal codes, tribal justice activities, and tribal judicial decisions. The Office shall take such action as may be necessary to ensure the confidentiality records, and other matters involving privacy rights.

**SEC. 202. SURVEY OF TRIBAL JUDICIAL SYSTEMS.**

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary, in consultation with Indian tribes, shall enter into a contract with a non-Federal entity to conduct a survey of conditions of tribal justice systems and Courts of Indian Offenses to determine the resources and funding, including base support funding, needed to provide for expeditious and effective administration of justice. The Secretary, in like manner, shall annually update the information and findings

contained in the survey required under this section. Any survey conducted pursuant to this section shall be completed and its findings reported by the Secretary and the Congress not later than 12 months after the date on which the contract for the conduct of the survey is executed.

(b) LOCAL CONDITIONS.—In the course of any annual survey, the non-Federal entity shall document local conditions of each Indian tribe, including, but not limited to—

(1) the geographic area and population to be served;

(2) the levels of functioning and capacity of the tribal justice system;

(3) the volume and complexity of the case loads;

(4) the facilities, including detention facilities, and program resources available;

(5) funding levels and personnel staffing requirements for the tribal justice system; and

(6) the training and technical assistance needs of the tribal justice system.

(c) CONSULTATION WITH INDIAN TRIBES.—The non-Federal entity shall actively consult with Indian tribes and tribal organizations in the development and conduct of the survey, including updates thereof, of conditions of tribal justice systems. Indian tribes and tribal organizations shall have the opportunity to review and make recommendations regarding the findings of the survey, including updates thereof, prior to final publication of the survey, or any update thereof. After Indian tribes and tribal organizations have reviewed and commented on the results of the survey, or any update thereof, the non-Federal entity shall report its findings, together with the comments and recommendations of the Indian tribes and tribal organizations, to the Secretary, the Committee on Indian Affairs of the Senate, and the Subcommittee on Native American Affairs of the Committee on Natural Resources of the House of Representatives.

**SEC. 203. BASE SUPPORT FUNDING FOR TRIBAL JUSTICE SYSTEMS.**

(a) IN GENERAL.—Pursuant to the Indian Self-Determination and Education Assistance Act, the Secretary is authorized to enter into contracts, grants, or agreements with Indian tribes and tribal organizations, for the development, enhancement, and continuing operation of tribal justice systems and traditional tribal judicial practices by Indian tribal governments.

(b) PURPOSES FOR WHICH FINANCIAL ASSISTANCE MAY BE USED.—Financial assistance provided through contracts, grants, or agreements entered into pursuant to this section may be used for—

(1) planning for the development, enhancement, and operation of tribal justice systems;

(2) the employment of judicial personnel;

(3) training programs and continuing education for tribal judicial personnel;

(4) the acquisition, development, and maintenance of a law library or computer assisted legal research capacities;

(5) the development, revision, and publication of tribal codes, rules of practice, rules of procedure, and standards of judicial performance and conduct;

(6) the development and operation of records management systems;

(7) the construction or renovation of facilities for tribal justice systems;

(8) membership and related expenses for participation in national and regional organizations of tribal justice systems and other professional organizations; and

(9) the development and operation of other innovative and culturally relevant programs and projects, including programs and projects for—

(A) alternative dispute resolution;

(B) tribal victims assistance or victims services;

(C) tribal probation services or diversion programs;

(D) juvenile justice services and multidisciplinary investigations of child abuse; and

(E) traditional tribal judicial practices, traditional tribal justice systems and traditional methods of dispute resolution.

(c) FORMULA.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary, with the full participation of Indian tribes, shall establish and promulgate by regulation, a formula which establishes base support funding for tribal justice systems in carrying out this section.

(2) The Secretary shall assess caseload and staffing needs for tribal justice systems and take into account unique geographic and demographic conditions. In the assessment of these needs, the Secretary shall work cooperatively with Indian tribes and tribal organizations and shall refer to any data developed as a result of the surveys conducted pursuant to section 202 and to comparable relevant assessment standards developed by the Judicial Conference of the United States, the National Center for State Courts, and the American Bar Association.

(3) Factors to be considered in the development of the base support funding formula shall include, but are not limited to—

(A) the caseload and staffing needs identified under paragraph (2) of this section;

(B) the geographic area and population to be served;

(C) the volume and complexity of the caseloads;

(D) the projected number of cases per month;

(E) the projected number of persons receiving probation services or participating in diversion programs; and

(F) any special circumstances warranting additional financial assistance.

(4) In developing the formula for base support funding for tribal judicial systems under this section, the Secretary shall ensure equitable distribution of funds.

## TITLE III—TRIBAL JUDICIAL CONFERENCES

**SEC. 301. ESTABLISHMENT; FUNDING.**

(a) ESTABLISHMENT.—In any case in which two or more governing bodies of Indian tribes establish a regional or national judicial conference, such conference shall be considered a tribal organization and eligible to contract for funds under this title, if each member tribe served by the conference has adopted a tribal resolution which authorizes the tribal judicial conference to receive and administer funds under this title. At the written request of any tribal judicial conference, a contract entered into pursuant to this title shall authorize the conference to receive funds and perform any or all of the duties of the Bureau and the Office under sections 201 and 202 of this Act on behalf of the members of such conference.

(b) CONTRACT AUTHORITY.—Pursuant to the Indian Self-Determination and Education Assistance Act, the Secretary is authorized, subject to appropriations, to enter into contracts, grants, or agreements with a tribal judicial conference for the development, enhancement, and continuing operation of tribal justice systems of Indian tribes which are members of such conference.

(c) FUNDING.—The Secretary is authorized to provide funding to tribal judicial conferences pursuant to contracts entered into under the authority of the Indian Self-Determination and Education Assistance Act for administrative expenses incurred by such conferences.

## TITLE IV—STUDY OF TRIBAL/FEDERAL COURT REVIEW

**SEC. 401. STUDY.**

(a) TRIBAL/FEDERAL COURT REVIEW.—A comprehensive study shall be conducted in accordance with subsection (b), of the treatment by tribal justice systems of matters arising under the Indian Civil Rights Act (25 U.S.C. 1301 et seq.) and of other Federal laws for which tribal justice systems have jurisdictional authority and regulations promulgated by Federal agencies pursuant to the Indian Civil Rights Act and other Acts of Congress. The study shall include an analysis of those Indian Civil Rights Act cases that were the subject of Federal court review from 1968 to 1978 and the burden, if any, on tribal governments, tribal justice systems, and Federal courts of such review. The study shall address the circumstances under which Federal court review of actions arising under the Indian Civil Rights Act may be appropriate or warranted.

(b) TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.—The study required in subsection (a) shall be conducted by the Tribal/Federal Court Review Study Panel in consultation with tribal governments.

**SEC. 402. TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.**

(a) COMPOSITION.—The Tribal/Federal Court Review Study Panel shall consist of—

(1) four representatives of tribal governments, including tribal court judges, two of whom shall be appointed by the Speaker of the House of Representatives and two of whom shall be appointed by the President pro tempore of the Senate; and

(2) four members of the United States Courts of Appeal, of whom one shall be appointed by the chief judge of the eighth circuit, one by the chief judge of the ninth circuit, one by the chief judge of the tenth circuit, and one by the chief judge of the Federal circuit.

(b) PERSONNEL.—The Tribal/Federal Court Review Study Panel may employ, on a temporary basis, such personnel as are required to carry out the provisions of this title.

(c) FINDINGS.—The Tribal/Federal Court Review Study Panel, not later than the expiration of the 12-month period following the date on which moneys are first made available to carry out this title, shall submit its findings and recommendations to—

(1) Congress;

(2) the Secretary;

(3) the Director of the Administrative Office of the United States Courts; and

(4) each Indian tribe.

(d) TERMINATION.—Thirty days after the Panel has submitted its findings and recommendations under subsection (c), the Panel shall cease to exist.

## TITLE V—AUTHORIZATIONS

**SEC. 501. TRIBAL JUSTICE SYSTEMS.**

(a) OFFICE.—There are authorized to be appropriated to carry out the provisions of sections 201, 202, and 301(a) of this Act, $7,000,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000. None of the funds provided pursuant to the authorizations under this subsection may be used for the administrative expenses of the Office.

(b) BASE SUPPORT FUNDING FOR TRIBAL JUSTICE SYSTEMS AND JUDICIAL CONFERENCES.—There are authorized to be appropriated to carry out the provisions of section 203 of this Act, $50,000,000 for each of the

fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(c) ADMINISTRATIVE EXPENSES FOR OFFICE.—There are authorized to be appropriated, for the administrative expenses of the Office, $500,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(d) ADMINISTRATIVE EXPENSES FOR TRIBAL JUDICIAL CONFERENCES.—There are authorized to be appropriated, for the administrative expenses of tribal judicial conferences, $500,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(e) SURVEY.—For carrying out the survey under section 202, there is authorized to be appropriated, in addition to the amount authorized under subsection (a) of this section, $400,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(f) AUTHORIZATION.—For carrying out the study under section 401, there is authorized to be appropriated such sums as may be necessary.

(g) NO OFFSET.—No Federal agency shall offset funds made available pursuant to this Act for tribal justice systems against funds otherwise available for use in connection with tribal justice systems.

(h) ALLOCATION OF FUNDS.—In allocating funds appropriated pursuant to the authorization contained in subsection (a) of this section among the Bureau, Office, tribal governments, and tribal judicial conferences, the Secretary shall take such action as may be necessary to ensure that such allocation is carried out in a manner that is fair and equitable, and is proportionate to base support funding under section 203 received by the Bureau, Office, tribal governments, and tribal government members comprising a judicial conference.

(i) INDIAN PRIORITY SYSTEM.—Funds appropriated pursuant to the authorizations provided by this section and available for a tribal justice system shall not be subject to the Indian priority system. Nothing in this Act shall preclude a tribal government from supplementing any funds received under this Act with funds received from any other source including the Bureau or any other Federal agency.

**TITLE VI—DISCLAIMERS**

**SEC. 601. TRIBAL AUTHORITY.**

Nothing in this Act shall be construed to—

(1) encroach upon or diminish in any way the inherent sovereign authority of each tribal government to determine the role of the tribal court within the tribal government or to enact and enforce tribal laws;

(2) diminish in any way the authority of tribal governments to appoint personnel;

(3) impair the rights of each tribal government to determine the nature of its own legal system or the apportionment of authority within the tribal government;

(4) alter in any way traditional dispute resolution forums;

(5) imply that any tribal court is an instrumentality of the United States; or

(6) diminish the trust responsibility of the United States to Indian tribal governments and tribal justice systems of such governments.

## NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for my colleagues and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The purpose of the hearing is to receive testimony on U.S. policy regarding oil and gas development on the Outer Continental Shelf.

The hearing will take place on Tuesday, September 14, at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building, First and C Streets, NE., Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. Attention: Heather Hart.

For further information, please contact Lisa Vehmas of the committee staff at 202/224–7555.

## THE NEED TO REINVIGORATE NATO

• Mr. LIEBERMAN. Mr. President, the Bosnian crisis has underlined the need for a redefinition of NATO's mission and organization structure. Throughout the cold war, NATO limited its mission to defending the territory of its member states. Yet the collapse of the Soviet bloc has left that mission largely irrelevant. As Senator LUGAR has cogently put it: "NATO will either develop the strategy and structure to 'go out of area' or it will 'go out of business.'"

Going out of area means increasing defense cooperation with the new democracies of Eastern Europe, notably Poland, Hungary, and the Czech Republic. Western training, the exchange of military personnel and intelligence, and the sale and leasing of military equipment should receive a greater emphasis. The modernization of Eastern European Armed Forces with Western military equipment would help facilitate their coordination with NATO in any future crisis. Eventual membership in NATO for these countries should be considered a genuine possibility.

Going out of area also means being willing to use force in Europe outside of the territory of NATO's members. NATO should take forceful military action from the air to deter continued Serb attacks in Bosnia.

Nor should NATO's commitments be restricted to Europe. While the proliferation of weapons of mass destruction in the Third World will represent the most serious security threat in future years, NATO has no mandate, and, therefore, no contingency plans to deal with this challenge. This failing was underlined by NATO's unwillingness to act as a united organization in the gulf war; if it had, America would not have had to shoulder such a heavy burden. NATO should, therefore, begin to reorient its military equipment, training, and doctrine for possible engagements outside of Europe. This should include more joint training exercises in the desert areas of the United States, as opposed to Europe's northern climate.

In addition to being more willing to use military force outside of its members' territories, NATO should transfer more authority to its European members. Specifically, a revitalized NATO needs a Germany that is willing to join in future military operations. Germany is well enough integrated in the democratic world to be trusted as a military ally. If there is ever another campaign of the magnitude of Desert Storm, Germany should be a combatant, and not just a financial contributor.

France should also be encouraged to take on a greater role in the alliance's decisionmaking processes. Such a transfer of responsibility could induce the French to play a greater role in the alliance's military activities, thereby lightening the burden for the United States. Greater French participation in NATO could also reduce Paris's attempts to set up a European defense structure outside NATO.

The need for a reinvigorated NATO does not mean that NATO's original mission—protecting Western Europe from a military threat from the East and providing an international focus for German foreign policy—has entirely disappeared. Russia, whose population is nearly as large as that of NATO's military core nations—Germany, France, and Britain—remains vulnerable to autocratic domestic forces. A unified Germany needs to be firmly connected to the West.

Nonetheless, in the new era, NATO's European members should make a larger contribution to their own security interests; the role of the United States should be less dominant and more supportive. At the same time, NATO must be willing to act to defend its vital interests outside of Europe, and particularly in the Middle East. If NATO can successfully adapt to the post-cold-war era, it will be as effective in the next century as it has been in the present one.•

## COMMENDING ERIC G. GUSTAFSON AS OUTGOING PRESIDENT OF THE INDEPENDENT INSURANCE AGENTS OF AMERICA

• Mr. GREGG. Mr. President, I rise today to commend a fellow New Hampshirite, Rick Gustafson, of Portsmouth, who will step down this September as president of the Independent Insurance Agents of America.

Rick exemplifies the qualities of leadership and service that are hallmarks of citizens of New Hampshire. Far away from the Washington Beltway, people like Rick strive to build their businesses, serve their customers, and help their community. Rick's service to the city of Portsmouth and the State of New Hampshire is long and impressive. He is past president of the

Portsmouth Jaycees, past president and founder of the Seacoast United Way, and has served as chairman of a local hospital. The list goes on.

Rick has a distinguished professional career as chairman of the Blake Insurance Agency while also compiling a long record of service to his industry. Although he steps down as president after a year of presiding over the Nation's largest insurance trade association, his affiliation with the Independent Insurance Agents of America began years ago. He has served as the president of the Portsmouth Insurance Association, as president of the New Hampshire State association, and on the national board of directors before ascending to the association's top post.

During his tenure as president, Rick has been extraordinarily involved in the legislative process when issues arose that affected independent insurance agents and small business. This summer he testified before the House Judiciary Committee about the regulation of the insurance industry. Rick also testified before the White House Task Force on Health Care this past year. Privately, Rick has met with President Bush on disaster relief, and more recently with Mrs. Clinton to discuss national health care reform. I imagine they both would agree that Rick is straightforward, honest, and informative when he comes to Washington to represent his colleagues in the private sector.

I commend Rick Gustafson for his years of service to both his industry and his community. I know he will continue to serve both on visits to Washington and through his efforts at home.•

## THE LEGACY OF ALAN CRANSTON

• Mr. LEVIN. Mr. President, the preacher Henry Ward Beecher once wrote, "The difference between perseverance and obstinacy is, that one often comes from a strong will, and the other from a strong won't."

In the case of our former colleague from California, Alan Cranston, a strong will, along with boundless energy and optimism, marks him in our memories here in the Senate and in our continued friendships with him, as a man of perseverance.

Some years ago, the book "Politics in America," described Alan as "a certified liberal with a rare skill at building bridges to Senate moderates and conservatives," and the description goes on to say that "he put together numerous winning coalitions."

This simple statement of accomplishment, an enviable and elusive feat in this body at any time, is the ultimate testament to the tireless efforts of Alan Cranston. We all know that Alan Cranston defined the job of whip and could help in the delicate task of assembling and counting votes better than perhaps any Senator in our memory.

But whether on the trail of legislative votes in the corridors of the Senate or out across the country in Presidential campaigns, Alan Cranston's hard work has made a difference. His fundamental belief in human rights and justice made him a leader in anti-apartheid efforts and arms control abroad and a champion of veterans, child care, education, and legal services here at home.

Even today he serves the cause of peace. In March of this year four former Presidents of the United States joined in a letter organized by Alan Cranston supporting President Clinton's commitment to "help sustain and develop democracy and free market reforms in Russia, the Ukraine and the other succession states."

Mr. President, Alan Cranston's footprints on this well-worn floor will not be soon forgotten. I commend to my colleagues an article by a long-time Cranston aide, Gerry Warburg for the San Francisco Examiner that discusses the Cranston legacy and I ask that it be printed in the RECORD.

The article follows:

THE LEGACY OF ALAN CRANSTON

One of the gross inequities of life in public service is that after many years of contributions to the commonwealth, a hero can be transformed into a bum overnight.

Thus does a man like George Bush, who has served his country valiantly in war, in the House of Representatives, as ambassador to the People's Republic of China, at the United Nations, and for eight years as vice President, and finally, four years in the White House, become yesterday's news.

This, too, can be said of Sen. Alan Cranston, who will retire from public service this month with little notice after more than three decades of working for Californians.

Life, as we all know, is unfair. However, it seems particularly unjust that the most successful Democratic politician in the history of California—winner of four terms to the Senate and elected six times by Senate colleagues as a member of the Democratic leadership in Congress—will quietly pass from the Washington scene.

Californians would do well to consider Cranston's legacy. As a politician, Alan is of a rare breed, a man whose singular purpose in pursuing power was the advancement of issues, not the other way around.

Awkward, even shy before the voters, he became involved in public life in the middle of this century to advance those causes he most care about: nuclear arms control, protection of the environment and civil rights.

Through his years in the Senate, preceded by work as a grassroots organizer and as the elected California state controller, Cranston did just that.

He helped enact more national parks legislation than any other lawmaker in the history of California.

He was in the forefront of the nuclear arms debate, ever seeking opportunities to advance mutual disarmament through the education of his colleagues and the adoption of legislation, such as the nuclear freeze, where feasible and necessary.

He was also a champion in promoting human rights, not just for California's ethnically diverse immigrants but for the women whose right to reproductive choice was one that Cranston protected vigilantly through numerous Supreme Court nominations and federal funding battles.

Alan Cranston played the key role in stopping the Bork nomination, in gaining Senate adoption of the landmark Nuclear Non-proliferation Act to curb exports of weapons-usable material, in supporting environmental legislation from the Redwood Parks and Point Reyes National Seashore bills to the Alaska lands bill and the desert protection bill pending before Congress.

We all know that Cranston's final term was scarred by his involvement with savings and loan promoter Charles Keating, which grew from Cranston's efforts as a Democratic Party leader to raise money—not for himself but for inner-city voter registration.

However, it would be a perversion of history to suggest that Cranston had a unique or central role in the savings and loan debacle. The collapse was brought about by a deregulation imitative championed as early as 1980 by then-presidential candidate Ronald Reagan, advanced through two Reagan presidential terms and supported enthusiastically by Democrats and Republicans alike in Congress.

Alan was the first to admit he was "stupid" in how he handled a specific Keating request to intervene with regulators. However, Alan's misplay of that incident should not obscure his many positive contributions.

Cranston's legacy will live on for years in Washington. His work will be carried forward by the many staffers whom he trained and encouraged to become involved in a life of public service.

Among them: Jon Steinberg, appointed under a Republican administration to a prominent judicial position; Harris Wofford, cochairman of Cranston's presidential campaign who leapt to the forefront of Democratic politics with his stunning victory in the Pennsylvania Senate race; Kam Kuwats, a former Cranston intern who just engineered Dianne Feinstein's Senate election triumph as her campaign manager.

Cranston influenced the lives of hundreds of idealistic men and women who sought a more affirmative role for our government.

As one of these individuals myself, I believe we all, Democrats and Republicans, should honor his service.•

## DOMESTIC VIOLENCE

• Mr. ROCKEFELLER. Mr. President, today I would like to speak on behalf of the citizens of Wayne County, WV who have recently endured a tragic and horrifying incident of domestic violence—one which has left this West Virginia community in a state of disbelief and in need of assistance and answers.

On July 7, a Wayne County sheriff's deputy served a husband a petition ordering him to stay away from his wife and children. By the end of that day, the husband had killed his wife, his 9-year-old daughter, and 8-year-old son. His 14-year-old daughter survived by pretending to be dead, after being shot and wounded in both legs. The man then shot and killed himself.

The tragedy came in the middle of a week of violence in Wayne county. Seven people were shot and five were killed in their homes, a place traditionally considered a shelter of safety

and comfort. These shocking events clearly indicate the disastrous toll domestic violence is taking on our State and our Nation

Last year alone, 1,300 West Virginia women fled from their homes and sought protection in one of the State's 13 domestic violence shelters, and 11,000 more women turned to these shelters for legal aid and medical care. This year, already 16 people have died throughout West Virginia as a result of domestic violence incidents. These recent events have sent both a shock wave through our State and a vital message to the rest of the Nation: We must remain firm in our commitment to passing the Violence Against Women Act.

The acts of violence throughout West Virginia are an intense reminder that domestic violence affects women of all ages in all areas of this country. In the last 5 years, domestic violence has become the number one health risk to women in the United States—more common than that of auto accidents, muggings, and cancer combined. Until legislation is passed to offer better protection and services to victims of domestic violence, the situation and resulting statistics will only get worse.

The tremendous and ongoing efforts of the West Virginia Coalition Against Domestic Violence, as well as those of similar programs in other States, have provided an outreach for thousands of desperate victims. Shelters throughout the Nation have offered a place of comfort and escape to women, an assurance of physical and psychological assistance when it seems they have no other place to turn. It is the tireless and selfless efforts of these organizations which will be the anchor on which to base our goals for improvement.

The Violence Against Women Act more than triples funds for battered women's shelters and provides $100 million for domestic violence programs. It provides funding for a national domestic violence hotline so individuals will have some place to turn in a life threatening situation. Hopefully, with new resources and new awareness we can curb domestic violence and ensure that women and children have access to shelter.

The exploits of domestic violence are not only felt by the immediate victims; innocent children trapped in violent homes grow up enveloped by fear, witnessing anger and physical and mental abuse as part of their daily lives. Thousands of children need attention and guidance to turn away from the cycle of abuse which they so frequently fall into themselves.

It is these children who grow up in violent homes who have a 74-percent greater chance of committing similar abuse themselves. That is why, when a West Virginia teacher asked her freshman health class at Huntington East High School, "Has anyone you have ever dated hit you before?" one out of four students raised their hands. We must begin programs to break this destructive cycle if we are to see domestic violence statistics improve.

In the time it has taken for you to read this statement, at least 10 women have been beaten by husbands or boyfriends. At least one women has been raped and two children have been abused. We cannot allow this violence to continue.

The Violence Against Women Act will provide new penalties for abusers. It will authorize funding for increased lighting and surveillance in public places, and emergency phones in public parks. Just as importantly, it will provide $65 million for rape education beginning at the junior high school level. So we can finally begin to break this disastrous cycle of abuse.

I would like to commend Senator BIDEN for his determination to see this bill become reality. I am proud to have been an original cosponsor of the bill, and will continue to encourage my colleagues to support the Violence Against Women Act as well. I thank my colleagues who have signed on to the Violence Against Women Act and hope that others will take the events of the Wayne County community as a sign that it is time to take action to provide protection to victims of this unnecessary and disturbing violence.●

## WEEK OF UNITY TO BE HELD IN CHICAGO, IL

● Ms. MOSELEY-BRAUN. Mr. President, August 22-29 of this year has been proclaimed a Week of Unity in my hometown of Chicago, Ill. The citizens of Chicago have chosen this week to focus special attention on the importance of working to unite people of all races, religions, and ethnic backgrounds.

