—Storm Kheem Pleads Guilty to Nonproliferation and Sanctions Violations: On January 27, Storm Kheem pled guilty in Brooklyn, New York, to charges that he violated export control regulations barring U.S. persons from contributing to Iraq's missile program. Kheem arranged for the shipment of foreign-source ammonium perchlorate, a highly explosive chemical used in manufacturing rocket fuel, from the People's Republic of China to Iraq via Amman, Jordan, without obtaining the required validated license from the Department of Commerce for arranging the shipment. Kheem's case represents the first conviction of a person for violating section 778.9 of the Export Administration Regulations, which restricts proliferation-related activities of ''U.S. persons.'' Kheem also pled guilty to charges of violating the Iraqi Sanctions Regulations.

5. The expenses incurred by the Federal Government in the 6-month period from August 19, 1994, to February 19, 1995, that are directly attributable to the exercise of authorities conferred by the declaration of a national emergency with respect to export controls where largely centered in the Department of Commerce, Bureau of Export Administration. Expenditures by the Department of Commerce are anticipated to be $19,681,000 most of which represents program operating costs, wage and salary costs for Federal personal and overhead expenses.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 21, 1995.*

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 2:15 p.m., a message from the House of Representatives, delivered by Mr. Schaefer, one of its assistant legislative clerks, announced that the Speaker has signed the following enrolled bill:

S. 1. An act to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. THURMOND).

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on March 21, 1995, she had presented to the President of the United States, the following enrolled bill:

S. 1. An act to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; and for other purposes.

REPORTS OF COMMITTEES SUBMITTED DURING RECESS

Pursuant to the order of the Senate of March 20, 1995, the following report was submitted on March 20, 1995, during the recess of the Senate:

By Mr. PACKWOOD, from the Committee on Finance, with an amendment in the nature of a substitute:

H.R. 831. A bill to amend the Internal Revenue Code of 1986 to permanently extend the deduction for the health insurance costs of self-employed individuals, to repeal the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission, and for other purposes (Rept. No. 104–16).

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 Mrs. FEINSTEIN:

S. 580. A bill to amend the Immigration and Nationality Act to control illegal immigration to the United States, reduce incentives for illegal immigration, reform asylum procedures, strengthen criminal penalties for the smuggling of aliens, and reform other procedures; to the Committee on the Judiciary.

By Mr. FAIRCLOTH:

S. 581. A bill to amend the National Labor Relations Act and the Railway Labor Act to repeal those provisions of Federal law that require employees to pay union dues or fees as a condition of employment, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HATFIELD (for himself and Mr. BROWN):

S. 582. A bill to amend title 28, United States Code, to provide that certain voluntary disclosures of violations of Federal laws made pursuant to an environmental audit shall not be subject to discovery or admitted into evidence during a Federal judicial or administrative proceeding, and for other purposes; to the Committee on the Judiciary.

By Mr. STEVENS:

S. 583. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for two vessels; to the Committee on Commerce, Science, and Transportation.

By Mr. ROBB (for himself, Mr. CRAIG, Mr. AKAKA, Mr. HARKIN, Mr. ROCKEFELLER, Mr. LUGAR, Mr. DEWINE, Mr. STEVENS, Mr. COCHRAN, Mr. WELLSTONE, Mr. FORD, and Mr. KERRY):

S. 584. A bill to authorize the award of the Purple Heart to persons who were prisoners of war on or before April 25, 1962; to the Committee on Armed Services.

By Mr. SHELBY:

S. 585. A bill to protect the rights of small entities subject to investigative or enforcement action by agencies, and for other purposes; to the Committee on Governmental Affairs.

By Mr. LAUTENBERG:

S. 586. A bill to eliminate the Department of Agriculture and certain agricultural programs, to transfer other agricultural programs to an agribusiness block grant program and other Federal agencies, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HATCH (for himself, Mr. HEFLIN, Mr. DOLE, Mr. THURMOND, Mr. GRASSLEY, Mr. SIMPSON, Mr. KYL, Mr. EXON, Mr. CRAIG, Mr. FORD, Mr. LOTT, Mr. ASHCROFT, Mr. BAUCUS, Mr. BOND, Mr. CAMPBELL, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. COVERDELL, Mr. D'AMATO, Mr. FAIRCLOTH, Mrs. FEINSTEIN, Mr. GRAMM, Mr. GRAMS, Mr. GREGG, Mr. HELMS, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INHOFE, Mrs. KASSEBAUM, Mr. KEMPTHORNE, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MURKOWSKI, Mr. PRESSLER, Mr. ROCKEFELLER, Mr. ROTH, Mr. SANTORUM, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. WARNER, and Mr. BREAUX):

S.J. Res. 31. A joint resolution proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN:

S. 580. A bill to amend the Immigration and Nationality Act to control illegal immigration to the United States, reduce incentives for illegal immigration, reform asylum procedures, strengthen criminal penalties for the smuggling of aliens, and reform other procedures; to the Committee on the Judiciary.

THE ILLEGAL IMMIGRATION CONTROL AND ENFORCEMENT ACT OF 1995

Mrs. FEINSTEIN. Mr. President, I rise today to introduce, and now send to the desk, the Illegal Immigration Control and Enforcement Act of 1995. This bill incorporates many of the concepts in the immigration package that I introduced in the last session of Congress. New proposals have been added, however, after consultation with many, including California's law enforcement officials and others interested in curbing illegal immigration.

Mr. President, I offer this legislation not to compete with Senator SIMPSON's S. 269, which he introduced on January 24, but rather to complement it. Little in this bill is duplicative of Senator SIMPSON's legislation. I am convinced that, combined, these two bills could offer a strong, straightforward program to stop illegal immigration.

There simply is no time to lose. The crisis of illegal immigration continues in California and throughout the Nation.

Too many people are still able to illegally cross our borders, and too few States, most notably California, carry the burden of having to support, educate, and often incarcerate the hundreds of thousands who enter this country illegally each year.

There is no doubt in my mind that our border enforcement has improved in the last 2 years and I want to thank this administration for an unprecedented commitment to that end. I am equally convinced, however, that steps already taken have been insufficient to fully address the problem.

Despite its major flaws and probable unconstitutionality, proposition 187 in California was overwhelmingly approved by voters last November. The message was clear: Stop illegal immigration. If Congress does not heed this warning, I fear an even more serious backlash nationwide against all immigrants, including those who want to come to our country legally.

IMPACT ON CALIFORNIA

One reason proposition 187 passed by such a large margin is that Californians know the impact of immigration on our State. According to 1993 INS statistics, 45 percent of the Nation's illegal immigrants are now in California. That means between 1.6 and 2.3 million illegal immigrants now reside in our State; 15 percent of California's State prison population—or almost 20,000 inmates—is comprised of incarcerated illegal immigrants; 45 percent of all persons with pending asylum cases reside in California; 35 percent of the refugees to this country claimed residency in California in 1993; and almost 30 percent of the legal immigrants in this have country chosen to live in California.

According to the Governor of our State, illegal immigration in fiscal year 1995–96 will cost California an estimated $3.6 billion, including an $2.66 billion for the federally mandated costs of education, health care, and incarceration. By anyone's estimation, that is a staggering sum, and a tremendous burden on just one State.

THE NEED FOR IMMIGRATION REFORM

I believe our Federal response to the problem of illegal immigration must address four key goals: First, control illegal immigration at the border; second, reduce the economic incentives to come to the United States illegally; third, deal swiftly and severely with document forgers and alien smugglers; and fourth, remove criminal aliens from our Nation's prisons and jails, while assuring that their sentences are served in their countries of origin.

BORDER CONTROL

This legislation requires that at least 700, and up to 1,000, new Border Patrol agents be hired in each of the next 3 fiscal years. It differs from the crime bill in one critical respect. The crime bill authorized the hiring of up to 1,000 new agents in each of Fiscal Years 1996, 1997 and 1998. This bill further requires that a minimum of 700 agents per year be hired. It thus adds a floor to the crime bill which will assure that no fewer than 2,100 new agents, and up to 900 support personnel, will be on board by the end of Fiscal Year 1998 for a total of 7,082 Border Patrol agents.

It mandates the hiring of sufficient INS border inspectors to fully staff all legal crossing lanes at peak periods. The bill also provides for improved border infrastructure and Border Patrol training.

REDUCING INCENTIVES

Second, this legislation substantially expands existing employer sanctions and wage and hour law enforcement programs to reduce the biggest incentives for undocumented persons to come to this country, namely jobs.

Central to this effort is the creation of a counterfeit-proof work and benefits authorization verification system. Any employer—and any provider of federally funded benefits—ought to be 100 percent certain that a candidate is here legally. A counterfeit-proof verification system is the only way this can be achieved.

In addition, this bill dramatically increases the civil fines for anyone who knowingly hires, recruits, or refers illegal aliens for hiring. This is important because today the civil penalties for illegally hiring an illegal immigrant are very low. Fines range between just $250 and $2,000—per alien hired—for a first offense.

This bill would increase that range from $1,000 to $3,000 for the first offense.

Second offenses would carry per alien fines of between $3,000 and $7,000, and third or later offenses would cost $7,000 to $20,000 per alien—that is more than double the current $3,000 to $10,000 liability.

It dramatically increases the criminal penalties for a pattern or practice of hiring illegal immigrants. This bill doubles the maximum criminal fine, and triples the maximum jail sentence, for anyone who facilitates a fraudulent application for benefits by an unlawful alien by counterfeiting the seal or stamp of any Federal agency. If this bill is enacted, the new maximums will be $500,000, or 15 years in jail, or both.

It provides for additional INS and Department of Labor inspectors to enforce existing laws and provides for the hiring of additional assistant U.S. attorneys to more aggressively prosecute these crimes.

SMUGGLING AND DOCUMENT FRAUD

Shutting down false document mills, counterfeiters, smugglers, and smuggling organizations is the third priority at the core of this legislation.

Smugglers and forgers will find this to be a very tough bill indeed. This legislation broadens current Federal asset seizure authority to include those who smuggle or harbor illegal aliens, and those who produce false work and benefits documents.

It imposes tough minimum and maximum sentences on smugglers, and it imposes those penalties for each alien smuggled. At the moment, penalties are assessed per transaction, no matter how many illegal immigrants a smuggler takes across our borders.

This bill increases the penalty for smugglers in the event that an alien is injured, killed, or subject to blackmail threats by the smuggler.

It makes it easier to deport so-called weekend warriors—legal permanent residents, green card holders, who are in the United States, smuggle illegal immigrants for profit, and then try to use their immigration status to avoid being deported from the United States.

It dramatically increases penalties for document forgers or counterfeiters. First offenders will be sentenced to 2½ to 5 years, 5 to 10 years with any prior felony conviction, and 10 to 15 years with two or more prior felonies. Currently, document forgers can receive as little as 0 to 6 months for a first offense.

CRIMINAL ALIENS

This legislation is intended to once again signal that the President must have the authority, by treaty, to deport aliens convicted of crimes in this country for secure incarceration in such aliens' home countries.

Although we have prisoner transfer treaty agreements with many nations now, they are subject to the consent of the prisoner to be transferred. If the prisoner does not consent, he is not transferred.

This legislation eliminates that obstacle. It also would speed up the deportation process and make more criminal aliens deportable by broadening the definition of an aggravated felony for which aliens may already be deported to include document fraud crimes not now independent grounds for deportation; it classifies as aggravated felonies certain offenses punishable by 3 years, rather than for which an alien has actually been sentenced to 5 years or more. As a result, it would definitely increase the number of criminals who would qualify for deportation as having committed aggravated felony.

In addition, courts would have the authority to require that, in order to receive a sentence of probation rather than a prison term, an illegal alien convicted of a crime would be required to consent to being deported as a condition of probation. This would give prosecutors the option of ejecting from the country relatively low-level offenders after trial without going through an additional, and often lengthy, deportation hearing.

SPONSORS OF LEGAL IMMIGRANTS

Before concluding, let me note just one other feature of the bill which pertains to immigrants who have lawfully come to the United States on the basis of a citizen's—usually an immediate relative's—sponsorship. The legislation would require anyone who sponsors a legal immigrant for admission to the United States to make good on their promise of financial support should the

legal alien require assistance before becoming a citizen.

In addition, past proposals to strengthen sponsorship agreements typically exempted sponsors from liability for medical costs.

This legislation would make sponsors responsible for the costs of medical care, requiring them to obtain health insurance for the immigrant they have sponsored. The insurance would be of a type and amount to be specified by the Secretary of Health and Human Services, and would be required to be purchased within 20 days of an immigrant's arrival in this country. A safety valve is built into the bill, however, for sponsors who die, or who become impoverished or bankrupt.

BORDER CROSSING FEE

This bill also provides a funding mechanism for this package with a border crossing fee of $1 per person, which could yield up to $400 million per year. The border control, the infrastructure, the training, the additional narcotics abatement efforts provided in this bill all could be underwritten by such a fee.

CONCLUSION

In conclusion, Mr. President, immigration is too much at the core of what America means to each of us individually, and to our society collectively, to politicize and polarize the coming debate. If we are to map common ground together, it is the spirit of compromise that must prevail. We owe America—America the Nation and America the idea—no less.

I look forward to continuing to work closely with the chairman of my subcommittee, Senator SIMPSON, with Senators KENNEDY and SIMON, and with all of my Republican colleagues on the subcommittee to present the full Judiciary Committee and the Senate with the best possible comprehensive illegal immigration legislation as quickly as possible.

By Mr. HATFIELD (for himself and Mr. BROWN):

S. 582. A bill to amend title 28, United States Code, to provide that certain voluntary disclosures of violations of Federal laws made pursuant to an environmental audit shall not be subject to discovery or admitted into evidence during a Federal judicial or administrative proceeding, and for other purposes; to the Committee on the Judiciary.

ENVIRONMENTAL AUDIT PRIVILEGE LEGISLATION

● Mr. HATFIELD. Mr. President, with the recent changes in Congress, we are presented with an important opportunity to take a fresh look at many aspects of our Federal legal and regulatory system. A return to federalism is underway including a movement to allow greater flexibility in administering Federal programs. I support a full review of the Federal regulatory straitjacket we have helped create and believe that greater flexibility should be extended to both the public and private sectors of this Nation.

As my colleagues know, it is difficult to have a conversation these days with a business leader or a local government official without the topic turning to the increasingly onerous burden of Federal regulations—particularly environmental regulations. It is now clear the many of our laws and regulations designed to ensure a safer environment are now having the unfortunate effect of discouraging sound environmental practices.

The legislation I will introduce today makes the point that the Federal Government should encourage responsible actions by businesses with incentives and flexibility, rather than through threats and penalties. Given the limited resources available for environmental enforcement and monitoring, it is vital that companies self-police and be willing partners in the implementation of the Nation's environmental programs. There is no other way to protect our people, our communities, and our environment.

In an effort to advance this idea, I am introducing the Environmental Audit Privilege Act. I am pleased to be joined in this effort by my friend from Colorado, Senator HANK BROWN.

This legislation will create new incentives for companies to police their own environmental actions by establishing a limited legal privilege for businesses that voluntarily audit their compliance with environmental laws and promptly proceed to correct any violations discovered.

In 1993, Oregon became the first State to codify a privilege for environmental audits. Under the Oregon law, an internal environmental audit, undertaken voluntarily, cannot be used against the company in a trial or administrative action, unless efforts to comply were not promptly initiated and pursued with reasonable diligence or the privilege was invoked for fraudulent purposes. The Oregon law garnered support not only from the business community, but also from the Oregon Department of Environmental Quality and the State attorney general. These supporters have told me of the positive effects this law has had in Oregon.

Six other States have created a similar privilege, including Colorado, Indiana, Kentucky, Arkansas, Illinois, and Wyoming. Nearly two dozen other States are considering bills to create an environmental audit privilege. Supporters of these State provisions argue that their efforts are undermined by the absence of a Federal counterpart. To avoid the State privilege, a litigant must simply file suit in Federal court, where it is possible the State privilege will not be recognized.