Chicago has long been recognized as one of the world's greatest cities—and rightly so. One of the things that makes Chicago so great is the wide variety of cultures that are represented within the boundaries of the city. Take, for example, my own neighborhood, Chicago's Hyde Park. In Hyde Park, men and women of all races, creeds, ethnicities, and income levels live and work together. From low-income housing projects to the internationally renowned University of Chicago, this vital community is an example to the city, and to the Nation, that diversity is a characteristic to be cherished, not feared.

It is fitting that this celebration of Chicago's diversity comes on the 30th anniversary of the 1963 March on Washington. The March on Washington was a historic expression of support for the civil and political rights of all Americans. On the anniversary of that march, the people of Chicago are once again demonstrating that the forces which unite us as Americans are greater than the forces that would divide us based on our differences.

This celebration in Chicago is not an isolated occasion. It is part of the City of Chicago Commission on Human Relations' Bias Free City campaign, now in its second year. The campaign is a partnership between local government, the corporate sector, religious leaders, the artistic community, and local philanthropists. That partnership is dedicated to creating an environment of respect and harmony among the diverse people of our city. The city of Chicago is to be commended for this campaign, and for its efforts to assure every resident that he or she is a welcomed and valued member of the community.

Mr. President, Chicago's Week of Unity reflects the best of America. Today, I ask my esteemed colleagues in the Senate to join with me in commending the citizens of my hometown for their commitment to a strong city and a strong America.●

## NATIONAL SCLERODERMA AWARENESS MONTH

● Mrs. FEINSTEIN. Mr. President, I rise today to invite my colleagues to support Senate Joint Resolution 103, a joint resolution to designate the month of August as "National Scleroderma Awareness Month."

The word "scleroderma" means "hard skin" and is used because a prominent first symptom of this disease could be a thickening and hardening of the skin. Scleroderma affects women four times more frequently than men. It can strike a healthy individual at any age, including at childhood. Hundreds of thousands of Americans are affected by this crippling and potentially fatal illness.

Scleroderma is a chronic autoimmune vascular disease affecting the connective tissues which provide the structural framework of the skin and vital organs. It causes the rampant overproduction of collagen and working cells are replaced with scar tissues, causing tissues to become inelastic and immobile.

Beyond the fact that this is a disease primarily affecting women, I became more familiar with scleroderma because of the trailblazing research conducted in the San Francisco Bay area. Scientists of many disciplines and from many sources are involved in a collaborative effort to try and bring sense to this disease.

However, because we are still uncertain of the cause or cure of scleroderma, people across the country have every reason to be concerned about the disease. For this reason, I hope that my colleagues will join me in designating August as "National Scleroderma Awareness Month." Activities and events organized around a nationally recognized month will

heighten public knowledge of scleroderma and facilitate support for much needed medical research.

I ask that a current list of cosponsors and a copy of the joint resolution be printed in the RECORD.

The material follows:

SENATE COSPONSORS—NATIONAL SCLERODERMA AWARENESS MONTH (AS OF 8/6/93)

Democrats:
Senator Akaka.
Senator Bingaman.
Senator Boxer.
Senator Bradley.
Senator Conrad.
Senator DeConcini.
Senator Dodd.
Senator Exon.
Senator Ford.
Senator Glenn.
Senator Heflin.
Senator Hollings.
Senator Inouye.
Senator Lautenberg.
Senator Levin.
Senator Lieberman.
Senator Metzenbaum.
Senator Moseley-Braun.
Senator Moynihan.
Senator Nunn.
Senator Pell.
Senator Sasser.
Senator Simon.
Senator Wofford.
Republicans:
Senator Chafee.
Senator Coats.
Senator Cochran.
Senator Cohen.
Senator Craig.
Senator D'Amato.
Senator Danforth.
Senator Durenberger.
Senator Grassley.
Senator Mack.
Senator McCain.
Senator Roth.
Senator Stevens.
Senator Warner.

S.J. RES. 103

Whereas scleroderma is a disease caused by the excess production of collagen, the main fibrous component of connective tissue, causing hardening of the skin or internal organs, or both, such as the esophagus, lungs, kidney, and heart;

Whereas approximately 300,000 people in the United States suffer from scleroderma, with women of childbearing age outnumbering men 4 to 1;

Whereas scleroderma, a painful, crippling, and disfiguring disease, is most often progressive and can result in premature death;

Whereas the symptoms of scleroderma are variable which can complicate and confuse diagnosis;

Whereas the cause and cure of scleroderma are unknown; and

Whereas scleroderma is an orphan disease that requires intensive research to improve treatment as well as find the cause and cure: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the months of August 1993 and August 1994 are designated as "National Scleroderma Awareness Month". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe each such month with appropriate activities that will enhance awareness of the disease and the need for a cure.●

## SHORE UP!, INC.

● Mr. SARBANES. Madam President, on Friday, September 17, 1993, in Salisbury, MD, families and friends will gather to recognize and honor three SHORE UP!, Inc., employees—Leo McNeil, Joanne Shearing, and Virginia Ragin Wharton—for their 20 years of service to the people of Maryland's Eastern Shore.

Located in Salisbury, MD, SHORE UP!, Inc., began as the Worcester County Community Action Committee and was formed to implement antipoverty projects and community action under the Economic Opportunity Act signed into Federal law on August 20, 1964.

Today, SHORE UP!, Inc. operates in the three lower Eastern Shore counties of Somerset, Wicomico, and Worcester and in the midshore counties of Kent, Queen Anne's, and Talbot. The growth and success of SHORE UP!, Inc., have had a positive impact on the lives of countless individuals and families.

The dedicated members of SHORE UP!, Inc., through their individual and collective efforts, have made Maryland a better place to live.

Leo McNeil joined SHORE UP!, Inc., in October 1972 as a project coordinator. In 1975, he served as director of administrative services and EEO officer, and in 1984 was promoted to administrator in the office of personal management. Mr. McNeil was educated in the public schools of North Carolina. He received his bachelor of science degree in 1968 from Elizabeth City State College in North Carolina.

Over the years, Mr. McNeil has served his community as: president of the Coastal Counties Community Housing Resources Board; president of the board of directors for Go Getters, Inc.; president of Wicomico County PTA's; president of New Directions for Social and Political Change; and a member of the Wicomico County Board of License Commissioners, Liquor Board. Mr. McNeil is married to Rachel Eddy McNeil and they have two children, Kim and Kelly.

Joanne L. Shearin came to SHORE UP!, Inc., in 1972 as executive secretary to the executive director, a position she held until 1982, when she became the personnel assistant until 1985. Project direction for the Displaced Homemakers Program until 1989, she assumed the duties of career development director for two State-funded programs. In April 1993, Mrs. Shearin moved into the Housing and Community Development Program as the divisional secretary.

Mrs. Shearin received her education in Brentwood, NY, and graduated from Brentwood High School. She attends Wor-Wic Community College and should receive her business management degree in 1994. Mrs. Shearin is president of the Wicomico Community Services Agencies Association, a past board member and cofounder of the Widowed Persons Service of Wicomico County. In 1993, she was chosen Outstanding Woman of the Year by the Wicomico County Commission for Women. Joanne is married to C. Earl Shearin; she has one daughter, Janine Elizabeth Vaughn, two sons, Timothy and James Alton Shearin, and five grandchildren.

Virginia Ragin Wharton came to SHORE UP!, Inc., Project Head Start as a volunteer from March 1972 until September 1972. Mrs. Wharton joined SHORE UP! as a full time teacher in September 1972 and taught at various SHORE UP! Head Start centers throughout Wicomico County.

In 1980, Mrs. Wharton served as coordinator-teacher, and in 1984 was promoted as coordinator at the Salisbury Center. In 1988, she became an education specialist, the position she now holds serving Worcester, Wicomico, Somerset, Talbot, Kent, and Queen Anne's Counties.

Mrs. Wharton graduated from Lincoln High School, Sumter, SC. She attended Morris College in Sumter, and in 1971 received her bachelor of science degree, majoring in elementary education. In 1973, Mrs. Wharton entered Salisbury State University in pursuit of her master's degree. Mrs. Wharton went to school evenings and summer and in 1975 received her master of education degree in elementary education with emphasis in early childhood.

Mrs. Wharton is married to Larry Wharton, and they have one daughter, Ashley Jane Wharton.

On the same evening, special recognition will be bestowed on the following employees: Ms. Edna G. Jackson, 27 years with SHORE UP! and Head Start; Ms. Shirley F. Ballard; Ms. Eva A. Johnson; and Ms. Elsie G. Waters, 26 years with SHORE UP! and Head Start; Ms. Yvonne F. Henry, 25 years with SHORE UP! and Head Start; Ms. Pearl J. Hackett; and Ms. Pearl L. Warner, 25 years with Head Start.

Through dedicated efforts of SHORE UP!, Inc., employees will continue to serve local communities to help others to help themselves.●

## THANKING SUPREME COURT NOMINATION TASK FORCE MEMBERS

● Mr. KOHL. Mr. President. I rise today to express my gratitude to the 15 attorneys comprising my Supreme Court task force for their assistance in helping me prepare for Judge Ruth Bader Ginsburg's nomination to the Court. These attorneys are among the foremost legal experts in my home State and, in my opinion, the entire United States. The indepth analysis that I received from the task force was invaluable in reviewing Judge Ginsburg's extensive writings and speeches. Their efforts allowed me to thoroughly understand her judicial philosophy and temperament, and contributed greatly to my casting a well-informed vote.

As in the past, this nonpartisan group was chaired by the deans of my State's two law schools and included private practitioners, government attorneys, and law school professors. Each task force member volunteered hours of their time for the good of Wisconsin and the good of the country. Their contribution to the confirmation process deserves our deepest appreciation.

Not surprisingly, the task force is now beginning to receive some long-deserved public recognition. A recent Janesville Gazette editorial praised the group for their efforts and for taking their responsibility seriously. I ask that a copy of the editorial appear at the conclusion of my remarks.

Mr. President, the members of my Supreme Court nomination task force are as follows:

Dean Dan Bernstine, cochair, University of Wisconsin Law School.

Dean Frank DeGuire, cochair, Marquette University Law School.

Prof. Gordon Baldwin, University of Wisconsin Law School.

Greg Conway, Esq., Liebmann, Conway, Olejniczak, Jerry, S.C., Green Bay, WI.

Ray Dall'Osto, Esq., Gimbel, Reilly, Guerin & Brown, Milwaukee, WI.

Prof. Ed Fallone, Marquette University Law School.

Prof. Marc Gallanter, University of Wisconsin Law School.

Patricia Gorence, deputy attorney general, Department of Justice, State of WI.

Prof. Linda Greene, University of Wisconsin Law School.

Prof. James Jones, University of Wisconsin Law School.

Jeffery Kassel, Esq., LaFollette & Sinykin, Madison, WI.

Prof. Peter Rofes, Marquette University Law School.

Prof. Frank Tuerkheimer, University of Wisconsin Law School.

Prof. Phoebe Williams, Marquette University Law School.

Brady Williamson, esq., LaFollette & Sinykin, Madison, WI.

Mr. President, one more person also deserves special thanks. She is Isabelle Ferrera, a first-year law student at the University of Wisconsin and our Bob LaFollette Legal Fellow this summer. She drafted questions, organized materials and, all in all, made a substantial contribution to the process.

The article follows:

[From the Janesville Gazette, July 30, 1993]

KOHL DID HIS HOMEWORK ON SUPREME COURT PICK

We'd bet Sen. Herb Kohl was one of the best-prepared members of the Senate Judiciary Committee as it voted 18–0 Thursday in favor of Supreme Court nominee Ruth Bader Ginsburg.

That's because Kohl, D-Wis., did his homework with help from his Supreme Court Task Force.

Ginsburg is the third Supreme Court nomination Kohl has considered. The others were David Souter and Clarence Thomas, whose highly charged confirmation hearing kept a nation glued to its television sets.

In each case, Kohl asked more than a dozen legal experts in the state to study and analyze the nominee's writings and case decisions. Panel members included professors at the state's two law schools and other respected Wisconsin lawyers. The senator met with the panel twice before the Judiciary Committee started its hearings.

Kohl and the panel members deserve praise for taking their responsibility seriously.●

## NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, REGARDING EDUCATIONAL TRAVEL

● Mr. BRYAN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received notification under rule 35 for Pate Felts, a member of the staff of Senator PRYOR, to participate in a program in Korea, sponsored by the A-san Foundation, from August 21 to 28, 1993.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Felts in this program.

The select committee received notification under rule 35 for Sam Spina, a member of the staff of Senator GORTON, to participate in a program in China, sponsored by the Chinese People's Institute of Foreign Affairs, from August 7 to 21, 1993.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Spina in this program.

The select committee received notification under rule 35 for James K. Sakai, a member of the staff of Senator AKAKA, to participate in a program in Indonesia, sponsored by the Republic of Indonesia, from August 20 to September 5, 1993.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Sakai in this program.

The select committee received notification under rule 35 for Jay C. Ghazal, a member of the staff of Senator PELL, to participate in a program in Germany, sponsored by Haus Rissen, from August 17 to 25, 1993.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Ghazal in this program.

The select committee received notification under rule 35 for Senator JEFFORDS and his spouse, Elizabeth Daley, to participate in a program in China, sponsored by the Chinese National Association of Industry and Commerce, from August 17 to 21, 1993.

The committee determined that no Federal statute or Senate rule would prohibit participation by Senator JEFFORDS and his spouse in this program.

The select committee received notification under rule 35 for Richard Kaufman, a member of the staff of the Joint Economic Committee to participate in a program in Nova Scotia, sponsored by the Russian Research Center of Nova Scotia, from July 25 to 27, 1993.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Kaufman in this program.

The select committee received notification under rule 35 for Senator PRESSLER to participate in a program in Greece, sponsored by the 1993 Bilderberg Meeting Steering Committee members of the host country—Greece—and the United States Senate, from April 22 to 25, 1993.

The committee determined that no Federal statute or Senate rule would prohibit participation by Senator PRESSLER in this program.

The select committee received notification under rule 35 for Mr. Mahr, a member of the staff of Senator CONRAD, to participate in a program in Chile, sponsored by the Chilean-American Chamber of Commerce, from August 9 to 13, 1993.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Mahr in this program.

The select committee received notification under rule 35 for Peter D. Caldwell and Susan Q. Murray, members of the staff of Senator JEFFORDS, to participate in a program in Taiwan, sponsored by the Chinese National Association of Industry and Commerce, from August 17 to 23, 1993.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Caldwell or Ms. Murray in this program.

The select committee received notification under rule 35 for Erin Day, a member of the staff of Senator MATHEWS, to participate in a program in Hong Kong and China's Guangdong Province, sponsored by the Hong Kong General Chamber of Commerce, from August 30 to September 6, 1993.

The committee determined that no Federal statute or Senate rule would prohibit participation by Ms. Day in this program.●

## A QUIET VICTORY AMID THE CROWD

● Mr. SIMON. Mr. President, just before the August recess, Chicago Tribune columnist Bob Greene had a column that brought good news.

There are so many items of bad news and discouragement that this warm

story about a person with a disability achieving something made me feel good, and I believe appeals to the best in all of us.

The article follows:

[From the Chicago Tribune, Aug. 4, 1993]

A QUIET VICTORY AMID THE CROWD

(By Bob Greene)

The guy in the next seat on the airplane could have been a character in a movie about big business and ambition. He had picked up the inflight telephone even before he fastened his seat belt, and by the time we taxied away from the gate he had already made three calls.

He didn't waste a word. His secretary had provided him with a printout of calls to make, and as we took off from Newark Airport, heading west, he worked his way down the list, by time zones. East Coast first, to catch people in their offices before they went home for the day. He kept punching in the numbers, announcing his name and company, going into his pitch.

He was aggressive and he was combative and he was non-stop, and here, five miles in their air, it didn't even matter. I leaned back and locked out his voice, because something I had seen back in the airport had already made the day a good one.

It had been at the ticket counter in the main lobby at Newark. This had been a broiling, muggy, oppressive day in the New York, and everyone heading out of town seemed to be in a foul mood.

All of us were lined up in one of those queues that snake their way back and forth between metal stanchions, separated by thick colored ropes. When you get to the front, dragging your luggage, you look up and down the length of the counter, waiting for an agent to be free.

These airport transactions are done mechanically and by rote most of the time; both the travelers and the ticket agents have been through all of this on too many occasions before, and there is seldom the impulse for a human connection to be made. Everyone has somewhere they're supposed to be, and the goal is to keep moving.

Today, though, I sensed that something out of the ordinary was going on. It took me a few seconds to figure it out.

I had advanced to third in line. Up ahead, at one of the ticket-counter stations just to my right, a woman who appeared to be in her twenties was speaking with an agent. The woman gave every appearance of being what used to be referred to as retarded, and now is more often described, with more compassion, as developmentally disabled. I am not certain if a non-physician can make a sure observation of Down's syndrome from a distance of 10 or 15 feet, but that appeared to be the case.

She was working on exchanging a ticket. I knew because I could hear her parents talking about it.

They were right next to me, her parents were, waiting on the other side of the ropes. They appeared nervous and hopeful and maybe a little bit frightened; if you have ever sat in a high school football stadium next to the parents of one of the players, you know what their frame of mind was as they watched their daughter.

This was hard. This was a big movement. This means something.

I listened to them talk to each other. She, and they, had decided that this was the day she was going to try this. She was going to do it on her own. She would succeed or fail on her own, without their help.

And she was working at it. That much, looking over at the counter, I could see. I could see this, too:

I could see that the ticket agent was not rushing her. I could see that, on this hectic airport day, the agent somehow understood just how monumental this bit of business was. The ticket agent worked with her, and the woman did her best to carry out her transaction the way she wanted to—the way she had practiced it—and this mattered. This was part of one person's, and one family's, history.

The other travelers did not complain at the wait. Some knew what was transpiring and some didn't, but no one said anything unpleasant in an effort to hasten the progress of the line, no one gestured at the ticket agent. The grown daughter worked to make sure that she transferred her ticket correctly, and this meant something.

Her parents * * * I wish you could have seen the look in their eyes. I don't know their story; how can you ever know the story of a family like this one? But I know this: When the transaction was complete, when their daughter came back to them bearing the ticket, I thought they were going to cry with pride. With pride, and with happiness for the smile on their daughter's face.

You never know when you'll find a moment. Now, next to me five miles in the air, the fellow on the telephone barked a strategic insult at some business associate somewhere down on the ground. I didn't care. Let the guy snarl. I was still seeing the look on that woman's face. She did it. Yes she did.•

## PHARMACEUTICAL INDUSTRY'S RESPONSE TO HEALTH CARE REFORM: "IF YOU CAN'T BEAT 'EM, BUY 'EM."

• Mr. PRYOR. Mr. President, in a little over a month from now, when we return from our August recess, the President and the Congress will take on the daunting but necessary task of reforming our Nation's health care system. In anticipation of the significant changes ahead, providers are beginning to look down the road and respond to the changes that they anticipate. This is, quite frankly, a natural reaction. The laws of nature have shown us over and over that it is no less than a game of survival of the fittest.

The drug industry is also looking into the crystal ball, and trying to make the adjustments they believe are necessary to survive and grow. One change they will definitely have to make is to put the breaks on exorbitant prescription drug price hikes. The days of excessive price increases on prescription drugs are a thing of the past.

As one major drug company CEO recently remarked on a TV newscast, "the Go-Go days of the 1980's are over." While recent data indicate that the prices of many individual drug products are still increasing faster than inflation, it appears that the drug industry is coming to terms with the fact that future revenue growth will depend on increases in volume, not increases in price. Obviously, that is a step in the right direction.

Health care reform, however, is also bringing about other changes in the drug industry which may not produce positive results for Americans and the new health care system. While I am not yet ready to sound the alarm bells, I am concerned about a strategy that appears to be emerging among drug manufacturers that could seriously erode the ability of market forces to contain drug prices in the future. This strategy appears to be very simple: "If you can't beat health care reform, then buy a company, form a subsidiary, or cut off the sources of supply of generic drugs". In other words, if you can't beat reform, eliminate as much competition as possible.

Just last week, we heard about the Merck-Medco merger. Merck, the world's largest drug company and Medco, the largest mail order prescription firm and a third party prescription processor, have merged to form an integrated pharmaceutical care operation. Speculation about the motives behind the merger and its impact on drug prices are the talk of Wall Street and the board rooms of pharmaceutical manufacturers. Frankly, the jury is out on what impact this merger will have on the drug industry, both in terms of price competition, and future mergers.

However, it is clear that this is a very different type of strategy for a drug maker to pursue. While horizontal integration among drug companies has been common in recent years, the vertical integration that we are seeing here is quite another story. As Merck and Medco said in statements about the merger, for the first time an entity has been formed that will transmit a medicine from the manufacturer directly to the patient.

Some conjecture that this move was made to assure Merck a more secure and expanded market for its products. The Medco acquisition will certainly give them that. One can only assume that many Medco prescriptions will be filled with Merck products, or will be switched to Merck products if another manufacturer's product is prescribed. Switching or "interchanging" drug products from one to another will be nothing different from Medco. That is because Medco had been using the principle of "therapeutic interchange" for several years now. This occurs when physicians are encouraged to switch a patient to a lower priced, chemically different drug from the one originally prescribed, but which produces a similar medical outcome in an individual.

This practice has been widely and effectively used in hospitals, HMO's, and other third party plans to lower drug costs. This practice can also help drug manufacturers obtain large, secure markets for their products. In return for market share, manufacturers have been negotiating significant discounts with Medco, saving money both for

Medco and its patients. For example, it is possible that anytime there is a prescription for Tagamet, Zantac, or Axid—popular anti-ulcer drugs—it could be filled with Pepcid, Merck's product, regardless of whether these other drugs are lower in price than Pepcid.

As a result, the practical impact of this merger may actually limit the effectiveness of therapeutic interchange to help contain drug prices. Without effective therapeutic interchange and the use of drug formularies, the health care system and the marketplace simply cannot lower pharmaceutical prices. Even with such tools, the system will still have to develop a reasonable mechanism to assure that new drugs—especially blockbusters—are priced reasonably.

However, this Merck-Medco merger and the potential for more like it, raise serious questions about whether this could blunt the very competition that the industry is contending will effectively contain drug prices. Let me mention just a few questions that this merger has raised for me and others with whom I have spoken.

Will Medco be able to continue independent therapeutic interchange now that it has merged with Merck? Will this merger blunt the evolution of this practice throughout the health care system? Will the merger limit the number of other drug companies that will want to sell their products to Medco—and thus limit provider's drug choices—given that Merck could then have data on other drug companies' pricing policies at its very finger tips? Does that mean that only Merck drugs—both brand and generic—will be dispensed by Medco?

And what happens to price competition when Merck-Medco sales grows to 10 or 15 percent of the market, which is not inconceivable within the next few years? Will Medco's third party plan be allowed to use a formulary, and if so, which manufacturers' drugs will be on the formulary? Whether this merger was borne out of an attempt to benefit from therapeutic interchange or to retard its use and growth, legitimate concerns about the impact on prices and competition in the pharmaceutical marketplace can be raised.

But, let's look at another emerging pattern of events that paints a rather disturbing picture of how the drug industry may be trying to increase their own sales in the exploding generic drug market by blocking out potential competitors. Right now, about 60 percent of all generic drugs in the United States are sold by brand name drug manufacturers. Therefore, these major companies not only have control over their own brand name drug prices at this very time, they appear to be positioning themselves to have control over generic drug prices as well. The importance of generic drugs to health care reform efforts cannot be over emphasized. Some of the most popular drugs that are still on patent today—including Feldene, Procardia, Ceclor, Lopid, Anaprox, Naprosyn, Tagamet, Micronase, Capoten, and Zantac—will come off patent between now and 1995.