The legislation I put forward today is an extension of legislation I introduced in the 103d Congress which was based solely on the Oregon law. A new section has been added to this bill as a result of the very constructive efforts of Senator BROWN. This new section is based on a worthy idea pioneered by the State of Colorado.

The audit privilege portion of my bill strikes an equitable balance between protecting a company's right to self-police and ensuring that businesses comply with environmental regulations. There are clear limits on the privilege, however. The privilege would cease to exist if used for fraudulent activities or if waived by a company. Furthermore, the privilege is moot if the company does not promptly act to achieve compliance when a violation is discovered in an audit. This factor ensures a strong incentive for companies to immediately correct any potential or real problem in their activities.

Even if the company proceeds immediately to correct a violation, the privilege is not absolute. The privilege only extends to information in the audit report, not to the violation itself. It would not bar enforcement action for environmental violations; no environmental law is decriminalized nor are enforcement agencies barred from pursuing action. This protection does not prevent an agency or an injured party from pursuing legal action against a violator on the basis of independent evidence of the violation.

Oregon's law has expanded employee involvement, which has made audits more complete and accurate, and it has helped employees connect their daily jobs with environmental compliance. It has also created new incentives for companies to independently pursue compliance while encouraging businesses to adopt more systematic approaches to examining and correcting their environmental activities.

Last, but by no means least, lawyers are no longer needed in Oregon to shield audit documents under the attorney-client privilege. Companies can now feel secure in keeping records, and they have had much greater success in dealing with chronic problems. Removing lawyers from audits substantially reduces the cost of auditing and improves the frankness of information flowing within companies.

The legislation I am introducing today also includes a very important section which I will refer to as voluntary disclosure. This section provides protection for companies that wish to step forward and voluntarily disclose inadvertent violations of environmental laws that come to light through the conduct of a voluntary environmental audit. Again, these provisions are based on a law first passed in the State of Colorado. It has been a pleasure to have worked with Senator BROWN and his fine staff over the past several months to reach agreement on this important section of the bill.

Under this section, if an audit reveals a previously unknown environmental violation, the company will be immune from administrative, civil, or criminal penalties if it: First, promptly and voluntarily discloses the violation to the regulatory agency; second, takes prompt steps to correct the problem; and, third, fully cooperates with the

regulatory agency. As with the privilege, this protection does not prevent an agency or an injured party from pursuing legal action against a violator on the basis of independent evidence of the violation.

While Oregon did not include such provisions in its law, I believe providing protections for voluntary disclosures is a meritorious idea, and one certainly worthy of the full consideration of the Senate. As one of my colleagues recently noted, sunlight is an excellent disinfectant. Thus, while the privilege portions of this bill allow an environmental audit to remain secret, the voluntary disclosure provisions would give the public access to this important information and would require any violations be addressed promptly.

Last week, President Clinton announced his plans to encourage environmental audits as part of a package of regulatory reform measures. I want to commend the President and those at EPA who have recognized the benefits of encouraging companies to engage in this type of self-analysis. I believe both business profitability and the environment will benefit from these efforts, and I look forward to working with the administration on the legislative side of this effort.

I am aware the administration has serious misgivings about codifying and audit privilege and has raised questions about the voluntary disclosure protection in this bill. I admit this is an issue that excludes great common sense appeal upon first glance, but which certainly grows more complex with each level of further analysis. While I am not a lawyer, my further analysis leads me to the conclusion that this idea is sound and that the Nation would benefit from the debate this legislative proposal will inevitably generate.

Self-enforcement by responsible companies is vital to the success of our environmental objectives. It is a fact that most companies want to police themselves. Not only is it morally correct, it is also consistent with a total quality management approach to business management, for companies to take a proactive approach to environmental safety. It makes business sense and is less costly for a company to find and rectify a violation than it is to face regulatory, civil, or criminal action. Incentives for self-enforcement will help free up the very limited resources of Federal and State environmental and enforcement agencies, allowing them to pursue the most severe, egregious, and dangerous violations of our environmental laws.

Federal policy must promote the delicate balance between protecting our environment and allowing business to flourish. The Environmental Audit Privilege Act will provide companies with greater flexibility and with incentives for compliance with environmental protection regulations. Such protections will signal an important step toward ensuring the success of our businesses and of our environmental programs.

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:

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 ''Voluntary Environmental Audit Protection Act''.

SEC. 2. VOLUNTARY SELF-EVALUATION PROTECTION.

(a) IN GENERAL.—Part VI of title 28, United States Code, is amended by adding at the end the following new chapter:

''CHAPTER 179—VOLUNTARY SELF-EVALUATION PROTECTION

''Sec.
''3801. Admissibility of environmental audit reports.
''3802. Testimony.
''3803. Disclosure to a Federal agency.
''3804. Definitions.

''§ 3801. Admissibility of environmental audit reports

''(a) GENERAL RULE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an environmental audit report prepared in good faith by a person or government entity related to, and essentially constituting a part of, an environmental audit shall not be subject to discovery and shall not be admitted into evidence in any civil or criminal action or administrative proceeding before a Federal court or agency or under Federal law.

''(2) EXCLUSIONS.—Paragraph (1) shall not apply to—

''(A) any document, communication, data, report, or other information required to be collected, developed, maintained, or reported to a regulatory agency pursuant to a covered Federal law;

''(B) information obtained by observation, sampling, or monitoring by any regulatory agency; or

''(C) information obtained from a source independent of the environmental audit.

''(3) INAPPLICABILITY.—Paragraph (1) shall not apply to an environmental audit report, if—

''(A) the owner or operator of the facility that initiated the environmental audit expressly waives the right of the person or government entity to exclude from the evidence or proceeding material subject to this section;

''(B) after an in camera hearing, the appropriate Federal court determines that—

''(i) the environmental audit report provides evidence of noncompliance with a covered Federal law; and

''(ii) appropriate efforts to achieve compliance were not promptly initiated and pursued with reasonable diligence; or

''(C) the person or government entity is asserting the applicability of the exclusion under this subsection for a fraudulent purpose.

''(b) DETERMINATION OF APPLICABILITY.—The appropriate Federal court shall conduct an in camera review of the report or portion of the report to determine the applicability of subsection (a) to an environmental audit report or portion of a report.

''(c) BURDENS OF PROOF.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a party invoking the protection of subsection (a)(1) shall have the burden of proving the applicability of such subsection including, if there is evidence of noncompliance with an applicable environmental law, the burden of proving a prima facie case that appropriate efforts to achieve compliance were promptly initiated and pursued with reasonable diligence.

''(2) WAIVER AND FRAUD.—A party seeking discovery under subparagraph (A) or (C) of subsection (b)(3) shall have the burden of proving the existence of a waiver, or that subsection (a)(1) has been invoked for a fraudulent purpose.

''(d) EFFECT ON OTHER RULES.—Nothing in this Act shall limit, waive, or abrogate the scope or nature of any statutory or common law rule regarding discovery or admissibility of evidence, including the attorney-client privilege and the work product doctrine.

''§ 3802. Testimony

''Notwithstanding any other provision of law, a person or government entity, including any officer or employee of the person or government entity, that performs an environmental audit may not be required to give testimony in a Federal court or an administrative proceeding of a Federal agency without the consent of the person or government entity concerning the environmental audit, including the environmental audit report with respect to which section 3801(a) applies.

''§ 3803. Disclosure to a Federal agency

''(a) IN GENERAL.—The disclosure of information relating to a covered Federal law to the appropriate official of a Federal agency or State agency responsible for administering a covered Federal law shall be considered to be a voluntary disclosure subject to the protections provided under section 3801, section 3802, and this section if—

''(1) the disclosure of the information arises out of an environmental audit;

''(2) the disclosure is made promptly after the person or government entity that initiates the audit receives knowledge of the information referred to in paragraph (1);

''(3) the person or government entity that initiates the audit initiates an action to address the issues identified in the disclosure—

''(A) within a reasonable period of time after receiving knowledge of the information; and

''(B) within a period of time that is adequate to achieve compliance with the requirements of the covered Federal law that is the subject of the action (including submitting an application for an applicable permit); and

''(4) the person or government entity that makes the disclosure provides any further relevant information requested, as a result of the disclosure, by the appropriate official of the Federal agency responsible for administering the covered Federal law.

''(b) INVOLUNTARY DISCLOSURES.—For the purposes of this chapter, a disclosure of information to an appropriate official of a Federal agency shall not be considered to be a voluntary disclosure described in subsection (a) if the person or government entity making the disclosure has been found by a Federal or State court to have committed repeated violations of Federal or State laws, or orders on consent, related to environmental quality, due to separate and distinct events giving rise to the violations, during the 3-year period prior to the date of the disclosure.

''(c) PRESUMPTION OF APPLICABILITY.—If a person or government entity makes a disclosure, other than a disclosure referred to in subsection (b), of a violation of a covered Federal law to an appropriate official of a Federal agency responsible for administering the covered Federal law—

''(1) there shall be a presumption that the disclosure is a voluntary disclosure described

in subsection (a), if the person or government entity provides information supporting a claim that the information is such a voluntary disclosure at the time the person or government entity makes the disclosure; and

''(2) unless the presumption is rebutted, the person or government entity shall be immune from any administrative, civil, or criminal penalty for the violation.

''(d) REBUTTAL OF PRESUMPTION.—

''(1) IN GENERAL.—The head of a Federal agency described in subsection (c) shall have the burden of rebutting a presumption established under such subsection. If the head of the Federal agency fails to rebut the presumption—

''(A) the head of the Federal agency may not assess an administrative penalty against a person or government entity described in subsection (c) with respect to the violation of the person or government entity and may not issue a cease and desist order for the violation; and

''(B) a Federal court may not assess a civil or criminal fine against the person or government entity for the violation.

''(2) FINAL AGENCY ACTION.—A decision made by the head of the Federal agency under this subsection shall constitute a final agency action.

''(e) STATUTORY CONSTRUCTION.—Except as expressly provided in this section, nothing in this section is intended to affect the authority of a Federal agency responsible for administering a covered Federal law to carry out any requirement of the law associated with information disclosed in a voluntary disclosure described in subsection (a).

''§ 3804. Definitions

''As used in this chapter:

''(1) COVERED FEDERAL LAW.—The term 'covered Federal law'—

''(A) means—

''(i) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

''(ii) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

''(iii) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

''(iv) the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.);

''(v) title XIV of the Public Health Service Act (commonly known as the 'Safe Drinking Water Act') (42 U.S.C. 300f et seq.);

''(vi) the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.);

''(vii) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

''(viii) the Clean Air Act (42 U.S.C. 7401 et seq.);

''(ix) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

''(x) the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.); and

''(xi) the Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.);

''(B) includes any regulation issued under a law listed in subparagraph (A); and

''(C) includes the terms and conditions of any permit issued under a law listed in subparagraph (A).

''(2) ENVIRONMENTAL AUDIT.—The term 'environmental audit' means a voluntary and internal assessment, evaluation, investigation or review of a facility that is—

''(A) initiated by a person or government entity;

''(B) carried out by the employees of the person or government entity, or a consultant employed by the person or government entity, for the express purpose of carrying out the assessment, evaluation, investigation, or review; and

''(C) carried out to determine whether the person or government entity is in compliance with a covered Federal law.

''(3) ENVIRONMENTAL AUDIT REPORT.—The term 'environmental audit report' means any reports, findings, opinions, field notes, records of observations, suggestions, conclusions, drafts, memoranda, drawings, computer generated or electronically recorded information, maps, charts, graphs, surveys, or other communications associated with an environmental audit.

''(4) FEDERAL AGENCY.—The term 'Federal agency' has the meaning provided the term 'agency' under section 551 of title 5.

''(5) GOVERNMENT ENTITY.—The term 'government entity' means a unit of State or local government.''.

(b) TECHNICAL AMENDMENT.—The analysis for part VI of title 28, United States Code, is amended by adding at the end the following:

''179. Voluntary Self-Evaluation Protection ..... 3801''.

SEC. 3. APPLICABILITY.

This Act and the amendment made by this Act shall apply to each Federal civil or criminal action or administrative proceeding that is commenced after the date of enactment of this Act.

SUMMARY OF HATFIELD/BROWN VOLUNTARY ENVIRONMENTAL AUDIT PROTECTION ACT

The ''Voluntary Environmental Audit Protection Act'' amends Title 28 of the U.S. Code by adding Chapter 179 entitled ''Voluntary Self-Evaluation Protection.'' The purpose is to protect environmental audits and provide qualified penalty immunity for voluntary disclosures made as a result of conducting environmental audits. The Act consists of the following four sections:

A. § 3801. ADMISSIBILITY OF ENVIRONMENTAL AUDIT REPORTS

Generally, environmental audit reports prepared in good faith are not subject to discovery and are not admissible in any federal administrative or judicial proceeding.

Exclusions: The protection against admissibility does not apply to documents or information: Required to be collected, maintained or reported under environmental laws; available due to the agency's own observation, sampling or monitoring; or available from an independent source.

Waiver: Waiver can only occur by an express waiver by the owner or operator of the facility that initiated audit.

Inapplicability: The protection is not applicable if: An environmental audit report shows non-compliance with an environmental law and the entity does not promptly initiate actions to achieve compliance and pursue those actions with reasonable diligence, or the protection is claimed for a fraudulent purpose.

Determination of Applicability: A federal court determines the applicability of the protection in an in camera review of an audit report or portion of an audit report.

Burden of Proof: The person or government entity invoking the protection has the burden of demonstrating its applicability and if there are instances of non-compliance, that appropriate efforts to achieve compliance have been initiated. The party seeking discovery of the audit report has the burden of proving that the protections were waived or that the privilege was invoked for a fraudulent purpose.

Other Statutes/Requirements: The Act does not affect any existing statutory or common law rules of evidence, discovery or privilege (such as attorney-client privilege and work-product doctrine).

B. § 3802. TESTIMONY

Any person that performs an environmental audit is not required to give testimony relating to the audit in an administrative or judicial proceeding. This applies to officers and employees of the person or government entity as well as the person or government entity itself.

C. § 3803. DISCLOSURE TO A FEDERAL AGENCY

The Act defines a disclosure as ''voluntary'' if: it arises out of an ''environmental audit'' (as defined); it is made promptly after learning of the information; actions are undertaken to achieve compliance; and the person or entity making the disclosure provides additional relevant information as requested by the appropriate agency.

Involuntary Disclosures: Otherwise voluntary disclosures will not be voluntary if the person or government entity has committed repeated violations of federal or state environmental laws or orders during the three years prior to the disclosure.

Presumption of Voluntariness: Disclosures are presumed to be voluntary, and unless rebutted, the person or government entity is immune from administrative, civil or criminal penalties for the violation(s) disclosed.

Rebuttal of Presumption: The federal agency has the burden of rebutting the presumption of voluntariness of the disclosure.

D. § 3804. DEFINITIONS

''Covered Federal Law'' includes FIFRA, TSCA, the Clean Water Act, the Oil Pollution Act of 1990, the Safe Drinking Water Act, the Noise Control Act, RCRA, the Clean Air Act, CERCLA, EPCRA and the Pollution Prevention Act of 1990, and any regulations or permits issued thereunder.

''Environmental Audit'' is a voluntary and internal review, assessment, evaluation or investigation that is initiated by the person or government entity, carried out by the person or government entity or its employees to determine compliance with any covered Federal law.

''Environmental Audit Report'' generally includes any reports, findings, opinions, observations, and conclusions relating to an environmental audit.

''Government Entity'' means any unit of state or local government.