Recognizing this lucrative fact, brand name companies may be making moves to assure themselves control not only over the brand name market, but the generic market as well. How are they doing this? By buying up generic firms, starting up their own generic subsidiaries, erecting barriers to entry, and trying to make it more difficult for independent generic manufacturers to sell products in this country. Let me give examples of each.

Within the last few months, Marion-Merrell Dow acquired the largest generic firm in the United States, Rugby-Darby. This means that a brand name company will now have control over the pricing policies of the biggest generic firm in the country. Other brand name manufacturers are starting their own generic firms, and selling generic versions of their patented drugs before the patents expire.

For example, Merck also established its own generic subsidiary last year—West Point Pharma—and have begun marketing a generic version of a popular antiarthritic drug Dolobid before the patent expires. Currently, Merck is selling the brand version of the drug for about $41, while the same exact generic version, made by Merck, is selling for about $25, a difference of $16 or 40 percent. This is the same drug, sold by the same company, at a significant reduction in price.

While I certainly applaud the fact that the price of the generic version is lower, the question of whether Merck could also have sold the brand name product all along at $25, and still have made a handsome profit is certainly one important issue. The other important issue is that any manufacturer which brings its own version of a generic to market before the patent expires assures itself not only an exclusive brand name market, but an exclusive generic market as well, at least for a period of time. This pre-emptive strike on a drug's generic market could discourage other independent generic manufacturers from entering the market, and thus could provide significant market power for the brand name manufacturer's generic version. The outcome could be a reduction in price competition, which is an undesirable result for the health care system.

That leads to another concern, which is the ability of generic manufacturers in the United States to be able to obtain the raw materials to make generic drugs which can compete with the brand name companies' generic drugs.

Brand name companies have been aggressively pressing our own Federal Government to make it difficult for United States-based generic manufacturers to import and test the active ingredients in generic drugs, and have them ready for distribution upon expiration of the brand name product. Most generic drug makers in this country obtain the raw materials to make their drugs from European sources. To limit the ability of independent generic companies in the United States to bring generics to market, the drug industry is encouraging the United States Trade Representative's Office to negotiate for pharmaceutical patent pipeline protection in other countries—especially Italy, Hungary, and Spain—which are the traditional sources of supply for United States generic drug makers. How will this impact the U.S. generic industry?

If drugs in those countries had pipeline patent protection, with no provisions in those laws to allow for the exportation into this country of generic materials for the purpose of testing and production, it would significantly slow the process by which U.S.-based generic manufacturers would be able to develop, test, and market generic products in this country.

The practical impact of this will essentially be a neutering of the intent of the 1984 Waxman-Hatch Act, which was designed to assure that generic drugs were available and on the market as soon as the brand name patent expired.

If generic makers cannot obtain these raw materials and test their drugs, Americans may have to wait several years after patent expiration for independent generic drug makers to be able to bring generic versions of popular brand name drugs to market. Alternatively, however, brand name companies will have no trouble making their own generic versions of their drugs, and getting a strong foothold in the generic market from day one. In addition to securing early market share, these brand name manufacturer generic versions will be immune from price competition because other independent generic makers will not be able to obtain the raw materials to produce them. The pipeline protection strategy, Mr. President, appears to shut off the pipeline of potential competition.

The picture that I am trying to paint here is that, in a very short period of time, the primary source of both brand name and generic drugs may be the brand name companies, and that's when price competition—or the lack of it—becomes a very serious concern.

Mr. President, the bottom line is that, at this point, the drug industry appears to be responding to the changes in the system by finding ways to limit competition and control more of the pricing in the market than they already do. This must cause us concern. We need more price competition in the drug market with additional players, rather than less price competition with fewer players.

If formularies, therapeutic interchange, and generic substitution are not allowed to work effectively in the free market, then I do not see how the free market can work to contain drug costs. What these recent actions by drug manufacturers may ultimately do, however, is force Congress to rethink other stronger alternatives to contain drug costs if the free market is not given the chance to operate. I hope that I am wrong about the motives of the drug industry, but at this point, I believe that my concerns are more than justified.●

## FROM WASTELAND TO LAND OF THE WASTED

● Mr. SIMON. Mr. President, recently, Newton Minow, the former Chairman of the FCC, and Craig L. LaMay, associate director of the Public Service Television project at the American Academy of Arts and Sciences, had an article about television violence that appeared in the Los Angeles Times.

What they have to say makes eminent good sense, and I urge my colleagues in the House and Senate, who are concerned about this issue, to read it.

The article follows:

[From the Los Angeles Times, July 9, 1993]

FROM WASTELAND TO LAND OF THE WASTED

(By Newton N. Minow and Craig L. LaMay)

Under the threat of congressional action, ABC, CBS, NBC and Fox television networks have agreed to begin labeling the violent programming they purvey in the nation's living room.

This initiative comes at a time when the American people are more concerned than ever before about television's troublesome effect on our youngest citizens. They have been joined by the American Psychological Assn. and the American Academy of Pediatrics, both of which have labeled the glut of TV violence a national health issue, as important and neglected as cigarette smoking was 30 years ago.

To be sure, television is about ideas, and even bad ideas are protected by the First Amendment. But television is also about the private use of a valuable public property, the broadcast spectrum. Like anyone else who uses public property, broadcasters are not free to do with it whatever they please. Their 1st Amendment rights are not absolute, but depend on the access to the broadcast spectrum granted to them by the public.

Despite their agreement on violence ratings and despite congressional concern—the recent inquires in the Senate and the House are only the latest of many, extending over 40 years—broadcasters are likely to go on treating the public airwaves as their personal property. To many of them, any concession amounts to self-imposed censorship. "If we censor television," asks a recent Broadcasting magazine editorial, "who will decide how much violence on TV is too much, and what kind, and in what situations?"

The violence ratings, whatever their shortcomings, provide a good answer to this rhetorcial question: If we, the people, want to, we can provide for better television and give our children healthier viewing experiences. And we can do it because, as the broadcasters like to say, "It's our air." All that's required is for us to change the way we think about this important medium, free enterprise and free speech.

We have been living for too long according to the seductive social theory that the individual pursuit of self-interest will automatically promote the general welfare. At the same time, many economists have ridiculed the idea of public interest, citing Adam Smith's famous dictum that he "never knew much good done by those who claim to trade in the public welfare."

Applying the same notion to speech, one recent FCC chairman declared television a business no more significant than any other and characterized a television set as a mere "toaster with pictures."

Not surprisingly, the result has been a television system for children that has by turns trivialized and ignored the idea of social and personal responsibility. Dick Wolf, the producer of "Miami Vice" and the new NBC show "South Beach," said last fall, "I have an 8-year-old and a 5-year-old. They've never seen any of the shows I've ever produced. They shouldn't be watching them." Should yours?

Anyone who has actually read Adam Smith knows that our "marketplace of Ideas" is at best a caricature of his economic marketplace: Unbridled self-interest, Smith wrote in "The Wealth of Nations," corrodes the moral context the market requires in order to function. Without moral responsibility, and if necessary government intervention, the market soon falls apart.

The market for free speech—a metaphor popular with free-speech absolutists—is sustained the same way. Indeed, our dedication to free speech and our abhorrence of censorship are based on the premise that ours is a society committed to individual moral responsibility.

Within respect to television violence, then, our dilemma is simple. If television is a business like any other, Congress should legislate an end to the industry's abuse of our children. If instead television is protected from government intervention as a vital part of our national communications, we must demand greater moral responsibility from those who use the public airwaves, or risk letting the whole system of free expression fall apart.

Make no mistake—it is those broadcasters and Hollywood producers who speak ominously of censorship who through their moral negligence are the greatest of the dangers to our 1st Amendment freedoms.

And to our children.●

## TRIBUTE TO BILL STRANNIGAN

● Mr. SIMPSON. Mr. President, I do not usually utilize the pages of the CONGRESSIONAL RECORD to commemorate citizens of my State because I never want to trivialize the process. But I have one person who surely merits the accolades.

At its national convention last month the National High School athletic Coaches Association conferred their very highest honor upon a man named Bill Strannigan of Riverton, WY. Earlier in the summer Bill had been named the winner of the Regional Seven Award—comprising high schools throughout the States of Wyoming, Montana, Idaho, Washington, Oregon, and Alaska. Then Bill won it all nationally. If you know him as I do you would know why.

I first met Bill when I was playing high school basketball in Cody, WY, and he was with Reliance High School Pirates—a tiny town with a big heart that no longer even fields a high school athletic team. Bill and I then later attended the University of Wyoming together. He began his teaching-coaching career at St. Stephens Mission near Riverton where my own dear grandmother began teaching in the 1880's. For 35 years until his retirement in May 1992. Bill compiled an outstanding record of coaching accomplishments. While at St. Stephens, his basketball teams established several state records which only in recent years have been surpassed.

When Bill left coaching he added the task of activities director to his many duties and he served in that capacity in District 25 for 17 years.

Bill held several offices in Wyoming Coaches Association and was also instrumental in establishing the Wyoming Coaches Hall of Fame at the University of Wyoming. In addition, he has long supported a program in Wyoming very dear to my heart. It is the Milward L. Simpson Athletic Awards. It is a scholarship presented annually in my father's memory and awarded to the outstanding boy and girl school athlete in Wyoming.

In citing Strannigan as the national winner this year, the NHSACA considered nominees from New York, Virginia, Florida, Minnesota, and New Mexico and based their final and highest award on Bill's service to Riverton High School, the Wyoming Coaches Association, and the State and National Athletic Directors Association as well as the consideration of the many honors achieved by him and Riverton's athletic programs during his career.

In addition to all of that he is just a delightful guy—and a wonderful friend—bright, thoughtful, energetic, loyal, determined—a friend to all, I am very, very proud of him.

This is one outstanding Wyomingite. I congratulate Bill on achieving his stellar recognition after 35 years of dedicated service to his schools, to his community, to his State, and to his country. He is such an appropriate and well deserved choice for this top national honor.

Congratulations, Bill.●

## FOREIGN CURRENCY REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

### CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Scott B. Gudes: | | | | | | | | | |
| Portugal | Escudo | 76,072 | 514.00 | | | | | 76,072 | 514.00 |
| Spain | Peseta | 165,025 | 1,435.00 | | | | | 165,025 | 1,435.00 |
| United States | Dollar | | | | 4,802.45 | | | | 4,802.45 |
| Senator Dale Bumpers: | | | | | | | | | |
| Italy | Dollar | | 178.00 | | | | | | 178.00 |
| Russia | Dollar | | 596.00 | | | | | | 596.00 |
| Senator Jim Sasser: | | | | | | | | | |
| United States | Dollar | | | | 3,945.45 | | | | 3,945.45 |
| Total | | | 2,723.00 | | 8,747.90 | | | | 11,470.90 |

ROBERT C. BYRD,
Chairman, Committee on Appropriations, Aug. 2, 1993.

### CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Senator John W. Warner: | | | | | | | | | |
| France | Franc | 1,495.92 | 276.00 | | | | | 1,495.92 | 276.00 |
| Belgium | Franc | 10,880 | 328.00 | | | | | 10,880 | 328.00 |
| Grayson F. Winterling: | | | | | | | | | |
| France | Franc | 1,495.92 | 276.00 | | | | | 1,495.92 | 276.00 |
| Belgium | Franc | 10,880 | 328.00 | | | | | 10,880 | 328.00 |
| Charles S. Abell: | | | | | | | | | |
| France | Franc | 1,495.92 | 276.00 | | | | | 1,495.92 | 276.00 |
| Belgium | Franc | 9,834 | 298.00 | | | | | 9,834 | 298.00 |
| Durwood W. Ringo, Jr.: | | | | | | | | | |
| Canada | Dollar | | 150.00 | | | | | | 150.00 |
| Senator Sam Nunn: | | | | | | | | | |
| Italy | Dollar | | 200.00 | | | | | | 200.00 |
| Russia | Dollar | | 744.00 | | | | | | 744.00 |
| Richard E. Combs, Jr.: | | | | | | | | | |
| Italy | Dollar | | 200.00 | | 30.00 | | | | 230.00 |
| Russia | Dollar | | 518.00 | | | | 150.00 | | 668.00 |
| Lucia M. Chavez: | | | | | | | | | |
| Italy | Dollar | | 228.00 | | | | | | 228.00 |
| Richard D. DeBobes: | | | | | | | | | |
| Italy | Lire | 553,905 | 373.00 | | | | | 553,905 | 373.00 |
| John W. Douglass: | | | | | | | | | |
| Italy | Lire | 506,320 | 344.05 | | | | | 506,320 | 344.05 |
| Senator Carl Levin: | | | | | | | | | |
| Croatia | Dollar | | 220.00 | | | | | | 220.00 |
| Albania | Dollar | | 181.00 | | | | | | 181.00 |
| Italy | Dollar | | 218.00 | | | | | | 218.00 |
| United States | Dollar | | | | 3,020.00 | | | | 3,020.00 |
| David A. Lewis: | | | | | | | | | |
| Croatia | Dollar | | 220.00 | | | | | | 220.00 |
| Albania | Dollar | | 181.00 | | | | | | 181.00 |
| Italy | Dollar | | 218.00 | | | | | | 218.00 |
| United States | Dollar | | | | 3,020.00 | | | | 3,020.00 |
| John W. Douglass: | | | | | | | | | |
| Croatia | Dollar | | 105.00 | | | | | | 105.00 |
| Albania | Dollar | | 30.00 | | | | | | 30.00 |
| John W. Douglass: | | | | | | | | | |
| Italy | Dollar | | 97.00 | | | | | | 97.00 |
| Senator John McCain: | | | | | | | | | |
| Cambodia | Dollar | | 720.00 | | | | | | 720.00 |
| Vietnam | Dollar | | 206.00 | | | | | | 206.00 |
| Hong Kong | Dollar | | 340.50 | | | | | | 340.50 |
| Marshall A. Salter: | | | | | | | | | |
| Cambodia | Dollar | | 720.00 | | | | | | 720.00 |
| Vietnam | Dollar | | 206.00 | | | | | | 206.00 |
| Hong Kong | Dollar | | 340.50 | | | | | | 340.50 |
| Senator Sam Nunn: | | | | | | | | | |
| France | Franc | 2,727.84 | 495.97 | | | | | 2,727.84 | 495.97 |
| Arnold L. Punaro: | | | | | | | | | |
| France | Franc | 8,321.50 | 1,513.00 | | | | | 8,321.50 | 1,513.00 |
| Lucia M. Chavez: | | | | | | | | | |
| Russia | Dollar | | 550.00 | | | | | | 550.00 |
| Total | | | 11,101.02 | | 6,070.00 | | 150.00 | | 17,321.02 |

SAM NUNN,
Chairman, Committee on Armed Services, July 15, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Howard Menell: | | | | | | | | | |
| England | Pound | 397.74 | 612.00 | | | | | 397.74 | 612.00 |
| United States | Dollar | | | | 752.45 | | | | 752.45 |
| Patrick Mulloy: | | | | | | | | | |
| England | Pound | 596.61 | 918.00 | | | | | 596.61 | 918.00 |
| United States | Dollar | | | | 883.45 | | | | 883.45 |
| Gregg Rickman: | | | | | | | | | |
| England | Pound | 994.93 | 1,530.00 | | | | | 994.93 | 1,530.00 |
| United States | Dollar | | | | 749.45 | | | | 749.45 |
| Ray Natter: | | | | | | | | | |
| England | Pound | 596.61 | 918.00 | | | | | 596.61 | 918.00 |
| United States | Dollar | | | | 749.45 | | | | 749.45 |
| Total | | | 3,978.00 | | 3,134.80 | | | | 7,112.80 |

DONALD RIEGLE,
Chairman, Committee on Banking, Housing and Urban Affairs, June 30, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE BUDGET, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Senator Pete V. Domenici: | | | | | | | | | |
| Mexico | Peso | 154.50 | 50.00 | | | | | | 50.00 |
| United States | Dollar | | | | 925.15 | | | | 925.15 |
| Total | | | 50.00 | | 925.15 | | | | 975.15 |

JIM SASSER,
Chairman, Committee on the Budget, July 12, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Senator Ernest F. Hollings: | | | | | | | | | |
| Portugal | Escudo | 94,424 | 638.00 | | | | | 94,424.00 | 638.00 |
| Spain | Peseta | 169,050 | 1,470.00 | | | | | 169,050.00 | 1,470.00 |
| United States | Dollar | | | | | 4,802.45 | | | 4,802.45 |
| Total | | | 2,108.00 | | 4,802.45 | | | | 6,910.45 |

ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science and Transportation, Aug. 2, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM OCT. 1 TO DEC. 31, 1992

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Kevin M. Dempsey: | | | | | | | | | |
| Chile | Peso | 239,581.20 | 636.00 | | | | | 239,581.20 | 636.00 |
| United States | Dollar | | | | 1,636.00 | | | | 1,636.00 |
| Donald M. Itzkoff: | | | | | | | | | |
| United States | Dollar | | 15.00 | | 829.79 | | 16.25 | | 861.04 |
| Sweden | Kroner | 1,994.97 | 294.46 | 745.25 | 110.00 | 84.21 | 12.43 | 2,824.43 | 416.89 |
| Germany | Mark | 333.52 | 216.57 | 139.35 | 90.49 | 39.86 | 25.88 | 512.73 | 332.94 |
| France | Franc | 1,851.10 | 346.00 | | | 133.75 | 25.00 | 1,984.85 | 371.00 |
| Sheryl W. Washington: | | | | | | | | | |
| United States | Dollar | | 15.00 | | 850.79 | | 12.00 | | 877.79 |
| Sweden | Kroner | 1,994.97 | 294.46 | 745.25 | 110.00 | 84.21 | 12.43 | 2,824.43 | 416.89 |
| Germany | Mark | 360 | 233.77 | 129.36 | 84.00 | | | 489.36 | 317.77 |
| France | Franc | 1,851.10 | 346.00 | | | 64.20 | 12.00 | 1,915.30 | 358.00 |
| Donald W. McClellan: | | | | | | | | | |
| United States | Dollar | | | | 765.80 | | | | 765.80 |
| Switzerland | Franc | 2,411.01 | 1,708.12 | 375.33 | 265.91 | 108.70 | 77.01 | 2,895.04 | 2,051.04 |
| Total | | | 4,105.38 | | 4,742.78 | | 193.00 | | 9,041.16 |

ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, June 24, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| G. Robert Wallace: | | | | | | | | | |
| Singapore | Dollar | | 238.00 | | | | | | 238.00 |
| Malaysia | Ringgit | 2,442.12 | 940.00 | | | | | 2,442.12 | 940.00 |
| United States | Dollar | | | | 4,186.45 | | | | 4,186.45 |
| Lisa Vehmas: | | | | | | | | | |
| United States | Dollar | | 562.96 | | 1,630.36 | | 17.82 | | 2,211.14 |
| Marshall Islands | Dollar | | 238.49 | | | | | | 238.49 |
| Total | | | 1,979.45 | | 5,816.81 | | 17.82 | | 7,814.08 |

J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, July 14, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Roy W. Kienitz: | | | | | | | | | |
| Denmark | Krone | 3,168 | 438.00 | | | | | 3,168.00 | 438.00 |
| Germany | Mark | | 693.00 | | | | | | 693.00 |
| France | Franc | 3,244.16 | 592.00 | | | | | 3,244.16 | 592.00 |
| United States | Dollar | | | | 2,587.55 | | | | 2,587.55 |
| Senator Harry Reid: | | | | | | | | | |
| Armenia | Dollar | | 336.00 | | | | | | 336.00 |
| Azerbaijan | Dollar | | 114.00 | | | | | | 114.00 |
| Uzbekistan | Dollar | | 184.00 | | | | | | 184.00 |
| Italy | Dollar | | 210.00 | | | | | | 210.00 |
| Poland | Dollar | | 166.00 | | | | | | 166.00 |
| Total | | | 2,733.00 | | 2,587.55 | | | | 5,320.55 |

MAX BAUCUS,
Chairman, Committee on Environment and Public Works, June 30, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C 1754(b). COMMITTEE ON FOREIGN RELATIONS, FOR TRAVEL FROM APRIL 1 TO JUNE 30, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Senator Joseph R. Biden, Jr: | | | | | | | | | |
| Croatia | Dollar | | 510.00 | | | | | | 510.00 |
| Germany | Dollar | | 130.00 | | | | | | 130.00 |
| United States | Dollar | | | | 3,142.45 | | | | 3,142.45 |
| Senator Hank Brown: | | | | | | | | | |
| Italy | Dollar | | 188.00 | | | | | | 188.00 |
| Armenia | Dollar | | 262.00 | | | | | | 262.00 |
| Azerbaijan | Dollar | | 114.00 | | | | | | 114.00 |
| Uzbekistan | Dollar | | 114.00 | | | | | | 114.00 |
| Poland | Dollar | | 390.00 | | | | | | 390.00 |
| Senator Paul Coverdell: | | | | | | | | | |
| United States | Dollar | | | | 1,111.45 | | | | 1,111.45 |
| Senator John F. Kerry: | | | | | | | | | |
| Vietnam | Dollar | | 384.00 | | | | | | 384.00 |
| Hong Kong | Dollar | | 466.00 | | | | | | 466.00 |
| United States | Dollar | | | | 7,062.45 | | | | 7,062.45 |
| Thailand | Dollar | | 240.00 | | | | | | 240.00 |
| Vietnam | Dollar | | 133.00 | | 10.00 | | | | 143.00 |
| Hong Kong | Dollar | 1,792 | 232.00 | | | | | 1,792 | 232.00 |
| Senator Richard G. Lugar: | | | | | | | | | |
| Italy | Dollar | | 230.00 | | | | | | 230.00 |
| Russia | Dollar | | 418.00 | | | | | | 418.00 |
| Senator Claiborne Pell: | | | | | | | | | |
| Italy | Lira | 609,440 | 416.00 | | | | | 609,440 | 416.00 |
| Russia | Dollar | | 715.00 | | | | | | 715.00 |
| Senator Larry Pressler: | | | | | | | | | |
| United States | Dollar | | | | 6,787.55 | | | | 6,787.55 |
| George W. Ashworth: | | | | | | | | | |
| Italy | Dollar | | 235.00 | | | | | | 235.00 |
| Russia | Dollar | | 573.00 | | | | | | 573.00 |
| Kristin Brady: | | | | | | | | | |
| United States | Dollar | | | | 477.45 | | | | 477.45 |
| Scott Bunton: | | | | | | | | | |
| Thailand | Baht | 3,509.17 | 155.96 | | | | | 3,509.17 | 155.96 |
| Vietnam | Dollar | | 61.22 | | | | 12.24 | | 73.46 |
| Hong Kong | Dollar | 1,290.50 | 167.03 | | | | | 1,290.50 | 167.03 |
| Larry Carpman: | | | | | | | | | |
| Thailand | Baht | 3,103.11 | 137.92 | | | 1,059 | 47.07 | 4,162.11 | 184.99 |
| Vietnam | Dollar | | 59.00 | | 10.00 | | 433.00 | | 502.00 |
| Hong Kong | Dollar | 1,150 | 148.85 | | | | | 1,150 | 148.85 |
| Gerald B. Christianson: | | | | | | | | | |
| United Kingdom | Pound | 994.35 | 1,530.00 | | | | | 994.35 | 1,530.00 |
| United States | Dollar | | | | 3,965.45 | | | | 3,965.45 |
| United Kingdom | Pound | 297.11 | 450.00 | 64.00 | 96.00 | | | 361.11 | 546.00 |
| United States | Dollar | | | | 3,965.45 | | | | 3,965.45 |
| Adwoa Dunn-Mouton: | | | | | | | | | |
| Gabon | Dollar | | 1,974.00 | | | | | | 1,974.00 |