OVERVIEW OF STATE ENVIRONMENTAL AUDIT PRIVILEGE LAWS

[© 1995 Coalition for Improved Environmental Audits—Current as of Mar. 6, 1995]

Issues	AR [1]	CO [2]	IL [3]	IN [4]	KY [5]	OR [6]	WY [7]
Environmental Audit Report: Requires documents comprising environmental audit report to be prepared as a result of an environmental audit and labeled ''Environmental Audit Report: Privileged Document.''.	Yes	No	Yes	Yes	Yes	Yes	Yes
Voluntary Disclosure:							
Immunity or reduction in penalties for voluntary disclosure	No	Yes	No	No	No	No	Yes
Immunity from criminal charges for voluntary disclosure	No	Yes	No	No	No	No	No
Waiver of Privilege:							
Expressly	Yes	Yes	Yes	Yes	Yes	Yes	Yes
By implication	Yes	Not stated	Not stated	Yes	Yes	Yes	Yes

OVERVIEW OF STATE ENVIRONMENTAL AUDIT PRIVILEGE LAWS—Continued

[© 1995 Coalition for Improved Environmental Audits—Current as of Mar. 6, 1995]

Issues	AR [1]	CO [2]	IL [3]	IN [4]	KY [5]	OR [6]	WY [7]
By failing to file a petition for in camera review or hearing (# of days to file petition after filing or request for the environmental audit report).	Yes (30 days)	Not stated	Yes (30 days)	Yes (30 days)	Yes (20 days)	Yes (30 days)	Yes (20 days)
By introduction of any part of the environmental audit report by party asserting the privilege	No	Not stated	Not stated	Not stated	Yes	Not stated	No
Privilege is lost if:							
Asserted for fraudulent purposes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Material is not subject to the privilege	Yes	Not stated	Yes	Yes	Yes	Yes	Yes
Material shows evidence of non-compliance and efforts to achieve compliance were not promptly initiated and pursued with reasonable diligence.	Yes	Yes	Yes	Yes	Yes	Yes	Yes
In a criminal proceeding, the legal official has a (need, substantial need, compelling need, or compelling circumstances) requiring the otherwise unavailable information.	Not stated	Yes	Not stated	Yes	Yes	Yes	Yes
Burden of Proof:							
Party asserting the privilege has burden of proving privilege and reasonable diligence toward compliance.	Yes	Yes [8]	No [9]	Yes	Yes	Yes	Yes
Party seeking disclosure has burden of proving fraudulent purpose	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Legal official or party seeking disclosure has burden of proving conditions for disclosure	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Provision for disclosure of only the portions of the environmental audit report relevant to the issues in the dispute.	Yes	Not stated	Yes	Yes	Yes	Yes	Yes

[1] Enacted February 17, 1995. Effective 90 days after the legislative session ends. Act No. 350 of the 1995 Session.
[2] Effective June 1, 1994. Colorado Revised Statutes Section 13–25–126.5.
[3] Effective January 24, 1995. Illinois Public Act 88–0690.
[4] Effective July 1, 1994. Indiana Code 13–10.
[5] Effective July 15, 1994. Title XVIII, Kentucky Statute § 224.01–040.
[6] Effective 1994. Or. Rev. Stat. § 468.963.
[7] Enacted February 18, 1995. Effective July 1, 1995.
[8] Party asserting privilege has burden of proving a prima facie case.
[9] Party asserting privilege has burden of proving privilege, but adverse party has burden of showing lack of reasonable diligence toward compliance.

SUMMARY OF 1995 STATE AND FEDERAL LEGISLATIVE INITIATIVES FOR THE ENVIRONMENTAL AUDIT PRIVILEGE

[1995 Coalition for Improved Environmental Audits—Revised Mar. 10, 1995]

State and legislative status	Reference No.	"Environmental Audit Report" label required on privileged document?	Immunity for voluntary disclosure?	Immunity includes criminal charges?
Arizona: Approved by Senate. Sent to House	S.B. 1290	NO	YES	YES
Arkansas: Signed into law on 2/17/95	Act No. 350 of 1995 Session	YES	NO	NO
Georgia: Introduced in Senate	S.B. 244	NO	NO	NO
Hawaii:				
Introduced in House	H.B. 390	YES	NO	NO
Introduced in Senate	S.B. 1304	NO	YES	YES
Idaho: Approved by Senate. Sent to House	S. 1142	YES	YES	YES
Kansas: Approved by Senate. Sent to House	S.B. 76	YES	YES	YES
Massachusetts: Introduced in House	H. 3426	NO	NO	NO
Mississippi: Bill passed both Houses. Returned to Senate for concurrence 3/7/95	S.B. 3079	NO	YES [1]	YES
Missouri: Bills introduced in House and Senate	H.B. 338	NO	YES	YES
	S.B. 350	NO	YES	YES
	S.B. 363	YES	YES [1]	NO
Montana: Introduced in House	H.B. 412	YES	YES	YES
Nebraska: Introduced to Legislature	L.B. 731	NO	YES	YES
New Hampshire: Introduced in House	H.B. 275	NO	YES	YES
New Jersey: Bills introduced in Assembly and Senate	A.B. 2521	NO	YES	YES
	S.B. 1797	NO	YES	YES
North Carolina: To be introduced in larger regulatory reform proposal		NO	NO	NO
Ohio: A bill similar to S.B. 361 of 1994 to be introduced		NO	YES	YES
Oklahoma: Introduced in House	H.B. 1388	YES	YES	YES
South Carolina: Introduced in Senate	S.B. 15	NO	YES	YES
Tennessee: Introduced in Senate	S.B. 1135	YES	YES	YES
Texas:				
Introduced in House	H.B. 2473	YES	YES	YES
Senate bill to be introduced	S.B. _____	YES	YES	YES
Utah: Bill passed both Houses 3/1/95. Sent to Governor	S.B. 84	NO	NO	NO
Virginia: Bill passed both Houses 2/16/95. Sent to Governor	H.B. 1845	NO	YES	NO
West Virginia: Bills introduced in Senate and House	H.B. 2494	NO	NO	NO
	S.B. 362	NO	NO	NO
Wyoming: Signed into law on 2/18/95	Act No. 26 of 1995 Session	YES	YES [1]	NO
Federal: Introduced in the House on 2/24/95 with 6 co-sponsors	H.R. 1047	NO	YES	YES

[1] Voluntary disclosures warrant either de minimis or reduced penalties.

Note: Other States with proposals not yet introduced: Alabama, California, Florida, Michigan, and Minnesota.

ASSOCIATED OREGON INDUSTRIES,
Salem, OR, March 17, 1995.

Re legislation for a Federal environmental audit privilege.

Hon. MARK O. HATFIELD,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: I understand you are favorably inclined to introducing legislation this Congress for a federal environmental audit privilege. Your bill would be modeled along the lines of the law Associated Oregon Industries pushed through the Oregon legislature in 1993. On behalf of Associated Oregon Industries' 2,400 primary members and 14,000 associate members, I applaud you efforts to actively pursue a federal law protecting environmental audit reports.

Oregon's environmental audit privilege was signed into law by Gov. Barbara Roberts on July 22, 1994. Oregon's law is the first of its kind in the nation. Since enactment, other states have adopted similar laws.

As a whole, Oregon industry works hard to comply with today's complex and voluminous environmental laws. Perfect compliance at all times, however, is a virtually unattainable objective for large facilities. Compliance is made all the more difficult when reports, generated during a company's voluntary environmental audit, are not confidential. Prior to Oregon's law, environmental agencies could obtain such audit reports and use them against a company in an enforcement action. By making environmental audit reports privileged. Oregon's law protects companies from ''hanging themselves'' as long as actions are taken to correct any violations found.

Though Oregon's regulated companies are reacting positively to the new state protections, Oregon's new law does not complete the protection circle. The Environmental Protection Agency is not bound by Oregon's environmental audit privilege and occasionally inspects Oregon companies. This is why a federal environmental audit privilege is needed.

Thank you for your efforts. I look forward to working with you.

Sincerely,

JAMES M. WHITTY,
Legislative Counsel.

PORT OF PORTLAND,
Portland, OR, March 20, 1995.

Hon. MARK O. HATFIELD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: On behalf of the Port of Portland, I want to express the Port's strong support for the environmental auditing privilege and voluntary disclosure bill that you are sponsoring.

The Port conducts periodic environmental audits at all of its facilities. The enactment of a federal environmental auditing privilege and voluntary disclosure provision will encourage many more businesses, especially medium- and small-sized businesses, to start environmental auditing. By limiting the fear that their voluntarily prepared environmental audit reports will be used against

them in enforcement proceedings, your bill will spur this auditing activity.

In addition to the environmental audit report evidentiary privilege, I understand your legislation includes a voluntary disclosure component to protect persons who discover inadvertent environmental violations from criminal or civil penalties, if they report the violations to the proper authorities and remedy them promptly. We believe this voluntary disclosure provision is as important as the environmental auditing privilege. We are pleased to see that your bill includes both of these elements.

Your environmental audit privilege and voluntary disclosure legislation should result in more companies conducting environmental audits and in a substantial overall increase in compliance with environmental requirements. Thank you for your efforts. Please let me know if there are steps we can take to support passage of this measure.

Sincerely,

DAVID LOHMAN,
Director, Policy and Planning.

LITTON CORP.,
Arlington, VA, March 14, 1995.

Hon. MARK O. HATFIELD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: I am writing on behalf of Litton Industries, Inc. to express Litton's strong support for the environmental auditing privilege and voluntary disclosure bill that you are co-sponsoring with Sen. Brown, and that we understand you intend to introduce imminently.

Litton is a leader in worldwide technology markets for advanced electronic and defense systems, and a major designer and builder of large, multimission combat ships for the U.S. Navy and allied nations. Litton employs approximately 30,000 people at numerous facilities across the country, including approximately 200 people in our Grants Pass, Oregon facility.

Litton conducts periodic environmental audits at all of its U.S. facilities. The enactment of a federal environmental auditing privilege and voluntary disclosure provision will encourage many more businesses, especially medium- and small-sized businesses, to start environmental auditing programs, without fear that their voluntarily prepared environmental audit reports will be used against them in enforcement proceedings.

In addition to the environmental audit report evidentiary privilege, we understand that your legislation includes a voluntary disclosure component which protects persons who discover inadvertent environmental violations, report the violations to the proper authorities, and remedy them promptly from criminal or civil penalties. Litton views the voluntary disclosure provision to be as important as the environmental auditing privilege, and we are gratified that your bill will include both of these elements.

Litton believes that your environmental audit privilege and voluntary disclosure legislation will result in more companies conducting environmental audits, and in a substantial overall increase in compliance with environmental requirements. Litton commends and will support your environmental audit privilege and voluntary disclosure bill. We believe that it represents a superior approach to environmental compliance because it emphasizes improved environmental quality rather than increased environmental enforcement. Thank you for your efforts.

Sincerely,

MARK V. STANGA,
Environmental Affairs Counsel.

ONTARIO PRODUCE,
March 17, 1995.

Senator MARK O. HATFIELD,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATFIELD: I would like to give my support for your bill providing for a federal environmental audit privilege similar to the Oregon law. It would allow businesses to realistically correct problems without creating more problems for themselves.

Very truly yours,

ROBERT KOMOTO.

AT&T,
Washington, DC, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATFIELD: We at AT&T were pleased to learn that you plan to introduce a bill establishing a privilege for environmental audits and a limited ''safer harbor'' for those who voluntarily correct and disclose environmental infractions.

AT&T has a strong record of environmental compliance, has performed environmental self-audits for many years, and is continuously improving its environmental compliance management systems. AT&T has played a strong role in protecting our environment through voluntary reductions in materials usage and recycling.

Environmentally responsible companies such as AT&T, which perform voluntary self-assessments, are presently placed in the uncomfortable position of creating documents in the course of their voluntary compliance efforts which government agencies and special interest groups will try to use against them in penalty actions and citizen's suits.

Similarly, enforcement agencies often assess large penalties as a consequence of a responsible company's voluntarily disclosure of an environmental infraction discovered through voluntary audits and self-assessment processes and voluntarily corrected. Absent these voluntary audit and self-assessment procedures, such violations would likely continue uncorrected, undisclosed, and unpenalized. Thus, current enforcement policy works as a disincentive to voluntary compliance, and thus works against the environment.

AT&T salutes your efforts to legislatively remedy this problem. AT&T would fully support a bill that would, under appropriate conditions, protect environmental audits from disclosure and create a safe harbor for companies that have voluntarily discovered, corrected, and disclosed environmental violations to the government.

We look forward to working with you, your staff, and other interested parties toward the enactment of such legislation. Such legislation would add a measure of fairness to the enforcement process and would remove disincentives to engage in voluntary audits, compliance management, and disclosure activities.

By eliminating some of the inequities and disincentives in the current enforcement scheme, we believe Congress will cause a higher level of voluntary compliance by American business with concomitant benefit to our environment.

Very truly yours,

NORM SMITH.

GEORGIA-PACIFIC CORP.,
Washington, DC, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: Georgia-Pacific Corporation is very supportive of the need for the Congress to enact an environmental audit protection bill. The State of Oregon has passed legislation to afford legal protection to the environmental audits we perform in our manufacturing facilities to help us in compliance with a host of environmental permits (air, water, solid waste, hazardous materials).

The corporation is moving aggressively to increase the audit program at every location to accomplish not only basic compliance, but more importantly to elevate the importance of environmental performance in the daily operation of our mills and plants. We are ranking environmental performance on an equal status of employee safety.

The potential misuse of this information in third party litigation is a major problem. We have experienced such misuse in Mississippi in connection with our water discharge permit at paper mill. If public policy demands proper compliance and monitoring, it should encourage—not discourage—more auditing by companies. We have been disappointed by EPA's own policy on environmental audits that discourages auditing.

A number of States have enacted or are considering legislation this year. However, this public policy should be uniform nationwide. Thus, G–P's strong support for audit protection legislation. G–P management in Oregon has advised us of your interest in leading such legislation. Because of your knowledge of our company in the State and your responsible record on environmental issues, we strongly urge you to take a leadership role on environmental audits.

I can assure you that should you introduce legislation to afford appropriate protection to environmental audits, G–P will not only be appreciative of this effort, but we will work very hard in support of your effort with other Senators.

Sincerely,

JOHN M. TURNER,
Vice President.

THE GEON CO.,
Cleveland, OH, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: The Geon Co. strongly supports the Voluntary Environmental Audit Protection Act, which we understand will be introduced tomorrow. This Act will benefit not only responsible members of the regulated community, but the public as well, by encouraging companies to implement strong and effective environmental auditing and oversight programs.

It has been our experience that most potential compliance problems are discovered and corrected through voluntary self-audits. The fear of discouraging past compliance problems, especially when they may give rise to huge potential civil penalties, is a very real disincentive to proactive compliance programs that rely on internal and external self-audits.

Although the U.S. EPA has claimed that voluntary self-disclosure issues can be addressed as a part of its enforcement policies and that legislation is unnecessary, we have, unfortunately, first-hand current experience that the EPA has been woefully remiss in adopting or even pursuing any enforcement policies that affect the purpose to which your bill is addressed, and those policies the EPA has recently proposed would fall far short of their state objectives.

We believe that current EPA enforcement policies often single out for punishment environmentally responsible proactive companies, which are thereby placed at a competitive disadvantage with their less proactive competitors.

Sincerely,

WILLIAM F. PATIENT,
Chairman of the Board,
President and Chief Executive Officer.

POLAROID CORP.
Cambridge, MA, March 15, 1995.

Re support for environmental audit privilege and voluntary disclosure legislation; The Voluntary Environmental Audit Protection Act.

Hon. MARK HATFIELD,
US Senate, Hart Senate Office Building, Washington, DC.

HON. SENATOR HATFIELD: Polaroid Corporation wishes to express its support for legislation that you and Senator Brown intend to introduce which will allow for a Federal Environmental Audit Privilege and for Voluntary Disclosure Protection. Polaroid is a worldwide manufacturer of various Imaging Products, and the majority of its manufacturing facilities are located in the Commonwealth of Massachusetts.

Polaroid believes that the fundamental policy justifications underlying the proposed ''Voluntary Environmental Audit Protection Act'' are consistent with this nation's laudable goals of encouraging higher levels of responsible environmental protection rather than simply continuing the promotion of ''command and control'' style environmental regulations. The substantial and measurable levels of environmental improvement that have been achieved in the United States over the past twenty-five years are, in large part, the result of the combined actions of the US Congress, the administrative agencies of the Executive, and American Industry. But new, more positive and cost effective incentives than those needed in the 1970's and 80's are required to enhance environmental protection and improve environmental performance in the 1990's. Polaroid supports this legislation and your actions involved in introducing and overseeing its passage.