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C 1754(b). COMMITTEE ON FOREIGN RELATIONS, FOR TRAVEL FROM APRIL 1 TO JUNE 30, 1993—Continued

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| United States | Dollar | | | | 4,101.95 | | | | 4,101.95 |
| Peter Galbraith: | | | | | | | | | |
| Singapore | Dollar | | 148.00 | | | | | | 148.00 |
| Cambodia | Dollar | | 956.00 | | | | | | 956.00 |
| Malaysia | Dollar | | 138.00 | | | | | | 138.00 |
| India | Dollar | | 570.00 | | | | | | 570.00 |
| Israel | Dollar | | 867.00 | | | | | | 867.00 |
| Cyprus | Pound | 60.51 | 127.00 | | | | | 60.51 | 127.00 |
| Turkey | Lira | 4,090.561 | 426.00 | | | | | 4,090.561 | 426.00 |
| United States | Dollar | | | | 5,840.65 | | | | 5,840.65 |
| Edwin Hall: | | | | | | | | | |
| Austria | Shilling | 41,175.75 | 3,542.00 | | | | | 41,175.75 | 3,542.00 |
| United States | Dollar | | | | 3,258.35 | | | | 3,258.35 |
| Edward E. Kaufman: | | | | | | | | | |
| Croatia | Dollar | | 552.00 | | | | | | 552.00 |
| Germany | Dollar | | 130.00 | | | | | | 130.00 |
| United States | Dollar | | | | 3,142.45 | | | | 3,142.45 |
| Richard Kessler: | | | | | | | | | |
| Singapore | Dollar | | 444.00 | | | | | | 444.00 |
| Cambodia | Dollar | | 1,356.00 | | | | | | 1,356.00 |
| Malaysia | Dollar | | 138.00 | | | | | | 138.00 |
| United States | Dollar | | | | 4,758.45 | | | | 4,758.45 |
| Croatia | Dollar | | 2,400.00 | | | | | | 2,400.00 |
| United States | Dollar | | | | 3,742.05 | | | | 3,742.05 |
| Elizabeth Lambird: | | | | | | | | | |
| Hong Kong | Dollar | | 516.00 | | | | | | 516.00 |
| China | Dollar | | 2,193.00 | | | | | | 2,193.00 |
| United States | Dollar | | | | 3,445.45 | | | | 3,445.45 |
| Michelle Maynard: | | | | | | | | | |
| Croatia | Dollar | | 1,600.00 | | | | | | 1,600.00 |
| Macedonia | Dollar | | | | | | | | |
| Bosnia | Dollar | | | | | | | | |
| United States | Dollar | | | | 3,717.05 | | | | 3,717.05 |
| Germany | Deutsche Mark | 1,298 | 799.00 | | | | | 1,298 | 799.00 |
| Earl McClure: | | | | | | | | | |
| Nicaragua | Dollar | | 20.00 | | | | | | 20.00 |
| United States | Dollar | | | | 1,073.45 | | | | 1,073.45 |
| Kenneth A. Myers: | | | | | | | | | |
| Italy | Dollar | | 230.00 | | | | | | 230.00 |
| Russia | Dollar | | 618.00 | | | | | | 618.00 |
| George Pickart: | | | | | | | | | |
| Cyprus | Pound | 60.51 | 127.00 | | | | | 60.51 | 127.00 |
| Israel | Dollar | | 393.00 | | | | | | 393.00 |
| Turkey | Lira | 4,090.561 | 426.00 | | | | | 4,090.561 | 426.00 |
| United States | Dollar | | | | 4,566.15 | | | | 4,566.15 |
| John Ritch: | | | | | | | | | |
| Croatia | Dollar | | 575.00 | | | | | | 575.00 |
| Germany | Dollar | | 155.00 | | | | | | 155.00 |
| United States | Dollar | | | | 3,142.45 | | | | 3,142.45 |
| United States | Dollar | | | | 1,667.25 | | | | 1,667.25 |
| Randy Scheunemann: | | | | | | | | | |
| Nicaragua | Dollar | | 900.00 | | | | | | 900.00 |
| United States | Dollar | | | | 908.45 | | | | 908.45 |
| Nancy Stetson: | | | | | | | | | |
| Vietnam | Dollar | | 384.00 | | | | | | 384.00 |
| Hong Kong | Dollar | | 369.00 | | | | | | 369.00 |
| United States | Dollar | | | | 7,062.45 | | | | 7,062.45 |
| Vietnam | Dollar | | 1,235.00 | | | | | | 1,235.00 |
| Hong Kong | Dollar | 1,197.53 | 155.00 | | | | | 1,197.53 | 155.00 |
| United States | Dollar | | | | 3,419.00 | | | | 3,419.00 |
| William C. Triplett III: | | | | | | | | | |
| Hong Kong | Dollar | | 516.00 | | | | | | 516.00 |
| China | Dollar | | 2,193.00 | | | | | | 2,193.00 |
| United States | Dollar | | | | 3,445.45 | | | | 3,445.45 |
| Senator Paul Simon: | | | | | | | | | |
| Italy | Lira | 384,000 | 210.00 | | | | | 384,000 | 210.00 |
| Armenia | Dollar | | 262.00 | | | | | | 262.00 |
| Azerbaijan | Dollar | | 114.00 | | | | | | 114.00 |
| Uzbekistan | Dollar | | 184.00 | | | | | | 184.00 |
| Poland | Dollar | | 390.00 | | | | | | 390.00 |
| Jeremy Karpatkin: | | | | | | | | | |
| Italy | Lira | 384,000 | 210.00 | | | | | 384,000 | 210.00 |
| Armenia | Dollar | | 262.00 | | | | | | 262.00 |
| Azerbaijan | Dollar | | 114.00 | | | | | | 114.00 |
| Uzbekistan | Dollar | | 184.00 | | | | | | 184.00 |
| Poland | Dollar | | 390.00 | | | | | | 390.00 |
| James P. Rubin: | | | | | | | | | |
| Croatia | Dollar | | 750.00 | | | | | | 750.00 |
| Germany | Dollar | | 750.00 | | | | | | 750.00 |
| United States | Dollar | | | 3,169.45 | | | | | 3,169.45 |
| Total | | | 39,451.98 | | 87,088.75 | | 492.31 | | 127,033.04 |

CLAIBONE PELL,
Committee on Foreign Relations, Aug. 2, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Jerry Tinker: | | | | | | | | | |
| United States | Dollar | | | | 3,965.45 | | | | 3,965.45 |

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993—Continued

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Switzerland | Franc | 635.75 | 438.00 | | | | | 635.75 | 438.00 |
| Poland | Dollar | | 1,498.00 | | | | | | 1,498.00 |
| Richard W. Day: | | | | | | | | | |
| Italy | Lire | | 1,500.00 | | | | | | 1,500.00 |
| United States | Dollar | | | | 3,344.15 | | | | 3,344.15 |
| Total | | | 3,436.00 | | 7,309.60 | | | | 10,745.60 |

JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary, Aug. 2, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), SELECT COMMITTEE ON INTELLIGENCE, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Patricia Hanback | | | 1,430.00 | | 4,769.45 | | | | 6,199.45 |
| Don Mitchell | | | 2,055.93 | | 4,773.15 | | | | 6,829.08 |
| Sarah Holmes | | | 948.24 | | 4,769.45 | | | | 5,717.69 |
| Christopher Straub | | | 819.00 | | 4,215.15 | | | | 5,034.15 |
| Judith Ansley | | | 836.23 | | 4,215.15 | | | | 5,051.38 |
| Mary Sturtevant | | | 2,000.00 | | 4,669.85 | | | | 6,669.85 |
| Jennifer Sims | | | 1,195.00 | | 3,303.25 | | | | 4,498.25 |
| William Griffies | | | 1,450.00 | | 3,303.25 | | | | 4,753.25 |
| Timothy Carlsgaard | | | 865.00 | | 1,782.00 | | | | 2,647.00 |
| Senator John Warner | | | 611.00 | | | | | | 611.00 |
| David Addington | | | 611.00 | | | | | | 611.00 |
| Norman Bradley | | | 151.00 | | 280.00 | | | | 431.00 |
| Timothy Carlsgaard | | | 285.00 | | 602.45 | | | | 887.45 |
| Alfred Cumming | | | 249.00 | | 602.45 | | | | 851.45 |
| Don Mitchell | | | 429.74 | | | | | | 429.74 |
| Senator John Glenn | | | 390.59 | | | | | | 390.59 |
| Total | | | 14,326.73 | | 37,285.60 | | | | 51,612.33 |

DENNIS DeCONCINI,
Chairman, Select Committee on Intelligence, July 15, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), SELECT COMMITTEE ON INTELLIGENCE, FOR TRAVEL FROM OCT. 1 TO DEC. 31, 1992

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Addendum to 4th Quarter of 1992: | | | | | | | | | |
| Codel Boren | | | | | 1,936.08 | | 11,485.68 | | 13,421.76 |
| Total | | | | | 1,936.08 | | 11,485.68 | | 13,421.76 |

Delegation expenses include direct payments and reimbursements to the Department of State and to the Department of Defense under authority of sec. 502(b) of the Mutual Security Act of 1954 as amended by sec. 22 of Public Law 95–384 and S. Res. 179, agreed to May 25, 1977.

DENNIS DECONCINI,
Chairman, Select Committee on Intelligence, July 15, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384–22 U.S.C. 1754(b), COMMISSION ON SECURITY AND COOPERATION IN EUROPE, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| David Evans: | | | | | | | | | |
| United States | Dollar | | | | 3,305.05 | | | | 3,305.05 |
| Russia | Dollar | | 1,585.00 | | | | | | 1,585.00 |
| Germany | Dollar | | 285.00 | | | | 65.58 | | 350.58 |
| United States | Dollar | | | | 3,511.05 | | | | 3,511.05 |
| Malta | Dollar | | 753.00 | | | | 95.10 | | 848.10 |
| Germany | Dollar | | 197.00 | | | | | | 197.00 |
| John Finerty: | | | | | | | | | |
| United States | Dollar | | | | 3,500.05 | | | | 3,500.05 |
| Estonia | Dollar | | 5,500.00 | | | | | | 5,500.00 |
| Heather Hurlburt: | | | | | | | | | |
| United States | Dollar | | | | 2,813.75 | | | | 2,813.75 |
| Austria | Schilling | 48,502.12 | 4,311.30 | | | 1,426.38 | 126.79 | 49,928.50 | 4,438.09 |
| Czech Republic | Dollar | | 690.00 | | | | | | 690.00 |
| Russia | Dollar | | 1,080.00 | | | | | | 1,080.00 |
| United States | Dollar | | | | 2,102.65 | | | | 2,102.65 |
| Austria | Schilling | 47,187.72 | 3,972.03 | | | | | 47,187.72 | 3,972.03 |
| Czech Republic | Dollar | | 920.00 | | | | | | 920.00 |
| Ronald McNamara: | | | | | | | | | |
| United States | Dollar | | | | 3,511.05 | | | | 3,511.05 |

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384–22 U.S.C. 1754(b), COMMISSION ON SECURITY AND COOPERATION IN EUROPE, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993—Continued

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Malta | Dollar | | 753.00 | | | | | | 753.00 |
| Germany | Dollar | | 197.00 | | | | | | 197.00 |
| Michael Ochs: | | | | | | | | | |
| United States | Dollar | | | | 3,306.25 | | | | 3,306.25 |
| Finland | Dollar | | 136.00 | | | | | | 136.00 |
| Latvia | Dollar | | 1,230.00 | | | | | | 1,230.00 |
| United States | Dollar | | | | 3,337.45 | | | | 3,337.45 |
| Russia | Dollar | | 1,600.00 | | | | | | 1,600.00 |
| Victoria Showalter: | | | | | | | | | |
| United States | Dollar | | | | 2,880.95 | | | | 2,880.95 |
| Poland | Dollar | | 984.00 | | | | 54.49 | | 1,038.49 |
| Germany | Dollar | | 714.00 | | | | 38.06 | | 752.06 |
| France | Dollar | | 528.18 | | | | 34.19 | | 562.37 |
| Samuel Wise: | | | | | | | | | |
| United States | Dollar | | | | 861.25 | | | | 861.25 |
| Czech Republic | Dollar | | 570.00 | | | | | | 570.00 |
| Austria | Schilling | 11,483.13 | 967.00 | | | | | 11,483.13 | 967.00 |
| Total | Dollar | | 26,972.51 | | 29,129.50 | | 414.21 | | 56,516.22 |

DENNIS DeCONCINI,
Chairman, Commission on Security and Cooperation in Europe, July 21, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMISSION ON SECURITY AND COOPERATION IN EUROPE, FOR TRAVEL FROM APR. 12 TO 19, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Senator Dennis DeConcini: | | | | | | | | | |
| Egypt | Dollar | | 132.00 | | | | | | 132.00 |
| Kenya | Dollar | | 120.00 | | | | | | 120.00 |
| Cyprus | Dollar | | 254.00 | | | | | | 254.00 |
| Romania | Dollar | | 283.00 | | | | | | 283.00 |
| Macedonia | Dollar | | 89.00 | | | | | | 89.00 |
| Austria | Dollar | | 215.00 | | | | | | 215.00 |
| Jane Fisher: | | | | | | | | | |
| United States | Dollar | | | | 1,695.25 | | | | 1,695.25 |
| Egypt | Dollar | | 132.00 | | | | | | 132.00 |
| Kenya | Dollar | | 120.00 | | | | | | 120.00 |
| Cyprus | Dollar | | 254.00 | | | | | | 254.00 |
| Romania | Dollar | | 283.00 | | | | | | 283.00 |
| Macedonia | Dollar | | 89.00 | | | | | | 89.00 |
| Austria | Dollar | | 860.00 | | | | | | 860.00 |
| Robert Hand: | | | | | | | | | |
| United States | Dollar | | | | 1,010.05 | | | | 1,010.05 |
| Romania | Dollar | | 283.00 | | | | | | 283.00 |
| Macedonia | Dollar | | 89.00 | | | | | | 89.00 |
| Austria | Dollar | | 215.00 | | | | | | 215.00 |
| R. Spencer Oliver: | | | | | | | | | |
| United States | Dollar | | | | 1,634.00 | | | | 1,634.00 |
| Cyprus | Dollar | | 254.00 | | | | | | 254.00 |
| Romania | Dollar | | 283.00 | | | | | | 283.00 |
| Macedonia | Dollar | | 89.00 | | | | | | 89.00 |
| Austria | Dollar | | 215.00 | | | | | | 215.00 |
| Victoria Showalter: | | | | | | | | | |
| United States | Dollar | | | | 2,063.74 | | | | 2,063.75 |
| Romania | Dollar | | 849.00 | | | | | | 849.00 |
| Austria | Dollar | | 130.00 | | | | | | 130.00 |
| Poland | Dollar | | 820.00 | | | | 91.64 | | 911.64 |
| Samuel Wise: | | | | | | | | | |
| United States | Dollar | | | | 1,847.35 | | | | 1,847.35 |
| Cyprus | Dollar | | 254.00 | | | | 33.60 | | 287.60 |
| Romania | Dollar | | 283.00 | | | | | | 283.00 |
| Macedonia | Dollar | | 89.00 | | | | | | 89.00 |
| Austria | Dollar | | 215.00 | | | | | | 215.00 |
| Poland | Dollar | | 492.00 | | | | 53.27 | | 545.27 |
| Czech Republic | Dollar | | 840.00 | | | | | | 840.00 |
| Delegation Expenses: | | | | | | | | | |
| Cyprus | Dollar | | | | | | 1,867.08 | | 1,867.08 |
| Romania | Dollar | | | | | | 1,061.09 | | 1,061.09 |
| Austria | Dollar | | | | | | 1,472.55 | | 1,472.55 |
| Total | | | 8,231.00 | | 8,250.40 | | 4,579.23 | | 21,060.63 |

DENNIS DeCONCINI,
Chairman, Commission on Security and Cooperation in Europe, July 21, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), U.S. SENATE WORLD CLIMATE CONVENTION OBSERVER GROUP, FOR TRAVEL JUNE 4–14, 1992

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Senator Albert Gore, Jr.: | | | | | | | | | |
| Brazil | Cruzeiro | 7,494,860 | 2,510.00 | | | | | 7,494,860 | 2,510.00 |
| United States | Dollar | | | | 683.00 | | | | 683.00 |
| Senator John H. Chafee: | | | | | | | | | |
| Brazil | Cruzeiro | 2,874,864 | 969.60 | | | | | 2,874,864 | 969.60 |
| Senator Claiborne Pell: | | | | | | | | | |
| Brazil | Cruzeiro | 1,139,390.2 | 619.72 | | | | | 1,139,390.2 | 619.72 |
| Senator Max Baucus: | | | | | | | | | |
| Brazil | Cruzeiro | 2,976,860 | 1,004.00 | | | | | 2,976,860 | 1,004.00 |
| Senator Larry Pressler: | | | | | | | | | |
| Brazil | Cruzeiro | 2,976,860 | 1,004.00 | | | | | 2,976,860 | 1,004.00 |
| Senator Steve Symms: | | | | | | | | | |
| Brazil | Cruzeiro | 2,976,860 | 1,004.00 | | | | | 2,976,860 | 1,004.00 |
| Senator Frank R. Lautenberg | | | | | | | | | |
| Brazil | Cruzeiro | 2,334,434 | 787.33 | | | | | 2,334,434 | 787.33 |
| Senator John Kerry: | | | | | | | | | |
| Brazil | Cruzeiro | 2,976,860 | 1,004.00 | | | | | 2,976,860 | 1,004.00 |
| United States | Dollar | | | | 1,655.00 | | | | 1,665.00 |
| Senator Timothy E. Wirth: | | | | | | | | | |
| Brazil | Cruzeiro | 7,439,960 | 2,503.63 | | | | | 7,439,960 | 2,503.63 |
| United States | Dollar | | | | 1,515.00 | | | | 1,515.00 |
| Senator Bob Graham: | | | | | | | | | |
| Brazil | Cruzeiro | 2,119,975 | 715.00 | | | | | 2,119,975 | 715.00 |
| Senator Paul Wellstone: | | | | | | | | | |
| Brazil | Cruzeiro | 2,121,860 | 877.63 | | | | | 2,121,860 | 877.63 |
| United States | Dollar | | | | 1,747.00 | | | | 1,747.00 |
| Susan Fagan: | | | | | | | | | |
| Brazil | Cruzeiro | 2,951,860 | 995.57 | | | | | 2,915,860 | 995.57 |
| Roy Kienitz: | | | | | | | | | |
| Brazil | Cruzeiro | 2,109,004.5 | 711.30 | | | | | 2,109,004.5 | 711.30 |
| Katie McGinty: | | | | | | | | | |
| Brazil | Cruzeiro | 7,494,860 | 2,510.00 | | | | | 7,494,860 | 2,510.00 |
| United States | Dollar | | | | 683.00 | | | | 683.00 |
| Jan Paulk: | | | | | | | | | |
| Brazil | Cruzeiro | 2,942,510 | 992.41 | | | | | 2,942,510 | 992.41 |
| Steven Polansky: | | | | | | | | | |
| Brazil | Cruzeiro | 2,167,800.5 | 731.13 | | | | | 2,167,800.5 | 731.13 |
| Marla Romash: | | | | | | | | | |
| Brazil | Cruzeiro | 2,853,560 | 962.90 | | | | | 2,853,560 | 962.90 |
| Steven J. Shimberg: | | | | | | | | | |
| Brazil | Cruzeiro | 2,483,128.2 | 837.48 | | | | | 2,483,128.2 | 837.48 |
| Delegation Expenses: | | | | | | | | | |
| Brazil | | | | | | | 10,676.62 | | 10,676.62 |
| Total | | | 20,739.70 | | 6,293.00 | | 10,676.62 | | 37,709.32 |

Delegation expenses include direct payments and reimbursements to the Department of State and to the Department of Defense under authority of sec. 502(b) of the Mutual Security Act of 1954, as amended by sec. 22 of P.L. 95–384, and S. Res. 179, agreed to May 25, 1977.

Senator ALBERT GORE, JR.,
Chairman of Delegation,
Senator GEORGE J. MITCHELL,
Majority Leader,
Senator ROBERT J. DOLE,
Republican Leader, July 29, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE MAJORITY LEADER FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

| Name Country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Deborah DeYoung: | | | | | | | | | |
| Thailand | Dollar | 1,645.64 | 213.00 | | | | | 1,645.64 | 213.00 |
| Vietnam | Dollar | 1,483.39 | 192.00 | | | | | 1,483.39 | 192.00 |
| Hong Kong | Dollar | 2,263.72 | 293.00 | | | | | 2,263.72 | 293.00 |
| Total | | | 698.00 | | | | | | 698.00 |

GEORGE J. MITCHELL,
Majority Leader, July 15, 1993.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE REPUBLICAN LEADER FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Senator Arlen Specter: | | | | | | | | | |
| Senegal | CFA | 44,499 | 163.00 | | | | | 44,499 | 163.00 |
| Cameroon | CFA | 30,303 | 111.00 | | | | | 30,303 | 111.00 |
| Kenya | Dollar | | 340.00 | | | | | | 340.00 |
| Uganda | Dollar | | 244.00 | | | | | | 244.00 |
| Central African Republic | CFA | 131,949 | 486.00 | | | | | 131,949 | 486.00 |
| Cameroon | CFA | 7,532 | 28.00 | | | | | 7,532 | 28.00 |
| Nigeria | Dollar | | 150.00 | | | | | | 150.00 |
| Barry Caldwell: | | | | | | | | | |
| Kenya | Dollar | | 340.00 | | | | | | 340.00 |
| Uganda | Dollar | | 244.00 | | | | | | 244.00 |

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE REPUBLICAN LEADER FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993—Continued

| Name and country | Name of currency | Per diem | | Transportation | | Miscellaneous | | Total | |
|---|---|---|---|---|---|---|---|---|---|
| | | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency | Foreign currency | U.S. dollar equivalent or U.S. currency |
| Central African Republic | CFA | 158,979 | 585.56 | | | | | 158,979 | 585.56 |
| United States | Dollar | | | | 791.00 | | | | 791.00 |
| Nigeria | Dollar | | 8.00 | | | | | | 8.00 |
| Cameroon | CFA | 40,497 | 150.55 | | | | | 40,497 | 150.55 |
| Total | | | 2,850.11 | | 791.00 | | | | 3,641.11 |

ROBERT J. DOLE,
Republican Leader, July 14, 1993.

## FACES OF THE HEALTH CARE CRISIS RETIREE HEALTH CARE

• Mr. RIEGLE. Mr. President, I rise today in my continuing effort to put a face on the health care crisis in my home state of Michigan. I want to tell the story of John Demerjian and his family from Sterling Heights, MI. John's retiree health benefits are being cut by his former employer, a situation which is occurring in Michigan and across the country with increasing frequency.

In 1989, John took advantage of early retirement at the age of 63. He retired with the written assurance that he and his family's health care benefits would continue to be provided; his share of the cost would be $15 per month for himself, his wife and one dependent. These benefits were written into his contract.

Last year, John received a letter from his former employer, informing him that the company contribution to his health benefits was being scaled back starting in 1993. John has seen his health insurance costs jump from $15 per month to $60 per month. In 1994, the cost to the family for their health care coverage will be $270 per month and in 1995, it will increase to $580 per month. In 1996, John's former employer will cease to contribute to the cost of the family's health insurance.

John is very worried about how his family will obtain health insurance when he can no longer afford the high cost of this policy. John himself is now on Medicare and only holds a supplemental policy with his former employer. His wife, Patricia, and his son, John, however, depend on his insurance.

John especially fears for his son who has a pre-existing condition which will cause many insurers to deny him coverage. John had cancer of the right ankle several years ago. Even though he has not had a reoccurrence of the cancer, it is still considered a preexisting condition.

John has worked hard all his life and thought he was going to be able to meet his family's health care needs after he retired. Every American deserves the peace of mind that adequate health insurance coverage can provide.

I will continue to do everything I can to work with my colleagues and President Clinton and First Lady Hillary Rodham Clinton to reform our health care system and provide access to affordable health care for all Americans.•

## ACHIEVEMENTS OF JOHN GOFMAN

• Mr. METZENBAUM. Mr. President, to be able to look back at the end of the day and know that you have made life better for someone else is truly the best measure of personal achievement. I rise today to note the achievements of a man I have known for over 50 years.

He is someone who has been able to say, after virtually every day in his career, that he has made a difference in the lives of his fellow men and women.

John Gofman is a medical doctor, and professor emeritus of molecular and cell biology at the University of California at Berkeley. Of greater importance for our country, John is also a whistleblower, humanitarian, and indefatigable fighter for what he believes is right. John is one of the foremost authorities on the effects of radiation on the human body.

Last year he received the Right Livelihood Award for his work on the effects of ionizing radiation. The award has been presented since 1980 to leading individuals whose work confronts the toughest issues of our time. It was established and is administered by an independent foundation in Stockholm, Sweden. The actual awards ceremony is conducted in the Swedish parliament chamber, on the day before announcement of Nobel Prize winners. Indeed, the Right Livelihood Award is viewed by many as a runner up Nobel Prize.

I first met Jack when we were growing up in Cleveland, OH. He was both president of our high school class, and class valedictorian.

Neither he nor I, nor anyone else, had any idea what nuclear energy was back then.

We have certainly come a long way in the intervening half century. The benefits and risks of the atom are all too clear. And Jack Gofman has been tracking these benefits and risks every step of the way.

Dr. Gofman has been on both sides of the nuclear debate. He was part of the Lawrence Livermore team which developed the Atomic Bomb. He has been on the inside as a researcher and safety expert. Subsequently, he became one of the leading critics of the way in which governments deal with nuclear safety.

John is not an advocate for any particular ideology or interest. He is an advocate for good science.

When the U.S. Atomic Energy Commission failed to produce necessary data on radiation's effect on the human body, John and a colleague produced their own report.

Their conclusion that U.S. nuclear plants were unsafe resulted in official ostracism. But Jack Gofman has never been out to win popularity contests.

When authorities sought to ignore or bury quality research, Jack wouldn't let them get away with it. He has been called brilliant by supporters and a crank by those whose lives he has made uncomfortable.

Mr. President, I have a better adjective for Dr. John Gofman: I call him a patriot in the truest sense of the word.

Mr. President, there are many so-called antinuke advocates whose credibility is often undermined by hysterical rhetoric.

Jack is no hysteric. Jack is nothing if not a level-headed analyst.

If he ever indulges in a rhetorical flourish, it is always backed up by the facts. Moreover, I should note that Jack is not indiscriminately antinuclear. For example, he has not opposed the existence per se of nuclear weapons.

He has recognized the value of nuclear deterrence in a world where nuclear proliferation jeopardizes stability.

Mr. President, Jack Gofman's most recent effort is a study on the long-term effects of the Chernobyl accident, which will be included in his upcoming book.

Jack's most current publication appeared in the Bulletin of the Atomic Scientists. I ask unanimous consent that a copy of the article, entitled "Beware the Data Diddlers" from the May 1993 issue be printed at the conclusion of my remarks.

In this article, Jack points out a dangerous trend among nuclear regulatory agencies: the willingness to apply huge fudge factors to the data they compile. Jack's point is that regulators can and do manipulate this data to reach false conclusions about harmful dosages of radiation.

Mr. President, our inventory of nuclear reactors is growing older. The pile of nuclear waste they produce grows larger and larger, with no permanent storage site available. And an increasing amount of nuclear material will be moved around the country as we dismantle nuclear warheads pursuant to the START Treaty.

It seems to this Senator that our nuclear regulators had better start shooting straight with the American people and with the Congress.

Our commercial and military nuclear programs are approaching a crossroads, and I for one want accurate information upon which to base decisions about the future.

If Dr. Gofman's allegations are even partially true—and I believe them to be 100 percent reliable—then we are confronting an unseen and unknown health threat of vast proportions.

The shame of it all is that the people we pay to monitor this threat act too much the part of bureaucrats and not nearly enough the part of scientists.

I wish we had more John Gofmans keeping a watch on, or working within, the U.S. Government.

Mr. President, I want to congratulate my friend Jack Gofman on his lifetime of achievement, and I want to bring his recent article to the attention of all my colleagues.

I am sure that Dr. Gofman would like nothing more than to see his life's work be made irrelevant by a new and tougher safety standard. Regrettably, Jack's work becomes more important to us each and every day.

[From the Bulletin of the Atomic Scientist, May 1993]

BEWARE THE DATA DIDDLERS

(By John W. Gofman)

Permit me to put the question starkly. Although there is ample evidence that nuclear pollution presents health risks, how can we properly assess the degree of risk when the governments that have unleashed the poisons also sponsor virtually all the health research concerning nuclear radiation?

That conflict-of-interest problem has a commonsense solution. We—and "we" refers mainly to individuals and nongovernmental organizations—must insist that independent "watchdog authorities" be established to monitor the work of those who may have a vested interest in underestimating the health risks that may be attributed to nuclear radiation.

These watchdog authorities will not be responsible for conducting the actual health-risk studies. Rather, they will be charged with insuring that the raw data used in health-risk studies are obtained and maintained as objectively as possible.

It's a common-sense idea. But like many simple ideas, it will be a tough sell.

Valid conclusions about the health consequences of various pollutants rest upon databases that can be trusted. If a database is false—either from careless work or from intentional bias—it will cause innocent analysts of the data to fill medical journals and textbooks with misinformation. As surely as a skewed foundation compromises the building erected upon it, a false database turns all users into purveyors of possibly deadly information, no matter how honest they may be. The accuracy of a database is the key to every conclusion that emerges from it. The health consequences of false databases can vary from trivial to tragic.

Although the principles discussed on these pages focus on radiation research, they apply with equal vigor to databases on dioxins, pesticides, mercury, and other major non-nuclear pollutants.

Because it seems just a matter of common sense to have independent watchdog authorities, many people simply assume that they already exist. But they do not. Not for radiation research, and not for any other pollutant. The current situation regarding databases is unacceptable. Indeed, future generations might characterize it as criminally negligent.

THE PROPOSAL

The Chernobyl database is already under construction by the International Program on the Health Effects of the Chernobyl Accident (IPHECA), which will operate through the World Health Organization. The main sponsors of the IPHECA study—with $200 million suggested for its initial stages—are the governments of the United States, Britain, Russia, France, Germany, and Japan. These governments also sponsor nuclear programs—either nuclear power, nuclear weapons, or both.

The conflict of interest is self-evident, and it is not limited to IPHECA'S Chernobyl study. Nearly all radiation research is sponsored by governments that fiercely defend and promote nuclear energy. I believe that they recognize their goals are not aided if the public comes to believe that radiation is harmful—even at low doses, and even if slowly delivered.

The current situation in radiation research is a bit like relying on the tobacco industry to conduct all the research on the health effects of smoking. Fortunately, we don't do that. Since the 1950s, thousands of independent studies regarding the impact of smoking on health have been organized. In effect, the scientists who have conducted these tobacco studies have acted as watchdogs vis-a-vis the tobacco industry, which takes a generally benign stance toward the products if produces.

Similarly, scientists with the mandate and the financial wherewithal to act independently must "watchdog" the building of radiation databases. I propose that we start with Chernobyl:

IPHECA should fund a team of independent scientists who will work inside the Chernobyl study. They would have the authority to make sure that the essential rules of research are observed. They also would have the right to publish their own views as an integral part of every IPHECA document.

Their assignment would not be to dictate a uniform analysis of the data. Rather, it would be to insure that the database itself can be trusted and that dissenting views about its handling and its meaning are not punished or silenced.

The watchdog scientists would in no way be answerable to governmental authorities. Rather, they would represent the public's right to a "second opinion" on matters of radiation and human health. An independent watchdog supervisory group could be appointed by environmental and other citizen groups to select and oversee the actual watchdog efforts.

Watchdog authorities must be permanent. Although the work that goes into the preparation of databases is most intense in the early phases, input is necessarily added for many decades, as the health of participants is followed up. Watchdog authorities must operate for the entire duration of a given study, because massive violations of the rules can occur even late in a study. (See "Violating the Rules of Research.")

UN-KNOWLEDGE

During a lifetime in biomedical research, I've concluded that it is hard to prove anything about anything. There are sampling errors, confounding variables, and necessary equipment that has not yet been invented. The path to understanding is only darkly lit, and the stones strewn along the way are numerous.

Acquiring truth about health and biology is difficult at best. In contrast acquiring falsehoods about health and biology seems to be inordinately easy. Consider the legions of peer-reviewed professional journals that have carried "evidence" favoring various pharmaceutical, dietary, surgical, or physical therapies for almost every problem—and the number of disappointments when the initial glowing reports are undermined by later reports suggesting no health benefits at all.

I call such information "biomedical unknowledge"—shorthand for all the findings that are the opposite of what is true about health and disease.

When I was younger, I assumed that no one wanted "un-knowledge." I no longer make that assumption. Consider the "wish-list" that nuclear energy-promoting governments seem to have for the radiation research they sponsor. It goes something like this:

Best of all would be a finding that a little extra radiation improves human health, a sort of invisible Vitamin E. This speculation has a name: hormesis. Indeed, some of its most avid proponents are already writing about the need to treat society in general for "radiation-deficiency disease." The second international conference or radiation hormesis—with some 250 speakers and participants—was held in Kayoto, Japan, last July.

The next best finding would be to determine that there was a threshold dose below which no harm occurs. The "safe dose—no risk" claim has become exceedingly common after the Chernobyl accident. For example, the U.S. Energy Department, in its 1987 report on the probable health consequences of Chernobyl, assigned a "zero risk" to some 500 million people exposed to low doses of fallout—if all doses below a half rad are harmless.

In a condensed version of the Energy Department's report (Science, December 16, 1988), the assertion that Chernobyl might induce zero extra cancers for persons exposed to low doses was repeated ten times in six pages. That's a fair definition of overkill. There was no mention of the powerful evidence and logic that argue against the threshold speculation. If hormesis and thresholds are not successfully sold to the general public, the next best finding would be to claim—as is often done—that a dose of radiation is far less harmful if it is received slowly over time than if the same dose is received all at once.

As a scientist, I have always taken these wishes and speculations seriously. I have

spent years testing them with the existing evidence and with logic. I, too, would prefer for radiation to be harmless. Who would not?

Unfortunately, evidence and logic do not support the wish list. On the contrary, evidence and logic suggest that low-dose ionizing radiation may well be the most important single cause of cancer, birth defects, and genetic disorders.

FOLLOW THE RULES

My work on the risks of low-dose radiation has been controversial. Some scientists say they agree with me. Many say they do not. But whether I'm right or wrong about the low-dose question is irrelevant in evaluating the watchdog proposal. The watchdog idea serves the interests of objective, scientific inquiry. It does not promote the interest of any particular point of view regarding the possible outcomes of specific studies.

It is fortunate that we do not often have disasters of the magnitude of Chernobyl. But the tragedy of Chernobyl will be compounded many-fold if we squander the opportunity to learn everything possible about the health risks associated with it, as well as its ecological consequences.

Creating a trustworthy database from an event such as the Chernobyl accident is a profound obligation of the world's scientific community. If research on the radiation consequences of Chernobyl is poorly designed or biased, or both, the false conclusions will nevertheless enter the professional literature and the textbooks.

Research that exaggerates the health hazard of radiation will be a disservice to humanity. But if researchers underestimate the true health hazards, the misinformation will be literally deadly, because it will result in great increases in "permissible doses" and unnecessary and preventable human exposures to radiation in the environment, in occupations, and in medical treatment.

To help prevent the production of false databases and false "findings," either through bias or scientific error, medical science has developed the already noted rules of research. These rules are acknowledged implicitly or explicitly throughout the epidemiological literature.

The key to creditable and credible research in the health effects of radiation is full obedience to these rules. Strict adherence to the rules simply eliminates issues regarding conflict of interest and scientific misconduct. No one needs to raise such issues—if impeccable adherence to the basic rules can be demonstrated. But whenever such adherence cannot be demonstrated, society would be ill-advised to accept the purported scientific "findings."

These assertions are not intended to impugn the motives or the work of most scientists who prepare or analyze radiation databases, although some misconduct exists in every field. But as already noted, if the rules of research are violated in building databases, no analyses of the data can escape the poison. The first obligation of every objective scientist is to question the believability of raw data before he or she uses them.

EVERYONE WINS

Perhaps IPHECA itself should have thought about introducing the watchdog concept, as a means of obtaining credibility for its studies. However, IPHECA has not done so.

Although I don't expect IPHECA's scientists to endorse the watchdog concept publicly, I suspect that most of them will privately welcome it. Most scientists, after all, would prefer to be honest and to do impeccable work.

Under a watchdog authority, everyone wins. The scientists win by being liberated from humiliating pressures to please their employers. The victims of nuclear accidents win by having objective, reality-based evaluations of the harm or lack of harm they have been exposed to. And of greatest importance, humanity gains by being freed of the specter of 100 years of biomedical un-knowledge about the health effects of radiation.

The watchdog proposal establishes a system that rewards and honors truth-telling, instead of punishing it by loss of employment. Further, the watchdog remedy requires no technological breakthroughs to make it feasible.

The only requirement: A firm insistence that it is necessary, an idea whose time has truly come. We cannot expect governments to be the source of such insistence. The demand must come from all segments of society, not just scientists. The sooner that people create a ground swell of support for such a concept, the earlier it will become a reality.

I urgently invite all individuals, groups, and organizations to let me know if they will permit themselves to be included on a list of endorsers of the watchdog concept.

Last December, the concept received emphatic support from the international jury of the Right Livelihood Award Foundation in Stockholm. Subsequently, I have received very favorable reactions to the proposal from a variety of scientific, environmental, and political figures in Ukraine, Belarus, and Russia.

The dollar costs of watchdog authorities over the decades will not be trivial, per database. But the work of the watchdogs is at least as important to ordinary taxpayers as is the work of the governmentally sponsored teams underwritten by their taxes. I suggest that funding for independent watchdog authorities should come from the same budget that supports governmentally funded investigators. For the sake of discussion, I suggest five percent of the budget.

For the Chernobyl database, if the initial budget for IPHECA is $200 million, five percent would be $10 million. If five percent of IPHECA's budget (whatever its ultimate size) is transferred to an independent watchdog authority, I suspect that taxpayers—or at least those who were aware of—would rejoice.

Why are the nuclear-committed governments so ready to conduct health studies concerning Chernobyl? And Chelyabinsk? and why do they continue to govern the studies of Hiroshima and Nagasaki?

They claim, of course, that they conduct such studies for the sake of truth, and for the benefit of all humanity. But at the grassroots, ordinary people may judge the sincerity of such claims by how positively governments respond to the watchdog proposal. Making the proposal is relatively easy, of course. The hard part will be building a critical mass of international support to make it a reality.

The sponsors of current research on radiation and other types of pollution may fight vigorously behind the scenes to kill the watchdog idea. And after the watchdog proposal is accepted—soon, I hope—people must still remain vigilant. They must insure that independent experts are not—or do not become—sheep who wear a watchdog costume. In the end, we are all watchdogs. We owe future generations at least that much.

THE RULES OF RESEARCH

There are nine fundamental rules of research that any organization studying the effects of radiation on human health should be required to follow. They may seem unexceptionable, yet they have often been ignored:

Groups must be comparable. An essential condition for discovering the effects of radiation is reasonable certainty that exposed and non-exposed groups are so similar that the sole reason the groups might be expected to experience different rates of disease and disorder is their exposure to radiation.

The groups must have experienced an actual difference in dose. If the rate of disease in two groups is being compared, it is essential to establish with reasonable certainty that the groups actually received appreciably different accumulated doses. If, in fact, the groups received nearly the same total amounts of radiation, a study is predestined to find no provable difference in disease rates between the two groups.

The difference in dose must be sufficiently large. The dose-differences between compared group must be large enough to allow for statistically conclusive findings despite the random variations in numbers and in population samples. Analysts can cope with the random fluctuations of small numbers both by assuring sufficiently large dose-differences between compared groups, and by assuring large numbers of people in each group.

The dose must be carefully reconstructed. Obviously, analysts will reach false conclusions if supposedly non-exposed individuals in a database actually received appreciable doses, and if people exposed to supposedly high doses received lower doses that the database indicates. When it comes to Chernobyl, weather patterns caused a very considerable variation in the spread of contamination, which makes this scientific pitfall a real possibility unless careful and objective dose-reconstruction is substituted for assumption. Fortunately, there are several dosimetry techniques that can reduce uncertainty about dose, even decades after the event.

Dose analysts must be rendered demonstrably objective. Analysts who estimate the dose subjects have received should have no idea of the medical status of the individual or the group to which the individual belongs. Health-status data and dose-related data must never appear in the same file. Analysts must do their work "blind" to protect the database from accidental or intentional bias concerning the relationship between radiation dose and health.

Diagnostic analysts' objectivity must be confirmed. To be credible, studies must be designed to guard against bias at every point. If any study of the effects of Chernobyl is to be valid, this principle must extend to all analysts, physicians, and technicians who diagnose the health status of study participants. They must not know whether an individual's radiation dose was high or low and they must be denied information (such as place of residence) that would allow them to form an opinion about a likely dose. It is crucial that teams of "special experts" not be allowed to alter diagnoses at a later date—"unblinded."

No retroactive changes in input data must be permitted after any results are known. In a continuing study, one must not be allowed to alter, delete, or add retroactively to the original input when response results become available. Deciding to revise original data creates an opportunity to falsify the cause-effect relationships (if any) between dose and response. Any study is suspect if retroactive changes are made in diagnosis or dose, if

cases are shuffled from group to group, or if any data or cases are suddenly dropped or new cases are added "as needed" from some reserve.

Data should not be excessively subdivided. Even the largest databases can be rendered inconclusive and misleading if analysts subdivide the data into too many categories or subsets. If analysts hope that a study will find no provable effects even if such effects exist, the outcome can be arranged by creating a "small-numbers problem," which will prevent all or nearly all of the study's results from meeting any test of statistical significance. Moreover, excessive subdivision increases the frequency of finding random effects, which may pass the test of statistical significance, but which are nevertheless false. Selective preservation of such false findings can be used to support an intentional bias. Any excessive subdivision of data should be viewed with suspicion.

No pre-judgments are permitted. Both pre-judgments and hypotheses are ideas held at the outset of an inquiry. Pre-judgments are assumptions, often unstated, that can cause investigators to ignore or discard particular evidence. In contrast, hypotheses are tentative explanations, openly stated, that invite challenges from other investigators.

VIOLATING THE RULES OF RESEARCH

The atomic bomb survivors database is updated and managed by the Radiation Effects Research Foundation (RERF) in Hiroshima. RERF is sponsored by the U.S. Energy Department and the Japanese Ministry of Health. In 1986, RERF virtually replaced the existing database, which had been used for about 21 years. New doses were assigned to survivors, many of the study's participants were suspended, and the remaining participants were shuffled into new groupings (cohorts). The reason given for these retroactive alterations was a set of revised dose estimates for both neutrons and gamma rays, from the 1987 publication, U.S.-Japan Joint Reassessment of Atomic Bomb Radiation Dosimetry in Hiroshima and Nagasaki: Final Report.

This revision is a violation of a basic research rule—that no retroactive changes in input data are permitted after any results are known. Parallel analysis with both old and new dose estimates, without an assault on the cohort structure of an ongoing study, is an acceptable practice to take account of new dose estimates, but RERF did not use it. Instead, its maneuvers with the A-bomb study database create a potential to revise the results to fit a preferred outcome. In contrast, credible epidemiological research makes elaborate efforts to avoid this possibility.

I complained about the rule violation of Dr. Itsuzo Shigematsu, the RERF chairman. In a letter to me, he replied in part: "Concern about bias does not appear to be justified. We shall, however, be sure to consider the necessity, and if so, the feasibility of dual analyses of our data [altered and non-altered input]."

RERF is already revising its revised database, which is called "the basis for any future amendments to the A-bomb survivor dosimetry that may be desirable." Perpetual, retroactive alteration seems to be RERF policy.

Meanwhile, RERF provided me with the old "unshuffled" data (the original database) as well as its new "shuffled" data through 1985 for an independent examination. (This examination is described in the fourth chapter of Radiation and Chernobyl, This Generation and Beyond, forthcoming.) For radiation-induced cancer, rates were calculated using both old and new dose-estimates with the unshuffled cohorts. Both analyses show that low-dose radiation is more harmful per dose-unit than high doses of radiation. By contrast, other analysts using only the new dose estimates with a shuffled cohort, have published a curve suggesting that low dose radiation is less carcinogenic per dose-unit than high-dose radiation.

Similar results were found when the database was shuffled and instances of radiation-induced mental retardation were examined. Serious mental impairment occurs when an eight to 26-week-old fetus receives an appreciable dose of radiation. The unaltered database suggests that there is no "safe" dose or threshold. But RERF analysts have frequently suggested that the atomic bomb survivor study indicates a possible threshold. Almost all the difference in interpretation can be explained by RERF's choice of the retroactively altered database; key cases of mental retardation have been moved from one dose category to another.

The retroactively altered database produces data on cancer and mental retardation rates that are more favorable to nuclear polluters than the unaltered database. Database "shufflers" should be required to demonstrate that no bias was introduced by their research rule violations, particularly because their sponsors are not neutral observers. In a matter of such importance to human health, these rule violations should not be tolerated at all.

Different rules of research have already been broken in the study of Chernobyl health effects. By 1989, three years after the Chernobyl accident, a number of complaints about health problems in Belarus and Ukraine had reached the press. At the request of the Soviet government, the International Atomic Energy Agency (IAEA) organized a study, led by Dr. Shigematsu. In May 1991, Shigematsu announced that the IAEA's international experts had found no relationship between illnesses in Belarus and Ukraine and the release of radiation from Chernobyl.

The IAEA study received a great deal of attention in the public press, but it was sharply criticized in scientific journals—as it should have been. It was flawed in a number of ways. The study broke more than one of the rules.

IAEA teams sampled seven "contaminated" and six "uncontaminated" or "control group" villages. The researchers then selected a radiation-exposed population that had received doses that may have been less than one rem higher than the doses of those in the control group—if there were any higher at all. Under such conditions, the search for meaningful results was doomed from the beginning, and the IAEA's conclusion was predictable from the start. The IAEA did not compare effects in "control" villages with villages where far higher doses were received (in many of the villages that were not included in the study, doses exceeded 20 rem).

If only small differences in dose are examined, careful dose reconstruction is critical. But the IAEA researchers did not do this adequately. For several days, the Chernobyl 4 reactor burned graphite, and short-lived and intensely radioactive nuclides were released, which made later estimates of exposure based only on levels of cesium 137 unreliable. Using cesium 137 levels rather than careful measurements of actual biological does contributed to inherently questionable conclusions.●

## EXISTING APPLICANTS FOR LOTTERIES

● Mr. INOUYE. Mr. President, section 6002(e)(2) of title VI creates a special rule which provides that the Commission may not issue a license or permit by lottery after the date of enactment unless one or more applications for such license were accepted for filing by the Commission before July 26, 1993. I would like to clarify the use of this term. The Commission often opens a window, or brief time period, for the filing of applications for a license. Although many applications may be filed during this period, it often takes the Commission some amount of time to review the applications to determine whether they will be accepted for filing. For instance, even if the Commission opened a window in April during which many applications were filed, the Commission may not have finished reviewing all the applications before July 26 to determine whether they were acceptable for filing.