Sincerely,

HARRY FATKIN,
Division Vice President,
Health, Safety & Environmental Affairs.

ENVIRONMENTAL AUDITING ROUNDTABLE,
North Ridgeville, OH, March 16, 1995.

Hon. MARK HATFIELD,
US Senate, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN HATFIELD: Following are the views of the Environmental Audit Roundtable on the ''Voluntary Environmental Audit Protection Act'' that you and Senator Brown are introducing. The intent of the bill is to encourage environmental auditing for compliance and effective management systems to ensure compliance and continual improvement.

The EAR, representing over 800 members, is the largest body of professional Environmental Health and Safety Auditors in the world.

As a general rule, our organization should be silent on activity that are external to the auditing process unless those activities promotes improvement in audit quality. We believe the concept of improving disclosure through a privilige mechanism will improve the quality of the audit process in the followng ways:

1. Removing the fear of penalty when non compliance is inadvertent will promote disclosure between the auditors and the audited entity.

2. The concept will encourage implementation of Environmental Audits.

3. The concept will facilitate the flow of information from the regulated community to the agency with regard to understanding and implementing environmental regulation. For small and medium size enterprises that do not have large EH&S staffs it is essential that an open dialogue with state and federal agencies be promoted to assist in understanding and implementing regulations. In addition, this exchange of information will provide valuable feedback on ways in which to make the regulation more understandable and efficient. Under our current regime of command and control there is little or no information flow from the regulated community to the agencies because the consequences are unpredictable.

4. The International Standards Organization (ISO) will be issuing a series of standards in early 1996 that could revolutionize the approach for managing and improving environment performance. Linkage between our national regulatory scheme and this international effort will depend on the agencies ability to communicate with its regulated customers. The concept of disclosure will elevate the level of communication.

In conclusion EAR believes that the legislation will promote environmental dialogue at all levels and improve the quality of the audit process. We believe the current regulatory mechanism of police and fine should be replaced with a cooperative program of disclose and correct. Legislation that promotes information exchange between state and federal agencies and their regulated customers creates fertile fields for innovative solutions and continual improvement.

Regards,

RONALD F. BLACK.

PHILIPS ELECTRONICS CORP.,
Washington, DC, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATFIELD: Philips Electronics is pleased to support your legislation known as the Voluntary Environmental Audit Protection Act. This legislation makes eminent sense in that it removes the threat of unreasonable penalty for an action of good faith to correct certain situations arising from noncompliance with environmental law. Philips Electronics and the vast majority of U.S. manufacturers strive to be good corporate citizens with respect to environmental and other laws. Your legislation will create an enforcement atmosphere that will encourage such good corporate citizenry. We thank you for your leadership.

Philips Electronics North America Corporation employs nearly 30,000 Americans engaged in the manufacture and sale of consumer and industrial electronics products and electronic components under the brand names of Philips, Magnavox and Norelco. Annual sales of more than $6 billion rank Philips among the top 100 U.S. manufacturers.

Sincerely,

RANDY MOORHEAD.

COLLIER, SHANNON, RILL & SCOTT,
Washington, DC, March 15, 1995.

Re Senator Hatfield's and Senator Brown's audit and disclosure protection legislation.

Hon. MARK HATFIELD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: On behalf of the Coalition for Improved Environmental Audits (''CIEA''), we write in support of your proposed legislation for environmental audit and voluntary disclosure protection. We applaud your efforts in conjunction with Senator Brown to introduce this legislation into the Senate. CIEA was formed to support legislative initiatives for the protection of environmental audits and voluntary disclosures; therefore, we wholly support your efforts to establish a qualified self-examination privilege that helps encourage companies to conduct comprehensive audits by reducing the risk that the audits will be used against them in enforcement proceedings. CIEA membership includes corporations and trade associations committed to establishing useful and effective environmental auditing programs. CIEA member companies own and operate facilities throughout the United States and welcome your proposed legislation to encourage and protect comprehensive environmental audits at their facilities.

CIEA supports your efforts to introduce legislation that establishes a federal environmental audit privilege and immunity for voluntary disclosures. The privilege will encourage corporations to establish useful and effective environmental auditing programs. The conditional immunity described in Section 3803 of the proposed legislation will encourage corporations to conduct candid assessments and timely remediation of any noncompliance with environmental laws. Recognition of a qualified environmental audit privilege and immunity provision will enhance compliance with environmental regulations without harming the ability of enforcement officials to prosecute significant wrongdoers.

U.S. industry can rely on a commitment made through legislation. Therefore, your federal legislation for the environmental audit privilege and voluntary disclosure protection allows U.S. industry to conduct environmental audits without the fear that the audit will end up being used against them. Now that federal legislation for the environmental audit privilege is moving forward (and seven States have enacted similar statutes) EPA should establish policy that reinforces this legislation.

The CIEA membership appreciates the opportunity to support your forthcoming legislation for the environmental audit privilege and voluntary disclosure immunity. We believe a reasoned discussion of the issues of environmental audit privileges will result in the passage of your bill, which will encourage and improve corporate environmental compliance.

Sincerely,

JOHN L. WITTENBORN,
STEPHANIE SIEGEL,
Counsel to the Coalition
for Improved Environmental Audits.

THE BFGOODRICH CO.,
Akron, OH, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

DEAR CHAIRMAN HATFIELD: The BFGoodrich Company wishes to express its support for legislation that you and Senator Brown are introducing—''The Voluntary Environmental Audit Protection Act.''

The BFGoodrich Company provides aircraft systems, components and services and manufactures a wide range of specialty chemicals. BFGoodrich manufactures in seven countries and operates an international network of sales offices and aircraft service centers with our Corporate headquarters in Akron, Ohio.

Because of the Company's international presence, we are exposed to a wide variety of environment, health and safety requirements. In order to ensure compliance with these requirements, our Company conducts environment, health and safety audits worldwide.

Only in the United States do we have a system where responsibly managed organizations suffer severe punishment for maintaining a review process to ensure compliance. Our current system is subject to the whim of U.S. EPA interpretations in the different regions of our nation. This does not allow for certainty in interpretation or fairness in enforcement.

Your proposed legislation, along with the legislation already enacted in those states that have chosen a new approach for the regulated community, will establish a mechanism where those who are sincere in trying to improve the environment will benefit—while those who continue to disregard good practices will be subject to the full enforcement of the law.

Your legislation is forward-looking and compatible with international programs. It will encourage our government agencies to focus their efforts on those who truly require oversight while encouraging greater disclosure of information and communications from the regulated community. Moreover, it will provide regulatory agencies with information to improve programs and better measure performance.

BFGoodrich supports your proposed legislation and actions aimed at introducing and overseeing its passage.

Sincerely,

JON V. HEIDER,
Executive Vice President and General Counsel.

CORPORATE ENVIRONMENTAL ENFORCEMENT COUNCIL,
Alexandria, VA, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

DEAR CHAIRMAN HATFIELD: On behalf of the members of the Corporate Environmental Enforcement Council (CEEC), I want to express to your support for legislation that you and Senator Hank Brown are introducing, ''The Voluntary Environmental Audit Protection Act.''

CEEC is an organization of 18 member companies comprised of corporate counsel and management from a wide range of industrial sectors that focuses exclusively on civil and criminal environmental enforcement public policy issues. CEEC's membership includes: AT&T, The BFGoodrich Company, Caterpillar, Inc., Coors Brewing Company, DuPont, Eli Lilly and Company, Hoechst Celanese Corporation, ITT Corporation, Elf Atochem, North America, Inc. Kaiser Aluminum & Chemical Corporation, Kohler Company, 3M, Owens Corning, Pfizer, Inc., Polaroid Corporation, Procter and Gamble, Textron and Weyerhaeuser Company.

We commend you and Senator Brown for this legislation because it is constructive environmental legislation. You have recognized that environmental audits are valuable management tools for improving environmental compliance, that they are good for the environment, and that they will enhance all of our collective efforts to improve environmental performance.

Mr. Chairman, we thank you and Senator Brown, and your staffs, for developing this important legislation and stand ready to work with you to see it become law.

Sincerely,

CARL A. MATTIA,
Chairman of the Board; Vice President, Environment, Health and Safety, The BFGoodrich Co.

COORS BREWING CO.,
Washington, DC, March 15, 1995.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATFIELD: We are pleased to support you and Senator Brown in your efforts to enact the Environmental Audit Disclosure Protection Act.

Environmental audits are proven management tools. They provide the opportunity for companies and public facility operators to take a close critical look at their operations, determine compliance with the thousands of complicated, often confusing and overlapping environmental regulations and statutes now on the books and fix any problem discovered. In Colorado with the passage of a bill in 1994 that is very similar to yours, we are creating a climate of some certainty, wherein a company or facility operator knows what kind of enforcement treatment to expect before investing in expensive and time consuming environmental audits and then disclosing results to state regulatory authorities. We strongly believe this certainty, albeit limited, goes a long way toward promoting self-initiated audits.

However, that same certainty must be applied at the Federal level to allow the Colorado statute, and others like it, to be fully effective and widely utilized. That is why your bill is so important. The debate over proper Federal legal controls over the extent, form and utilization of voluntary self audits and the use of the information obtained has been a matter of controversy among regulators in Washington who hold unchallenged power and control under the current command and control system.

Stanley Legro, EPA's Chief Enforcement official from 1975–77, wrote an interesting article entitled ''Self Audits and EPA Enforcement'' in the Environmental Forum, December 1994. The article follows this letter. To paraphrase Mr. Legro, he says in order to reach the next plateau to improving the quality of the environment there must be a shift from the current enforcement mentality to providing incentives to increase compliance. In moving to that next plateau Mr. Legro says he ''favors maximizing incentives for voluntary self audits.''

We believe that your bill as drafted embraces Mr. Legro's thoughts by striking an appropriate and constructive balance between many of the relevant competing interests involved. The bill provides protection for responsible entities against being punished for doing the right thing without impending enforcement against those who flaunt environmental laws. It is truly refreshing without impeding enforcement against those who flaunt environmental laws. It is truly refreshing to see legislation that benefits the environment, benefits responsible industry, protects against abuses, imposes no costly mandates and doesn't spend a dime of taxpayers' money. Indeed, it may even reduce the need for, and expense of, certain enforcement resources.

Coors looks forward to assisting you and Senator Brown to secure early enactment of this legislation.

Respectfully yours,

ALAN R. TIMOTHY,
Director, Federal Government Affairs.

[From the Environmental Forum, December 1994]

SELF AUDITS AND EPA ENFORCEMENT

(By Stanley W. Legro)

The high degree of interest in the public meeting held by EPA on auditing last summer is strong evidence of the continuing importance of this vital subject. Indeed, it may be fair to say that the subject of auditing necessarily raises the most fundamental issue affecting the EPA: What is the role of enforcement in achieving the agency's primary purpose for being?

The debate about voluntary self-audits and the use of the information obtained has been ongoing since the earliest days of the EPA. It was a hotly debated subject during my tenure as the agency's chief enforcement official from 1975–77. It continues to be a hotly debated issue today. Its long tenure and the agency's inability to come to closure on a decision are to a large extent attributable to the difficult policy choices involved.

The fundamental issue is whether the EPA's primary purpose to improve the quality of the environment is best achieved by providing positive incentives for voluntary compliance and remediation or by punishing, for past actions or omissions, those who have failed to meet their responsibilities to preserve and maintain the quality of the environment. These are not easily separable.

During the nascent stages of the agency, strong enforcement actions and substantial punishments for violators were necessary to convince both the public and those in regulated industries that environmental laws were to be taken seriously and that failure to comply could have serious consequences. During my tenure, there was still a substantial questioning among many in the regulated communities as to whether these environmental requirements were a passing fad that might be repealed by the next Congress and whether the EPA really meant business. An emphasis on vigorous enforcement was vital to send an unequivocal answer to those questions.

With the hindsight of time, I am convinced that the decision made then was the right one, emphasis on vigorous enforcement to send the clear message that or country had made a decision to improve the quality of the environment, and that those who tried to thwart the effort would face severe consequences. While our country still has much left to do, the progress to date is proof of the wisdom of choosing robust enforcement.

Today, we are faced with a somewhat different situation which, I believe, calls for a different emphasis. One should not gainsay the vital continuing role of vigorous enforcement. We must begin by leaving no doubt whatsoever that anyone who intentionally or recklessly harms or endangers the quality of our environment, no matter how long after the fact the transgression is discovered, should—indeed must—be subject to the full force of the law.

Nevertheless, now there is a high degree of awareness of the existence of environmental laws and regulations in general, as well as the specific requirements for compliance, among the regulated communities as well as among the public. There is relatively little incidence of knowing or intentional actions or omissions which harm or degrade the environment. From my present perspective, a much bigger barrier to continuing substantial progress is awareness of environmental problems on the ground so that appropriate remedial actions can be promptly commenced and effectively accomplished in a timely manner.

This brings us to environmental audits. What is the best balance between the carrot and the stick to achieve the best overall results? I recommend that today, while the stick should always remain within easy reach, the emphasis must be shifted to providing incentives for broad scale voluntary compliance. In my opinion, the emphasis today should be on those measures that will encourage environmental audits and the benefits which they can produce in the real world.

Accordingly, I suggest that the results of environmental audits should not be used by the EPA (or state or local) enforcement authorities to seek penalties for any past acts or omissions unless it is shown that such acts or omissions were intentional with knowledge that they would or were likely to result in serious harm to the environment or were reckless.

At the same time, I recommend that the results of environmental audits be provided to the agency, and that they serve as a benchmark for future remediation and correction of practices, processes, and existing pollution which they have revealed. In other words, prospectively the results of environmental audits will be used to set a high standard, but one that is fair because it offers an opportunity to take those actions which would avoid or alleviate the environmental harm.

If the EPA discovers a violation by its own inspection or as a result of information received from a third party, I believe that it should pursue vigorously all remedies available. However, if the discovery is a result of a voluntary audit and is timely reported first to the EPA by the source, policy considerations weigh in favor of encouraging voluntary self audits and prompt follow-up corrective actions.

We also need to consider the nature and extent of privilege, the right to confidentiality for the results of environmental audits. Some jurisdictions have adopted this approach. I have researched and considered the issue at length. It is my conclusion that the use of a privilege approach by the EPA is an unsatisfactory solution which does not protect the environment nor provide maximum incentive to initiate self audits. (However, it is vital to have a privilege from disclosure to private parties and to any state or local officials who refuse to join in the recommended EPA approach.)

From the perspective of the EPA, the purpose of this, as any other policy, is to improve the environment. The agency seeks to provide incentives for self audits to discover and to commence prompt and effective remedial measures. The self audit is merely a means; without assuring that the audit results are put to use, the policy fails. The remedial measures are the end. A privilege approach gives no assurance that problems discovered will result in remedial actions taken. Indeed, the privilege approach may actually discourage prompt remedial measures in many cases.

From the perspective of the corporate executive, the privilege approach is also unsatisfactory for at least two reasons. First, some information resulting from the audit is likely to be subject to mandatory disclosure under certain environmental laws and securities laws. Such partial disclosure will often lead to investigations or audits that independently uncover most, if not all, of the information for which the privilege is claimed. Second, and even more important from the point of view of a corporate official deciding whether to undertake a voluntary self audit, a privilege does nothing to eliminate liability for past violations; a self audit increases the availability of evidence to authorities to prove those violations. For these reasons, a privilege approach would not be the best policy for the EPA.

In sum, in order to maximize the incentives to conduct self audits and to apply the information obtained to realize the greatest environmental improvement, I recommend the following commitment by the agency's enforcement authorities:

The EPA will continue to apply the full penalties for past violations discovered by EPA inspections or by a means other than as a result of a voluntary self audit and timely reporting by the source. Penalties will not be assessed for past violations discovered by a voluntary self audit and voluntarily reported to EPA, unless the past violation was intentional or resulted from reckless conduct. Last, once a violation has been discovered and reported, the source will be required promptly to take prospective actions necessary to prevent a continuance or recurrence of the problem and to commence appropriate remedial measures to protect and restore the quality of the environment.

All policy choices must be measured against the standard of achieving the greatest amount of improvement in our environmental quality. Today, I believe the balance should favor maximizing the incentives for voluntary self audits. Voluntary environmental self audits, reporting past violations and pollution which requires remedial actions discovered by those audits to the EPA, and undertaking prompt and effective remedial measures offer the best opportunity to achieve our national policy objectives in the shortest period of time. This is the right policy choice for the EPA today.

AMERICAN FOREST & PAPER ASSOCIATION,
Washington, DC, March 20, 1995.

Hon. MARK HATFIELD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HATFIELD: I want to express the support of the American Forest & Paper Association (AF&PA) for the efforts you and Senator Brown have undertaken with regard to granting a limited privilege to internal, voluntary environmental audits.

AF&PA is the major trade association representing the forest products industry in this country. We account for 7 percent of all U.S. manufacturing output and directly employ 1.6 million workers in the manufacture of forest and paper products and the recovery and recycling of paper. We contribute $49 billion in direct payrolls to local economies and rank among the top ten employers in 46 of the 50 states.

AF&PA member companies are regulated under a wide range of environmental programs, including the Federal Water Pollution Control Act, the Clean Air Act, and the Resource Conservation and Recovery Act. The Association strongly supports public policies that will serve to increase compliance with environmental laws by granting a limited protection for information developed by companies through voluntary, internal environmental audit programs. Some states, including Oregon and Colorado, have already enacted statutes providing such protections, and we believe the positive experience gained in these instances bolsters the case for a similar statute at the Federal level.

Accordingly, AF&PA strongly supports the leadership you and Senator Brown have shown in this field. Although we have not had the opportunity to analyze your draft legislation in detail, we believe that it will help to lay the foundation for a necessary Federal debate. As a matter of policy, such audits help to increase compliance with environmental safeguards, and should be encouraged. When our analysis of your proposal is completed, AF&PA will share that review with you and your staff. We look forward to working with you to expedite consideration of this important issue.

Sincerely,

B. ROLAND MCELROY,
Vice President,
Government Affairs.

ELF ATOCHEM NORTH AMERICA, INC.,
Arlington, VA, March 21, 1995.

Hon. MARK HATFIELD,
U.S. Senate,
Washington, DC.

Subject: ''Voluntary Environmental Audit Protection Act'' to amend Title 28 of the United States Code.

DEAR SENATOR HATFIELD: On behalf of Elf Atochem North America, Incorporated, I am writing to express our strong support for the proposed ''Voluntary Environmental Audit Protection Act'' introduced by both you and Senator Hank Brown. Our company has developed a strong audit program which will be further strengthened with passage of this proposed legislation. The ability to move rapidly to fix problems and share concerns throughout the company, without the legal concerns that presently overshadow any audit program, will be greatly enhanced.

We are aware of the U.S. Environmental Protection Agency's (EPA) effort to amend its current audit policy. However, in our view EPA still takes the position that ''no good deed goes unpunished,'' by providing for penalties when a company voluntarily discloses violations that would not have been found but for the use of good environmental management through auditing.

For some time, our management has been actively involved in the conceptual issues concerning auditing and environmental management. Frank Friedman, Elf Atochem N.A. Senior Vice-President for Health, Environment and Safety, is author of the leading book on environmental management, ''A Practical Guide to Environmental Management'' (Fifth Edition 1995) published by the Environmental Law Institute. At EPA's request, Mr. Friedman was the lead-off speaker at the Agency's review of its audit policy in July 1994. In his testimony, Mr. Friedman counseled, as did many others, on the need ''for EPA to develop other indicators of enforcement success rather than just on the basis of the number of cases brought''.

There is no question that EPA should retain a strong enforcement program, but it is equally important that enforcement be put in context, namely, as a vehicle for assuring environmental compliance. If compliance is achieved voluntarily; if problems are disclosed and dealt with more rapidly, and more companies develop in-depth audit programs, then EPA's enforcement goals are readily achieved.

We also have, at this time, one important comment on the proposed legislation. Proposed Section 3803(b) limits voluntary disclosure if a company has ''committed repeated violations''. We assume this language applies to companies operating a single ''facility''. If not, such a provision disadvantages companies operating multiple facilities with respect to the audit disclosure protections provided in the proposed bill. In such cases, if a violation has occurred at one facility and a company wants to make certain that this will not occur elsewhere it will be penalized. We are sure this is not the intent of the bill and it should be clarified.

Again, we wish to commend you and your staff for the careful and thoughtful way in which this proposed legislation was crafted. The proposed bill recognizes that if companies have strong, voluntary auditing programs in place, compliance will follow. Because this legislation represents sound public policy that will advance protection of human health and the environment, Elf Atochem (as will, we are certain, other members of the regulated community) is committed to supporting passage of this legislation.

Sincerely,

CHARLES A. KITCHEN,
Director, Government Relations.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, March 1, 1995.

Hon. JOEL HEFLEY,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN HEFLEY: I am writing to express EPA's opposition to the environmental audit privilege/penalty immunity provisions currently contained in H.R. 1047. Our concerns include the following:

1. Environmental damage or even disasters caused by recklessness or gross negligence would go unpunished under certain provisions. Specifically, regardless of the harm inflicted on people or the environment, H.R. 1047 would eliminate all punishment for certain criminal and other violations if they are ''voluntarily'' disclosed. As we read H.R. 1047, a ''voluntary disclosure,'' for which total immunity from civil and criminal penalties is granted, includes information that is required to be reported—including notification of emergencies as well as routine reports, such as Discharge Monitoring Reports under the Clean Water Act. Truly ''voluntary'' disclosures should be encouraged, but not by granting blanket immunity for criminal and other harmful acts.

2. The bill encourages litigation that will further burden our already taxed judicial system. Specifically, the bill uses many vague terms for lawyers to argue over. For example, H.R. 1047 would allow violators to argue that many routine business activities are ''compliance evaluations'' simply to evade disclosure. This kind of litigation will drain both private and government resources and in some cases prevent quick action to address environmental emergencies—despite the exceptions in the bill.

3. The evidentiary privilege in this bill appears to go far beyond the attorney-client and work product privileges by potentially shielding from the government and the public virtually all factual information about environmental noncompliance—including facts underlying a self-evaluation that might be crucial in holding violators accountable for their actions. It appears that the privilege would apply to much more than just audit reports and over documents related to self-evaluations.

4. It makes sense to give substantial penalty reductions to those who come forward, disclose their violations, and promptly correct them. The penalty immunity provision in the bill, however, gives violators an unfair economic advantage over their law-abiding competitors because it does not allow federal and state governments to recover from the violator even the economic benefit they gained from their noncompliance.

As you may know, Administrator Browner asked the Office of Enforcement and Compliance Assurance last May to reassess EPA's environmental auditing policy to see if we needed new incentives to encourage voluntary disclosures and prompt correction of violations uncovered in environmental audits. Our review has been open and inclusive. In July 1994, and again in January 1995, we held public meetings, and an Agency auditing workgroup has met and continues to work with key stakeholders. We have involved industry, trade groups, state environmental commissions and attorneys general's offices, district attorneys' offices, and environmental groups. We have identified approaches that seem to have broad support among these groups.

Consistent with prior correspondence between several House members and Administrator Browner, we expect to announce the results of our reassessment process shortly. The issues surrounding environmental auditing, voluntary self-evaluations and voluntary disclosure are complex, and we are eager to share what we have learned with the Congress in hearings. We think it is crucial that the House take the time to hold appropriate hearings on the full range of views on these issues, and to consider alternative approaches that would have the support of a wide range of stakeholders. Unfortunately, H.R. 1047 falls far short of that mark.

I look forward to working with you and other members on these very important and complex issues.

Sincerely,

STEVEN A. HERMAN,
Assistant Administrator.

HOUSE OF REPRESENTATIVES,
Washington, DC, March 20, 1995.

Mr. STEVEN A. HERMAN,
Assistant Administrator, U.S. Environmental Protection Agency, Washington, DC.

DEAR MR. HERMAN: I am writing in response to your letter of March 1, 1995. While I appreciate the Office of Enforcement and Compliance Assurance taking the time to comment on H.R. 1047, I am disappointed that your letter merely recasts the unsubstantiated objections that the Environmental Protection Agency routinely has made for many years.

Let me respond to each of your specific concerns and take the opportunity to explain why protections for legitimate environmental audits and voluntary disclosures are critical for the public health and the environment.

1. You argue that the voluntary disclosure provisions would grant blanket immunity from criminal penalties and would include information that is required to be reported under environmental laws, such as Discharge Monitoring Reports, etc.

H.R. 1047 does not grant blanket immunity from prosecution. In fact, there is no immunity from prosecution, but simply immunity from administrative, civil and criminal penalties. Further, the immunity is not a ''blanket'' immunity; there are two important limitations. First, the presumption against imposition of penalties is a rebuttable presumption. If the presumption can be rebutted by the EPA (i.e., notice was not given promptly, the information was not learned as a result of an environmental audit or the problem is not corrected) then penalties can be assessed. Second, if a regulated entity has demonstrated a pattern of disregard for environmental laws, they are not eligible for penalty immunity for voluntary disclosures. In addition, information that is voluntarily disclosed that may be required to be reported under an environmental law would only be subject to the immunity if it was learned as a result of performing the environmental audit. This is a significant limitation.

2. Your letter states that the legislation will encourage litigation because it is vague and would allow violators to argue that many routine business activities are compliance evaluations to evade disclosure. You do not believe that the exceptions in the bill will prevent such evasion and, consequently, such litigation.

H.R. 1047 does not privilege any reports or data that are already required to be compiled or reported. Nor does it restrict EPA's ability to request additional data. The definition of a voluntary environmental self-evaluation is clear in the bill. To qualify, the evaluation must be initiated and carried out by the person for the purpose of determining compliance with environmental laws. The EPA itself has defined environmental auditing in its 1986 policy statement in broader terms. Thus, in this legislation, there are no vague terms behind which persons can hide to evade disclosure of anything that is already required to be reported. It is disingenuous for the EPA to suggest increased litigation as a reason to oppose this bill, when many EPA programs have just that effect.

3. You argue that the evidentiary privilege goes beyond the common law attorney-client and work product privileges.

While H.R. 1047 does provide a more expanded privilege than the attorney-client privilege, it does not protect the facts that are required to be provided to the EPA. The EPA still has complete access to the date and reports as it had before. Moreover, the EPA can still obtain additional information through investigations, information requests, sampling and monitoring, etc. Facts available to the EPA in documents required to be maintained by entities, reports that must be provided to the EPA and information obtained from independent sources are all still available to the EPA under H.R. 1047. Presumably, these are the facts the EPA believes are necessary to ensure compliance with environmental laws.

4. Finally, you argue that the penalty immunity in the legislation gives violators an unfair economic advantage over their law-abiding competitors because it does not allow federal and state regulators to recover the economic benefit gained from noncompliance. Your concern that a violator will derive an economic benefit is misplaced.

Under H.R. 1047, as soon as a person voluntarily discloses a violation, that person must promptly achieve compliance in order to receive penalty immunity. These steps include installing whatever equipment may be required. In cases where there are environmentally irresponsible companies that have avoided installing the requisite equipment, any economic benefit that they may have derived will surely be cancelled out—and then some—by having to quickly retrofit their plants to come into compliance. It will likely cost them significantly more to come into compliance at a later date than it did for their competitors who designed compliant systems from the outset. Further, how would the EPA propose to determine any such economic benefit while assuring the certainty required for companies to utilize the voluntary disclosure provisions? I believe this would be terribly difficult to predict with certainty.

In addition to the specific responses above, several other points must be considered regarding H.R. 1047. Administrator Browner has emphasized that ''enforcement is not an end in itself.'' She has noted that the EPA must change its ways; that the agency must do everything it can to focus on compliance, and that obstacles to compliance must be eliminated. H.R. 1047 does just that.

As the EPA recognizes, an environmental enforcement policy should not discourage compliance. Unfortunately, current EPA and Department of Justice policies do precisely that. Under the current enforcement scheme, responsible entities that work to achieve environmental goals find themselves exposed to greater liability than those in the regulated community who do less or do nothing at all.

The result of all this is that responsible members of the regulated community are discouraged from conducting self-evaluations and from voluntarily disclosing violations because of the tremendous risk of civil and criminal enforcement. This negatively impacts compliance which, in turn, negatively impacts public health and the environment. In the end, the environment is the loser.

Since the EPA's goal is compliance, not punishment, as stated by the president last Thursday in announcing his regulatory reform package, then surely it makes sense to

encourage compliance. This view is not without precedent at the federal level. Other federal agencies have recognized the need to encourage compliance, and have done so by implementing protections similar to those in H.R. 1047. The Federal Aviation Administration's policy serves as a perfect example that compliance should come first.

The FAA policy is designed to provide incentives for deficiencies to be identified and corrected by the companies themselves, rather than risk air safety by awaiting the results of an FAA inspection. In implementing the FAA policy, agency officials emphasized that ''aviation safety is best preserved by incentives . . . to identify and correct their own instances of noncompliance and invest more resources in efforts to preclude recurrence, rather than paying penalties''. Surely, environmental protection is at least as important as aviation safety and, therefore, deserves the same incentives to enhance compliance.

H.R. 1047 is critical because it provides incentives to maximize environmental compliance and allocates resources to compliance, not enforcement. I reiterate that intentional violators cannot benefit from the legislation. And while responsible members of the regulated community will indeed benefit in terms of receiving much needed protections and certainty, the real beneficiary of H.R. 1047 is the environment.

I look forward to your participation in this debate as the legislative process moves forward.

Sincerely,

JOEL HEFLEY,
Member of Congress.●

By Mr. STEVENS:

S. 583. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for two vessels; to the Committee on Commerce, Science, and Transportation.

VESSEL DOCUMENTATION LEGISLATION

● Mr. STEVENS. Mr. President, today I am introducing a bill to provide certificates of documentation for the vessels *Resolution* and *Perserverance.*

The hovercraft *Resolution,* Serial Number 77NS8701, and *Perserverance,* Serial Number 77NS8901, were built in 1983 and 1985, respectively, by British Hovercraft Corp. Limited in East Cowes, Isle of Wight, England.

They are 70 feet in length, and have a maximum operating weight of 32 tons.

The craft were sold to Hovertravel, a United Kingdom company, which operated the craft in a passenger ferry operation from the Isle of Wight, England.

The two hovercraft were sold by Hovertravel to the U.S. Navy in 1986 *Resolution,* and 1989 *Perserverance.*

They were modified by Textron in Panama City, FL to be used as training craft for U.S. Navy personnel to learn to operate hovercraft.

After being declared surplus by the U.S. Navy, ownership of the vessels now resides with Champion Constructors, Inc., a subsidiary of Cook Inlet Region, Inc. of Anchorage, AK.

Because the vessels were built in England, they are undocumented, and require a waiver of the Jones Act to be operated in the U.S. coastwise trade.

Champion Constructors, Inc. intends for the vessels to be used between points in Alaska transporting cargo and passengers.

It is my understanding that no other hovercraft of this type and size exist.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 583

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for each of the vessels RESOLUTION (Serial Number 77NS8701) and PERSERVERANCE (Serial Number 77NS8901).●

By Mr. ROBB (for himself, Mr. CRAIG, Mr. AKAKA, Mr. HARKIN, Mr. ROCKEFELLER, Mr. LUGAR, Mr. DEWINE, Mr. STEVENS, Mr. COCHRAN, Mr. WELLSTONE, Mr. FORD, and Mr. KERRY):

S. 584. A bill to authorize the award of the Purple Heart to persons who were prisoners of war on or before April 25, 1962; to the Committee on Armed Services.