This provision of the bill allows the Commission to use a lottery to assign a license even if only one application for that license has been accepted for filing prior to July 25, 1993. This does not mean that licenses that are filed prior to the July 26 date and that are accepted for filing after such date are ineligible for the lottery. All applications filed prior to July 26 that are subsequently accepted for filing at any date thereafter continue to remain eligible for the lottery as long as the Commission determines that at least one application was ruled to be acceptable for filing prior to July 26.

In limiting the Commission's use of the lottery mechanism to license the applications which were accepted for filing before July 26, 1993, the conferees were aware that the Commission would be required to suspend licensing activities for some services while it alters its rules to conform to this requirement. The conferees concluded that the Commission would be able to make the needed rules changes promptly, and hence any disruption to services in the pipeline would be minor. The Commission should be mindful that delay in the resumption of licensing will harm these services, and hence it should move promptly to initiate—and consummate—the needed rulemaking proceedings.

I call the Commission's particular attention to the Interactive Video Data Service [IVDS] where delays in concluding the rulemaking and commencing the application and licensing process have already been lengthy. The public is not being well served by such delay, which is preventing the introduction of an important new service. The changes necessitated by this legislation should not be an invitation to reopen any questions resolved in the current rules. The Commission should

merely modify the selection mechanism to substitute an auction mechanism for the lottery selection method. I expect the Commission to give particularly expeditious attention to concluding the needed rule modifications for IVDS, so the introduction of service will not be further delayed and the initial licensees and the providers of the technology and the service will not be disadvantaged.•

## TWO SERBIAS: ONE NATIONALIST, ONE DEMOCRATIC

• Mr. SIMON. Mr. President, I am concerned that the continued war in Bosnia not distract attention from widespread abuses of human rights in Serbia. The two are closely related.

The Serbian nationalists' continued assaults against Sarajevo, including last week's seizure of Mt. Bjelasnica and the city's main TV transmitter in violation of a U.N. cease-fire agreement and the U.N.'s "no-fly" zone, represent Serbia's persistent pattern of human rights abuses. Seeking to achieve a Greater Serbia through war in Bosnia and ethnic cleansing, Serbian nationalists and their allies in Belgrade have systematically killed, tortured, and otherwise tried to silence people, including ethnic Serbs.

The struggle of Vuk and Danica Draskovic, the leader of the Serbian Renewal Movement and his wife, is just one of many sad stories to emerge from the former Yugoslavia. The Draskovics were savagely beaten by Belgrade police after a June 1 anti-government demonstration. Vuk Draskovic, who came close to death in his 9-day prison hunger strike, courageously stood up to a totalitarian police state. He inspired millions of Serbs, including many Serbian-Americans, who disagree with the Milosevic regime.

The plight of Draskovic and his wife evoked expressions of diplomatic support by world leaders; Mrs. Danielle Mitterrand flew to Belgrade to appeal to Milosevic on the Draskovics' behalf. Having been treated in a French military hospital, the Draskovics are now recuperating from their injuries in Montenegro.

Vuk Draskovic stands for democracy, something Serbia and its neighbors desperately need. The Belgrade authorities have accused him of undermining Serbia's international standing with his public comments against the war.

Now, as President Clinton urges our European allies and partners to support air strikes against Bosnian Serb forces besieging Sarajevo, Serbian leaders in Belgrade and in Bosnia should understand that they—not their courageous democratic critics—are the ones who have undermined and even disgraced Serbia's cause.

Vuk Draskovic and his wife are now safe and at liberty, but he may still face trumped-up charges on grounds of having allegedly assaulted a policeman in the June 1 demonstration. The Serbian Government should know that further criminal proceedings against Vuk Draskovic would do nothing to enhance its dismal standing in the international community. I urge my colleagues to join with me in speaking out on his behalf.•

## REDEEMING THE ENVIRONMENTALISTS

• Mr. HATFIELD. Mr. President, as one who considers himself both an environmentalist and a Christian, I have been troubled by the failure of many in the environmental movement to understand the place of Christians in the cause of environmentalism. Many environmentalists have adopted an Earth-inspired spirituality, misconstruing the Christian mission to care for the planet and assuming that true environmentalists have no place in the Christian church. Nothing could be further from the truth.

The Christian tradition is rooted in the human understanding of our responsibility to serve as stewards of this planet. We are told in Genesis that the Lord put human beings in the Garden of Eden "to work it and take care of it." (2:15) Christians are, by our very nature, environmentalists.

In a recent issue of Christianity Today, Prof. Ronald J. Sider addresses the issue of Christian stewardship over our planet and the role Christians play in tending to global concerns. Dr. Sider points out that the Hebrew word "abad," translated "work," means, in fact, "to serve," suggesting our position merely as caretakers in a garden we do not own. God granted us dominion over his other creations, a position we have, unfortunately, twisted into domination.

Our poisoning of the Earth's water, earth, and air reflects our misguided notion of human invincibility. But Christianity provides us with answers. We must accept our responsibility as stewards of the planet while recognizing our humble place in Creation relative to the Creator.

The very principles embodied in Christianity—humility in the face of God and service to the planet in the name of God—must guide our efforts. Wise use of the Earth's resources—using limited amounts of resources we cannot replace and helping to replenish those we can—is the balanced and responsible approach to caring for our environment. Guided by these principles, Christians can contribute much to the work of environmentalism.

I would ask that Professor Sider's essay entitled "Redeeming the Environmentalists" appear in the RECORD following my remarks.

[From Christianity Today, June 21, 1993]

REDEEMING THE ENVIRONMENTALISTS

(By Ronald J. Sider)

In March 1990, in Seoul, South Korea, I attended an international conference on Justice, Peace, and the Integrity of Creation sponsored by the World Council of Churches. I heard many persuasive claims about the way Christians had distorted humanity's mandate to have dominion over the Earth—the consequence of these distortions being a ravaged creation. I became concerned, however, when I noticed that no one had mentioned the fact that human beings have an exalted status within creation, in that they alone are created in the image of God.

So I proposed a one-sentence addition to the document we were debating. From the floor, I asked that we add a sentence affirming that, as we confess these misunderstandings, we nonetheless "accept the biblical teaching that people alone have been created in the image of God."

The drafting committee promptly accepted the addition but dropped the word "alone." I pointed out that this undercut the basic point. Are trees and toads also created in God's image? When the drafting committee remained adamant, I called for a vote. And the motion lost! At that moment, a majority of attendees at this important convocation were unwilling to say what historical, biblical theology has always affirmed: that human beings alone are created in the image of God.

As my experience illustrates, in today's environmental movement there is a lot of theological confusion. Actress Shirley MacLaine says we must declare that we are all gods. Disciplined but unchastened Catholic theologian Matthew Fox says we should turn from a theology centered on sin and redemption and develop a creation spirituality, with nature as our primary revelation and sin a distant memory. Australian scientist Peter Singer says any claim that persons have a status different from monkeys and moles is "speciesism." Several decades ago historian Lynn White argued that it is precisely the Christian view of persons and nature that created the whole ecological mess. Meanwhile, many evangelicals come close to celebrating the demise of the Earth, enthusiastically citing the decay as proof that the return of Christ is very near.

These and other factors will tempt evangelicals to ignore and denounce environmental concerns. But that would be a tragic mistake—for at least three reasons. First, because the danger is massive and urgent. Second, because there are evangelistic opportunities that arise out of environmental concerns. And third, because if we do not offer biblical foundations for environmental action, we will have only ourselves to blame if environmental activists turn to other, finally inadequate, world-views and religions. With wisdom and a renewed appreciation of the wholeness of God's plan for redemption, we can lead the way forward in the healing of our Earth.

WHY BE INVOLVED

An urgent problem. That we are in trouble is increasingly clear. Gaping holes in the ozone layer, polluted rivers, expanding deserts, denuded mountainsides, air-poisoned cities, and spiraling carbon emissions producing global warming—all sound the warning. In the last 40 years, we have lost one-fifth of our topsoil and one-third of our rain forests. Leading scientists are so frightened that even prominent secularists like Carl Sagan have issued an urgent plea to the religious community to help find solutions to impending ecological disaster.

Evangelistic opportunities. The very urgency of the problem has created tremendous evangelistic opportunities. As one reads the environmental literature, the deep yearning for religious meaning becomes clear. Many environmentalists have rejected the materialistic "scientism" that drives our technoculture. They are right in thinking that secular naturalism, which has been so influential in the last 200 years, cannot solve environmental problems. The tragedy is that when these folks yearn for religious solutions, they assume that historic Christianity has nothing to offer. So they turn to goddess worship, nature spirituality, Eastern monism, and New Age nonsense.

What an opportunity—if we have the courage, intellectual vigor, and faith. Instead of rejecting environmentalism lest our theology become contaminated, we must stride boldly into the mainstream of the green movement, showing how biblical faith offers a better foundation for environmental engagement. We need to imitate Paul's bold strategy in the face of the Athenians' religious confusion and spiritual groupings. Paul praised their religious yearning and told them about the God for whom they did not have a name (Acts 17). If we do the same, naming God in the midst of the massive contemporary longing for religious foundations, we may be surprised at the evangelistic results.

Christian leadership. Third, evangelicals must become environmentalists to make sure that a biblical rather than a monist world-view shapes what will undoubtedly be one of the most central global problems of our lifetime. Make no mistake: Modern folk will find some spiritual foundations to guide and shape their environmental concerns. If it is not biblical faith, then it will be something far less adequate.

There is a spiritual battle going on. Satan would dearly love to persuade modern folk that the best way to solve our environmental crisis is to jettison historic Christianity. The truth, of course, is exactly the reverse. The best foundation for saving the creation is by worshiping and obeying the Creator revealed in Jesus Christ.

CALLED TO GARDEN

The only way to make sure that the biblical world-view plays a central role in shaping key environmental decisions is for large numbers of biblical Christians to join enthusiastically in the environmental movement. As we pray, teach, and act, five biblical principles will be especially important.

First, whereas a one-sided view of either God's transcendence or immanence compounds our problems, a biblical combination of both points the way through our dilemmas. If we focus only on God's immanence (his presence in the world), we land in pantheism where everything is divine and good as it is. If we talk only about God's transcendence (his radical separateness from creation), we may end up seeing nature as a mere tool to be used at human whim.

The biblical God is both immanent and transcendent. He is not a cosmic watchmaker who wound up the global clock and then let it run on its own. God continues to work in the creation. In Job we read that God gives orders to the morning (38:12), that the eagle soars at God's command (39:27), and that God provides food for the ravens when their young cry out in hunger (38:41). The Creator, however, is also radically distinct from the creation. Creation is finite, limited, dependent; the Creator is infinite, unlimited, self-sufficient.

Second, we should gratefully learn all we can from the book of nature without in any way abandoning biblical revelation. When Matthew Fox tells us that we can get most or all the revelation we need from creation, we will firmly reply that the biblical revelation of redemption from sin through Jesus Christ is as true and essential as ever in our environmental age.

Third, human beings are both interdependent with the rest of creation and unique within it, because we alone have been created in the divine image and given stewardship over the Earth. Christians have at times forgotten our interdependence with the rest of creation. Our daily existence depends on water, sun, and air. Everything is interrelated in the global ecosystem. The emissions from our cars contribute to the destruction of trees—trees that convert the carbon dioxide we exhale into the oxygen we need to survive. Christians today must recover an appreciation of our dependence on the trees and flowers, the streams and forests. Unless we do, we shall surely perish.

But the Bible insists on two other things about humanity: Human beings alone are created in the image of God, and we alone have been given a special "dominion" or stewardship. It is a biblical truth, not speciesism, to say that only human beings—and not trees and animals—are created in the image of God (Gen. 1:27). This truth is the foundation of our God-given mandate to have dominion over the nonhuman creation (Gen. 1:28; Psalm 8).

Tragically—and arrogantly—we have distorted dominion into domination. Lynn White was correct in placing some blame for environmental decay on Christianity. But it is a misunderstanding of the Bible, not God's Word itself, that is at fault here.

Genesis 2:15 says the Lord put us in the garden "to work it and take care of it" (NIV). The word abad, translated "work," means "to serve." The related noun actually means "slave" or "servant." The word shamar, translated "take care of," suggests watchful care and preservation of the Earth. We are to serve and watch lovingly over God's good garden, not rape it.

The Old Testament offers explicit commands designed to prevent exploitation of the Earth. Every seventh year, for instance, the Israelites' land was to lie fallow because "the land is to have a year of rest" (Lev. 25:4). Failure to provide this sabbatical for the land was one reason for the Babylonian captivity (Lev. 26:34, 42–43). "I will remember the land," Yahweh declared.

If we have no different status from that of mammals and plants, we cannot eat them for food or use them to build civilizations. We do not need to apologize to brother carrot when we have lunch. We are free to use the resources of the Earth for our own purposes. Created in the divine image, we alone have been placed in charge of the Earth. At the same time, our dominion must be the gentle care of a loving gardener, not the callous exploitation of a self-centered lord. So we should not wipe out species or waste the nonhuman creation. Only a careful, stewardly use of plants and animals by human beings is legitimate.

CLOTHING THE LILIES

Fourth, a God-centered, rather than a human-centered, world-view respects the independent worth of the nonhuman creation. Christians have too easily and too often fallen into the trap of supposing that the nonhuman creation has worth only as it serves human purposes. This, however, is not a biblical perspective.

Genesis 1 makes clear that all creation is good—good, according to the story, even before our first ancestors arrived on the scene. Colossians 1:16 reveals that all things are created for Christ. And according to Job 39:1–2, God watches over the doe in the mountains, counting the months of her pregnancy and watching over her when she gives birth! The first purpose of the nonhuman creation, then, is to glorify God, not to serve us.

"The heavens are telling the glory of God; and the firmament proclaims his handiwork. Day to day pours forth speech, and night to night declares knowledge. There is no speech, nor are there words; their voice is not heard; yet their voice goes out through all the earth, and their words to the end of the world" (Ps. 19:1–4).

It is important to note that God has a covenant, not only with persons but also with the nonhuman creation. After the flood, God made a covenant with the animals as well as with Noah: "Behold, I establish my covenant with you and your descendants after you, and with every living creature that is with you, the birds, the cattle, and every beast of the earth with you, as many as came out of the ark" (Gen. 9:9–10).

Jesus recognized God's covenant with the whole of creation when he noted how God feeds the birds and clothes the lilies (Matt. 6:26–30). The nonhuman creation has its own worth and dignity apart from its service to humanity.

Insisting on the independent dignity of the nonhuman creation does not mean that we ignore the biblical teaching that is has been given to us human beings for our stewardship and use (Gen. 1:28–30; Ps. 8:6–8). Always, however, our use of the nonhuman creation must be a thoughtful stewardship that honors the creation's dignity and worth in the eyes of the Creator.

THE EARTH'S HOPE

Finally, God's cosmic plan of redemption includes the nonhuman creation. This fact provides a crucial foundation for building a Christian theology for an environmental age. The biblical hope that the whole created order, including the material world of bodies and rivers and trees, will be part of the heavenly kingdom confirms that the created order is good and important.

The Bible's affirmation of the material world can be seen most clearly in Christ himself: Not only did the Creator enter his creation by becoming flesh and blood to redeem us from our sin, but the god-man was resurrected bodily from the tomb. The goodness of the created order is also revealed in how the Bible describes the coming kingdom: the marriage supper of the Lamb, where we will feast on bread, wine, and all the glorious fruit of the earth.

Unlike Hindu monists who think the created order is an illusion to escape, biblical people know that the creation is in itself so good that God is going to purge it of the evil introduced by the Fall and restore it to wholeness. Romans 8:19–23 tells us that at Christ's return, when we experience the resurrection of the body, then the groaning creation' will be transformed: "The creation itself will be liberated from its bondage to decay and brought into the glorious freedom of the children of God" (NIV).

In Colossians 1:15–20 we read that God intends to reconcile all things, "whether things on earth or things in heaven," through Jesus Christ. That does not mean that everyone will be saved; rather, it means that Christ's salvation will finally extend to all of creation. The Fall's corruption of every part of creation will be corrected.

The prophets often spoke of the impact of human sin on nature (Gen. 3:17–18; Isa. 24:4–

6; Hosea 4:3). But they also foresaw that in the messianic time nature would share in salvation: "In that day I will make a covenant for them with the beasts of the field and the birds of the air" (Hos. 2:16–23, NIV; see also Isa. 55:12–13). In the coming kingdom, I hope to go sailing on an unpolluted Delaware river.

The Christian hope for Christ's return must be joined with our doctrine of creation. Knowing that we are summoned by the Creator to be wise gardeners caring for God's good Earth, knowing the hope that someday the Earth will be restored, Christians should be vigorous participants in the environmental movement. Our motives are many. We must preempt world-views that would undermine both Christian faith and a lasting environmental solution. We will discover, perhaps to our surprise, that environmental engagement grounded in biblical truth will attract many spiritually lost contemporaries to our Lord. Also, we may be able to save our grandchildren (should the world still exist 40 years from now) from ecological disaster. Most important, we will honor the Creator of this gorgeous and astonishingly intricate cosmos.●

## WOMEN'S EQUALITY DAY

● Mr. RIEGLE. Mr. President, I rise today to draw attention to an important day that is being observed later this month. On August 26, our Nation will celebrate Women's Equality Day, the 73d anniversary of the 19th amendment to the Constitution which gave women the right to vote. This annual celebration is important not only in drawing attention to the current status of women's equality in America, but also as a time to reflect on the past struggles and achievements.

The organized American movement for women's equality has been going on or more than 100 years—and as early as the 1830's, feminists such as Sarah Grimke eloquently wrote of the simple fairness and benefits of equal treatment of the sexes.

> Equality of the sexes will bring benefits to men, as well as women. Men * * * would find that woman, as their equal, was unspeakably more valuable than woman as their inferior, both as a moral and an intellectual being.

And even though the movement gained momentum at the end of the last century, it took until 1914 for the amendment to reach the United States Senate and an additional 6 years for ratification. Although we commemorate the day of ratification as Women's Equality Day, every celebration must be tempered with the knowledge that not all women received the vote in 1920. Barriers like the poll tax, literacy tests, and simple refusal to let certain voters participate, kept many black women from the polls until passage of the 1965 Voting Rights Act. I have the great honor of serving here in the Senate with CAROL MOSELEY-BRAUN, the first African-American woman Senator in our Nation's history, and I strongly believe that remembering these distinctions in our past equal rights successes is an integral part of understanding where our movement is today, and how much farther we have to go.

Equality for women in this country will only come about when there is economic equality, equality in health care and research, and equality of constitutional rights of privacy. Yesterday, the Family and Medical Leave Act when into effect—a vitally important piece of legislation which was unpassable just last year. It is now the law of the land. The National Community Service Act, which we've just passed this week, has special provisions directed at encouraging women to participate equally in the program. My own Apprenticeship Improvement Act contains a plan for encouraging women and other minorities, who have traditionally been ignored, to take part in these useful training programs. And in the House, over 20 bills have been introduced this year as the Economic Equity Act. For the first time in 12 years, we have a real opportunity to reform the orientation of our laws and our Federal programs to include women as equal partners, and I am proud to contribute my efforts to that process.

On the health care front, we clearly have a long way to go: only 13.5 percent of the National Institutes of Health's current budget is devoted specifically to women's health; only 40 percent of working women have health insurance through their employer or union, compared to 59 percent of men. We have made significant progress in research funding in the past 2 years—the 1993 appropriations to both the Centers for Disease Control and NIH contain record levels of women's cancer research funding, and a new DES research and education program which I have championed for years. But this year's record funding should be seen as a first step, and not as the end goal.

In the area of civil and constitutional rights, I fully support S. 25, the Freedom of Choice Act, and the S. 636, the Free Access to Clinics Act. While abortion is a difficult emotional issue and there are no easy answers, I firmly believe that the choice should not be imposed by the government—the choice belongs to the individual woman. All American women should have the right to choose, regardless of which State they live in and that is why Congress must enact S. 25. Codification of the Roe versus Wade decision is critical to the privacy rights of all Americans, not just women—when one American's constitutional rights are continually constricted and reduced, all Americans suffer equally. The Freedom of Choice Act and the equal rights amendment together would finally establish constitutional recognition of women's equality.

S. 17, the Equal Remedies Act, is another bill which must be passed in this Congress. In order for us to pass the Civil Rights Act of 1991, we had to make substantial compromises with the Republican President—unfortunately, the financial remedies open to minorities suffering discrimination were not extended to include women. Now we have the opportunity to rectify this injustice by passing the Equal Remedies Act, of which I'm proud to be an original cosponsor; this bill will eliminate caps on damages available to women who have experienced intentional discrimination in the workplace.

The issues I've referred to are just the beginning of what we need to do to eliminate the disparate treatment of men and women in our country. There are so many other issues we need to address: reassessing foreign assistance to countries where women's rights and human rights are routinely violated; aggressively addressing the violent crimes which target women; and actively encouraging our young women and girls to pursue fields of study in mathematics and sciences, where they have been traditionally underrepresented.

Just 73 years ago, opponents of the 19th amendment said that women's brains simply weren't designed for politics and that they could not comprehend the complexities of economics—today we have five Democratic female Senators, whose input and support I deeply value and appreciate. I am proud to say that more than half these women now sit on the Senate Banking, Housing, and Urban Affairs Committee, which I chair.

Mr. President, everyone in this country has something that they can contribute to this society, through their own God-given skills and abilities, if they are only given the opportunity to participate fully. I believe observing Women's Equality Day is one important way to keep our eyes focused on this important goal. I intend to continue to work to bring about equality for women, and everyone in this country.●

## ERIC G. GUSTAFSON

● Mr. SMITH. Mr. President, I rise to recognize Rick Gustafson of Portsmouth, NH, who will end his term as president of the Independent Insurance Agents of America in September.

Rick Gustafson is a leader in his community, State, and industry. His commitment and service in New Hampshire is distinguished and appreciated. He is past president of the Portsmouth Jaycees, past president and founder of the Seacoast United Way, and has served as chairman of a local hospital. He is also involved in many other civic and community organizations.

Rick is chairman of the Blake Insurance Agency, a successful business in Portsmouth. While his tenure as president of the Nation's largest insurance trade association ends next month, his service to the Independent Insurance Agents of America is impressive. He

has served as president of the Portsmouth Insurance Association, president of the New Hampshire State association, and served on the national board of directors before serving as president.

During his presidency, Rick has been very involved in advocating policies and proposals to assist independent insurance agencies and other small businesses. This summer, he appeared before the House Judiciary Committee and prior to that he testified before the White House Task Force on Health Care. He has also discussed natural disaster relief and other issues with President Bush.

Rick Gustafson deserves the gratitude of his colleagues and friends for his years of service to New Hampshire and his industry. I am confident that he will continue to leave his mark as he continues his impressive career and service in Portsmouth.•

## COLONEL QADHAFI'S PEACE OFFENSIVE

• Mr. MOYNIHAN. Mr. President, recently some have spoken of a Libyan peace offensive. Qadhafi has made vague statements about recognizing Israel. Denounced Islamic militants. Permitted a group of pilgrims to visit Israel—whatever their intent.

Some have suggested that we explore the possibility that Qadhafi has truly changed. They have even implied that we might relax the current policy of pressuring Libya to turn over the two Libyan officers indicted for the Pan Am 103 bombing.