PURPLE HEART LEGISLATION

● Mr. ROBB. Madame President, I introduce legislation which will correct an inequity that unfairly denies due recognition to some of America's worthiest veterans.

Specifically, this bill would entitle prisoners of war from War World I, World War II, and Korea to receive the Purple Heart Medal for wounds which were sustained while being captured or while in captivity. Currently, only those veterans who suffer wounds while being captured or in captivity after April 25, 1962, are eligible for the Purple Heart Medal.

While we might debate how best to recognize their sacrifice and hardship, one thing is abundantly clear; we should not differentiate between prisoners of war based solely on the date of the war in which they were captured.

Madam President, as a Vietnam veteran who has had the privilege of leading marines in combat, and as a member of the Senate's Select Committee on POW/MIA Affairs, I am acutely aware of the hardships endured by service personnel who have been captured by hostile military forces. All of these servicemen have suffered mental and physical abuse, and many were tortured, beaten and starved while in confinement.

Our prisoners of war from World War I, World War II, and Korea suffered various wounds and innumerable atrocities at the hands of their captors. Many continue to suffer from physical difficulties associated with their capture and confinement. The Purple Heart Medal would serve to put their service and sacrifice on par with the veterans of other wars, and will remind Americans of their sacrifices. It seems a fitting and overdue recognition.

Madam President, I ask unanimous consent that the text of the bill, the supporting resolutions of the Military Order of the Purple Heart and the Disabled American Veterans, and the letters of support from the DAV, American Legion, AMVETS, and the Jewish War Veterans of the United States, be printed in the RECORD. I would also like to thank my colleagues, Senators AKAKA, COCHRAN, CRAIG, DEWINE, FORD, HARKIN, KERRY, LUGAR, ROCKEFELLER, STEVENS, and WELLSTONE for joining me as original cosponsors of this bill.

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

S. 584

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY TO AWARD PURPLE HEART.

(a) AUTHORITY TO MAKE AWARD.—(1) Subject to paragraph (2), the President may award the Purple Heart to a person described in subsection (b) who was taken prisoner and held captive before April 25, 1962.

(2)(A) Except as provided in subparagraph (B), an award of the Purple Heart under paragraph (1) may be made only in accordance with the standards in effect on the date of the enactment of this Act for the award of the Purple Heart to a person described in subsection (b) who has been taken prisoner and held captive on or after April 25, 1962.

(B) An award of a Purple Heart may not be made under paragraph (1) to any person convicted by a court of competent jurisdiction of rendering assistance to any enemy of the United States.

(b) ELIGIBLE PERSONS.—(1) A person referred to in subsection (a) is an individual—

(A) who is a member of the Armed Forces of the United States; and

(B) who is wounded while being taken prisoner or held captive—

(i) in an action against an enemy of the United States:

(ii) in military operations involving conflict with an opposing foreign force;

(iii) during service with friendly forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party;

(iv) as the result of an action of any such enemy or opposing armed force; or

(v) as the result of an act of any foreign hostile force.

(2) Any wound of a person referred to in paragraph (1)(A) that is determined by the Secretary of Veterans Affairs to be a service-connected injury arising from being taken prisoner or held captive under a circumstance referred to in paragraph (1)(B) shall also meet the requirement set forth in paragraph (1)(B).

(c) RELATIONSHIP TO OTHER AUTHORITY TO AWARD THE PURPLE HEART.—The authority under this Act is in addition to any other authority of the President to award the Purple Heart.

THE MILITARY ORDER
OF THE PURPLE HEART,
Springfield, VA, February 14, 1995.

JAMES CONNELL,
Department State Director,
Richmond, VA.

DEAR MR. CONNELL: I received a call from the Senator's office requesting a copy of the Resolution ''to authorize the award of the Purple Heart Medal.''

Enclosed is a copy of Resolution No. 94–038, passed by the Convention Body at the National Convention of the Military Order of the Purple Heart, in Des Moines, Iowa.

If I can be of further assistance, contact this office.

Sincerely,

EDMUND E. JANISZEWSKI,
National Legislative Director.

RESOLUTION NO. 94–038

Re to authorize the award of the Purple Heart to persons who were prisoners of war on or before April 25, 1962.

Committee: Legislative/Service.

Committee Action: Approve.

Whereas: Current law provides for the award of the Purple Heart Medal to POWs under certain circumstances, who were captured on or after April 25, 1962; and

Whereas: Senator Robb of Virginia has proposed a bill to award the Purple Heart Medal to POWs captured prior to April 25, 1962; and

Whereas: Presidents Kennedy and Reagan have issued Executive Orders allowing for the award of the Purple Heart Medal to civilians wounded under certain circumstances to include terrorists attacks; now, therefore be it

Resolved: That the Military Order of the Purple Heart support legislation proposed by Senator Robb, which is attached to this resolution; and be it further

Resolved: That the Military Order of the Purple Heart of the United States of America seek legislation, to negate the award of the Purple Heart Medal to any civilian under any circumstances; and finally be it

Resolved: That copies of this resolution be forwarded to the 62nd National Convention of the Military Order of the Purple Heart of the United States of America, for adoption by the delegates in assembly at Des Moines, Iowa, August 8th thru August 13th, 1994.

Submitted by Edmund F. Janiszewski, National Legislative Director, July 14, 1994.

Convention Action: Approved by Convention Body August 11, 1994.

DISABLED AMERICAN VETERANS,
Washington, DC, September 6, 1994.

Hon. CHARLES S. ROBB,
State Office of Senator Charles S. Robb, Richmond, VA.

DEAR SENATOR ROBB: Thank you for providing us with a copy of your draft bill to authorize the award of the Purple Heart to persons who were prisoners of war on or before April 25, 1962.

This measure has the support of the Disabled American Veterans. The delegates to our 1994 annual National Convention adopted a resolution (copy enclosed) supporting legislation for this purpose, and your draft bill is consistent with that resolution.

We appreciate the changes you made to address our concerns, and we appreciate your efforts on behalf of this deserving group of veterans.

Sincerely,

RICHARD F. SCHULTZ,
National Legislative Director.

NATIONAL INTERIM LEGISLATIVE COMMITTEE
RESOLUTION

AUTHORIZE THE PURPLE HEART MEDAL TO FORMER POWS OF WORLD WAR I, WORLD WAR II, AND THE KOREAN WAR FOR INJURIES RECEIVED DURING CAPTIVITY

Whereas, Title 32, U.S. Code, effective April 25, 1962, authorizes the award of the Purple Heart to prisoners of war for wounds or injuries sustained as a result of beatings and other forms of physical torture while in captivity; and

Whereas, prior to April 25, 1962, the Purple Heart Medal for former prisoners of war was only awarded to those who were wounded or injured in action prior to or at the time of capture or in an attempted or successful escape; and

Whereas, former prisoners of war of World War I, World War II and the Korean War were physically abused, beaten, tortured and placed on forced work details, without concern for their health by enemy guards and hostile civilians; and

Whereas, many of these servicemen, while in captivity, suffered from physical abuse, malnutrition and exhaustion, as well as received wounds and injuries as a result of direct and indirect action at the hands of their captors; NOW

Therefore, be it Resolved that the Disabled American Veterans in Nation Convention assembled in Chicago, Illinois, August 20–25, 1994, supports the enactment of legislation to provide the same consideration to the award of the Purple Heart Medal to former prisoners of war held captive prior to April 25, 1962, as afforded those captured after that date.

THE AMERICAN LEGION,
Washington, DC, August 29, 1994.

Mr. JIM CONNELL,
Deputy State Director, State Office of Senator Charles S. Robb, Richmond, VA.

DEAR MR. CONNELL: Members of the staff of the American Legion have reviewed Senator Robb's proposed bill authorizing award of the Purple Heart medal. You have satisfied the concerns we outlined in our March 31, 1994 letter and we have no objection to the proposed bill as it now reads. The Legion, however, still has no resolution recognized by the membership on this subject and therefore, cannot specifically and formally endorse the bill at this time.

In most cases dealing with presentation of military awards and decorations, we defer to the Department of Defense and their appropriate directives. If your proposed bill complements a service regulation you should encounter few objections.

Sincerely,

GERALD M. MAY,
Assistant Director,
National Legislative Commission.

AMVETS,
Lanham, MD, August 25, 1994.

Hon. CHARLES S. ROBB,
U.S. Senate,
Washington, DC.

DEAR SENATOR ROBB: I am writing to express AMVETS' support for your bill to award the Purple Heart to certain military personnel who were taken prisoner before April 25, 1962.

We are pleased that your bill will recognize the sacrifices made by those who suffered at the hands of the enemy, whatever the period of conflict.

I would also like to express AMVETS' opposition to awarding the Purple Heart to civilians who suffer injuries because of terrorist action. While we in no way minimize anyone's suffering, there is a fundamental difference between the responsibilities incumbent upon each service member and their civilian counterparts. That alone justifies the limitation on the eligibility for the award.

Thank you again for working for America's veterans, and we look forward to working with you in the future.

Sincerely,

DONALD M. HEARON,
National Commander.●

By Mr. LAUTENBERG:

S. 586. A bill to eliminate the Department of Agriculture and certain agricultural programs, to transfer other agricultural programs to an agribusiness block grant program and other Federal agencies, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE AGRICULTURE MODERNIZATION ACT

● Mr. LAUTENBERG. Mr. President, I introduce the Agriculture Modernization Act. It would eliminate the Department of Agriculture, spinning off some programs to other parts of the Federal Government, and sell the two USDA buildings on the Mall.

This legislation acknowledges what we all know: the Great Depression ended 50 years ago and it's 1995. Many USDA activities should go the way of the WPA and other programs which, like the USDA's commodity price programs, were set up to deal with the devastation caused by the Depression. With recovery, they were disbanded.

House Budget Committee Chairman JOHN KASICH and Senate Majority Leader BOB DOLE have proposed eliminating four departments of government as part of their deficit reduction plan: Committee, Education, Energy, and Housing and Urban Development.

If we want to scale back government, and eliminate wasteful bureaucracies, the USDA is an excellent place to start. It is the most obsolete and bloated of all Cabinet departments. The USDA tops the list for personnel, budget, and subsidies to those who need them least.

In scaling back Government, let's start with a department that provides pork for agribusinesses that don't need it before we eliminate one that helps our children get an education and start on life.

In evaluating the Kasich-Dole proposal, it is important to understand that the USDA has 109,000 employees, more than the other four departments combined. Furthermore, USDA's $62 billion budget dwarfs the budgets of Commerce, Energy, Education and HUD. Indeed, it is almost as large as these four departments combined.

The Agriculture Modernization Act will eliminate wasteful programs in USDA. It will transfer important programs to agencies better suited to administer them, like HHS taking over the Food Stamp Program.

And it will put all the money spent on commodity programs into a block grant which will be phased out completely over 5 years. This will permit the States to help recipients of agricultural entitlement programs adjust to a scaling back, and then loss, of benefits.

This bill will reduce the deficit by approximately $25 billion over 5 years. The Republican leaders have laid out ambitious deficit reduction goals to slice $500 billion off the Federal budget in the next 5 years. They propose to accomplish this without touching Social Security.

That's going to mean very deep cuts. I'd like to see us start on subsidies to agribusiness and waste at USDA before we cut the safety net out from under our Nation's families and children.

The Department of Agriculture's time has come and gone. It began under President Abraham Lincoln. In the 1860's, 60 percent of Americans were farmers and the USDA had 9 employees. Now only 2 percent of Americans are farmers and USDA has 109,000 employees worldwide.

That's one bureaucrat for every five farmers.

The commodity programs began in the Great Depression, when we did not know if America could feed itself. When we didn't know if grocery stores would have food on their shelves.

But American agriculture is much different today. Our stores are stocked with inexpensive foods. And our most competitive commodities are fruits, vegetables, meats, and poultry that don't receive any price subsidies.

It's time to extend free market principles to agriculture.

There are 75,000 farmers with incomes over $250,000 per year who get an average of $26,000 in agricultural subsidies. My small businesspeople in New Jersey making a lot less don't get subsidies. And, the Republicans want to reduce the school lunch program, nutrition programs, take away summer jobs from kids, cut assistance to seniors and others for heating bills, and cut housing aid to AIDS patients, among others.

I say we should start with USDA. No more aid for dependent agribusinesses.

I support entitlement programs for kids and other groups in need. I think we should have a social safety net. But, agribusiness is not on my list of deserving beneficiaries.

This bill sets priorities for deficit reduction. We should start by cutting obsolete programs and programs that benefit those who don't need Government assistance.

Mr. President, I ask unanimous consent that an accompanying factsheet be inserted in the RECORD.

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

THE AGRICULTURE MODERNIZATION ACT OF 1995

This bill will eliminate the USDA in 1996. This will be accomplished by eliminating some programs, phasing out the commodity programs over five years and by transferring some agencies and functions to other departments.

PROGRAMS TO BE ELIMINATED

Market Promotion Program.
Export Enhancement Program.
Rural Telephone Program.
Rural Electricity Program.
Animal Damage Control Program.
Commodity Credit Corporation.

BLOCK GRANT—ADMINISTERED BY THE DEPARTMENT OF COMMERCE (PHASED OUT OVER FIVE YEARS)

All commodity programs including: Feed grains, wheat, rice, cotton, tobacco, dairy, soybeans, peanuts, sugar, honey, and wool.

DEFICIT REDUCTION

This legislation will save approximately $25 billion over five years, not including administrative savings resulting from transferring duplicative functions to other departments and agencies. See attachment for details.

PROGRAMS TO BE TRANSFERRED

Health and Human Services:
Food Stamps, School Lunch, WIC and other nutrition programs. Nutrition programs that are entitlements will remain so.
Food Safety and Inspection Service.
Food and Consumer Service.
Parts of the Animal and Plant Health Inspection Service.
Commerce:
Economic research and statistical programs.
Agriculture research programs.
Regulatory programs.
Economic development programs.
Parts of Animal and Plant Health Inspection Service.
Interior: Forest Service, Natural resource, conservation and environmental programs.
Treasury: Credit and loan programs.
FEMA: Crop insurance.
EPA: Rural Utilities Service Water and Sewer Programs.●

By Mr. HATCH (for himself, Mr. HEFLIN, Mr. DOLE, Mr. THURMOND, Mr. GRASSLEY, Mr. SIMPSON, Mr. KYL, Mr. EXON, Mr. CRAIG, Mr. FORD, Mr. LOTT, Mr. ASHCROFT, Mr. BAUCUS, Mr. BOND, Mr. BREAUX, Mr. CAMPBELL, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. COVERDELL, Mr. D'AMATO, Mr. FAIRCLOTH, Mrs. FEINSTEIN, Mr. GRAMM, Mr. GRAMS, Mr. GREGG, Mr. HELMS, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INHOFE, Mrs. KASSEBAUM, Mr. KEMPTHORNE, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MURKOWSKI, Mr. PRESSLER, Mr. ROCKEFELLER, Mr. ROTH, Mr. SANTORUM, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, and Mr. WARNER):

S.J. Res. 31. A joint resolution proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

Mr. HATCH. Mr. President, throughout our history, the American people have revered the flag of the United States as the symbol of our Nation. The American flag represents in a way nothing else can, the common bond shared by a very diverse people. Yet whatever our differences of party, politics, philosophy, race, religion, ethnic background, economic status, social status, or geographic region, we are united as Americans. That unity is symbolized by a unique emblem, the American flag.

As Supreme Court Justice, John Paul Stevens said in his dissent in the 1989 Texas flag-burning case:

> A country's flag is a symbol of more than nationhood and national unity. It also signifies the ideas that characterize the society that has chosen that emblem as well as the special history that has animated the growth and power of those ideas. . . . So it is with the American flag. It is more than a proud symbol of the courage, the determination, and the gifts of a nation that transformed 13 fledgling colonies into a world power. It is a symbol of freedom, of equal opportunity, of religious tolerance, and of goodwill for other peoples who share our aspirations.

For over 200 years, this proud banner has symbolized hope, opportunity, justice and, most of all, freedom, not just to the people of this Nation, but to people all over the world. I believe that the American flag is equally worthy of protection as the ideals for which it stands.

This February 23 marked the 50th anniversary of one of the most dramatic moments in our Nation's history; the raising of the American flag on the Island of Iwo Jima by U.S. marines during World War II. That heroic image instantly came to symbolize the determination and courage of all of the brave Americans fighting in that great struggle for the very survival of America as a free nation. Fifty years later, it remains one of our Nation's most powerful images, reminding us that throughout our history, through the generations, from the Battle of Bunker Hill to Operation Desert Storm, on every continent and ocean, in every corner of the world, Americans have fought, and in many cases given their lives, fighting under this flag and for the Nation and the ideals it represents. By protecting that flag against acts of physical desecration, we honor their memory and their sacrifice.

I am proud to rise today to introduce a constitutional amendment that would restore to Congress and to the 50 States the right to protect our unique national symbol, the American flag, from acts of physical desecration.

Restoring legal protection to the American flag is not a partisan issue. Forty-three Senators, both Republicans and Democrats, have joined with Senator HEFLIN and myself as original cosponsors of this amendment.

Restoring legal protection to the American flag would not overturn the first amendment. Rather, it would overturn an interpretation of that amendment by the Supreme Court, in which the Court, by the narrowest of margins, five to four, held that flag burning was a form of protected free speech. Distinguished jurists regarded as great champions of the first amendment agreed that physical desecration of the American flag does not fall within the ambit of the first amendment. In the case of Street versus New York, then Chief Justice Earl Warren wrote:

''I believe that the States and the Federal Government have the power to protect the flag from acts of physical desecration and disgrace.'' Justice Abe Fortas wrote: ''The States and the Federal Government have the power to protect the flag from acts of desecration committed in public.'' Justice Hugo Black, generally regarded as a first amendment absolutist, stated: ''It passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the American flag an offense.'' I believe the Court majority in the Texas versus Johnson case had it wrong; burning the flag is conduct and may be prohibited. This amendment would correct that error and restore to Congress and the State the power they historically had to protect the American flag from acts of physical desecration.

Restoring legal protection to the American flag would not place us on a slippery slope precisely because the flag is so unique as our national symbol. There is no other symbol, no other object, which represents our Nation as does the flag. Accordingly, there is absolutely no basis for concern that the protection we seek for the American flag could be extended to cover any other object of form of political expression.

Restoring legal protection to the American flag would not infringe on free speech. Freedom of speech is not and has never been absolute. We have laws against libel, against slander, and against obscenity. As a society, we can and do place limitations on both speech and conduct. The classic example is, of course, the prohibition against shouting fire in a crowded theater. You can't hold a demonstration in a courtroom. You can't make speeches using a bullhorn at 2 a.m. in a residential neighborhood. You can't destroy Government property or buildings as a means of protest. Right here in the U.S. Senate, we prohibit speeches or demonstrations of any kind, even the silent display of signs or banners, in the public galleries. I believe flag burning is in the same category as obscenity—conduct which is beyond the pale of acceptability even in a free society.

For many years, our flag was protected, by Federal law and laws in 48 States, from acts of physical desecration. No one can seriously argue that freedom of speech or freedom of expression was diminished or curtailed during that period. Restoring the protection of law to our flag would not prevent the expression, in numerous ways safeguarded under the Constitution, of a single idea or thought. It merely prevents conduct with respect to one unique, symbolic object, our Nation's flag.

The effort to restore legal protection to our national symbol is a movement of the American people. It has been initiated by grassroots Americans; 91 civic, veterans, and patriotic organizations, led by the American Legion, joined together in the Citizens Flag Alliance, working to build support across this Nation for a constitutional amendment to restore the historical protection of our flag. Forty-six States have passed resolutions urging Congress to send a flag protection amendment to the States for ratification.

Let this be clear: the Citizens Flag Alliance came to me, Senator HEFLIN, and other Members of Congress, before last November. We did not come to them. This effort is not generated from Capitol Hill. The Citizens Flag Alliance presented us with a report on their effort. They asked us for our support for their cause. We were pleased to agree. It is now up to Congress to heed the voice of the American people and pass this amendment.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 31

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

''ARTICLE —

''The Congress and the States shall have power to prohibit the physical desecration of the flag of the United States.''.

Mr. HEFLIN. Mr. President, I rise today in support of a constitutional amendment to prevent the desecration of the American flag. As an original cosponsor along with Senator HATCH and 42 of our colleagues, I urge our colleagues to join in protecting the sanctity of this symbol of our great Nation. As I have said before on the Senate floor, I feel that the Supreme Court's decision in Texas versus Johnson, incorrectly places flag burning under the protection of the first amendment. In my judgement, it is our responsibility to change that decision and return the flag to the position of respect it deserves.

Few people would disagree with the argument that the American flag stands as one of the most powerful and meaningful symbols of freedom ever created. In the dissent in Texas versus Johnson, Chief Justice Rehnquist states in his opening paragraph:

> For more than 200 years, the American flag has occupied a unique position as the symbol of our Nation, a uniqueness that justifies a governmental prohibition against flag burning in the way * * * Johnson did here.

Justice Stevens calls the flag a national asset much like the Lincoln Memorial. He states that:

> Though the asset at stake in this case is intangible, given its unique value, the same interest supports a prohibition on the desecration of the American flag.

I must agree with Chief Justice Rehnquist and Justice Stevens in their belief that the flag should be protected from such desecration. However, I believe that the flag also has a tangible value. I feel that the court could have expressed an opinion that would have allowed protection to both values, for in that case, the flag was stolen.

The flag holds a mighty grip over many people in this country. Its mystical appeal is as unique to every person as a fingerprint. Thousands of Americans have followed the flag into battle and thousands of these Americans have left these battles in coffins draped proudly by the American flag. Nothing quite approaches the power of the flag as it drapes those who died for it, or the power of the flag as it is handed to the widow of that fallen soldier. The meaning behind these flags goes far beyond the cloth used to make the flag or the dyes used to color Old Glory red, white, and blue. The flag reaches to the very heart of what it means to be an American. It would be a tragedy for us to allow the power of the flag to be undermined through the legal desecration of the flag. Allowing the legal burning of that flag creates a mockery of the great respect so many patriotic Americans have for the flag.

JUDICIALLY WRONG

As I have stated before, I feel on many different levels that the Supreme Court's decision was wrong. I feel it was wrong for me personally, it was wrong for patriotism, it was wrong for this country, but perhaps most importantly, this decision was judicially wrong.

I want to emphasize that although I am a strong believer in first amendment rights, I recognize that first amendment rights are not absolute and unlimited. There have been numerous decisions of the Supreme Court that limit freedom of expression.

Some of history's great protectors of the freedom of speech have agreed that the first amendment is not absolute. Many of these protectors have agreed that the flag is a symbol of such profound importance that protecting it is permissible. Later in this speech I will be quoting from some of the protectors of both the flag and the first amendment such as Supreme Court Chief Justice Earl Warren, Justice Hugo Black, Justice John Paul Stevens, and Justice Oliver Wendell Holmes.

In a landmark case reflecting the Supreme Courts long held belief that the freedom of expression is not absolute, the court in *Shenk* v. *United States*, 249 U.S. 47 (1919) stated that:

> The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic.

Justice Oliver Wendell Holmes stated that:

> The question in every case is whether the words [actions] used are used in such clear circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the Congress has a right to prevent.

Clearly the indignation caused by the Johnson decision and the fisticuffs which have broken out in flag burning attempts show that flag burning should not be protected by the first amendment. What if the flag burning had occurred in wartime? Certainly, a clear and present danger would be present.

Justice Stevens wrote in *Los Angeles City Council* v. *Taxpayers for Vincent* 466 U.S. 789 (1984) that:

> The first amendment does not guarantee the right to imply every conceivable method of communication at all times and in all places.

Arguments have been made that limitations on the freedom of expression refer only to bodily harm, however, the Supreme Court has recognized the need for individuals to protect their honor, integrity, and reputation when injured by libel or slander. See: *New York Times* v. *Sullivan*, 376 U.S. 254 (1964) (providing standards regarding the libel of public figures); *Time* v. *Hill*, 385 U.S. 374 (1967) (providing standards regarding libel of private individuals).

These holdings protect an individual's honor from defamation. I see no reason why the honor of our flag should not be protected.

Arguments have also been made that limitations on free speech involve only civil suits. However, the Court has continually upheld criminal statutes involving obscene language and pornography. There is: *New York* v. *Ferber*, 458 U.S. 747 (1982) (upholding a New York statute regarding child pornography); *Miller* v. *California*, 413 U.S. 15 (1973) (this case provides much of the current legal framework for the regulation of obscenity).

The U.S. Supreme Court has even upheld criminal statutes involving draft card burning. In *United States* v. *O'Brian*, 391 U.S. 367 (1968), the Court upheld the Federal statute which prohibited the destruction or mutilation of a draft card. In reaching this decision the Court expressly stated:

> [W]e cannot accept the view that an apparently limitless variety of conduct can be labeled ''speech'' whenever the person engaging in the conduct intends thereby to express an idea.

Certainly the people of America have a right to expect that the honor, integrity, and reputation of this Nation's flag should be protected. If draft card burning can be prohibited, surely burning the American flag can also be prohibited. Does a draft card have more honor than the American flag? Certainly not.

In an earlier decision involving the desecration of the flag, Chief Justice Earl Warren wrote in dissent in *Street* v. *New York*, 394 U.S. 577 (1969):

> I believe that the States and the Federal Government do have the power to protect the flag from acts of desecration and disgrace * * * however, it is difficult for me to imagine that, had the Court faced this issue, it would have concluded otherwise.

In this same case, Justice Hugo Black dissented stating:

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

I do not think that anyone can question that Hugo Black and Earl Warren were champions of the first amendment, but they recognized that the flag was something different, something special. The Supreme Court substantiated this view in *Smith* v. *Coguen*, 415 U.S. 566 (1974), when the majority of the Court noted that:

> [C]ertainly nothing prevents a legislature from defining the substantial specificity what constitutes forbidden treatment of the United States flags.

Finally I would like to quote from Justice Stevens in *Texas* v. *Johnson*, when he says about the flag:

> It is a symbol of freedom, of equal opportunity, of religious tolerance, and of good will for other people who share our aspirations. The symbol carries its message to dissidents both home and abroad who may have no interest at all in our national unity and survival.

I am a strong believer that the rights under the first amendment should be fully protected and do not feel that an amendment changing these rights should be adopted except in very rare instances. The Founding Fathers, in drafting article V of the Constitution, intended that if it would be extremely difficult to amend the Constitution, requiring a two-thirds vote of both Houses of Congress and a difficult ratification process requiring the vote of three-fourths of the States. The history of this country shows that only 27 amendments to the Constitution have been adopted and only 17 after the Bill of Rights—containing the first 10 amendments—were ratified.

Some may ask why have a constitutional amendment; why not try legislation? To those I would say the Senate has passed statutes concerning flag desecration. As a body we have tried to oppose the protection of flag desecration, but statutory law has not worked. We have a number of groups that have joined together to form the Citizen's Flag Alliance. There are about 90 organizations in this wide-ranging coalition. In addition, 46 States' legislatures have passed memorializing resolutions calling for the flag to be protected by the Congress.

In my judgment, we should heed this call and act decisively to ensure that the American flag remains protected and continues to hold the high place we have afforded it in both our hearts and history. The flag is indeed an important national asset which we must always support as we would support the country herself. In closing, I want to share with you the eloquent words of Henry Ward Beecher's work, ''The American Flag,'' which expresses this sentiment:

> A thoughtful mind, when it sees a national's flag, sees not the flag only, but the Nation itself; and whatever may be its symbols, its insignia, he reads chiefly in the flag the government, the principles, the truths, the history which belongs to the Nation that sets it forth.

Mrs. FEINSTEIN. Mr. President, I compliment my colleague on the Judiciary Committee and the Senator from Alabama for his very thoughtful statement and constitutional amendment. I would very much appreciate being listed as a cosponsor of that amendment.

I thank the Senator for his words because I think they were cogent. I also believe they reflect the views of the American people.

Mr. HEFLIN. I thank the Senator.

Mr. MACK. Mr. President, this past election demonstrated the desire of American citizens everywhere for change. People are frustrated with the direction in which this country has been heading and the skewing of priorities and values. One example of how standards and basic values are slipping was the 1989 Supreme Court ruling which permitted the desecration of our Nation's flag.

The American flag has always been a symbol of freedom and democracy throughout the world. It has guided thousands upon thousands of American service men and women as they have fought and died in defense of our basic freedoms.

The Court's decision struck at the heart of everything we hold dear in America. The flag is our most cherished symbol of liberty and is recognized throughout the world as an emblem of hope for those struggling for freedom. We should not condone its willful destruction.

Mr. President, I support the proposal for a constitutional amendment to protect the sanctity of the American flag. With this amendment, the first amendment can be upheld while we clearly declare our reverence for and dedication to our most cherished symbol of freedom—the American flag.

Mr. CRAIG. Mr. President, I am pleased to join my distinguished colleagues in proposing a constitutional amendment to protect the flag of the United States.

We Americans are not one race, nor are we one creed. We are an amalgam of the world's people come together to form a nation. And to symbolize that union, we have chosen a fabric that weaves together our many races, customs, and beliefs: the American flag.

No other emblem, token, or artifact of our Nation has been defended to the death by legions of patriots. No other has drawn multitudes from abroad with the promise of freedom. No other has inspired generations with the belief that life, liberty, and the pursuit of happiness are the birthright of every human being.

Old Glory holds a unique place in the hearts of Americans, and that is why they have requested—indeed, demanded—unique protection for it.

Several years ago, Congress attempted to fashion legislation for this purpose, but it just did not work.

Some people probably thought that was the end of the story. They were

wrong. The American people did not give up; they continued to debate and discuss this matter. And they succeeded in passing memorials in 43 States urging Congress to take action to protect the flag from physical desecration. Some of my colleagues may recall last year, on Flag Day, I placed those memorials in the CONGRESSIONAL RECORD for all to see.

Mr. President, the legislatures submitting those memorials represent nearly 229 million people—more than 90 percent of our country's population. They did not pass these memorials easily or swiftly. In legislature after legislature, the record shows these memorials were given serious and thorough consideration.

Now it is time for the U.S. Congress to match that resolve. Today, in response to the demand of the American people, we are offering this amendment. Mr. President, I urge all my colleagues to join us in supporting this necessary and appropriate measure to safeguard the flag of our Nation.

Mr. KEMPTHORNE. Mr. President, I rise today in strong support of efforts to protect the flag of the United States. I am pleased to join my colleagues in introducing a resolution proposing a constitutional amendment to prohibit the desecration of the flag.

Mr. President, the support for this amendment is, quite simply, overwhelming; 46 State legislatures have already passed memorializing resolutions requesting the Congress to pass an amendment to protect the flag. I am pleased to note my home State, Idaho, passed just such a resolution 2 years ago. In asking the Congress to present an antiflag desecration amendment to the States for ratification, the Idaho Legislature stated,

> . . . the American Flag to this day is a most honorable and worthy banner of a nation which is thankful for its strengths and committed to curing its faults, and a nation which remains the destination of millions of immigrants attracted by the universal power of the American ideal . . . .

Should not the symbol of this ideal be protected? Since 1777, when the Second Continental Congress passed a resolution describing what the flag of the fledgling Nation should be, the Stars and Stripes has stood for all that we hold dear. While great leaders of this Nation have come and gone, the flag has been an American constant. Through the Civil War, two World Wars, the Depression, and times of domestic crisis, Old Glory has flown proudly, serving as a symbol to all the world that freedom, justice, and liberty remain alive in the United States.