I could not disagree more. How can one imagine that Qadhafi will play a constructive role in the Israeli-Palestinian conflict—a conflict whose settlement involves international law and U.N. resolutions—if Libya refuses to comply with the demands of the United Nations? Moreover, if Qadhafi's public relations offensive tells us anything, it is that U.N. sanctions are having an effect. Now is the time to strengthen them, not to be fooled by a phoney peace initiative. We must insist on nothing less than justice for those responsible for the Pan Am bombing.

Is there a way to test the sincerity of the new Qadhafi Yes. Insist that he fully and promptly comply with all U.N. resolutions on Pan Am 103. Then—and only then—might we begin to believe that Libya is serious about being a member of the international community.

• Mr. KENNEDY. Mr. President, I agree with my colleague from New York. Colonel Qadhafi wants us to compromise with terrorists, and we should reject that idea categorically.

Like clockwork, Libya's public relations campaign is renewed every 120 days, just before the United Nations reviews its current sanctions against Libya.

Just before each review, feelers from Libya go out, suggesting that Colonel Qadhafi is changing his ways, and that stronger sanctions are unwarranted. Before each U.N. review, Qadhafi sends emissaries to the United Nations and the United States and other nations, to try to convince the world community that Libya wants to cooperate.

These efforts are always accompanied by talk of paying off the families of the victims of the terrorist bombing of Pan Am flight 103, the 189 Americans and 81 others who were murdered in one of the most savage terrorist atrocities of our time. The families want justice. They are not willing to take Libya's blood money.

Qadhafi even succeeded, albeit briefly, in retaining former State Department legal adviser, Abraham D. Sofaer, as counsel. But public outrage was so intense that Mr. Sofaer was forced to drop Libya as a client.

The message from the international community should be clear and unequivocal. Justice must be done. The terrorists must be punished. The victims of Pan Am flight 103 and their families deserve no less.

Libya must turn over the suspects for trial in the United States or Britain in accord with the U.N. resolutions. Senator MOYNIHAN and I and 53 other Senators have urged President Clinton to strengthen the current sanctions by imposing an international oil embargo against Libya, unless these suspects are made available. That should be our policy, and we should stick to it until justice is finally done.•

## PESTICIDES AND FOOD SAFETY

• Mr. LEAHY. Mr. President, since I came to the Senate and became a member of the Senate Agriculture Committee, we have on many occasions addressed the reform of our pesticide laws. For all involved this has often been a frustrating process.

Fortunately, after 12 years of denial, we finally have an administration that recognizes reforms are necessary. It is undertaking an extensive review of our pesticide laws. The immediate reason for this review is a court decision that struck down EPA's interpretation of the Delaney clause. But more broadly, the overhaul of our food safety and pesticide laws is long overdue.

Let me summarize what I believe must be done.

First, our pesticide laws should be based on a food safety standard that protects all Americans, including children.

Second, our pesticide laws must ensure that if pesticides are approved, and used, our food will meet that standard. Pesticides that do not meet a rigorous safety standard must be removed from the market promptly.

Finally, we must have an agricultural research and farming program that helps farmers meet that standard. We must focus our efforts on finding alternative pest control strategies.

These principles seem so obvious that I would imagine most Americans assume the system already works this way. Unfortunately, it does not.

The reason for this is historical. First, our food safety laws were largely designed to address gross food contamination—not pesticide residues.

Second, our pesticide laws were not originally intended to be food safety laws at all. They were written to make sure that pesticides on the market actually worked for farmers.

Third, our basic agricultural research and farm programs were conceived before pesticides were widely used, and well before food safety and pesticides on food became a national issue.

Of course, there have been attempts to connect and relate these laws over the years. But in the end, they do not work in an integrated way to meet clearly enunciated national objectives. They are like using the wrong tool to repair an engine. Either the tool or the engine ends up broken.

### FOOD SAFETY

Our pesticide laws should be based on a single food safety standard that protects all Americans, including children.

Recent events have made the problems with our food safety laws even more urgent. Last year, the Ninth Circuit Court of Appeals ruled that the Delaney clause means what it says: no residues of cancer-causing chemicals are permitted on processed foods.

The public will not have confidence in a system of pesticide regulation that says absolutely no pesticide residues are allowed on some foods, but on other foods even the Government's safety standards can be exceeded on economic grounds.

And while we have one of the world's safest food supplies, the margin of safety can be far too small for our most vulnerable population: our children.

On June 29, 1993, I held a hearing to review the results of the National Academy of Sciences report on pesticides in the diets of infants and children. The report concluded that current policies do not adequately protect America's children from exposure to pesticides in food and water. We cannot accept a system that may put thousands of children at risk.

We need a single pesticide residue standard that is applied to all foods. There are some who want a health-based system that can be bent if it hurts one industry or another. That will not work for the public or the food industry as a whole. We need to choose a consistent, protective standard and make everyone play by the rules.

And when we set that standard, we must be sure to follow the recommendations of the National Academy of Sciences for protecting America's children. It must account for nondietary exposure to pesticides, consider

all health hazards, including noncancer effects, and incorporate appropriate safety factors to account for the unique vulnerability and sensitivity of America's children.

When we protect our most vulnerable population, everyone wins.

Senator KENNEDY has introduced legislation that would establish a uniform, easily defined standard for acceptable pesticide residues on food. I will work with Senator KENNEDY and the administration to see that we craft a food safety standard that will protect all Americans and that will give farmers access to the pest control strategies they need.

FIFRA REFORM AND CIRCLE OF POISON

Reform of our food safety laws alone will not be enough. I have said many times that the problem with our pesticide laws is that they leave the public in the dark, and the farmer on the hook. The public is in the dark because safety studies on many pesticides currently in use have not been completed.

More than 20,000 pesticides currently on the market remain unreviewed. And even when EPA decides a pesticide is unsafe, it can take years to remove it from the market.

The present system also does not work for farmers. It leaves them on the hook. As new health data comes to light they do not know from year to year whether they will be able to use a pesticide or not.

This year we must reform our pesticide laws based on scientifically sound standards. We must make sure that if pesticides are approved, and use, our food will meet safety standards.

We must:

Complete the review of older pesticides mandated in 1988 to ensure that all chemicals on the market meet up-to-date health and safety standards,

Expedite registration and provide market incentives for safer pesticides, and

Resolve the minor use debate without reversing the trend toward safer pesticides.

We must also reform our pesticide laws to ensure that pesticides that do not meet a rigorous safety standard are removed from the market promptly by:

Streamling procedures for suspending and canceling hazardous pesticides, and

Updating and strengthening EPA's enforcement capability.

American farmers use over 800 million pounds of chemical pesticides in 1991 alone. We encounter pesticides every day—on our lawns, in our soil, in our drinking water, and on our dinner plates.

We should embrace the administration's goal of reducing pesticide use. Phasing out those pesticides that pose the greatest risks to human health and the environment is a good idea.

Finally we must break the circle of poison. It make no sense to reform our food safety and pesticide laws if pesticides banned in the United States end up in our food supply on imported food. I fought for this provision in the 1990 farm bill. It is a position that Vice President GORE supported as a Senator, and I look forward to working with him and the administration to include it in our food safety reform package. The circle of poison must be broken.

ALTERNATIVES TO CHEMICAL PESTICIDES

If farmers are going to be able to meet a new health-based safety standard, we must provide effective, economic alternatives. The key to our reform efforts has to be the development and dissemination of alternative pest control methods.

We need to aggressively pursue new technologies that will allow farmers to produce the quantity and variety of food consumers demand without, endangering them or the environment.

Our international competitors are making environmentally friendly technologies a high priority. We must harness the power of our vast agricultural research and extension system—unquestionably the envy of the world—to put these same tools in the hands of American farmers.

Rather than jump from crisis to crisis, as we seem to do now, we need to take an approach to pesticide regulation that seeks to avoid crises before they happen.

As I told the President several weeks ago, we need to establish a focused, coordinated program that will identify those pesticides that pose the greatest risks to consumers and the environment, and concentrate research and development efforts on finding safer alternatives.

Where no alternatives can be identified, we must establish targeted research programs to find them. And where promising new alternatives are in development, we must accelerate testing, and make sure that farmers have access to the latest technology.

A central component of this strategy will be to coordinate our research agenda with our regulatory policies. As regulatory agencies get new data suggesting that a particular chemical may pose an unreasonable risk to consumers or the environment, we need a system to quickly relay that information to USDA, so that the research and extension system can respond in a timely manner.

Unfortunately, this kind of coordination has been lacking under previous administrations. Let me give you two examples of the kind of problem we face.

The first was a result of last year's Delaney clause court decision. In response to that decision, EPA withdrew emergency use permits for some pesticides suspected of causing cancer. Included on the list of denied permits was one for use of a particular herbicide to control hemp sesbania in rice fields. The same day that EPA, USDA, and FDA staff came to brief the Agriculture Committee on this decision, the Associated Press reported a new nonchemical method to control this same weed.

Ironically, the work described was presented at a USDA conference in Beltsville, and was done by USDA scientists at the Jamie Whitten Research Center in Mississippi. Had USDA research been better coordinated with EPA regulatory policy, the farmers who still face this crisis might have a safe, effective alternative available.

The second example is the recent banning of a popular fungicide, methyl bromide. By law, production of this chemical will be phased out entirely by the year 2000, because it is an ozone depleter. USDA has not developed a coordinated plan to find alternatives. In fact, they propose to spend about 20 percent of their funds for methyl bromide research to study its emissions, despite the fact that it will be off the market in 7 years. These funds should be devoted to alternatives.

Finally, I am pleased that the administration echoed the ideas I have outlined when it announced its commitment to reducing the use of pesticides and to promote sustainable agriculture.

The only way to make real reforms in our pesticide policies is to fundamentally alter the way we look at pesticides and pest management systems. If we want to reduce the effects of agricultural chemicals on our health and the environment, we must look toward pollution prevention, reduction of pesticide use, and sustainable agriculture.

For years I have fought for sustainable agriculture research and technology transfer, and I will continue on that course.

I look forward to working with President Clinton as we put together a package that will benefit America's consumers and farmers.•

## HELSINKI HUMAN RIGHTS DAY

• Mr. RIEGLE. Mr. President, on the 18th anniversary of the signing of the Final Act of the Conference on Security and Cooperation in Europe [CSCE], the promotion of human rights remains a critical goal. As a cosponsor of Senate Joint Resolution 111, designating August 1, 1993, as "Helsinki Human Rights Day," I rise to commemorate this momentous occasion.

The Helsinki Final Act, commonly referred to as the Helsinki accords, was signed on August 1, 1975, by the leaders of West and East European states, along with Canada, and the United States. The 35 signatories agreed to encourage cooperation and foster respect for fundamental freedoms, "including the rights of persons belonging to national minorities, democracy, the rule of law, economic liberty, social justice,

and environmental responsibility." The act addresses the importance of individual human rights, including freedom of thought, conscience, religion, and belief, in addition to minority rights. The freedom to exercise one's cultural, religious, and linguistic freedoms is especially pertinent today as callous disregard for these rights has led to armed conflict and bloodshed, threatening the security and stability of Europe.

Since the dissolution of the Soviet Union, CSCE membership has expanded to include 53 participants, of which many are newly independent states. The CSCE process provides the United States, Canada, and 51 Eurasian states with a forum for the discussion of human rights issues and specific violations. As a result, cooperation has increased and further agreements have been reached. Most recently, the CSCE has reaffirmed its commitment to democracy and human rights through the Copenhagen Document of June 1990, the Charter of Paris for a New Europe of November 1990, and the Moscow Document of October 1991.

During the cold war, the Helsinki process successfully brought to light human rights injustices and helped to bridge Europe's artificial divide. I strongly believe that the Helsinki agreement has not outlived its usefulness now that the cold war is over. Indeed, the challenges to human rights in Europe today are as real and frighteningly brutal as ever. Ethnic strife in the Nagorno-Karabakh region, the treatment of Kurdish minorities, and particularly the war in Bosnia and Herzegovina are testament to this fact.

The value we attach to the importance of human rights will set the tone and determine the response of many countries who look to the United States for leadership. Stressing the importance of human rights serves our own self-interest because a democratic Europe, devoid of human suffering, which encourages and is accepting of cultural, ethnic, and religious differences, will certainly be a safer and more prosperous Europe.

Therefore, we must not let up in our vigorous pursuit for justice through the promotion and protection of human rights. I again reaffirm my commitment to the defense of human rights and fundamental freedoms as we mark this "Helsinki Human Rights Day."•

## U.N. ROLE IN SOMALIA

• Mr. LIEBERMAN. Mr. President, I want to express my strong support for the United Nations effort to bring peace and stability to Somalia. The United Nations is breaking new ground by engaging as a peacemaker, rather than a peacekeeper, in Somalia. The success of its peacemaking mission there is vitally important if the U.N. is to be capable of halting aggression and restoring order to other war-ravaged countries around the globe.

Unfortunately, we are increasingly hearing calls for the U.N. to stop fighting against the violence instigated by the warload Mohamed Farah Aideed and to begin negotiating with Aideed to gain his cooperation. I believe this would be a mistake. It would not only reward Aideed's obstructionism and his killing of U.N. soldiers, but it would also send the wrong message—a message that says "if you are willing to oppose the U.N. through violence, the UN will eventually come around to deal with you on your terms." I can't think of anything more devastating to the world community's ability to promote peace.

Certainly General Aideed would like nothing better than to make the United Nations negotiate with him, thus demonstrating that he is a force to be reckoned with. Negotiations would offer Aideed some breathing room so that he can regroup and resupply his forces without fear of U.N. intervention. And negotiations, by their nature, would enable him to obtain concessions from the United Nations. This combination would leave Aideed in a stronger position than he is in now; it would also contribute to his ability to reassert control over his former territories and perhaps, ultimately, dominate all of Somalia and its people.

The United Nations remain firm in its refusal to acquiesce to Aideed's intimidation tactics. As the preeminent world power, the United States has an obligation to support the U.N. in this regard. The United Nations can neither make nor keep peace without the assistance of the United States. The United States played a leading role in helping to rescue Somalia last December, and we must continue to do so now. We cannot afford to allow the successful relief effort and the nascent rebuilding of the country to be turned back because we were reluctant to take a stand against an outlaw like General Aideed.

If we fail to meet Aideed's challenge, we risk allowing Somalia to revert back to the conditions that existed before international intervention: widespread famine and bloody civil war. A serious blow will be dealt to the principle of humanitarian intervention. And the credibility of U.N. efforts, both to make and to keep peace, will be immeasurably damaged. We must not allow this to happen.•

## S. 1298—NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994

• Mr. BIDEN. Mr. President, I would like to get the attention of the chairman of the Armed Services Committee regarding section 126 of the National Defense Authorization Act for fiscal year 1994, which addresses the Titan IV Solid Rocket Motor Upgrade Program. I would like to discuss this provision now because the bill is not likely to be brought up before the August recess and I believe clarification of the Armed Services Committee's position on this matter is necessary.

As I understand it, this provision would provide the Secretary of Defense with the authority to resolve an ongoing dispute among the contractors and the Air Force.

Do I correctly describe this provision?

Mr. NUNN. Yes, the Senator from Delaware has accurately described section 126.

Mr. BIDEN. As the chairman is aware, last year's Defense appropriations act directed the Department of Defense to make changes in a contract for the Titan IV space launch system to correct problems identified by the inspector general of the Department of Defense.

As I understand it, the Armed Services Committee does not object to the substance of the appropriations act direction, but rather to the form which it took. Is that right?

Mr. NUNN. Yes. The committee feels strongly that Congress normally should not intervene in such matters and should not take away the discretion of the Secretary of Defense to act in the best interest of the taxpayer and our national security. At the same time, the committee recognizes that the DOD inspector general has recommended that corrective action be taken in this particular case. The committee accepts the conclusion of the inspector general, and understands why the appropriations committees took the action they did. The committee has reviewed this matter, and believes that the Secretary of Defense should have the authority to resolve it without a congressional mandate.

Mr. BIDEN. I agree with the concerns expressed by the chairman. As a general proposition, Congress should not intervene in such matters. But, as the chairman has noted, this is a unique case: the action taken was based on the recommendations of the Department of Defense inspector general.

Relying on the provision in the appropriations act, the respective parties have been involved in negotiations regarding this matter for the past several months. It was my understanding, based on our conversations to date, that the chairman believes—and the committee report so states—that these negotiations should not be delayed.

Does the chairman agree that these negotiations should continue without delay?

Mr. NUNN. The committee's position is that the Secretary of Defense should proceed expeditiously with negotiations if he decides it is in the best interest of the taxpayers and our national security. We do not believe, however, that the Secretary should be compelled to take action if he believes it is

not in the best interest of the taxpayers and our national security. If the Secretary has not acted by the time our bill becomes law, he will have the discretionary authority to act, but will not be compelled to do so.

Mr. BIDEN. Am I correct that the Defense Department could legally settle this matter prior to passage of the Defense Authorization Act?

Mr. NUNN. The Secretary of Defense could settle this matter immediately under the authority of last year's appropriations act. If the Secretary decides to utilize the authorities contained in our bill, he also could complete negotiations and submit a settlement for inclusion in the Authorization Act. If the Secretary of Defense decides on the merits that a settlement is warranted, I would expect it to be approved by the conference committee.

Mr. BIDEN. I thank the chairman. I want to express my appreciation to him for his assistance with this matter.•

## THE CONFERENCE REPORT ACCOMPANYING H.R. 2010, THE NATIONAL AND COMMUNITY SERVICE TRUST ACT OF 1993

• Mr. JEFFORDS. Mr. President, I rise in support of the conference report to H.R. 2010, the National and Community Service Trust Act of 1993. The report before us today represents a bipartisan effort to reach compromise on legislation of significant importance.

Many may think it ironic or even disingenuous to pass a spending bill while we are debating a budget reconciliation package. Perhaps even more confusing—why I would vote against the budget package and still support a national and community service bill costing $1.5 billion over 3 years.

Those concerns are legitimate but—in my mind not related.

Certainly, now is the time to make true budget cuts—to reduce spending and begin to balance what has become an extraordinary deficit. But, at the same time we must begin to reevaluate where we are spending our money. Reducing spending does not mean stop spending. We must reduce our spending within the budget parameters and reprioritize where we are putting our money.

In the 1980's defense spending was clearly a national priority. Over that time, defense spending skyrocketed. Unfortunately, the outlook was not as bright for education programs.

Since 1970, Federal investment in education and social programs as a percent of the gross domestic product plunged downward. The Federal share of elementary and secondary spending has been cut drastically—from 9.1 percent to 5.6 percent over the last 12 years. Among advanced industrialized countries, the U.S. ranks 11th in public school spending. Today, only 2 percent of the total Federal budget is invested in the education of our Nation's students.

Clearly, education funding has not been a priority over the last decade. I argue that it must be.

Not only will passage of this bill show our commitment to the children of this Nation, it will also meet essential unmet needs of this country. Investing $1.5 billion over 3 years now, will provide us with immeasurable benefits in the future.

We must begin to open our thinking regarding national and community service. This is not a program in which the Federal Government gives money away. It is a program where participants are rewarded with stipends and education benefits in return for a commitment to work hard and serve the country.

I envision this program becoming a national peacetime army geared up to fight illiteracy, homelessness, poverty, crime, and violence. I expect individuals in this program to mentor students after school, to care for an elderly sick individual at home, to run activities for latch key children and to clean up our city streets and environment. The education benefit and stipend is not a giveaway. It is a pledge of dedication to do a job that meets an unmet need in this country. It is only in this way that we will begin to address the dire needs of this country in a reasonable and affordable way.•

## ORDERS FOR SEPTEMBER 7, 1993

Mr. MITCHELL. Madam President, I now ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9 a.m. on Tuesday, September 7; that when the Senate reconvenes on Tuesday, September 7, the Journal of proceedings be deemed to have been approved to date, the call of the calendar be waived, and no motions or resolutions come over under the rule; that the morning hour be deemed to have expired, and following the time for the two leaders there then be a period of time for the transaction of morning business not to extend beyond 10:30 a.m. with Senators permitted to speak therein for not to exceed 5 minutes each, with the time from 9:30 a.m. until 10:30 a.m. under the control of Senator BYRD; that at 10:30 a.m. the Senate proceed as under a previous order into executive session to resume consideration of the Elders nomination; that on Tuesday, September 7, the Senate stand in recess from 12:30 p.m. until 2:15 p.m.in order to accommodate the respective party conferences.

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

## PROGRAM

Mr. MITCHELL. Madam President, for the information of Senators, I wish to state my intentions regarding legislation when the Senate reconvenes in September after the Labor Day recess. Under a previous order, the Senate will resume consideration of the Elders nomination of Tuesday, September 7 at 10:30 a.m. that order provides for a specific and limited time for debate for that nomination, and it is my intention that the vote on the nomination will occur on Tuesday, September 7, upon the completion of that debate. If all time is used, the vote would not occur until in the evening, but it is my hope that some time will be yielded back and that the vote can occur perhaps in the late afternoon or early evening to accommodate Senators.

In any event, Senators should know that there will be no votes occurring prior to 12:30 p.m. on Tuesday, September 7, and the first vote is likely to occur some hours later depending upon how much of the time allocated for debate on the Elders nomination is actually used.

Following the Elders nomination, it is my hope—and I believe this to be a realistic hope based on my discussions with the distinguished Republican leader and the managers of the national service bill—that the conference report on the national service bill will by then be the subject of a time agreement, which will permit a limited time for debate on that subject on Tuesday, September 7, following the Elders vote, with a vote on that national service bill to occur either on Tuesday, September 7, if it is not late in the evening, or, if it is, to have the vote occur the first thing on the morning of Wednesday, September 8.

Following that vote, which I expect to occur no later than in the morning of September 8, it is my intention to proceed to the Department of Defense authorization bill, which we had hoped to act on this week but were not able to for a variety of reasons. It is my intention that we would begin consideration of that bill on the morning of Wednesday, September 8, and that we would complete action on that bill that week, that is, we will stay in session that week considering that bill on Wednesday, Thursday, and Friday. I hope we can complete it on that Friday. It is then my intention to proceed, following disposition of the DOD authorization bill, to the Interior appropriations bill.

If things go as I hope—and I must insert parenthetically that they rarely do—I would hope and expect that we could get to the Interior appropriations bill on Monday, September 13. I will not attempt now to make any decision with respect to how we proceed on that day. That bill will be managed by Senator BYRD and Senator HATFIELD as well, and I will wait until we get back on the 7th to discuss with them how best to proceed with the bill then.

But the order I anticipate for approximately the first week upon our return, I will repeat, will be the Elders nomination, the national service conference report, the DOD authorization bill, and the Interior appropriations bill. We may make an effort to insert other matters that can be scheduled in a way that does not consume too much time and can be the subject of agreement if that is possible. But I wanted to give Senators as much notice as possible on the schedule for the first several days. By the time we finish the Interior appropriations bill, I expect that the Appropriations Committee will have reported out several of the appropriations bills upon which action still has not occurred, and I expect that we will spend much of the rest of September dealing with those appropriations bills and the appropriations bills conference reports as they become available.

Mr. SIMPSON. Madam President, may I say in just a few moments here that, indeed, on our side of the aisle, along with 6 Democrats, we congratulate you on your victory. And it was a special opportunity for the President to move forward, and we understand those joyous times. We savor those ourselves. It was a tough one and not purely partisan. I think it is important we address that as we leave here, at this was not 44 evil Republicans, totally evil and venal, but 6 Democrats, too, that joined the cause. And now may we get together and all sit down and do something about the entitlements programs which are called in the vernacular of Medicare, Medicaid, Social Security, and retirement. Until we deal honestly with those things, we will never get this done, ever, and we know it. Every one of us knows it. Everyone in this Chamber knows it.

And then I commend the majority leader. He has, just as I came in, reflected his research on the constitutionality issue.

I knew Judge Mitchell when he came here, and I said to him 1 day, "Judge, I would have hated to have practiced law before you on the bench." And he said, "You would have, I am sure you would have. You would have been in deep trouble."

No, he did not say that, but he felt like it.

He is fair; he is firm; he is partisan; and he has never closed us off procedurally, ever. No tricks, no fun and games.

While Hester were her "A", he will wear a "P", and that means patience. He has been very patient with us.

But we will not be back until September. I appreciate knowing the schedule, and that will be a very detailed thing. You have always tried to be quite fair with us about the scheduling, the hours, the last vote, and we appreciate that very much. I tell you we do.

## ADJOURNMENT UNTIL TUESDAY, SEPTEMBER 7, 1993 AT 9 A.M.

Mr. MITCHELL. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand adjourned until 9 a.m. on Tuesday, September 7, as provided for under provisions of House Concurrent Resolution 136.

There being no objection, the Senate, at 12:27 a.m., adjourned until Tuesday, September 7, 1993, at 9 a.m.

## NOMINATIONS

Executive nominations received by the Senate August 6, 1993:

### THE JUDICIARY

PIERRE N. LEVAL, OF NEW YORK, TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT, VICE GEORGE C. PRATT, RETIRED.

M. BLANE MICHAEL, OF WEST VIRGINIA, TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, VICE JAMES M. SPROUSE, RETIRED.

MARTHA CRAIG DAUGHTREY, OF TENNESSEE, TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT, VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

WILLIAM ROY WILSON, JR., OF ARKANSAS, TO BE U.S. CIRCUIT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS VICE G. THOMAS EISELE, RETIRED.

JENNIFER B. COFFMAN, OF KENTUCKY, TO BE U.S. CIRCUIT JUDGE FOR THE EASTERN AND WESTERN DISTRICTS OF KENTUCKY VICE EUGENE E. SILER, JR., ELEVATED.

DEBORAH K. CHASANOW, OF MARYLAND, TO BE U.S. CIRCUIT JUDGE FOR THE DISTRICT OF MARYLAND VICE ALEXANDER HARVEY, II, RETIRED.

PETER J. MESSITTE, OF MARYLAND, TO BE U.S. CIRCUIT JUDGE FOR THE DISTRICT OF MARYLAND VICE JOSEPH HOWARD, RETIRED.

ALEXANDER WILLIAMS, JR., OF MARYLAND, TO BE U.S. CIRCUIT JUDGE FOR THE DISTRICT OF MARYLAND VICE NORMAN P. RAMSEY, RETIRED.

THOMAS M. SHANAHAN, OF NEBRASKA, TO BE U.S. CIRCUIT JUDGE FOR THE DISTRICT OF NEBRASKA VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

MARTHA A. VAZQUEZ, OF NEW MEXICO, TO BE U.S. CIRCUIT JUDGE FOR THE DISTRICT OF NEW MEXICO VICE SANTIAGO E. CAMPOS, RETIRED.

DAVID G. TRAGER, OF NEW YORK, TO BE U.S. CIRCUIT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

LAWRENCE L. PIERSOL, OF SOUTH DAKOTA, TO BE U.S. CIRCUIT JUDGE FOR THE DISTRICT OF SOUTH DAKOTA VICE DONALD J. PORTER, RETIRED.

LEONIE M. BRINKEMA, OF VIRGINIA, TO BE U.S. CIRCUIT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA VICE ALBERT V. BRYAN, JR., RETIRED.

### DEPARTMENT OF STATE

RICHARD A. BOUCHER, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF CYPRUS.

PETER F. ROMERO, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ECUADOR.

LESLIE M. ALEXANDER, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO MAURITIUS, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE FEDERAL AND ISLAMIC REPUBLIC OF THE COMOROS.

JOHN D. NEGROPONTE, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF THE PHILIPPINES.

DAVID P. RAWSON, OF MICHIGAN, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF RWANDA.

RICHARD N. GARDNER, OF NEW YORK, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SPAIN.

### DEPARTMENT OF JUSTICE

PAULA JEAN CASEY, OF ARKANSAS, TO BE U.S. ATTORNEY FOR THE EASTERN DISTRICT OF ARKANSAS FOR THE TERM OF 4 YEARS VICE CHARLES A. BANKS, RESIGNED.

PAUL KINLOCH HOLMES, III, OF ARKANSAS, TO BE U.S. ATTORNEY FOR THE WESTERN DISTRICT OF ARKANSAS FOR THE TERM OF 4 YEARS VICE J. MICHAEL FITZHUGH.

LYNNE ANN BATTAGLIA, OF MARYLAND, TO BE U.S. ATTORNEY FOR THE DISTRICT OF MARYLAND FOR THE TERM OF 4 YEARS VICE RICHARD D. BENNETT, RESIGNED.

JOSEPH PRESTON STROM, JR., OF SOUTH CAROLINA, TO BE U.S. ATTORNEY FOR THE DISTRICT OF SOUTH CAROLINA FOR THE TERM OF 4 YEARS VICE JOHN S. SIMMONS, RESIGNED.

PAUL EDWARD COGGINS, OF TEXAS, TO BE U.S. ATTORNEY FOR THE NORTHERN DISTRICT OF TEXAS FOR THE TERM OF 4 YEARS VICE MARVIN COLLINS, RESIGNED.

SCOTT M. MATHESON, JR., OF UTAH, TO BE U.S. ATTORNEY FOR THE DISTRICT OF UTAH FOR THE TERM OF 4 YEARS VICE DAVID J. JORDAN, RESIGNED.

ROBERT P. CROUCH, JR., OF VIRGINIA, TO BE U.S. ATTORNEY FOR THE WESTERN DISTRICT OF VIRGINIA FOR THE TERM OF 4 YEARS VICE E. MONTGOMERY TUCKER, RESIGNED.

### CORPORATION FOR PUBLIC BROADCASTING

DIANE BLAIR, OF ARKANSAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR A TERM EXPIRING JANUARY 31, 1998, VICE SHARON PERCY ROCKEFELLER, TERM EXPIRED.

### NATIONAL RAILROAD PASSENGER CORPORATION

DANIEL COLLINS, OF OHIO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL RAILROAD PASSENGER CORPORATION FOR A TERM OF 4 YEARS VICE CHARLES LUNA, TERM EXPIRED.

### NATIONAL LABOR RELATIONS BOARD

WILLIAM B. GOULD IV, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE REMAINDER OF THE TERM EXPIRING AUGUST 27, 1993, VICE CLIFFORD R. OVIATT, JR., RESIGNED.

WILLIAM B. GOULD IV, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF 5 YEARS EXPIRING AUGUST 27, 1998. (REAPPOINTMENT)

### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

JANE ALEXANDER, OF NEW YORK, TO BE CHAIRPERSON OF THE NATIONAL ENDOWMENT FOR THE ARTS FOR A TERM OF 4 YEARS, VICE JOHN E. FROHNMAYER, RESIGNED.

### DEPARTMENT OF LABOR

KATHARINE G. ABRAHAM, OF IOWA, TO BE COMMISSIONER OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, FOR A TERM OF 4 YEARS VICE JANET L. NORWOOD, TERM EXPIRED.

### LEGAL SERVICES CORPORATION

HULETT HALL ASKEW, OF GEORGIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 1995, VICE WILLIAM LEE KIRK, JR.

LAVEEDA MORGAN BATTLE, OF ALABAMA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 1995, VICE J. BLAKELEY HALL.

JOHN G. BROOKS, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 1995, VICE GUY V. MOLINARI.

NANCY HARDIN ROGERS, OF OHIO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 1995, VICE JO BETTS LOVE.

DOUGLAS S. EAKELEY, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 1996, VICE BASILE J. UDDO.

F. WILLIAM MCCALPIN, OF MISSOURI, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 1996, VICE PENNY L. PULLEN.

MARIA LUISA MERCADO, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 1996, VICE THOMAS D. RATH.

THOMAS F. SMEGAL, JR., OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 1996, VICE NORMAN D. SHUMWAY.

JOHN T. BRODERICK, JR., OF NEW HAMPSHIRE, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 1996, VICE HOWARD H. DANA, JR.

### U.S. POSTAL SERVICE

EINAR V. DYHRKOPP, OF ILLINOIS, TO BE A GOVERNOR OF THE U.S. POSTAL SERVICE FOR THE TERM EXPIRING DECEMBER 8, 2001.

### FEDERAL LABOR RELATIONS AUTHORITY

JOSEPH SWERDZEWSKI, OF COLORADO, TO BE GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM OF 5 YEARS, VICE ALAN ROBERT SWENDIMAN, RESIGNED.

### DEPARTMENT OF COMMERCE

JOHN DESPRES, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF COMMERCE, VICE QUINCY MELLON KROSBY.

DEPARTMENT OF DEFENSE

MORTON H. HALPERIN, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF DEFENSE, VICE DAVID J. GRIBBIN, III, RESIGNED.

FREDERICK F.Y. PANG, OF HAWAII, TO BE AN ASSISTANT SECRETARY OF THE NAVY, VICE BARBARA SPYRIDON POPE, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

*To be Lieutenant general*

MAJ. GEN. MALCOLM R. O'NEILL xxx-xx-xx... U.S. ARMY.

IN THE AIR FORCE

THE FOLLOWING AIR NATIONAL GUARD OF THE U.S. OFFICERS FOR PROMOTION IN THE RESERVE OF THE AIR FORCE UNDER THE PROVISIONS OF SECTIONS 593 AND 8379, TITLE 10 OF THE UNITED STATES CODE. PROMOTIONS MADE UNDER SECTION 8379 AND CONFIRMED BY THE SENATE UNDER SECTION 593 SHALL BEAR AN EFFECTIVE DATE ESTABLISHED IN ACCORDANCE WITH SECTION 8374, TITLE 10 OF THE UNITED STATES CODE. (EFFECTIVE DATE FOLLOWS SERIAL NUMBER)

LINE OF THE AIR FORCE

*To be lieutenant colonel*

MAJ. WILLIAM D. BRYAN, JR. xxx-xx-x... 5/3/93
MAJ. PEDRO CARDENAS xxx-xx-x... 4/17/93
MAJ. JAMES P. CARRIGAN xxx-xx-x... 5/1/93
MAJ. THEODORE R. FURLAND xxx-xx-x... 5/7/93
MAJ. ROBERT S. LANSIEDEL xxx-xx-x... 5/6/93
MAJ. BURFORD M. LEE xxx-xx-x... 4/30/93
MAJ. CHERYL A. PRISLAND xxx-xx-x... 5/4/93
MAJ. DAVID A. THOMAS xxx-xx-x... 5/1/93

CHAPLAIN CORPS

*To be lieuteant colonel*

MAJ. GREGORY C. WIELUNSKI xxx-xx-x... 4/28/93

MEDICAL CORPS

*To be lieutenant colonel*

MAJ. STEPHEN R. KEENER xxx-xx-x... 5/1/93

IN THE ARMY

THE FOLLOWING NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTIONS 624 AND 628, TITLE 10, UNITED STATES CODE. THE OFFICER IDENTIFIED WITH AN ASTERISK IS ALSO BEING NOMINATED FOR APPOINTMENT IN THE REGULAR ARMY IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATES CODE.

JUDGE ADVOCATE GENERAL

*To be lieutenant colonel*

MICHAEL D. GRAHAM xxx-...

MEDICAL CORPS

*To be lieutenant colonel*

*THOMAS L. IRVIN xxx-x...

MEDICAL SERVICE CORPS

*To be lieutenant colonel*

RICHARD A. SAJAC xxx...
DOMINIC A. SOLIMANDO xxx-...

## CONFIRMATIONS

Executive nominations confirmed by the Senate August 6, 1993:

DEPARTMENT OF TRANSPORTATION

DAVID RUSSELL HINSON, OF ILLINOIS, TO BE ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION.

DEPARTMENT OF STATE

JOHN T. SPROTT, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR EXECUTIVE SERVICE, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF SWAZILAND.

ROLAND KARL KUCHEL, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ZAMBIA.

WALTER C. CARRINGTON, OF MARYLAND, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE FEDERAL REPUBLIC OF NIGERIA.

AURELIA ERSKINE BRAZEAL, OF GEORGIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF KENYA.

JOHN S. DAVISON, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF NIGER.

JAMES ROBERT JONES, OF OKLAHOMA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO MEXICO.

DONALD J. MCCONNELL, OF OHIO, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BURKINA FASO.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

J. JOSEPH GRANDMAISON, OF NEW HAMPSHIRE, TO BE DIRECTOR OF THE TRADE AND DEVELOPMENT AGENCY.

THE JUDICIARY

RUSSELL F. CANAN, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF 15 YEARS.

OFFICE OF PERSONNEL MANAGEMENT

LORRAINE ALLYCE GREEN, OF THE DISTRICT OF COLUMBIA, TO BE DEPUTY DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUSAN GAFFNEY, OF VIRGINIA, TO BE INSPECTOR GENERAL, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

DEPARTMENT OF DEFENSE

VICTOR H. REIS*, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF ENERGY (DEFENSE PROGRAMS),

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

DEPARTMENT OF JUSTICE

LOUIS J. FREEH, OF NEW YORK, TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION FOR THE TERM OF 10 YEARS.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS TO TITLE 10, UNITED STATES CODE, SECTION 1370:

*To be lieutenant general*

LT. GEN. JOHN E. JAQUISH xxx-xx-x... 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. STEPHEN B. CROKER xxx-xx-x... 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. JOHN E. JACKSON, JR. 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. WALTER KROSS xxx-xx-x... U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT 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*

MAJ. GEN. THAD A. WOLFE xxx-xx-x... U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE U.S. AIR FORCE TO THE POSITION AND GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 8037:

*To be major general*

*To be judge advocate general of the U.S. Air Force*

BRIG. GEN. NOLAN SKLUTE xxx-xx-x... U.S. AIR FORCE.

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR PROMOTION IN THE REGULAR ARMY OF THE UNITED STATES TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 611(A) AND 624:

*To be permanent major general*

BRIG. GEN. WILLIAM H. CAMPBELL xxx-xx-x...
BRIG. GEN. HENRY A. KIEVENAAR, JR. xxx-xx-x...
BRIG. GEN. ALFONSO E. LENDARDT xxx-xx-x...
BRIG. GEN. GEORGE A. FISHER, JR. xxx-xx-x...
BRIG. GEN. JOHN W. HENDRIX xxx-xx-x...
BRIG. GEN. JOHN M. KEANE xxx-xx-x...
BRIG. GEN. JAMES W. MONHOLLEN xxx-xx-x...
BRIG. GEN. JOHN J. CUSICK xxx-xx-x...
BRIG. GEN. TOMMY R. FRANKS xxx-xx-x...
BRIG. GEN. ERIC K. SHINSEKI xxx-xx-x...
BRIG. GEN. ROBERT F. FOLEY xxx-xx-x...
BRIG. GEN. ALBERT J. GENETTI, JR. xxx-xx-xx...
BRIG. GEN. WILLIAM J. BOLT xxx-xx-x...
BRIG. GEN. JOHN N. ABRAMS xxx-xx-x...
BRIG. GEN. CARL F. ERNST xxx-xx-x...
BRIG. GEN. JAMES J. CRAVENS, JR. xxx-xx-xx...
BRIG. GEN. DAVID R.E. HALE xxx-xx-x...
BRIG. GEN. JOHN A. DUBIA xxx-xx-xx...
BRIG. GEN. JOE N. BALLARD xxx-xx-x...
BRIG. GEN. JOSEPH E. DEFRANCISCO xxx-xx-x...
BRIG. GEN. LEONARD D. HOLDER, JR. xxx-xx-x...
BRIG. GEN. GEORGE A. CROCKER xxx-xx-x...
BRIG. GEN. THOMAS A. SCHWARTZ xxx-xx-x...
BRIG. GEN. DOUGLAS D. BUCHHOLZ xxx-xx-x...
BRIG. GEN. PATRICK M. HUGHES xxx-xx-x...
BRIG. GEN. LARRY R. JORDAN xxx-xx-x...
BRIG. GEN. WILLIAM F. KERNAN xxx-xx-x...
BRIG. GEN. DAVID A. WHALEY xxx-xx-x...

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

*To be lieutenant general*

MAJ. GEN. THOMAS G. RHAME xxx-xx-x... U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

*To be lieutenant general*

MAJ. GEN. JOHN P. OTJEN xxx-xx-x... U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

*To be lieutenant general*

MAJ. GEN. KENNETH R. WYKLE xxx-xx-x... U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

*To be lieutenant general*

MAJ. GEN. WILLIAM W. HARTZOG xxx-xx-x... U.S. ARMY.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS DEPUTY JUDGE ADVOCATE GENERAL OF THE NAVY AND APPOINTMENT TO THE GRADE OF REAR ADMIRAL UNDER TITLE 10, UNITED STATES CODE, SECTION 5149(A):

DEPUTY JUDGE ADVOCATE GENERAL OF THE NAVY

*To be rear admiral*

CAPT. HAROLD E. GRANT, JUDGE ADVOCATE GENERAL'S CORPS U.S. NAVY xxx-xx-x...

THE FOLLOWING-NAMED CAPTAINS IN THE LINE OF THE U.S. NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL (LOWER HALF), PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICER

*To be rear admiral (lower half)*

CAPT. JAMES FREDERICK AMERAULT xxx-xx-xxxx U.S. NAVY.
CAPT. CHARLES JOSEPH BEERS, JR. xxx-xx-xxxx U.S. NAVY.
CAPT. LYLE GENE BIEN xxx-xx-x... U.S. NAVY.
CAPT. WILLIAM DILLARD CENTER xxx-xx-xx... U.S. NAVY.
CAPT. WALTER FRANCIS DORAN xxx-xx-x... U.S. NAVY.
CAPT. JAMES OREN ELLIS, JR. xxx-xx-xx... U.S. NAVY.
CAPT. WILLIAM JOSEPH FALLON xxx-xx-x... U.S. NAVY.
CAPT. ROBERT ELLIS FRICK xxx-xx-x... U.S. NAVY.
CAPT. ALBERT HENRY KONETZNI, JR. xxx-xx-xxxx U.S. NAVY.
CAPT. KATHARINE LENORA LAUGHTON xxx-xx-xx... U.S. NAVY.
CAPT. DANA BRUCE MCKINNEY xxx-xx-x... U.S. NAVY.
CAPT. JOSEPH SCOTT MOBLEY xxx-xx-x... U.S. NAVY.
CAPT. DANIEL JOSEPH MURPHY, JR. xxx-xx-xxxx U.S. NAVY.
CAPT. RODNEY PETER REMPT xxx-xx-x... U.S. NAVY.
CAPT. HARRY TAYLOR RITTENOUR xxx-xx-x... U.S. NAVY.
CAPT. NORBERT ROBERT RYAN, JR. xxx-xx-xxxx U.S. NAVY.
CAPT. CHARLES RAYMOND SAFFELL, JR. xxx-xx-xx... U.S. NAVY.

CAPT. ANTHONY JOHN WATSON xxx-xx-x... U.S. NAVY.
CAPT. RICHARD DAVID WEST xxx-xx-x... U.S. NAVY.
CAPT. ROBERT CHARLES WILLIAMSON xxx-xx-xxxx U.S. NAVY.

ENGINEERING DUTY OFFICER

*To be rear admiral (lower half)*

CAPT. GEORGE PETER NANOS, JR. xxx-xx-xx... U.S. NAVY.
CAPT. JAMES LOUIS TAYLOR xxx-xx-x... U.S. NAVY.

AEROSPACE ENGINEERING DUTY OFFICER

*To be rear admiral (lower half)*

CAPT. CRAIG EUGENE STEIDLE xxx-xx-x... U.S. NAVY.

SPECIAL DUTY OFFICER (INTELLIGENCE)

*To be rear admiral (lower half)*

CAPT. THOMAS RAY WILSON xxx-xx-x... U.S. NAVY.

THE FOLLOWING-NAMED REAR ADMIRAL (LOWER HALF) IN THE LINE OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICER

*To be rear admiral*

REAR ADM. (1H) JOSEPH WILSON PRUEHER, xxx-xx-..., U.S. NAVY.

THE FOLLOWING NAMED REAR ADMIRAL (LOWER HALF) OF THE RESERVE OF THE U.S. NAVY FOR PERMANENT PROMOTION TO THE GRADE OF REAR ADMIRAL IN THE STAFF CORPS, AS INDICATED, PURSUANT TO THE PROVISION OF TITLE 10, UNITED STATES CODE, SECTION 5912:

CIVIL ENGINEER CORPS OFFICER

*To be rear admiral*

REAR ADM. (1H) WILLIAM ANTON HEINE, III, xxx-xx-... 2/5105 U.S. NAVAL RESERVE.

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING JOHN D. ANDERSON, AND ENDING MICHAEL E. SOLIN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 1993.

AIR FORCE NOMINATIONS BEGINNING WANDA P.C. ADKINS, AND ENDING THOMAS L. ZIEMANN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 1993.

AIR FORCE NOMINATIONS BEGINNING MAJ. JOHN C. CHASE, xxx-xx-xxxx AND ENDING MAJ. ROBERT C. PAOLILLO, xxx-xx-xxxx WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 15, 1993.

AIR FORCE NOMINATIONS BEGINNING MARK A. MCLAUGHLIN, AND ENDING JOSEPH C. FRY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 16, 199C.

AIR FORCE NOMINATIONS BEGINNING MAJ. BERNARD R. BARKER, xxx-xx-xx... AND ENDING MAJ. ROBERT L. FERGUSON, xxx-xx-x... WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 16, 1993.

IN THE ARMY

ARMY NOMINATIONS BEGINNING ANGEL L. ACEVEDO, AND ENDING 4816X, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 16, 1993.

ARMY NOMINATIONS BEGINNING RUFUS Y. BANDY, AND ENDING JEREL M.* ZOLTICK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 29, 1993.

ARMY NOMINATIONS BEGINNING JOHN W. BRINSFIELD, AND ENDING ERVIN L. SHIREY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 13, 1993.

ARMY NOMINATIONS BEGINNING REBECCA L.* AADLAND, AND ENDING MARIE L.* WRIGHT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 13, 1993.

ARMY NOMINATIONS BEGINNING DAVID H. BLAIR, AND ENDING PATRICIA A. TURNER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 16, 1993.

ARMY NOMINATIONS BEGINNING *ROBERT M. WILSON, AND ENDING RICHARD N. JOHNSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 20, 1993.

IN THE MARINE CORPS

MARINE CORPS NOMINATIONS BEGINNING MICHAEL J. AGUILAR, AND ENDING ROBERT R. ZIMMERMAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 19, 1993.

IN THE NAVY

THE FOLLOWING-NAMED LIEUTENANT COMMANDER IN THE LINE OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF COMMANDER, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 628, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICER

*To be commander*

PAUL I MURDOCK

THE FOLLOWING-NAMED LIEUTENANT IN THE STAFF CORPS OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF LIEUTENANT COMMANDER, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 628, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW:

MEDICAL CORPS

*To be lieutenant commander*

CHRISTOPHER M. CULP

NAVY NOMINATIONS BEGINNING DAVID V. BARNES, AND ENDING CAMERON C. MCKEE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 7, 1993.

NAVY NOMINATIONS BEGINNING STEPHEN PAUL AMBROSE, AND ENDING KAREN ANN FUNARO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 7, 1993.

NAVY NOMINATIONS BEGINNING ROBERT DEAN ALLEN, AND ENDING SUSAN ALICE FORTNEY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 7, 1993.

THE FOLLOWING-NAMED COMMANDER IN THE LINE OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF CAPTAIN, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT QUALIFICATIONS THEREFOR AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICER

*To be captain*

JOHN FORREST SCHORK

NAVY NOMINATIONS BEGINNING TODD A. BRAYNARD, AND ENDING CHARLES L. KIMBERLY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 22, 1993.