As a member of the Senate Armed Services Committee, I have had the opportunity to meet the men and women of our Armed Forces around the world. These individuals put their lives on the line regularly, so that we may live in peace and safety. And while they are serving us, the American public, they do so under the Stars and Stripes. For those who are stationed overseas, the flag represents the rights and freedoms which they stand prepared to defend, even while on foreign ground. It also stands for their home, the Nation which proudly awaits their return when their duties are done. For those who have finished their service to their country, the flag is a constant reminder that the ideals for which they fought still live, and that their sacrifices were not in vain.

In 1867, Senator Charles Sumner expressed his sentiments about the flag. His words, I think, are most appropriate to be repeated at this time. He said:

> There is the national flag. He must be cold, indeed, who can look upon its folds rippling in the breeze without pride of country. If in a foreign land, the flag is companionship, and country itself with all its endearments . . . White is for purity; red for valor; blue, for justice. And altogether, bunting, stripes, stars, and colors, blazing in the sky, make the flag of our country, to be cherished by all our hearts, to be upheld by all our hands.

Mr. President, how can we continue to uphold the flag to the honor it deserves if we allow it, the symbol for all for which this Nation stands, to be willfully desecrated and defiled? The courts have said we can not protect the flag by statute; our only remedy is to amend the Constitution. So, I stand here today to express my wholehearted support for the resolution which will be introduced today to propose just such an amendment. I hope my colleagues will join me in acting to protect our flag and all that it represents of our past, our present, and our future.

Mr. PRESSLER. Mr. President, I rise to announce my cosponsorship of a joint resolution to amend the U.S. Constitution to allow Congress and the States to prohibit the desecration of the American flag.

Having served two tours in the Vietnam war as a second lieutenant in the Army, our flag has a deep personal meaning for me. I experience a feeling of pride when I see the Stars and Stripes flying in front of a military base, on top of the U.S. Capitol Building here in Washington, or in a small town parade in South Dakota. I feel sick to my stomach when I think of its desecration by my fellow Americans.

The American flag is a dramatic living symbol of the principles for which this great country stands—liberty, due process, justice for all. Our flag is an emblem of the ideals which set our Nation apart from all others.

When someone willfully desecrates the flag, he or she is committing a malicious act of violence that incites those Americans who have dedicated their lives to uphold the values we cherish. It tramples the honor of millions of soldiers—men and women—who served, fought, and died to preserve the values which the flag represents. It strikes at the honor of the untold number of civilians who have worked in industries behind the lines to support our military forces.

Mr. President, in Johnson versus Texas (1989), the Supreme Court ruled that desecrating the flag is free speech protected by the first amendment. In response, Congress overwhelmingly passed the Flag Protection Act of 1989. However, the following year, in United States versus Eichmann (1990), the Court struck down this statute as an impermissible infringement on the first amendment.

I disagree with the Supreme Court's rulings. I believe it is entirely appropriate for Congress to enact legislation to protect from desecration the primary symbol of our great Nation. However, unless the Johnson and Eichmann decisions are overturned by a subsequent Court, it is clear that only a constitutional amendment will ensure the validity of any State or Federal statute banning flag desecration.

Opponents of our effort to protect the flag argue that free speech is among the most sacred rights enjoyed by Americans. They believe that this amendment limits their right to freedom of speech. I certainly agree with the need to vigilantly guard the first amendment. No other society on this planet is more tolerant of different viewpoints and opinions than America. But flag desecration is more than just speech. It is among those acts of public behavior so offensive and harmful that they fall outside of the protections of the first amendment.

For example, one of the famous limits of free speech is that one cannot shout ''fire!'' in a crowded move theater. Malicious and defamatory speech, such as slander and libel, also are not protected by the first amendment. Obscenity does not enjoy the protection of the first amendment. We do not permit people to freely deface a synagogue or church buildings in the name of free speech. Likewise, physical desecration of the flag through burning, trampling, or any other method is not free speech protected by our Constitution. It is offensive conduct that does not deserve protection by the first amendment.

I am therefore proud to join with my colleagues in supporting a constitutional amendment to protect the American flag. Since the Johnson ruling, 43 States have passed resolutions calling on Congress to pass a flag desecration amendment for consideration by the States. Mr. President, I urge my colleagues to carry out the clear will of the American people by supporting this resolution.

Mr. D'AMATO. Mr. President, generations of immigrants have surmounted incredible obstacles to reach our shores and experience true American freedom. Our Nation's flag has welcomed these weary travelers for hundreds of years. For these people, the U.S. flag is more than just a simple patchwork of cloth, it is the patchwork of our values, our beliefs, and our freedoms. It is our history.

During this history, many brave Americans sacrificed their lives for the flag. At Malmedy, Khe Sanh, Inchon, Iwo Jima, Kuwait City, and in numerous other places, Americans fought and

died for democracy, freedom, and justice. Indeed, our flag represents these virtues. It would be an insult to their memory if we allowed the continued desecretion of our flag. This practice must end, and end now.

Ms. SNOWE. Mr. President, I am proud to join Senators HATCH, HEFLIN, and others in cosponsoring the proposed constitutional amendment to grant to States and Congress the power to prohibit the physical desecration of the flag of the United States. Our flag occupies a truly unique place in the hearts of millions of citizens as a cherished symbol of freedom and democracy. As a national emblem of the world's greatest democracy, the American flag should be treated with respect and care. Our free speech rights do not entitle us to simply consider the flag as personal property, which can be treated any way we see fit including physically desecrating it as a legitimate form of political protest.

The flag is not just simply a visual symbol to us—it is a symbol whose pattern and colors tell a story that rings true for each and every American. The 50 stars and 13 stripes on the flag are a reminder that our Nation is built on the unity and harmony of 50 States. And the colors of our flag were not chosen randomly: red was selected because it represents courage, bravery, and the willingness of the American people to give their life for their country and its principles of freedom and democracy; white was selected because it represents integrity and purity; and blue because it represents vigilance, perseverance, and justice. Thus, this flag has become a source of inspiration to every American wherever it is displayed.

For these reasons and many others, a great majority of Americans believe—as I strongly do—that the American flag should be treated with dignity, respect, and care—and nothing less.

Unfortunately, not everyone shares this view. In June 1990, the Supreme Court ruled that the Flag Protection Act of 1989, legislation adopted by the Congress in 1989 generally prohibiting physical defilement or desecration of the flag, was unconstitutional. This decision, a 5-to-4 ruling in U.S. versus Eichman, held that burning the flag as a political protest was constitutionally protected free speech. The Flag Protection Act had originally been adopted by the 101st Congress after the Supreme Court ruled in its Texas versus Johnson case that existing Federal and State laws prohibiting flag burning were unconstitutional because they violated the first amendment's provisions regarding free speech.

I profoundly disagreed with both rulings the Supreme Court made on this issue. In our modern society, there are still many different forums in our mass media, television, newspapers and radio and the like, through which citizens can freely and fully exercise their legitimate, constitutional right to free speech, even if what they have to say is overwhelmingly unpopular with a majority of American citizens.

The constitutional amendment being introduced today has been carefully drafted to simply allow the Congress and individual State legislatures to enact laws prohibiting the physical desecration of the flag, if they so choose. It certainly does not stipulate or require that such laws be enacted. When considering the issue, it is helpful to remember that prior to the Supreme Court's 1989 Texas versus Johnson ruling, 48 States, including my own State of Maine, and the Federal Government had anti-flag-burning laws on their books for years.

Whether our flag is flying over a ball park, a military base, a school, or on a flag pole on Main Street, our national standard has always represented the ideals and values that are the foundation this great nation was built on. And our flag has come not only to represent the glories of our Nation's past, but it has also come to stand as a symbol for hope for our Nation's future. Mr. President, I urge my colleagues to support this important amendment.

Mr. FORD. Mr. President, there are many reasons for protecting the unique symbol of the American flag, from the basic liberties it represents to the promise of a better future. But some of the greatest reasons for protecting the flag occurred thousands of miles away from our own shores.

For example, 50 years ago, just days after American troops had claimed victory at Iwo Jima, six soldiers helped raise the American flag on the highest point of the island. You can see a soldier on the far left with both arms reaching skyward. It's unclear whether he's just released the flag pole, or if he's trying to touch the flag he fought so hard for, one last time.

And perhaps it was the last time he touched the American flag, for 26 days later, he died on the island he had helped claim.

The soldier was Pvt. Franklin Sousley of Kentucky, and his image in this famous photograph not only has frozen in time his historic efforts, but tied them inextricably to the symbolism of the American flag.

The flag that flew at Iwo Jima serves as a reminder of how war changes the course of a life, of a nation, of a world, so that even individuals who were never there, recognize that those hours of destruction and suffering have altered the future irrevocably.

But Private Sousley's outstretched arms also mirror the actions of the millions who've reached out for all that our flag symbolizes, from the basic liberties written into our Constitution to the dreams of a better future for their families.

That is why I believe so strongly that the physical integrity of the American flag must be protected. Back in 1989, the U.S. Supreme Court declared unconstitutional a Texas flag desecration statute, ruling that flag desecration was free speech protected under the first amendment.

In response to that decision, the Senate overwhelmingly passed the Flag Protection Act, which was also declared unconstitutional. The Supreme Court's action made it clear that a constitutional amendment is necessary for enactment of any binding protection of the flag.

Up to this point, neither House of Congress has been able to garner the two-thirds supermajority necessary for passage of a constitutional amendment. But because grassroots support for this amendment continues to grow, I have joined with Members on both sides of the aisle to again try passing this amendment. I am hopeful that this time we'll get the necessary votes.

Clearly no legitimate act of political protest should be suppressed. Nor should we ever discourage debate and discussion about the Federal Government. The narrowly written amendment gives Congress and the States the ''power to prohibit the physical desecration of the flag of the United States,'' without jeopardizing those rights of free speech.

Fifty years ago, the American flag flying over Iwo Jima literally meant life for the flyers of crippled B–29's who would have died at sea if they had not had the island to land on.

Today, the flag that hangs in schoolrooms, over courthouses, in sports stadiums, and off front porches all across America, has a bit of the battle of Iwo Jima woven into its fabric.

Mr. President, I would say that's something worth protecting.

Mr. THURMOND. Mr. President, I rise today as an original cosponsor of a proposed constitutional amendment authorizing the Congress and the States to prohibit the physical desecration of the American flag.

In June of 1989, the Supreme Court issued a ruling in Texas versus Johnson which allows the contemptuous burning of the American flag. Immediately after that ruling, I drafted and introduced a proposed constitutional amendment to overturn that unfortunate decision.

After bipartisan discussions with Members of the Senate and President Bush, the Senate voted on a similar proposal which I cosponsored. During this time, the Supreme Court ruled in U.S. versus Eichman that a Federal statute designed to protect the flag from physical desecration was unconstitutional. The Texas decision had involved a State statute designed to protect the flag.

On June 26, 1990, the Senate voted 58–42 for the proposed constitutional amendment, 9 votes short of the two-thirds needed for congressional approval.

Opponents of this proposed amendment claimed it was an infringement on the free speech clause of the first amendment. However, the first amendment has never been construed as protecting any and all means of expressive

conduct. Just as we are not allowed to falsely shout ''fire'' in a crowded theater or obscenities on a street corner as a means of expression, I firmly believe that physically desecrating the American flag is highly offensive conduct and should not be allowed.

The opponents of our proposal to protect the American flag have misinterpreted its application to the right of free speech. Former Chief Justice Warren, Justices Black and Fortas are known for their tenacious defense of first amendment principles. Yet, they all unequivocally stated that the first amendment did not protect the physical desecration of the American flag. In Street versus New York, Chief Justice Warren stated, ''I believe that the States and the Federal Government do have the power to protect the flag from acts of desecration and disgrace.''

In this same case, Justice Black, who described himself as a first amendment ''absolutist'' stated, ''It passes my belief that anything in the Constitution bars a State from making the deliberate burning of the American flag an offense.''

Mr. President, the American people treasure the free speech protections afforded under the first amendment and are very tolerant of differing opinions and expressions. Yet, there are certain acts of public behavior which are so offensive that they fall outside the protection of the first amendment. I firmly believe that flag burning falls in this category and should not be protected as a form of speech. The American people should be allowed to prohibit this objectionable and offensive conduct.

It is our intention with this proposed constitutional amendment to establish a national policy to protect the American flag from contemptuous desecration. The American people look upon the flag as our most recognizable and revered symbol of democracy which has endured throughout our history.

Mr. President, I urge my colleagues to join the sponsors and cosponsors of this proposed constitutional amendment to protect our most cherished symbol of democracy.

Mr. GRASSLEY. Mr. President, I am pleased to join the chairman of the Senate Judiciary Committee, Senator HATCH, and my other distinguished colleagues in cosponsoring this resolution to amend the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States.

Let me state from the outset, as I have stated before, this amendment will merely restore the power to Congress and the States to prohibit flag desecration—a power that we believe they have always had.

Unfortunately, the Supreme Court incorrectly interpreted the Constitution's first amendment. The Court failed to discern the difference between protected speech, and an act—a type of hate crime of physical desecration of the flag.

Therefore, our amendment does not tamper or tinker with the Constitution's Bill of Rights that protects speech.

But, Mr. President, for argument's sake, assume this amendment does tamper with the speech clause.

Let us ask ourselves a question. If we had to choose, should we amend the speech clause to: protect the American flag from acts of desecration; or protect our reelection to office by restricting the right of voters to hear words of opposition and opponents to speak against us—the incumbents?

I regret, Mr. President, that too many Senators have sided with incumbent protection instead of flag protection.

Remember, the Senate in 1990 fell 9 votes short of the 67 needed to pass a flag protection amendment to the Constitution because, by and large, it was argued that there is something very special, and untouchable about the speech clause.

Mr. President, you may be astonished to learn that 28 of the 42 Senators who voted against amending the speech clause to protect the American flag, had either sponsored, cosponsored, or voted to facilitate the passage of a constitutional amendment pegged the ''incumbent protection bill.''

This speech clause amendment was aimed at overturning the Supreme Court's Buckley versus Valeo decision. The Court said the first amendment speech clause is violated by restrictions on money used on political communication during campaigns.

So while these Senators supported incumbent protection, they strongly opposed flag protection.

Had only 9 of these 28 Senators had their priorities straight, the Senate would have passed the flag protection amendment 5 years ago.

And let us keep in mind, during the 200 years following 1789, over 10,000 constitutional amendments were introduced to the various Congresses.

In fact, in 1990, 525 out of 535 U.S. Representatives and Senators had sponsored or cosponsored amendments to the Constitution for everything under the Sun—from ERA to D.C. statehood.

So, the fact is, a vast majority of Congressmen and Senators do support amending the Constitution.

And more to the point at hand, many of those 28 Senators—who were happy to amend the speech clause to protect their incumbency, but joined in killing an amendment to protect the American flag—are still serving in the 104th Congress.

Mr. President, in fact, enough are still serving, that if they would change their priorities and their votes, this time our efforts to pass an amendment to protect the American flag will succeed.

ADDITIONAL COSPONSORS

S. 39

At the request of Mr. STEVENS, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 39, a bill to amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes.

S. 125

At the request of Mr. MOYNIHAN, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 125, a bill to authorize the minting of coins to commemorate the 50th anniversary of the founding of the United Nations in New York City, New York.

S. 216

At the request of Mr. HATCH, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 216, a bill to repeal the reduction in the deductible portion of expenses for business meals and entertainment.

S. 243

At the request of Mr. ROTH, his name was added as a cosponsor of S. 243, a bill to provide greater access to civil justice by reducing costs and delay, and for other purposes.

S. 262

At the request of Mr. GRASSLEY, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 262, a bill to amend the Internal Revenue Code of 1986 to increase and make permanent the deduction for health insurance costs of self-employed individuals.

S. 295

At the request of Mrs. KASSEBAUM, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 295, a bill to permit labor management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes.

S. 304

At the request of Mr. SANTORUM, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 332

At the request of Mr. CONRAD, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 332, a bill to provide means of limiting the exposure of children to violent programming on television, and for other purposes.

S. 351

At the request of Mr. HATCH, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 351, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities.