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House of Representatives

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O God, our help in ages past, our hope for years to come, we pray that You would give to us and all people the gifts of the spirit of knowledge and understanding, of gratitude and praise, of wisdom and tolerance, of justice and mercy, and of peace and goodwill. It is our petition that we would open our hearts to Your love and our souls to Your grace so that we honor You by our words and deeds and serve the people of this Nation with dignity. As You have created a whole world by Your hand, O gracious God, so recreate us in the spirit of reconciliation and unity that together as a nation we will be the people You would have us be. This is our earnest prayer. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. SOLOMON. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. SOLOMON. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 325, nays 72, answered ''present'' 9, not voting 28, as follows:

[Roll No. 495]

YEAS—325

Abercrombie	Condit	Gordon
Allen	Cook	Goss
Andrews	Cooksey	Graham
Archer	Cox	Granger
Armey	Coyne	Greenwood
Bachus	Cramer	Hall (OH)
Baesler	Crapo	Hall (TX)
Baker	Cubin	Hamilton
Baldacci	Cummings	Harman
Ballenger	Danner	Hastert
Barcia	Davis (IL)	Hastings (WA)
Barr	Davis (VA)	Hayworth
Barrett (NE)	Deal	Hilleary
Barrett (WI)	DeGette	Hobson
Bartlett	Delahunt	Hoekstra
Barton	DeLauro	Holden
Bass	DeLay	Hooley
Bateman	Deutsch	Horn
Bentsen	Diaz-Balart	Hostettler
Bereuter	Dickey	Hoyer
Berman	Dicks	Hunter
Bilbray	Dingell	Hutchinson
Bilirakis	Doggett	Inglis
Bishop	Dooley	Istook
Blagojevich	Doolittle	Jackson (IL)
Bliley	Doyle	Jenkins
Blumenauer	Dreier	John
Blunt	Duncan	Johnson (CT)
Boehlert	Dunn	Johnson (WI)
Boehner	Edwards	Johnson, E. B.
Bonilla	Ehlers	Johnson, Sam
Bono	Ehrlich	Jones
Boswell	Emerson	Kanjorski
Boucher	Eshoo	Kaptur
Boyd	Etheridge	Kelly
Brady (TX)	Evans	Kennedy (MA)
Bryant	Everett	Kennelly
Bunning	Ewing	Kildee
Burr	Farr	Kilpatrick
Burton	Fawell	Kim
Buyer	Foley	Kind (WI)
Callahan	Forbes	King (NY)
Calvert	Ford	Kingston
Camp	Fossella	Kleczka
Campbell	Fowler	Klink
Canady	Franks (NJ)	Klug
Capps	Frelinghuysen	Knollenberg
Cardin	Frost	Kolbe
Castle	Gallegly	LaHood
Chabot	Ganske	Lampson
Chambliss	Gejdenson	Lantos
Chenoweth	Gekas	Largent
Christensen	Gilchrest	Latham
Clayton	Gillmor	LaTourette
Clement	Gilman	Lazio
Coble	Gonzalez	Leach
Coburn	Goode	Levin
Collins	Goodlatte	Lewis (CA)
Combest	Goodling	Lewis (KY)
Linder	Paul	Smith (NJ)
Lipinski	Paxon	Smith (OR)
Livingston	Payne	Smith (TX)
Lofgren	Pease	Smith, Linda
Lowey	Pelosi	Snowbarger
Lucas	Peterson (MN)	Snyder
Luther	Peterson (PA)	Solomon
Maloney (NY)	Pickering	Souder
Markey	Pitts	Spence
Mascara	Pombo	Spratt
Matsui	Pomeroy	Stabenow
McCarthy (MO)	Porter	Stearns
McCarthy (NY)	Portman	Stokes
McCollum	Price (NC)	Stump
McDermott	Quinn	Sununu
McHale	Radanovich	Talent
McHugh	Rahall	Tanner
McInnis	Rangel	Tauscher
McIntosh	Redmond	Tauzin
McIntyre	Regula	Taylor (NC)
McKeon	Riley	Thomas
McKinney	Rivers	Thornberry
Meehan	Rodriguez	Thune
Mica	Roemer	Thurman
Millender-McDonald	Rogers	Tiahrt
Miller (FL)	Rohrabacher	Tierney
Minge	Ros-Lehtinen	Torres
Mink	Rothman	Traficant
Moakley	Roukema	Turner
Moran (VA)	Roybal-Allard	Upton
Morella	Royce	Walsh
Murtha	Rush	Wamp
Myrick	Ryun	Watkins
Nadler	Salmon	Watt (NC)
Neal	Sanchez	Watts (OK)
Nethercutt	Sanders	Waxman
Neumann	Sandlin	Weldon (FL)
Ney	Sawyer	Weldon (PA)
Northup	Saxton	Wexler
Norwood	Schumer	Weygand
Nussle	Sensenbrenner	White
Ortiz	Serrano	Whitfield
Owens	Sessions	Wilson
Oxley	Shaw	Wise
Packard	Shays	Wolf
Pappas	Sherman	Woolsey
Parker	Shimkus	Yates
Pascrell	Shuster	Young (AK)
Pastor	Sisisky	Young (FL)
	Skaggs	

NAYS—72

Ackerman	DeFazio	Gutknecht
Aderholt	English	Hansen
Becerra	Ensign	Hastings (FL)
Berry	Fattah	Hefley
Bonior	Fazio	Hill
Borski	Filner	Hilliard
Brady (PA)	Fox	Hinchey
Brown (CA)	Frank (MA)	Hulshof
Brown (FL)	Furse	Jackson-Lee (TX)
Brown (OH)	Gephardt	Kennedy (RI)
Clay	Gibbons	Kucinich
Clyburn	Green	LaFalce
Costello	Gutierrez	

Lee	Pickett	Taylor (MS)
Lewis (GA)	Poshard	Thompson
LoBiondo	Ramstad	Towns
Manzullo	Rogan	Velazquez
McGovern	Sabo	Vento
McNulty	Schaffer, Bob	Visclosky
Meeks (NY)	Scott	Waters
Menendez	Skelton	Weller
Moran (KS)	Smith (MI)	Wicker
Oberstar	Stark	Wynn
Olver	Stenholm	
Pallone	Stupak	

ANSWERED ''PRESENT''—9

Carson	Martinez	Reyes
Cunningham	Metcalf	Sanford
Manton	Petri	Shadegg

NOT VOTING—28

Cannon	Hyde	Pryce (OH)
Conyers	Jefferson	Riggs
Crane	Kasich	Scarborough
Davis (FL)	Maloney (CT)	Schaefer, Dan
Dixon	McCrery	Skeen
Engel	McDade	Slaughter
Hefner	Meek (FL)	Smith, Adam
Herger	Miller (CA)	Strickland
Hinojosa	Mollohan	
Houghton	Obey	

□ 1020

So the Journal was approved.

The result of the vote was announced as Clerk announced as above recorded.

PERSONAL EXPLANATION

Mr. HINOJOSA. Mr. Speaker, during rollcall vote No. 495 on the Journal I was unavoidably detained. Had I been present, I would have voted "yes."

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore (Mr. LAHOOD). Will the gentleman from New York (Mr. SOLOMON) come forward and lead the House in the Pledge of Allegiance.

Mr. SOLOMON led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 678. An act to require the Secretary of the Treasury to mint coins in commemoration of Thomas Alva Edison and the 125th anniversary of Edison's invention of the light bulb, and for other purposes.

H.R. 1659. An act to provide for the expeditious completion of the acquisition of private mineral interests within the Mount St. Helens National Volcanic Monument mandated by the 1982 Act that established the Monument, and for other purposes.

H.R. 2000. An act to amend the Alaska Native Claims Settlement Act to make certain clarifications to the land bank protection provisions, and for other purposes.

H.R. 2411. An act to provide for a land exchange involving the Cape Cod National Seashore and to extend the authority for the Cape Cod National Seashore Advisory Commission.

H.R. 2795. An act to extend certain contracts between the Bureau of Reclamation and irrigation water contractors in Wyoming and Nebraska that receive water from Glendo Reservoir.

H.R. 4079. An act to authorize the construction of temperature control devices at Folsom Dam in California.

H.R. 4081. An act to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Arkansas.

H.R. 4166. An act to amend the Idaho Admission Act regarding the sale or lease of school land.

H.R. 4655. An act to establish a program to support a transition to democracy in Iraq.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 3528. An act to amend title 28, United States Code, with respect to the use of alternative dispute resolution processes in United States district courts, and for other purposes.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3874) ''An Act to amend the National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to extend certain authorities contained in those Acts through fiscal year 2003, and for other purposes.''

The message also announced that the Senate has passed bills of the following titles in which concurrence of the House is requested:

S. 736. An act to convey certain real property within the Carlsbad Project in New Mexico to the Carlsbad Irrigation District.

S. 744. An act to authorize the construction of the Fall River Water Users District Rural Water System and authorize financial assistance to the Fall River Water Users District, a non-profit corporation, in the planning and construction of the water supply system, and for other purposes.

S. 1175. An act to reauthorize the Delaware Water Gap National Recreation Area Citizen Advisory Commission for 10 additional years.

S. 1637. An act to expedite State review of criminal records of applicants for bail enforcement officer employment, and for other purposes.

S. 1641. An act to direct the Secretary of the Interior to study alternatives for establishing a national historic trail to commemorate and interpret the history of women's rights in the United States.

S. 2041. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Willow Lake Natural Treatment System Project for the reclamation and reuse of water, and for other purposes.

S. 2086. An act to revise the boundaries of the George Washington Birthplace National Monument.

S. 2117. An act to authorize the construction of the Perkins County Rural Water System and authorize financial assistance to the Perkins County Rural Water System, Inc., a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes.

S. 2140. An act to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Denver Water Reuse project.

S. 2142. An act to authorize the Secretary of the Interior to convey the facilities of the Pine River Project, to allow jurisdictional transfer of lands between the Department of Agriculture, Forest Service, and the Department of the Interior, Bureau of Reclamation, and the Bureau of Indian Affairs, and for other purposes.

S. 2235. An act to amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage the use of school resource officers.

S. 2239. An act to revise the boundary of Fort Matanzas National Monument, and for other purposes.

S. 2240. An act to establish the Adams National Historical Park in the Commonwealth of Massachusetts, and for other purposes.

S. 2241. An act to provide for the acquisition of lands formerly occupied by the Franklin D. Roosevelt family at Hyde Park, New York, and for other purposes.

S. 2246. An act to amend the Act which established the Frederick Law Olmsted National Historic Site, in the Commonwealth of Massachusetts, by modifying the boundary, and for other purposes.

S. 2247. An act to permit the payment of medical expenses incurred by the United States Park Police in the performance of duty to be made directly by the National Park Service, and for other purposes.

S. 2248. An act to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision, when required by State law, and for other purposes.

S. 2257. An act to reauthorize the National Historic Preservation Act.

S. 2284. An act to establish the Minuteman Missile National Historic Site in the State of South Dakota, and for other purposes.

S. 2285. An act to establish a commission, in honor of the 150th Anniversary of the Seneca Falls Convention, to further protect sites of importance in the historic efforts to secure equal rights for women.

S. 2309. An act to authorize the Secretary of the Interior to enter into an agreement for the construction and operation of the Gateway Visitor Center at Independence National Historical Park.

S. 2468. An act to designate the Biscayne National Park Visitor Center as the Dante Fascell Visitor Center.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of House Resolution 577, the Chair announces that he has designated this time for the taking of the official photo of the House of Representatives in session. The House will be in a brief recess while the Chamber is being prepared for the photo. The Members will please remain in place when the photographs are taken. Members will please face the camera. The process will take approximately 15 minutes. About 5 minutes after that, the House will proceed with the business of the House.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess until approximately 10:50 a.m.

Accordingly (at 10 o'clock and 23 minutes a.m.), the House stood in recess until approximately 10:55 a.m.)

REQUEST TO EXTEND DEBATE ON IMPEACHMENT INQUIRY RESOLUTION

☐ 1055

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that the debate on House Resolution 581 regarding proceeding with an impeachment inquiry be expanded to the time of 8 hours.

The SPEAKER. The Chair is constrained not to recognize the gentleman for that purpose at this time.

AUTHORIZING THE COMMITTEE ON THE JUDICIARY TO INVESTIGATE WHETHER SUFFICIENT GROUNDS EXIST FOR THE IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

Mr. HYDE. Mr. Speaker, by direction of the Committee on the Judiciary, I call up H. Res. 581, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 581

Resolved, That the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in accordance with the rules of the committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

SEC. 2. (a) For the purpose of making such investigation, the committee is authorized to require—

(1) by subpoena or otherwise—

(A) the attendance and testimony of any person (including at a taking of a deposition by counsel for the committee); and

(B) the production of such things; and

(2) by interrogatory, the furnishing of such information;

as it deems necessary to such investigation.

(b) Such authority of the committee may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole or by subcommittee.

Subpoenas and interrogatories so authorized may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them, and may be served by any person designated by the chairman, or ranking minority member, or any member designated by either of them. The chairman, or ranking minority member, or any member designated by either of them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness. For the purposes of this section, ''things'' includes, without limitation, books, records, correspondence, logs, journals, memorandums, papers, documents, writings, drawings, graphs, charts, photographs, reproductions, recordings, tapes, transcripts, printouts, data compilations from which information can be obtained (translated if necessary, through detection devices into reasonably usable form), tangible objects, and other things of any kind.

The SPEAKER. The resolution, since reported from the Committee on the Judiciary, constitutes a question of privilege and may be called up at this time.

Mr. HYDE. Mr. Speaker, while the normal procedure grants 1 hour of debate on a privileged resolution, I propose doubling that time.

Therefore, I ask unanimous consent that I be recognized for 2 hours for the debate on H. Res. 581, 1 hour of which I intend to yield to the gentleman from Illinois (Mr. CONYERS) for the purposes of debate only. And anybody on my side who was constrained to object, I hope they will withhold their objection so we can have the 2 hours of debate.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. CONYERS. Mr. Speaker, reserving the right to object, I appreciate the unanimous consent that is being put forward, and ask my friend, the distinguished gentleman from Illinois (Mr. HYDE), chairman of the Committee on the Judiciary, if he would add 2 hours to that request, please.

I understand the exigencies of the moment, but I have enormous pressure being put upon the ranking member for Members to merely have a chance to get in a brief expression on this historic occasion, and I ask that the gentleman give that his most generous consideration.

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Speaker, I thank the gentleman for yielding. I can only say that we have had extensive discussions and I am fearful that there would be several objectors to that. So, I am constrained to offer the extra hour only and not go beyond that.

I would suggest a special order tonight where everybody can speak as long and as loudly as they want.

☐ 1100

Mr. CONYERS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request gentleman from Illinois?

There was no objection.

The SPEAKER. The gentleman from Illinois (Mr. HYDE) is recognized for 2 hours.

Mr. HYDE. Mr. Speaker, for purposes of debate only, I yield 1 hour to the distinguished minority ranking member on the Committee on the Judiciary, the gentleman from Michigan (Mr. CONYERS), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

PARLIAMENTARY INQUIRY

Mr. EDWARDS. Mr. Speaker, considering the historical importance of this vote today and the precedent we will set for decades to come, would it be within the rules of the House for me at this time to ask unanimous consent that each Member of this House, who feels in his or her conscience that he or she would want to speak for 2 minutes on this issue, be allowed that opportunity as they try to represent the 560,000 people in their district?

The SPEAKER. The gentleman is not recognized for that purpose, and the House has already established by unanimous consent the 2-hour time limit.

PARLIAMENTARY INQUIRY

Mr. DINGELL. Mr. Speaker, reserving the right to object.

The SPEAKER. There is no request to be objected to at this time, but the Chair would be glad to recognize the gentleman from Michigan (Mr. DINGELL) for a parliamentary inquiry.

Mr. DINGELL. Then I will make this a parliamentary inquiry, Mr. Speaker.

Why is it we are not being afforded more time to debate this? This is one of the most important questions——

The SPEAKER. That is not a parliamentary inquiry, but that might be raised during debate, if the gentleman gets time.

PARLIAMENTARY INQUIRY

Mr. ACKERMAN. Mr. Speaker, parliamentary inquiry. I would like to inquire if a unanimous consent request is in order.

The SPEAKER. That would not be in order at this time unless the gentleman from Illinois yielded for that purpose.

Mr. ACKERMAN. Mr. Speaker, will the gentleman yield?

The SPEAKER. The gentleman from Illinois (Mr. HYDE) controls the time.

Mr. ACKERMAN. Will the gentleman yield for a unanimous consent request?

Mr. HYDE. Mr. Speaker, I must insist on regular order or we will not get through with this, so I cannot yield for a unanimous consent request.

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on House Resolution 581, the resolution now under consideration.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. ACKERMAN. Mr. Speaker, reserving the right to object, we are just asking for fairness.

The SPEAKER. Does the gentleman from New York (Mr. ACKERMAN) object?

Mr. ACKERMAN. In that case, Mr. Speaker, I object.

The SPEAKER. Objection is heard.

The Chair recognizes the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Speaker, general leave was objected to?

The SPEAKER. General leave was objected to. The gentleman from Illinois (Mr. HYDE) controls the time and has yielded to himself.

Mr. HYDE. Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, today we will vote on an historic resolution to begin an inquiry into whether the President has committed impeachable offenses. All of us are pulled in many directions by our political parties, by philosophy and friendships; we are pulled by many competing forces, but mostly we are moved by our consciences. We must listen to that still small voice that whispers in our ear, duty, duty, duty.

Some years ago Douglas MacArthur, in a famous speech at West Point, asserted the ideal of our military forces as duty, honor and country. We do not have to be a soldier in a far-off land to feel the force of those words. They are our ideal here today as well.

We have another ideal here, to attain justice through the rule of law. Justice is always and everywhere under assault, and our duty is to vindicate the rule of law as the surest protector of that fragile justice.

And so here, today, having received the referral in 17 cartons of supportive material from the Independent Counsel, the question asks itself: Shall we look further or shall we look away?

I respectfully suggest that we must look further by voting for this resolution and thus commencing an inquiry into whether or not the President has committed impeachable acts. We do not make any judgments, we do not make any charges, we simply begin a search for truth.

My colleagues will hear from our opponents that, yes, we need to look further, but do it our way. Their way imposes artificial time limits, limits our inquiry to the Lewinsky matter, and requires us to establish standards for impeachment that have never been established before, certainly not in the Nixon impeachment proceedings, which we are trying to follow to the letter.

We have followed the Rodino format. We will move with all deliberate speed. Many raise concerns about that proposition. Let me speak directly to those concerns. Some suggest the process to date has been partisan, yet every member of the Committee on the Judiciary voted for an inquiry in some form. We differ over the procedural details, not the fundamental question of whether we should go forward.

Many on the other side of the aisle worry that this inquiry will become an excuse for an open-ended attack on this administration. I understand that worry. During times when Republicans controlled the executive branch and I was in the minority, I lived where they are living now.

With that personal experience, I pledge to my colleagues the fairest and most expeditious search for the truth that I can muster. I do not expect that I will agree with my Democratic friends at each step along the way, but I know that to date we have agreed on many things. In fact, we have agreed on many more things than is generally known.

I hope at the end of this long day we will agree on the result. I am determined we will continue to look every day for common ground and to agree where we can. When we must disagree, we will do everything we can to minimize those disagreements. At all times, civility must be the watch word for Members on both sides of the aisle. Too much hangs in the balance for us not to rise above partisan politics.

I will use all my strength to ensure that this inquiry does not become a fishing expedition. Rather, I am determined that it will be a fair and expeditious search for truth. We have plenty enough to do now, we do not need to search for new material.

However, I cannot say that we will never address other subjects, nor would it be responsible to do so. I do not know what the future holds. If substantial and credible evidence of other impeachable offenses comes to us, as the Independent Counsel hinted or suggested in a letter we received only yesterday, the Constitution will demand that we do our duty. Like each of my colleagues, I took an oath to answer that call. I intend to do so, and I hope my colleagues will join with me if that day comes. I do not think we want to settle for less than the whole truth.

Some are concerned about timing. Believe me, nobody wants to end this any sooner than I do. But the Constitution demands that we take the amount of time necessary to do the right thing in the right way. A rush to judgment does not serve anybody's interest, certainly not the public's interest. As I have said publicly, my fervent hope and prayer is we can end this process by the end of the year. That is my new year's resolution. However, to agree to an artificial deadline would be irresponsible. It would only invite delay and discourage cooperation.

For those who worry about the timing, I urge them to do everything possible to encourage cooperation. No one likes to have their behavior questioned. The best way to end the questions is to answer them in a timely and truthful manner. Thorough and thoughtful cooperation will do more than anything to put this matter behind us.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. SOLOMON.)

(Mr. SOLOMON asked and was given permission to revise and extend his remarks.)

Mr. SOLOMON. Mr. Speaker, I certainly thank the gentleman for yielding me this time, and I just rise in support of the resolution and to commend the Committee on the Judiciary.

Mr. Speaker, I rise in support of this resolution to authorize and direct the Committee on the Judiciary to investigate whether sufficient grounds exist to impeach the President of the United States.

I commend the Judiciary Committee for following the intent of the Rules Committee resolution, H. Res. 525, which passed the House overwhelmingly on September 11. That resolution instructed the Committee to carefully review and release the material in the independent Counsel's report, expunging that material in the Independent Counsel's report, expunging that material which is not relevant or may interfere with ongoing investigations.

I would say to the Committee—you have judiciously carried out the instructions given to you by the House, and I commend you for it.

The public release of the material in that report, with appropriate redactions, was necessary to give Members of the House the ability to cast informed votes here on the floor today. Members of the House and the public, unfortunately, must have a dialogue about the contents of this report.

I believe that in approving the release of this material by such a large margin, the House relied on the traditional notion that an informed citizenry is critical to the success of our republic.

In supporting this resolution before the House today, let me say to the Members that regardless of your personal feelings about the President, whether political supporters or not, you have a constitutional obligation to set aside those feelings and cast your vote solely on the basis of whether you believe the evidence submitted to this House is sufficient grounds to undertake an impeachment inquiry.

Prior to today, I have withheld judgment and made no statements to the media regarding the substantive grounds for impeachment. However, I have reviewed the evidence in the report and I find it thorough, well-documented, and exhaustive in its corroborating detail.

After reviewing all of this evidence, I believe we have an overwhelming constitutional duty to vote to proceed with an inquiry.

I for one will continue to reserve judgment on whether articles of impeachment should be brought until after the Judiciary Committee has completed its investigation and sends a further recommendation to the House.

Mr. Speaker, today we should not determine whether to impeach the man who holds the Executive Office of the President. Rather, we should ratify the Judiciary Committee's recommendation that there is enough evidence to formally ask that question.

In doing so, we affirm the grim charge handed down by the framers of the Constitution, to guard against degradation of the office by the man who happens to hold it.

During the debate on whether to include the impeachment clause in the Constitution at the convention, Governor Morris, a delegate from Pennsylvania, offered an amendment to strike the clause.

At the conclusion of the debate, he changed his mind and supported the impeachment clause and argued, ''Our executive is not like a Magistrate having a life interest, much less like one having an hereditary interest in his office.''

With the unique idea of this constitutional clause as a foundation for our deliberation, our action here today affirms that we are not like the rest of the world.

I urge support for the resolution.

Mr. HYDE. Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself 10 seconds.

I really want to say to the chairman of the Committee on the Judiciary, the gentleman from Illinois (Mr. HENRY HYDE), that I respect the fulsomeness and fairness of his statement. I know that he is a person of his word, and I hope that these processes within our committee and the Congress will follow along the lines that he has outlined so admirably.

Mr. Speaker, I yield 4½ minutes to the gentleman from Virginia (Mr. RICK BOUCHER), the principal architect of the alternative proposal to the motion on the floor that will be embodied in a motion to recommit.

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Mr. Speaker, I want to thank the gentleman from Michigan for yielding this time to me and commend him for the leadership that he has exerted as we have worked on this side in order to offer a fair and a balanced alternative to the resolution of inquiry.

At the conclusion of this debate, I will offer a motion to recommit the resolution offered by the gentleman from Illinois to the Committee on the Judiciary with the instruction that the committee immediately report back that resolution to the House with instructions that it contain our Democratic alternative.

While we would have preferred that Democrats have a normal opportunity to present our resolution as an amendment, the procedure that is being used by the House today does not make a Democratic amendment in regular course in order. The motion to recommit with instructions does, however, give us an opportunity to have the House adopt the Democratic plan.

The Democratic amendment is a resolution for a full and complete review by the Committee on the Judiciary of the material that has been presented to the House by the office of Independent Counsel. The Republican resolution also provides for that full and complete review. The difference between the Democratic and the Republican approaches is only over the scope of the review, only over the time that the review will take, and only over our insistence that the Committee on the Judiciary, in conducting its process, pay deference and become aware of the historical constitutional standard for impeachment that has evolved to us over the centuries and was recognized most recently by the Committee on the Judiciary in 1974 and then recognized by the full House of Representatives.

The public interest requires a fair and deliberate inquiry in this matter. Our resolution provides for that fair and deliberate inquiry. But the public interest also requires an appropriate boundary on the scope of the inquiry. It should not become an invitation for a free-ranging fishing expedition, subjecting to a formal impeachment inquiry matters that are not before the Congress today. The potential for such a venture should be strictly limited by the resolution adopted today by the House, and our Democratic proposal contains those appropriate limits. It would subject to the inquiry the material presented to us by the office of Independent Counsel, which is the only material before the House today.

The public interest also requires that the matter be brought to conclusion at the earliest possible time; that is, consistent with a thorough and complete review. The country has already undergone substantial trauma. If the committee carries this work beyond the time that is reasonably needed to conduct its complete and thorough review, that injury to the Nation will only deepen. We should be thorough, but we should also be prompt.

Mr. Speaker, given that the facts of this matter are generally well-known, given that there are only a handful of witnesses who have relevant information that can be addressed in this inquiry, and given the further fact that all of those witnesses have already been the subject of extensive review by the Grand Jury, and their testimony is available, this inquiry can, in fact, be prompt. The committee's work should not extend into next year. A careful and a thorough review can be accomplished between now and the end of this year, and our Democratic resolution provides that appropriate limitation on time.

The resolution requires that the committee hold hearings on the constitutional standard for impeachment, which was clearly stated in the conclusion of the committee's report in the Watergate years of 1974. Our substitute then directs that the committee compare the facts that are stated in the referral of the Independent Counsel to that historical constitutional standard and, if any facts rise to the level of impeachable conduct, that material would then be subjected to the thorough inquiry and review process contained within our resolution.

Under the resolution that we are putting forth, the committee will begin its work on the 12th day of October, that is next Monday, and will conclude all proceedings, including the consideration of recommendations, during the month of December.

□ 1115

There would then be ample time for the House of Representatives to consider those recommendations and conclude its work by the end of this year.

The procedure we are recommending is fair, it is thorough, it is prompt. It is a recommendation for an inquiry. It would assure an appropriate scope. It would give deference to the historical constitutional standard for impeachment, and it would assure that this matter is put behind us so the Nation can proceed with its very important business by the end of this year.

Mr. HYDE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Wisconsin (Mr. SENSENBRENNER), a member of the committee.

Mr. SENSENBRENNER. Mr. Speaker, I rise in support of the resolution of inquiry.

At Monday's meeting of the Committee on the Judiciary, Investigative Counsel David Shippers informed the committee that the material received to date shows that the President may have committed 15 felonies. These alleged felonies were in the course of the President's successfully defeating Paula Jones' civil rights lawsuit, claims the Supreme Court in a 9–0 decision said that she had the right to pursue. The President denies all these allegations. Obviously someone is telling the truth and someone is lying.

The Committee on the Judiciary must be given the power to decide this issue. What is at stake here is the rule of law. Even the President of the United States has no right to break the law. If the House votes down this inquiry, in effect, it will say that even if President Clinton committed as many as 15 felonies, nothing will happen. The result will be a return to the imperial presidency of the Nixon era where the White House felt that the laws did not apply to them, since they never would be punished. That would be a national tragedy of immense consequences.

Vote for the resolution. Let the Committee on the Judiciary try to find the truth.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the able gentleman from New York (Mr. SCHUMER), a senior member of our Committee on the Judiciary.

Mr. SCHUMER. Mr. Speaker, I thank the gentleman for yielding time.

Mr. Speaker, this is a serious and solemn day. After a careful reading of the Starr report and other materials submitted by the Office of Independent Counsel as well as a study of the origins and history of the impeachment clause of the Constitution, I have come to the conclusion that, given the evidence before us, while the President deserves significant punishment, there is no basis for impeachment of the President and it is time to move on and solve the problems facing the American people, like health care, education and protecting seniors' retirement.

To me, Mr. Speaker, it is clear that the President lied when he testified before the grand jury not to cover a crime but to cover embarrassing personal behavior. While it is true that in ordinary circumstances and in most instances an ordinary person would not be punished for lying about an extramarital affair, the President has to be held to a higher standard and must be held accountable. But high crimes and misdemeanors, as defined in the Constitution and as amplified by the Federalist Papers and Justice Story, have always been intended to apply to public

actions relating to or affecting the operation of the government, not to personal or private conduct.

That said, the punishment for lying about an improper sexual relationship should fit the crime. Censure or rebuke is the appropriate punishment. Impeachment is not. It is time to move forward, not have the Congress and American people endure the specter of what could be a year-long focus on a tawdry but not impeachable affair. Today the world economy is in crisis and cries out for American leadership, without which worldwide turmoil is a grave possibility. The American people cry out for us to solve the problems facing them. This investigation, now in its fifth year, has run its course. It is time to move on.

Mr. HYDE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Pennsylvania (Mr. MCHALE).

Mr. MCHALE. Mr. Speaker, Franklin Roosevelt once said that ''the presidency is preeminently a place of moral leadership.''

I want my strong criticism of President Clinton to be placed in context. I voted for President Clinton in 1992 and 1996. I believed him to be the ''Man from Hope'' as he was depicted in his 1992 campaign video. I have voted for more than three-fourths of the President's legislative agenda and I would do so again. My blunt criticism of the President has nothing to do with policy. Moreover, the President has always treated me with courtesy and respect and he has been more than responsive to the concerns of my constituents.

Unfortunately, the President's misconduct has now made immaterial my past support or agreement with him on issues. Last January 17, the President of the United States attempted to cover up a sordid and irresponsible relationship by repeated deceit under oath in a Federal civil rights suit. Contrary to his later public statement, his answers were not ''legally accurate,'' they were intentionally and blatantly false. He allowed his lawyer to make arguments to the court based on an affidavit that the President knew to be false. The President later deceived the American people and belatedly admitted the truth only when confronted some 7 months later by a mountain of irrefutable evidence. I am convinced that the President would otherwise have allowed his false testimony to stand in perpetuity.

What is at stake is really the rule of law. When the President took an oath to tell the truth, he was no different at that point from any other citizen, both as a matter of morality and as a matter of legal obligation. We cannot excuse that kind of misconduct because we happen to belong to the same party as the President or agree with him on issues or feel tragically that the removal of the President from office would be enormously painful for the United States of America. The question is whether or not we will say to all of our citizens, including the President of the United States, when you take an oath, you must keep it.

Having deliberately provided false testimony under oath, the President in my judgment forfeited his right to office. It was with a deep sense of sadness that I called for his resignation. By his own misconduct, the President displayed his character and he defined it badly. His actions were not ''inappropriate.'' They were predatory, reckless, breathtakingly arrogant for a man already a defendant in a sexual harassment suit, whether or not that suit was politically motivated.

And if in disgust or dismay we were to sweep aside the President's immoral and illegal conduct, what dangerous precedent would we set for the abuse of power by some future President of the United States?

We cannot define the President's character. But we must define the Nation's. I urge an affirmative vote on the resolution.

Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to the gentleman from New York (Mr. NADLER), who coauthored the alternative proposal that we shall shortly offer this morning.

Mr. NADLER. Mr. Speaker, the issue in the potential impeachment is whether to overturn the results of a national election, the free expression of the popular will of the American people. It is an enormous responsibility, and an extraordinary power. It is not one that should be exercised lightly. It is certainly not one which should be exercised in a manner in which or would be perceived to be unfair or partisan.

The work of this House during the Nixon impeachment investigation commanded the respect and support of the American people. A broad consensus that President Nixon had to go was developed precisely because the process was seen to be fair and deliberate. If our conduct in this matter does not earn the confidence of the American people, then any action we take, especially if we seek to overturn the result of a free election, will be viewed with great suspicion and could divide a nation for years to come.

We do not need another ''Who lost China?'' debate. We do not need a decade of candidates running for office accusing each other of railroading a democratically elected President out of office, or participating in a thinly failed coup d'etat.

The issue has the potential to be the most divisive issue in American public life since the Vietnam War. The process by which we arrive at our decision must be seen to be both nonpartisan and fair. The legitimacy of American political institutions must not be called into question.

I do not believe personally that all the allegations in the Starr report, if proven true, describe impeachable offenses. We need to remember that the framers of the Constitution did not intend impeachment as a punishment for a wrongdoing but as a protection of constitutional liberties and of the structure of the government that they were establishing against a President who might seek to become a tyrant.

The President's acts, if proven true, may be crimes, calling for prosecution or other punishment, but not impeachment. So I do not believe we need a formal impeachment inquiry. But if we are to have an inquiry, it must be fair. So far it has been anything but fair. The President was not given the Starr report before it was made public; a violation of all the precedents. No debate on the committee occurred on the merits whatsoever. We spent a month on deciding what should be released and what should be kept in private, and then we heard the report of the two counsels and then we discussed procedure but not a minute of debate on the merits on the evidence, on the standard of impeachment, on anything.

The supreme insult to the American people, an hour of debate on the House floor on whether to start, for the third time in the American history, a formal impeachment proceeding. We debated two resolutions to name post offices yesterday for an hour and a half. An hour debate on this momentous decision is an insult to the American people and another sign that this is not going to be fair.

The democratic amendment is a fair device for a fair process. It provides for a limitation in scope in time, and I urge its adoption.

POINT OF ORDER

Mr. OBEY. Mr. Speaker, I make a point of order.

The SPEAKER. The gentleman will state his point of order.

Mr. OBEY. Mr. Speaker, this is a fairly important issue. It seems to me that if Members are going to vote on it the least they could do is be here in the chamber when it is debated, and I would hope that the leadership of both parties would be sending out messages to the Members that whatever they are doing, they ought to drop it and get their tails here.

Mr. HYDE. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Florida (Mr. CANADY), a member of the committee.

Mr. CANADY of Florida. Mr. Speaker, I rise today to support the impeachment inquiry resolution of the Committee on the Judiciary, a resolution which ensures that we expeditiously deal with the serious charges against the President in a process that is fair, thoughtful and deliberative.

In this resolution, we followed the pattern and procedures established in the Nixon impeachment inquiry. This model served the House well in the Nixon case. It has stood the test of time and there is no reason that we should abandon this model now.

The House should reject the unprecedented Democratic alternative with its unwise, arbitrary and unrealistic limitations and restrictions on the ability of the Committee on the Judiciary to

do its job. We must recognize that the Democratic alternative sets up a process that has never, not once, been followed in the more than 200-year history of impeachment under our constitution. It is totally without precedent.

Some have claimed that the charges against the President do not amount to high crimes and misdemeanors but the very report cited by the President's lawyers, which was prepared by the impeachment inquiry staff in the Nixon case, recognizes that conduct of the President which, and I quote, ''undermines the integrity of office'' is impeachable. The unavoidable consequence of perjury and obstruction of justice by a President would be to erode respect for the office of the President. Such acts inevitably subvert the respect for the law, which is essential to the well-being of our constitutional system.

If perjury and obstruction of justice do not undermine the integrity of office, what offenses would? Not long after the Constitution was adopted, one of the framers wrote, if it were to be asked what is the most sacred duty and the greatest source of security in a republic, the answer would be, an inviolable respect for the Constitution and laws. Those, therefore, who set examples which undermine or subvert the authority of the laws lead us from freedom to slavery. They incapacitate us for a government of laws.

Today, as Members of this House, it is our solemn responsibility under the Constitution to move forward with this inquiry and to set an example that strengthens the authority of the laws and preserves the liberty with which we have been blessed as Americans.

Mr. CONYERS. Mr. Speaker, I yield 1½ minutes to the gentleman from Florida (Mr. WEXLER), a valuable member of the Committee on the Judiciary.

Mr. WEXLER. Mr. Speaker, God help this Nation if today we become a Congress of endless investigation, accomplices to this unAmerican inquisition that would destroy the presidency over an extramarital affair.

The global economy is crumbling and we are talking about Monica Lewinsky.

Saddam Hussein hides weapons and we are talking about Monica Lewinsky.

□ 1130

Genocide wracks Kosovo, and we are talking about Monica Lewinsky.

Children crammed into packed classrooms, and we are talking about Monica Lewinsky.

Families cannot pay their medical bills, and we are talking about Monica Lewinsky.

God help this Nation if we trivialize the Constitution of the United States and reject the conviction of our Founding Fathers that impeachment is about no less than the subversion of the government. The President betrayed his wife; he did not betray the country. God help this Nation if we fail to recognize the difference.

Mr. HYDE. Mr. Speaker, I yield 2 minutes the distinguished gentleman from Arkansas (Mr. HUTCHINSON).

Mr. HUTCHINSON. Mr. Speaker, today we are considering a resolution of inquiry into the conduct of the President of the United States. It is not about a person, but it is about the rule of law. Each of us took a simple oath to uphold the Constitution of the United States. The Constitution provides a path to follow in these circumstances. The path may not be well worn, but it is well marked, and we will be wise to follow it rather than to concoct our own ideas on how to proceed.

The gentleman from New York concluded that the President has lied under oath, that he should be punished, but he should not be impeached. The gentleman is way ahead in his conclusion of where this process should be and where I am. I would say that this process is not about punishment. The purpose of this process is to examine the public trust, and, if it is breached, to repair it.

We have been referred serious charges of perjury, obstruction of justice and abuse of power. The President and his lawyers have denied each of these charges, as is his right to do. Our response should be that we need to examine these facts to determine the truth and to weigh the evidence, and it is our highest duty today to vote for this inquiry so that, if the result is there are no impeachable offenses, we can move on, but if there is more to be done, we can be sure that the rule of law will not be suspended or ignored by this Congress.

The Watergate model was chosen because that was what was demanded by my friends from across the aisle. This resolution does not direct the committee to go into any additional areas, but it does give the committee the authority to carry out its responsibility and to bring this matter to a conclusion without further delay.

It is my firm commitment, as an Arkansan, as an American and as someone who has tried to work with my colleagues from both side of the aisle, to be fair in every way in the search for truth. Did the President participate in a scheme to obstruct justice? Did the President commit perjury? Do these allegations, if proven, constitute impeachable offenses? We can answer these questions in a fair and bipartisan manner, and that is my commitment.

People say this is not Watergate. That is true. Every case is different. But the rule of law and our obligation to it does not change. They do not change because of position, personalities or power. The rule of law and justice depends upon this truth.

I ask my colleagues to support the resolution.

Mr. CONYERS. Mr. Speaker, I yield 1½ minutes to the gentleman from Wisconsin (Mr. BARRETT).

Mr. BARRETT of Wisconsin. Mr. Speaker, many of the President's actions were wrong. In fact, they were indefensible. But our role today is not to attack him. Our role today is to make sure that this process is defensible.

And this is not a defensible process. This Chamber spent a day, a little more than a day, debating renaming an airport, and we are spending 2 hours on deciding the future of this Presidency. That is unfair.

There should be an inquiry; we should move on. But it has to be fair, and what we are seeing today is not fair, it is not focused.

We have a report from Kenneth Starr. We should focus our inquiry on the report and any subsequent matters Ken Starr brings us.

We should have a target date of completion. We should aim to finish this by December 31. And if we cannot get it done, we can ask for an extension, and that can happen.

But the American people want this to be a fair process, and they are not stupid, and they recognize that this is not a fair process. The President may be punished, the President should be held accountable for his actions, but we have a duty, each and every person in this Chamber has a duty, to do that in a fair way.

And I think each of us has to examine our conscience and ask whether we want to have a wide-ranging fishing expedition or whether we want to focus it on the report that has been brought to us and any subsequent matters the special prosecutor brings to us. If we do that, I think we can do that on a bipartisan basis, and I think that will be fair, and that is what the American people want.

Mr. HYDE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California (Mr. DREIER).

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, this is obviously a very difficult time for every Member of this House.

I think it was said first by the gentleman from Illinois (Mr. HYDE): Duty, duty, duty. The gentleman from Wisconsin (Mr. BARRETT) just talked about our duty. But I think, over and above our duty, I think it is important for us to recognize the words of the gentleman from Pennsylvania (Mr. MCHALE) who talked about the importance of the rule of law. That really is why we are here.

Over the past several weeks and months a number of us have dusted off our copies of the Federalist Papers, John Jay, Alexander Hamilton, James Madison—James Madison being the author, the father of the Constitution. Towards the end of the 51st Federalist, James Madison puts it perfectly as we look at the challenge that we face today. He said:

> Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained or until liberty be lost in the pursuit.

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that on the motion

to recommit we be granted 5 minutes on each side for the purpose of comments and for the purpose of debate.

The SPEAKER. Has the gentleman from Illinois yielded to the gentleman from Michigan for the purpose of that request?

Mr. HYDE. Yes, Mr. Speaker. I think 5 minutes on each side on the motion to recommit is justifiable, and I support the gentleman in his request.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield 1½ minutes to the gentleman from New Jersey (Mr. ROTHMAN), an able member of the Committee on the Judiciary.

Mr. ROTHMAN. Mr. Speaker, after 4½ years investigation of nearly every aspect of President Clinton's public and private life, Independent Counsel Ken Starr presented the House with 11 allegations of impeachment, all relating only to the President's misconduct with Monica Lewinsky. The Democrats say that these are serious allegations and that we should resolve these 11 charges by the end of this year and let the chips fall where they may. The Republicans say that they will not be limited to the 4½ year investigation by Mr. Starr. They feel that Mr. Starr was too light on President Clinton, and so they want an impeachment inquiry not only limited to Mr. Starr's charges regarding Miss Lewinski, but any other charges anyone can come up with on any subject at any time and with no time limit. And they want the American people to pay for it.

Mr. Speaker, I believe the Republican bill is unfair, it is unfair to the President, it is unfair to our country, and it is not in our national interest. We already know that what the President did was wrong, It was morally wrong, and now we need to decide what is an appropriate punishment for his offenses.

But let us reject the open-ended Republican inquiry. Let us instead follow the democratic model and resolve the 11 charges that Mr. Starr actually brought to us and do so before the end of the year so that we can get together as a Nation and address the serious and important other issues that face us here at home and around the world.

Mr. HYDE. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT), a member of the committee.

(Mr. CHABOT asked and was given permission to revise and extend his remarks.)

Mr. CHABOT. Mr. Speaker, I rise in support of the resolution.

Our responsibility today is to determine if the evidence we have examined thus far warrants further investigation by the Committee on the Judiciary. We do not sit in judgment today. We are not here to convict or punish or sentence today. We are here to seek the truth.

To fulfill our constitutional duty we must determine if the evidence presented to date strongly suggests wrongdoing by the President and if the alleged wrongdoing likely rises to the level of an impeachable offense; that is, a high crime or misdemeanor. I would submit that strong evidence exists that the President may have committed perjury and the historic record demonstrates that perjury can be an impeachable offense.

Based on the facts and on the law, this House has a constitutional duty to proceed to a formal inquiry.

Mr. Speaker, I think I speak for most of my colleagues when I say that this is not a matter to be taken lightly. Rarely in one's political life is one forced to confront such an awesome and historic responsibility. It is my sincere hope that we can work together as the Founding Fathers envisioned, in a bipartisan fashion, to complete this task as expeditiously as possible and to do what is in the best interests of the country.

I would urge my colleagues on both sides of the aisle to rise above the partisan fires that too often burn in our Nation's capital. Consider the facts at hand and fulfill our constitutional responsibilities by moving forward with a fair and thorough investigation of this important matter.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. LOFGREN), a member of the Committee on the Judiciary who has worked tirelessly on crafting a middle course for the Members of the House of Representatives.

Ms. LOFGREN. Mr. Speaker, many of us have labored very hard to craft a plan that would allow us to deal with the referral of the independent counsel in a way that is focused, in a way that is fair, in a way that is prompt and efficient, and, most of all, in a way that puts our Constitution first. I am very distressed to say that I do not see that that is going to happen today in this chamber.

Mr. Speaker, I fear what Alexander Hamilton warned against in Federalist Paper Number 65, that ''there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt.'' That prophecy, that fear, is about to be realized. I believe that the majority has used its raw voting power to create a proposal that could result in a wide-ranging and lengthy impeachment inquiry. The Committee on the Judiciary may become the standing committee on impeachments. And I further fear that the rules in the Constitution may never be applied to the referral that has been sent to us. Even worse, we may end up—as happened Monday—with the majority counsel creating entirely new standards for high crimes and misdemeanors, which will have a very serious distorting effect on our constitutional system of government.

□ 1145

When we are lost, the best thing for us to do is to look to our Constitution as a beacon of light and a guideline to get us through trying times. Historically, impeachment was to be used when the misconduct of the executive was so severe that it threatened the very constitutional system of government itself. Ben Franklin described it as the alternative to assassination. It is that standard that needs to be applied in this case.

The question is not whether the President's misconduct was bad. We all know that the President's misconduct was bad. The question is, are we going to punish America instead of him for his misconduct? Are we going to trash our Constitution because of his misconduct? Are we going to make sure that this investigation goes on interminably while we ignore economic crises, or the needs of our students for education?

I fear that we are letting down our country. Twenty-four years ago, as an idealistic student, I watched this body rise to the occasion. Twenty-four years ago, as an idealistic student, I worked on the staff of a member of the Judiciary Committee, and I saw the committee, and I saw this Congress do a very hard thing: come together, become nonpartisan, and do a tough job for America.

I am very concerned that, instead of rising to this occasion today, we are falling down and lowering ourselves and America with it. I urge the adoption of the Boucher amendment.

Mr. HYDE. Mr. Speaker, I am pleased to yield 1 minute to the distinguished gentlewoman from Florida (Ms. ROS-LEHTINEN).

Ms. ROS-LEHTINEN. Mr. Speaker, our laws promise a remedy against sexual harassment. But if we say that lying about sex in court is acceptable or even expected, then we have made our sexual harassment laws nothing more than a false promise, a fraud upon our society, upon our legal system, and upon women.

Lying under oath and obstruction of justice are ancient crimes of great weight because they shield other offenses, blocking the light of truth in human affairs. There they are a dagger in the heart of our legal system and our democracy. They cannot and must not be tolerated.

The office of the presidency is due great respect, but the President is a citizen with the same duty to follow the laws as all other citizens. The world marvels that our President is not above the law, and my vote today helps assure that this rule continues.

With a commitment to the principles of the rule of law, which makes this country the beacon of hope for political refugees like myself throughout the world, I cast my vote in favor of the resolution to undertake an impeachment inquiry of the conduct of the President of the United States.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. DELAHUNT), my friend and a senior prosecutor.

Mr. DELAHUNT. Mr. Speaker, I am aware of the fact that there is limited time for this debate. I think that is, indeed, unfortunate, because I was going on to talk about how we have abdicated our constitutional duties to an unelected prosecutor, how we have released thousands of pages that none of us in good conscience can say that we have read.

We violated the sanctity of the Grand Jury so that we can arrive here today to launch an inquiry without an independent, adequate review of the allegations by this body, which is our constitutional mandate. Ken Starr is not the agent of the United States Congress. It is our responsibility.

I was going to go on and speak about the proposal put forth by the gentleman from Virginia (Mr. BOUCHER), one that would have addressed and would address all of the allegations raised in the Starr referral in a fair way and in an expeditious way without dragging this Nation through hearings that will be interminable in nature.

What it really means for this country, is all the President's, any President's, enemies have to do to commence an impeachment process is to name an independent counsel so that we can here just simply rubber stamp that independent counsel's conclusions.

I was going to speak about the letter that was referred to by the universally respected chairman of the committee and a gentleman whom I hold in high esteem, the gentleman from Illinois (Mr. HYDE), the letter where Mr. Starr is saying that he may make further referrals and keep this inquiry going on indefinitely. That is not a process, Mr. Speaker; it is a blank check. That is what I was going to talk about.

But out of deference to others that want to speak, I will conclude by saying, one hour to begin only the third impeachment inquiry in U.S. history is a travesty and a disgrace to this institution. I think that says it all, and besides, I am probably out of time.

Mr. HYDE. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Florida (Mr. MCCOLLUM), a distinguished member of the committee.

(Mr. MCCOLLUM asked and was given permission to revise and extend his remarks.)

Mr. MCCOLLUM. Mr. Speaker, the question for us today is not whether or not the President committed impeachable offenses or whether or not we are here to impeach, the question is, do the allegations that have been presented to us by Kenneth Starr and his report merit further consideration?

Some would have us believe today that, even if all of those allegations were proven to be true, that the answer is no. They are wrong. The issue before us when we consider this matter is not Monica Lewinsky. The issue is not sex. The issue is not whether the President committed adultery or betrayed his wife.

The issue is did the President of the United States commit the felony crime of perjury by lying under oath in a deposition in a sexual harassment case. The issue is did the President of the United States commit the felony crime of perjury by lying under oath to a Grand Jury. The issue is did the President of the United States commit a felony crime of obstructing justice or the felony crime of witness tampering. If he did, are these high crimes and misdemeanors that deserve impeachment?

I would suggest that these are extraordinarily serious; that if the President of the United States is to be judged not to have committed a high crime and misdemeanor if the facts are proven, and we do not know that, that these things are true and he committed these crimes, but if he is judged not to have committed a high crime and misdemeanor for committing these other crimes of perjury, we will have determined that, indeed, he is no longer the legal officer at the highest panicle of this country.

Because to leave him sitting there is to undermine the very judicial system we have. It is to convey the message that perjury is okay, certainly at least perjury in certain matters and under certain circumstances. It is not okay. It is a very serious crime. Obstructing justice is. Witness tampering is.

One hundred fifteen people are serving in Federal prisons today who may be watching these proceedings today, serving in prison for perjury. Two judges have been impeached since I have been in Congress for nothing more than perjury, committing perjury as we call it.

What do we say in the future to all of those people who take the oath of office who say ''I swear to tell the truth, the whole truth, and nothing but the truth?'' What do we say to all of those people who swear to tell the truth, nothing but the truth, but the whole truth when they are witnesses in cases throughout this country, civil and criminal? What do we say to all of the people who we may judge in the future who may be judges or otherwise who come before us who commit perjury? Is it okay?

If we leave this President alone if he committed these crimes, then we have undermined our Constitution, and we have undermined our system of justice. This is serious. We need to investigate these allegations.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from California (Mr. FAZIO), the departing chair of our caucus.

Mr. FAZIO of California. Mr. Speaker, today's proceeding is of such great historical importance that it should be approached with a deep and abiding respect for the Congress, the Constitution, and the Presidency.

We had the opportunity to develop a fair and responsible process that would protect, not only the dignity of the office of the Presidency, but create a precedent worth following. But I believe the Republican majority has squandered that, and, by doing so, has set in motion a process that is too much about partisanship and not enough about statesmanship.

The Republican proposal offers no limits on how long this partisan inquiry will go on nor on how long independent counsel Ken Starr can drag up issues that he has had 4 years to bring to this House. Sadly, there has been no willingness to limit the duration or scope of this resolution.

The Republican proposal moves ahead with an impeachment inquiry before the Committee on the Judiciary has even conducted a review of the facts and determined whether those facts constitute substantial and credible evidence. It lowers the threshold for which a President can be harassed and persecuted to the point of distraction from his constitutional duties.

From now on, any Congress dissatisfied with the policies of a particular administration or the personal behavior of any President could simply conduct an ongoing, costly, and distracting inquiry designed to dilute the authority of the Presidency.

After this election, when rational behavior returns, and cooler heads can prevail, I urge us to forge a way to rise above the nasty politics that have clouded this body.

I will not be here with those of you who return to this next Congress. I leave after 20 years with my self-respect intact. I have reached across the lines within my own party and, when necessary, across the aisle to the other party to make this House work and to get things done for this country.

I fought partisan battles. I have stood my ground on issues that matter to my district. The American people expect us to do that. But they also expect us to, each of us, to rise above the base political instincts that drive such a wedge through this institution.

In the months ahead, we must find a way, my friends, to do what is right for America to find a way to return this House to the people through a respect for law, for fairness, and due process. In the end, we must do a lot better than we will do today.

Mr. HYDE. Mr. Speaker, I am very pleased to yield 2½ minutes to the gentleman from Georgia (Mr. BARR), a distinguished member of the committee.

Mr. Speaker, will the gentleman yield to me very briefly?

Mr. BARR of Georgia. I am happy to yield to the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the Committee on the Judiciary.

Mr. HYDE. Mr. Speaker, I just want the record to be clear. My good friend the gentleman from Massachusetts (Mr. DELAHUNT) talked about 60,000 pages that were released that were not reviewed or looked at.

I want him to know, and I want everyone listening to know that every single page of anything that was released was reviewed, and things that were not released were reviewed by our staff.

I also would like to point out that total time spent looking at these

records by the Democrats, members of the Committee on the Judiciary on the Democrat side, were 21.81 hours. Six of them never came over to see the material. On the Republican side, 114.59 hours, and every Member came over to look at the material.

Mr. CONYERS. Mr. Speaker, will the gentleman yield to me?

Mr. HYDE. Mr. Speaker, I will give the gentleman from Georgia additional time.

Mr. BARR of Georgia. I yield to the gentleman from Michigan (Mr. CONYERS), the distinguished ranking member.

Mr. CONYERS. Mr. Speaker, I thank the gentleman from Illinois (Mr. HYDE). That really contributes to the comity of this body, and I am sure it is an interesting statistic that everybody ought to know about.

Mr. BARR of Georgia. Mr. Speaker, reclaiming my time, I yield to the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the committee.

Mr. HYDE. Mr. Speaker, I just want to say to my friend that when the gentleman from Massachusetts (Mr. DELAHUNT) says this has been done careless or in a slipshod manner not reviewing these things, it is important to know we took our job seriously. They were there to be reviewed. If my colleagues did not choose to do it, that is their option.

Mr. CONYERS. Thank you, Mr. HYDE.

Mr. HYDE. You are welcome, Mr. CONYERS.

Mr. BARR of Georgia. Mr. Speaker, might I inquire of the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the committee, if I have, in fact, 2 minutes remaining?

Mr. HYDE. Mr. Speaker, the gentleman has every reason to inquire, and I would like to give the gentleman from Georgia (Mr. BARR) a total of 3 minutes for his generosity.

Mr. BARR of Georgia. Mr. Speaker, as the United States Attorney appointed by President Reagan, when a case was presented to me, I started at the beginning. I would look and see what the law says, and I would look and see what the history of that law said.

Here we have similarly to look at the Constitution. It is pretty clear. What makes it even clearer, though, Mr. Speaker, is if we look at the sources for Article II Section 4, which is the impeachment power, we find, for example, Mr. Speaker, that, according to the Federalist writings 211 years ago, that an impeachable offense is, quote, ''Any abuse of the great trust reposed in the President.''

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Moreover, they tell us, as Federalist 65 did, written by that great constitutional scholar Alexander Hamilton, an impeachable offense is a ''violation of public trust.''

I did not stop there, Mr. Speaker. I looked at further constitutional scholars. I find that 24 years ago, no less a constitutional scholar than William Jefferson Clinton, defined an impeachable offense as, ''willful, reckless behavior in office.''

I did not stop there. I looked at a report coauthored by Hillary Rodham, part of the impeachment team in the Watergate years, and I find that at page 26 of their report, she and others of her colleagues define an impeachable offense as ''wrongs that undermine the integrity of office.''

Where are we now, Mr. Speaker? The step we are taking today is one I first urged nearly a year ago. All we are doing today is taking the constitutionally equivalent step of impaneling a grand jury to inquire into whether or not the evidence shall sustain that offenses have, in fact, occurred.

The passage of H.R. 581 will mark the dawn of a new era in American government. We are sending the American people a clear message, that truth is more important than partisanship, and that the Constitution cannot be sacrificed on the altar of political expediency; that no longer will we turn a blind eye to clear evidence of obstruction of justice, perjury and abuse of power. We will be sending a message to this and all future Presidents that if, in fact, the evidence establishes that you or any future President have committed perjury, obstruction of justice, subversion of our judicial system, that we will be saying, no, sir, Mr. President, these things you cannot do.

It is our job as legislators to diagnose threats to our democracy and eliminate them. By the time the damage to our system is so great that everyone can see it, the wounds will be too deep to heal. We have already waited too long to address this issue. We must move forward quickly, courageously, fairly, and most importantly, constitutionally, along the one and the one and only path charted for us in the Constitution, the impeachment process.

We must do this, Mr. Speaker, so that tomorrow morning as we in this Chamber, as teachers all across America, lead their students in the pledge of allegiance, we can look America in the eye and say, yes, at least for today the Constitution is alive and well.

Mr. DELAHUNT. Mr. Speaker, I yield myself such time as I may consume.

I think it is very important for the record and for the American people to know that yes, the staff worked hard; the staff, the majority staff and the minority staff, to review 60,000 and some odd pages. But let me suggest that no Member in this House, no member in this committee in good conscience can stand here in this well today and state that he or she adequately reviewed that testimony before its release.

And this is a responsibility mandated by the Constitution to Members, not to staff, and that is what this is about today. This is not about defending the President, this is about defending the Constitution of the United States.

Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Speaker, the decision of the Republicans to limit the debate on this very important resolution to decide whether this body will move with an inquiry to impeach is a continuation of the partisan, unfair, inconsiderate actions that have dictated the management of this impeachment crisis since independent counsel Ken Starr dumped his referral in the laps of this Congress and in the laps of the public. This continuous, shameless and reckless disregard for the Constitution, basic civil rights and the citizens of this country cannot be tolerated.

This is a sad and painful time for all of us. The least we can do is handle this matter with dignity and fairness for everyone involved. Four and one-half years, $40 million. Unnecessary. Subpoenas of uninvolved individuals, and Mr. Starr's close relationships with groups and individuals, with demonstrated hatred for the President, taints the independent counsel's investigation.

This Congress does not need a protracted, open-ended witch-hunt of intimidation, embarrassment and harassment. The tawdry and trashy thousands of pages of hearsay, accusations, gossip, and stupid telephone chatter does not meet the standard of high crimes and misdemeanors.

The President's actions in this matter are disappointing and unacceptable, but not impeachable. Mr. Schippers, the general counsel for the Republicans, extended the allegations in search of something, anything that may meet the constitutional standards, and even the extended and added allegations do not comport with the Constitution.

It is time to move on. Reprimand the President, condemn him, but let us move on. These grossly unfair procedures will only tear this Congress and this Nation apart. I ask my colleagues to vote down this open-ended and unfair resolution. It does not deserve the support of this House.

Mr. Speaker, the Members of the Congressional Black Caucus have constantly warned this body about the dangers of a prosecutor run amok. They have warned this body about the abuse of the power of the majority. We ask our colleagues to listen to us as we remind our colleagues of the history of our people who have struggled against injustice and unfairness. Let us not march backwards; let us be wise enough to move forward and spend our precious time working on the issues of education, health care, senior citizens, children, and in the final analysis, Mr. Speaker, justice, and opportunity for all Americans.

Mr. HYDE. Mr. Speaker, I would like to inquire as to the time remaining on both sides.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. HYDE) has

33½ minutes; the gentleman from Massachusetts (Mr. DELAHUNT) as 34½ minutes.

Mr. HYDE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from South Carolina (Mr. INGLIS), a valued member of the committee.

Mr. INGLIS of South Carolina. Mr. Speaker, we are now engaged in a constitutional process that is about the search for truth. I believe that we should do that in a fair and expeditious way, completely disregarding polls, completely disregarding the pendency of an election on November 3, and answering the question that our colleague from California just asked about whether it is appropriate just to move along.

Of course, we do want to move along to important issues facing the country. We do want to restore freedom in health care, we do want to secure the future of Medicare and Social Security, and we do want to continue the progress toward balancing the budget. All of those things we want to do.

But I would ask my colleagues to consider this. Really, this is the crucial business of the country. This is the crucial business.

As we go into the next century, the question is, does the truth even matter. Now, some would say, let us move along, it does not matter, just move along. But if we move along, what we are leaving aside is serious allegations of serious crimes.

Just this week one of my staffers was on her way over here with a staff member of one of our colleagues, the gentleman from Louisiana (Mr. COOKSEY). An accident occurred, occurred on a bicycle, struck this young lady, not my staffer, but the other staffer. She was hurt. Now, she has two duties as a citizen. One is to testify, to be a witness, to come forward; and the second is to testify truthfully when called on, if necessary, in court.

Now, what shall we say to her if we are going to just move along and say that the potential of the crime of perjury just does not matter, then what of that small case in a court here in D.C.? We say to that case, well, it is not necessary to tell the truth in court, and it is not necessary to testify, I suppose. But we must say, if we are going to preserve the rule of law in this Nation, that it does matter, and that when that young staffer is called on to testify, if she must, she must testify, and then she must tell the truth.

This is the essential work of this Congress and of this Nation.

Mr. DELAHUNT. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from North Carolina (Mr. WATT), and a distinguished member of the Committee on the Judiciary.

Mr. WATT of North Carolina. Mr. Speaker, as members of the Committee on the Judiciary, we have had the opportunity to indicate our willingness to engage in a process that is fair, measuring the President's conduct against a constitutional standard, not a bicycle standard; focused on what the independent counsel has referred or might refer to us; and timely, one that sets an objective to conclude this matter and put it behind us.

We have also had the opportunity to listen to our colleagues on the Committee on the Judiciary who want to engage in an unfair and open-ended, partisan political fishing expedition, dealing with bicycles rather than constitutional standards, some of whom have already gone on television and already declared their conclusion in this matter before a trial even begins.

We have had our opportunity.

Mr. Speaker, I would like to yield the balance of my time to a nonmember of the Committee on the Judiciary, my good colleague from Texas (Mr. EDWARDS).

Mr. EDWARDS. Mr. Speaker, I am deeply disappointed that the Republican leadership has placed an incredibly unfair gag rule on a constitutional debate of historic proportions. If this gag rule is the first test of the Republicans' fairness in this inquiry, they have failed that test.

The most important issue today, Mr. Speaker, before us is not the November 3 elections, or even the fate of President Clinton. The most important issue before us is the historical precedent we set in beginning the process of undoing an election for the most important office of our land. The right to vote is the foundation of our entire democracy. To override the votes of millions of Americans in a Presidential election is an extraordinary action. It is a radical action, and, in effect, it is allowing the votes of 535 citizens to override the votes of tens of millions of citizens.

In its rush to begin an impeachment inquiry just days before a crucial election, this Congress will have lowered the threshold for future Presidential impeachment inquiries in such a way that compromises the independence of the Presidency as a coequal branch of government.

The truth is the Committee on the Judiciary has not even had 1 day, not even 1 hour of hearings on our Founding Fathers' original intent about the threshold for impeachment. I find it ironic that the very Republicans who have preached all year long that we should impeach Federal judges for not abiding by our Founding Fathers' constitutional intentions have now decided we can start an historic constitutional process without even 1 hour of hearings. How ironic that those same Republicans will today force us to vote on a truly historic constitutional issue without even 1 hour, 1 day of hearings on our Founding Fathers' intent about high crimes and misdemeanors.

To begin a formal impeachment inquiry after only a cursory review of the Independent Counsel's report, in light of a standard that has not been defined, within the context of a pending congressional election weeks away, at the very least undermines the credibility of this House on this important issue, and at the very worst has set an historical precedent that we can easily begin the process of undoing the freely exercised votes of millions of Americans.

To even begin this radical process without the greatest of deliberation, regardless of one's final vote, is in itself, in my opinion, an attack upon the very core of our democracy.

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Mr. HYDE. Mr. Speaker, I am very pleased to yield 2 minutes to the distinguished gentleman from Tennessee (Mr. BRYANT), a member of our committee.

(Mr. BRYANT asked and was given permission to revise and extend his remarks.)

Mr. BRYANT. Mr. Speaker, I want to remind our colleagues that we are not voting on impeachment today. We are here today simply to uphold our constitutional obligation to look further into the allegations of wrongdoing against this president, and not to look away.

We seem to all agree that the President's conduct was wrong, and we seem to now agree that we must continue this process toward finding the truth. But this is not about keeping political score. It is not about allowing the President to dictate the terms of this process. We are here protecting our Constitution, which we have a duty to uphold. So let us complete our task fairly and expeditiously.

I must respectfully disagree with my good friend and colleague, the gentleman from Virginia (Mr. BOUCHER) and his alternative to this. Now is not the time to set arbitrary time limits, because, as we have learned before, that encourages stonewalling. We can actually get this done quicker, as the chairman said, without time limits. Now is not the time to consider possibly piecemealing allegations. Let us get all this done, get all this behind us, and move forward.

As part and parcel of that, our responsibility to the American people is to be fair throughout this process. It is an elementary principle of this fairness that the President should not be allowed to limit or direct or influence the process that Congress uses to investigate these allegations.

At the end of the day, our Constitution will still stand as a pillar of our Nation. It will and it should, fittingly, outlast any person, whomever it might be, who has the great privilege of serving in the office of the presidency.

Mr. DELAHUNT. Mr. Speaker, I yield 10 seconds to the gentleman from New York (Mr. ACKERMAN).

MOTION OFFERED BY MR. ACKERMAN

Mr. ACKERMAN. Mr. Speaker, I move that when the House adjourn, we do so to Salem, a quaint village in the Commonwealth of Massachusetts, whose history beckons us thence.

The SPEAKER. That is not a proper motion, the Chair would say to the gentleman from New York.

Mr. DELAHUNT. Mr. Speaker, I yield 2 minutes to my friend and colleague, the gentleman from Massachusetts (Mr. MEEHAN), whose district I do not think includes the town of Salem.

Mr. MEEHAN. Mr. Speaker, this debate is as important for what it is not about as for what it is about. It is not about whether to conduct an inquiry. Both the Democratic and Republican resolutions would initiate an inquiry. It is not about who has been more faithful to the Watergate precedent. Neither side is pure on that subject.

What this debate is about is whether the Committee on the Judiciary will take up Whitewater, Travelgate, and Filegate, without a shred of paper from the Independent Counsel on this subject. It is about whether the committee will commence a fullscale impeachment hearing without asking itself, as a threshold matter, whether even Ken Starr's best case compels impeachment.

If Members can somehow convince themselves that after 4½ years and nearly $50 million in taxpayers' money, that Ken Starr has been less than aggressive in pursuing Whitewater, Travelgate, and Filegate, then Members should vote for the Republican resolution which authorizes the Committee on the Judiciary to take them up even without a referral from Kenneth Starr.

If Members believe that the committee should avoid the question of whether even Ken Starr's best case compels impeachment, and, instead, plunge blindly into a month-long evidentiary fiasco, then they should vote for the Republican resolution.

How is it in our Nation's best interest to initiate an impeachment inquiry which willfully blinds itself to the numerous constitutional scholars that say that even Ken Starr's best case does not compel impeachment? At this time of global political and economic turmoil, it is in our Nation's interest to deal with the Lewinsky matter fairly and expeditiously. Only the Democratic alternative would do that.

So please, let us put the national interest above partisanship. I ask Members to vote their conscience, vote for the Democratic alternative, and against the Republican resolution.

Mr. HYDE. Mr. Speaker, I am pleased to yield 1½ minutes to the distinguished gentleman from Ohio (Mr. DENNIS KUCINICH).

Mr. KUCINICH. Mr. Speaker, I rise today not on behalf of Democrats or Republicans, but as an American who is deeply concerned that our country bring closure to the charges against the President. A vote for an inquiry is not the same as a vote for impeachment. This vote is neither a vote to impeach nor a license to conduct a partisan witchhunt.

In fact, some have called for impeachment without a hearing. Some have called for resignation without a hearing. Some have called for exoneration without a hearing. I believe there will be no resolution without an open hearing. There will be no accountability without an open hearing. There will be no closure for this country, for this Congress, or for our president, without an open hearing.

The Nation is divided. The House is divided. A House divided against itself will not stand, so if inquire we must, let us do it fairly, and in the words of Lincoln, with malice towards none, with charity towards all, because there will be an inquiry. The American people expect it to proceed fairly, expeditiously, and then they expect it to end. The people want us to get this over with, and they will be watching.

Let the President make his case. Give him a chance to clear his name and get back to his job. Bring everything out in the open. Bring forward the accusers and subject them to the light of day, settle this, and then move forward to do the business of the people, the business for which the people elected us: to further economic growth, to protect social security, to improve health care, and to meet all the other pressing needs of the American people.

Mr. CONYERS. Mr. Speaker, it is my pleasure to yield 1 minute to the gentleman from Maine (Mr. ALLEN).

Mr. ALLEN. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, this is a solemn moment, but as theater, it is overdone. It is overdone because this vote is not about whether or not we should have an impeachment inquiry. Both resolutions call for such an inquiry, so we will have one. This vote is about what kind of impeachment inquiry we will conduct. That question is important.

The majority wants an open-ended impeachment inquiry with no limits on its scope or duration. Under their plan, the Committee on the Judiciary can investigate anything and everything it wants for 6 months, a year, or even longer. I believe their plan will inflame partisanship, and if prolonged, weaken the institution of the presidency and this country.

This is not Watergate. That committee conducted a factual inquiry. We have piles of facts from the special prosecutor. Our task is to find an appropriate consequence for behavior we know is wrong. Our alternative will provide for thorough consideration of the Starr alternative, of the Starr referral, by December 31, 1998. What is wrong with that?

I urge my colleagues to oppose an inquiry resolution that does not say when it will end or what it will cover, and instead, support the focused, fair, and expeditious Democratic alternative.

Mr. HYDE. Mr. Speaker, I am pleased to yield 2 minutes to the distinguished gentleman from Missouri (Mr. KENNY HULSHOF).

Mr. HULSHOF. Mr. Speaker, last night I addressed this body and urged my colleagues to please avoid partisan wrangling. Today I implore the Members of this body to recognize the historical gravity of the moment. Today is not the day to condemn the process or the prosecutor. Today is not the day for talking points or pointing fingers.

Mr. Speaker, in this debate, let us pledge not our loyalty to our party, let us pledge allegiance to our country. Let us not be partisans. Instead, let us be patriots.

I, too, am concerned about the open-ended nature of the investigation. I believe each one of us would fervently wish this cup would pass us by, but I have faith in the integrity and ability of the gentleman from Illinois (Mr. HYDE), and when he says this process will be handled fairly and expeditiously, I think his word deserves great weight in this body.

So the question I have for the Members is simply this: Is it possible, is it possible, that there is credible evidence that exists that would constitute grounds for an impeachment? If Members' answer is a solemn yes, then vote in favor of the resolution.

But I submit, even if Members' answer is an equivocal ''I do not know,'' then I think that the judgment of the doubt, the benefit of the doubt, must go in favor of the resolution.

Mr. Speaker, last January I was privileged to enter this Chamber for the first time, my family proudly beaming from the House gallery as I rose in unison with the Members of this body to take an oath. I pledged my sacred honor to the Constitution of the United States. That is what this vote is about.

In my humble and considered opinion, that oath requires from me a vote of aye on the resolution.

Mr. CONYERS. Mr. Speaker, it is my pleasure to yield 2 minutes to the able gentleman from New York (Mr. CHARLES RANGEL).

(Mr. RANGEL asked and was given permission to revise and extend his remarks.)

Mr. RANGEL. Mr. Speaker, I had the privilege of serving on the Watergate Committee on the Judiciary. One difference then, as opposed to now, is that we worked together as Republicans and Democrats to search for the facts and to report to the House of Representatives for them to make a determination.

Now, we do not have any question of trying to impeach the President of the United States or protecting the integrity of the Congress or the Constitution. The Republicans do not want to impeach, and would not touch it with a 10-foot political pole. They know at the end of this year that this Congress is over, and they even want to carry this over for the next 2 years, to attempt to hound this president, who has been elected twice, out of office.

The reason for it is because it is the only thing they have to take to the American people before this election. What else are they going to take? Their legislative record? The fact that they have renamed National Airport after Ronald Reagan, that they have deep-sixed the tax code to the year 2002?

On the question of social security, what have they done? Tried to rape the reserve. What have they done as it relates to minimum wage and providing jobs? What have they done for education? What have they done for the health of the people in this Nation?

They are not just going to get elected by hounding the President of the United States, because as they judge the President of the United States, the voters will be judging them on November 3.

Mr. HYDE. Mr. Speaker, I am very pleased to yield 1 minute to the distinguished gentleman from California (Mr. CHRIS COX).

Mr. COX of California. Mr. Speaker, I thank the chairman for yielding time to me.

Mr. Speaker, a member of the minority stated during the debate that the decision to limit the debate to 2 hours on this resolution is partisan. In allocating 2 hours for debate on a resolution authorizing an inquiry of impeachment, the Congress is adhering to precedent, the precedents established by the House of Representatives when it was under Democratic control. It is in fact doubling the amount of time that was spent in debate on the identical resolution in February, 1974.

Likewise, the wording of the resolution adheres directly to precedent. The minority argues today that an impeachment inquiry should be narrowly limited to the evidence we already know, but on February 6, 1974, when the Democrats were in the majority, Committee on the Judiciary Chairman Rodino stated: ''To be locked into . . . a date (for completion of the inquiry) would be totally irresponsible and unwise.'' The inquiry, he said, must be ''thorough, so that we can make a fair and responsible judgment.''

The resolution does, as it must, follow precedent. We, in undertaking this solemn constitutional duty, must follow precedent. A vote for the resolution is a vote for a fair, full, and complete inquiry today, just as in 1974.

□ 1230

Mr. CONYERS. Mr. Speaker, I yield 1 minute to the gentleman from Rhode Island (Mr. KENNEDY).

Mr. KENNEDY of Rhode Island. Mr. Speaker, today I will cast the most important vote of my whole time here in the United States Congress. And if we are not going to listen to each other, then I would like us to listen to the eminent scholar, Lawrence Tribe, on what we are doing today.

He said that, ''Today this Congress is twisting impeachment into something else, instead of keeping it within its historical boundaries, and our Nation and its form of government are imperiled as a result.'' He went on to say that, ''Today we are losing sight of the constitutional wreckage that this vote will cause as we lay down historical precedent that a President of the United States can be impeached for something other than official misconduct as President of the United States.''

Mr. HYDE. Mr. Speaker, I yield such time as he may consume to the gentleman from Kentucky (Mr. BUNNING).

(Mr. BUNNING asked and was given permission to revise and extend his remarks.)

Mr. BUNNING. Mr. Speaker, I rise in support of the resolution.

Except for declaring war, impeachment is the most serious and sobering issue that the House can consider. The question before us today demands that we act out of statesmanship and not raw, political partisanship. Our history and our Constitution demand the best for us.

I have read the referral to the House from the Independent Counsel, Ken Starr, and I believe there is enough evidence to warrant further inquiry by the Judiciary Committee.

The Judiciary Committee's review of the evidence accumulated by the Independent Counsel indicates that there exists substantial and credible evidence of fifteen separate events directly involving the President that constitute grounds to proceed with an impeachment inquiry. The charges are troubling—perjury, obstruction of justice, witness tampering, and abuse of power. They are not simply about extra-marital affairs, or making misleading statements. Instead, the allegations touch more profoundly upon claims of criminal conduct.

I do not know if all of the allegations in the Starr report are true and factual. But, the charges are serious and some of the claims made against the President are compelling. However, the report represents only one side of the story, and the President deserves the right to exonerate himself before the Judiciary Committee, the full House and the American people.

Our Constitution and historical precedent set out a procedure to follow in proceedings such as this, and I believe we must strictly follow the letter of the law. Impeachment is a grave matter, and at this crucial moment in our history we must not rush to judgment.

The inquiry by the Judiciary Committee must be orderly, and judicious. But, it must also be expeditious. While I do not think that an arbitrary deadline should be imposed on the panel, for the good of the country I believe it is incumbent upon the Committee to work with all deliberate speed in order to conclude this matter as soon and as fairly as possible. Chairman Hyde's goal of the Committee concluding its work by the end of the year is fair and reasonable.

By the same token, I also believe that the President has a duty to work with, and not against, the Judiciary Committee to speedily resolve this matter. The sooner we can conclude these proceedings, the better it will be for the country. Now is not the time for further foot-dragging and delay by anyone.

I believe the President was right yesterday when he said members of the House should cast ''a vote of principle and conscience'' on authorizing the impeachment inquiry. I agree. Of all the votes cast in this Congress, this should be one of integrity and honor.

Mr. HYDE. Mr. Speaker, I yield 2½ minutes to the gentleman from Texas (Mr. DELAY), the distinguished whip.

Mr. DELAY. Mr. Speaker, I thank the gentleman from Illinois (Chairman HYDE) for yielding me this time.

Mr. Speaker, I do not want to be here today. I wish I could just ignore all of this and make it go away. But I have a responsibility to answer a question today and that question is: How will history judge our actions that we take today?

I believe that this Nation sits at a crossroad. One direction points to the high road of the rule of law. Sometimes hard, sometimes unpleasant. This path relies on truth, justice, and the rigorous application of the principle that no man is above the law.

Now, the other road is the path of least resistance. This is where we start making exceptions to our laws based on poll numbers and spin control. This is when we pitch the law completely overboard when the mood fits us; when we ignore the facts in order to cover up the truth.

Shall we follow the rule of law and do our constitutional duty no matter how unpleasant, or shall we follow the path of least resistance, close our eyes to the potential law breaking, forgive and forget, move on, and tear an unfixable hole in our legal system?

No man is above the law and no man is below the law. That is the principle that we all hold dear in this country. The President has many responsibilities and many privileges. His chief responsibility is to uphold the laws of this land. He does not have the privilege to break the law.

The American system of government is built on the proposition that the President of the United States can be removed if he violates his oath of office. This resolution simply starts that process of inquiry. Did the President break the law? And if he did, does that lawbreaking constitute an impeachable offense?

Closing our eyes to allegations of wrongdoing by voting ''no,'' or by limiting scope or time, constitutes a breach of our responsibilities as Members of this House. So let history judge us as having done our duty to uphold that sacred rule of law.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the able gentleman from Pennsylvania (Mr. KANJORSKI).

(Mr. KANJORSKI asked and was given permission to revise and extend his remarks and to include extraneous material.)

Mr. KANJORSKI. Mr. Speaker, I rise in opposition to any impeachment inquiry.

Mr. Speaker, I rise today with a heavy heart. Today, for only the third time in our nation's history, the House will consider whether to initiate an impeachment inquiry against the President. I take my sworn constitutional duty and responsibility in this matter very seriously.

Over the last four weeks, I have reviewed the Starr report and other material submitted by his office. I have also listened to legal experts, constitutional scholars, and my constituents about the referral. I have further studied the origins and history of our Constitution's impeachment clause. After considerable deliberation, I have determined that there is no

convincing reason to vote for an impeachment inquiry into the matters referred by the independent counsel based on the evidence that we have before us at this time.

Clearly, President Clinton behaved badly. He was wrong to engage in an inappropriate relationship with a young woman. He was wring to mislead the American people in his public statements, and he was wrong to provide misleading answers in judicial proceedings. For that wrong behavior the President should be reprimanded, but he should not be removed from office.

Our Constitution demands a higher standard for the Congress to undertake the extraordinary action of removing a duly-elected President. This Congress has not sufficiently considered what constitutes an impeachable offense. Before we irreparably damage our nation's delicate system of checks and balances among our three branches of government, it is imperative that we establish that standard in a fair, non-partisan matter. The resolution we are considering today is not about whether the man who holds the highest elected office in the country engaged in an improper relationship and then tried to conceal it. Rather, this resolution is about the standard under which the Congress has the right to overturn the will of the people who elected the President of the United States.

IMPEACHMENT DEFINITION

Both the text of the Constitution and the comments of its authors place the bar for impeachment quite high, and mandate that Congress use the impeachment process to address only the gravest of wrongs. Specifically, Article II of the Constitution states that the President may be removed from office on impeachment for, and conviction of ''treason, bribery or other high crimes and misdemeanors.''

Because this phrase is often truncated and used out of context, it is necessary to carefully examine the writings and debates of the Constitution's authors. Fortunately, evidence of the phrase's meaning and development is extensive. One individual who can provide especially helpful guidance about the meaning of the term is George Mason, the man who proposed the language adopted by the Constitutional Convention. Mr. Mason noted that ''Impeachment should be reserved for treason, bribery, and high crimes and misdemeanors where the President's actions are great and dangerous offenses or attempts to subvert the Constitution and the most extensive injustice.''

Read in their entirety the writings of the Constitution's authors firmly imply that the bar for impeachment is extremely high, and that Congress should use it to address only those Presidential actions that threaten the stability of our democracy. Moreover, the debate over the Constitution indicates that the Founders clearly intended that ''other high crimes and misdemeanors'' had to be crimes and actions against the state on the same level of magnitude as treason and bribery.

We can also look to precedent when seeking to understand the definition of impeachment and whether the actions of a President in his private life rise to the level of ''high crimes and misdemeanors.'' In 1974, the House Judiciary Committee considered substantial evidence that Richard Nixon committed tax fraud during his presidency. Although the evidence overwhelmingly indicated that President Nixon had committed such fraud, the panel concluded by a bipartisan vote of 26 to 12 that personal misconduct is not an impeachable offense. Further, the Supreme Court has ruled that other remedies exist for addressing Presidential wrongdoing, including civil lawsuits and criminal prosecutions.

Finally, it is important to note that the Founders included impeachment as a constitutional remedy because they worried about Presidential tyranny and gross abuse of power. They did not intend impeachment or the threat of its use to serve as a device for denouncing the President's private actions. Instead, they left punishment for improper private Presidential conduct to public opinion, the political process, and judicial proceedings. I support the Framers' wise counsel on impeachment. The consideration of whether to overturn a decision of the electorate should only be undertaken in extreme situations. In short, Presidents ought not to be impeached for private conduct, however reprehensible.

POOR PRECEDENT

Beyond failing to meet the standard of impeachment envisioned by our Founders and strengthened by past practice, an impeachment inquiry into the matters recently referred by the independent counsel would create dangerous and undesirable precedents for the country in at last three significant ways. First, if this politically-inspired effort ultimately succeeds, it will tip the delicate system of checks and balances in favor of Congress. The result would be a parliamentary system whereby the party in power in Congress could impeach a President and a Vice President of another party for virtually any reason. Our Founders created a government with three separate, but equal branches of government. We should remember this fact today and not upset the balance of power they so sensibly established.

Second, as noted above, the House should vote to pursue an impeachment inquiry only if it has credible evidence of action constituting fundamental injuries to the governmental process. Assuming the facts presented by the independent counsel thus far to be true, the President's conduct does not rise to the level the Founders deemed impeachable because it was not ''a serious abuse of power or a serious abuse of official duties.'' Furthermore, Congress has in more than 200 years never removed a President from office even though several Presidents have committed far more serious abuses. One must consequently ask whether this is where we want to set the bar for impeaching this and future Presidents. From my perspective it is not.

Finally, based on the facts of this referral, an impeachment inquiry would impose an extraordinary invasion of privacy. An impeachment inquiry on what is fundamentally a private matter will likely deter worthy contenders in both parties from running for political office—particularly the presiency—because they fear protracted, government-sponsored investigations into their past, current, and possibly future actions. Moreover, it could also provoke a move to impeach future Presidents every time that Congress thinks they may have made false statements.

THE SOLUTION

Like most Americans, I am personally disappointed with the President's acknowledged inappropriate personal behavior. Clearly, the President engaged in an improper relationship about which he did not want anyone to know. The President, as a result, was not forthcoming with the truth regarding this relationship, not only with the independent counsel and Congress, but also with his family and the American people. Ultimately, after months of personal turmoil the President admitted the affair, and suffered great humiliation and much public embarrassment, probably more than any other individual in our nation who has made similar mistakes.

The President's conduct was wrong and worthy of rebuke. Even if such personal behavior is not impeachable, as representatives of the people we must tell the President that his actions are not acceptable. We should, therefore, immediately consider some sort of censure against the President. Censure is a serious act that will certainly damage his standing in the public and lower his rank in history.

CONCLUSION

At the end of my prepared remarks, I will attach four excellent articles that further elaborate on the points I have made today. They include an analysis by noted constitutional scholar Cass Sunstein, thoughts by Robert F. Drinan and Wayne Owens who served as Democratic Members on the House Watergate panel, and a commentary by former Republican President Gerald R. Ford. The former President argues that instead of impeachment, the House should publicly censure the current President's behavior. I have also attached several recent statements about the Starr referral from some of the individuals integrally involved in Watergate all of whom conclude that this is vastly different form and less serious than Watergate.

Mr. Speaker, from my perspective Congress must swiftly resolve the matters referred by the independent counsel. We need to admonish the President for his inappropriate personal behavior and quickly move forward and address the nation's real priorities. We also need to ensure that we rebuke the President, and not punish the nation. The American people should not have to suffer through what could be an unlimited Congressional inquiry into a tawdry, but hardly impeachable extramarital affair. This Congress should begin the process of healing the nation's wounds. We should also begin to forgive. For these reasons, I will oppose this impeachment inquiry.

[From the Washington Post, Oct. 4, 1998]

''IMPEACHMENT? THE FRAMERS WOULDN'T BUY IT''

(By Cass Sunstein)

We all now know that, under the Constitution, the president can be impeached for ''Treason, Bribery, or other high Crimes and Misdemeanors.'' But what did the framers intend us to understand with these words? Evidence of the phrase's evolution is extensive—and it strongly suggests that, if we could solicit the views of the Constitution's authors, the current allegations against President Clinton would not be impeachable offenses.

When the framers met in Philadelphia during the stifling summer of 1787, they were seeking not only to design a new form of government, but to outline the responsibilities of the president who would head the new nation. They shared a commitment to disciplining public officials through a system of checks and balances. But they disagreed about the precise extent of presidential power and, in particular, about how, if at all, the president might be removed from office. If we judge by James Madison's characteristically detailed accounts of the debates, this question troubled and divided the members of the Constitutional Convention.

The initial draft of the Constitution took the form of resolutions presented before the 30-odd members on June 13. One read that the president could be impeached for ''malpractice, or neglect of duty,'' and, on July 20, this provision provoked extensive debate. The notes of Madison, who was representing Virginia, show that three distinct positions dominated the day's discussion. One extreme view, represented by Roger Sherman of Connecticut, was that ''the National Legislature should have the power to remove the Executive at pleasure.'' Charles Pinckney of South Carolina, Rufus King of Massachusetts and Gouvernor Morris of Pennsylvania opposed, with Pinckney arguing that the president ''ought not to be impeachable whilst in office.'' The third position, which ultimately carried the day, was that the president should be impeachable, but only for a narrow category of abuses of the public trust.

It was George Mason of Virginia who took a lead role in promoting this more moderate course. He argued that it would be necessary to counter the risk that the president might obtain his office by corrupting his electors. ''Shall that man be above'' justice, he asked, ''who can commit the most extensive injustice?'' The possibility of the new president becoming a near-monarch led the key votes—above all, Morris—to agree that impeachment might be permitted for (in Morris's words) ''corruption & some few other offences.'' Madison concurred, and Edmund Randolph of Virginia captured the emerging consensus, favoring impeachment on the grounds that the executive ''will have great opportunitys of abusing his power; particularly in time of war when the military force, and in some respect the public money, will be in his hands.'' The clear trend of the discussion was toward allowing a narrow impeachment power by which the president could be removed only for gross abuses of public authority.

To Pinckney's continued protest that the separation of powers should be paramount, Morris argued that ''no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard against it by displacing him.'' At the same time, Morris insisted, ''we should take care to provide some mode that will not make him dependent on the Legislature.'' Thus, led by Morris, the framers moved toward a position that would maintain the separation between president and Congress, but permit the president to be removed in extreme situations.

A fresh draft of the Constitution's impeachment clause, which emerged two weeks later on Aug. 6, permitted the president to be impeached, but only for treason, bribery and corruption (exemplified by the president's securing his office by unlawful means). With little additional debate, this provision was narrowed on Sept. 4 to ''treason and bribery.'' But a short time later, the delegates took up the impeachment clause anew. Mason complained that the provision was too narrow, that ''maladministration'' should be added, so as to include ''attempts to subvert the Constitution'' that would not count as treason or bribery.

But Madison, the convention's most careful lawyer, insisted that the term ''maladministration'' was ''so vague'' that it would ''be equivalent to a tenure during pleasure of the Senate,'' which is exactly what the framers were attempting to avoid. Hence, Mason withdrew ''maladministration'' and added the new terms ''other high Crimes and Misdemeanors against the State''—later unanimously changed to, according to Madison, ''against the United States'' to ''remove ambiguity.'' The phrase itself was taken from English law, where it referred to a category of distinctly political offenses against the state.

There is a further wrinkle in the clause's history. On Sept. 10, the entire Constitution was referred to the Committee on Style and Arrangement. When that committee's version appeared two days later, the words ''against the United States'' had been dropped, probably on the theory that they were redundant, although we have no direct evidence. It would be astonishing if this change were intended to have a substantive effect, for the committee had no authority to change the meaning of any provision, let alone the impeachment clause on which the framers had converged. The Constitution as a whole, including the impeachment provision, was signed by the delegates and offered to the nation on Sept. 17.

These debates support a narrow understanding of ''high Crimes and Misdemeanors,'' founded on the central notions of bribery and treason. The early history tends in the same direction. The Virginia and Delaware constitutions, providing a background for the founders' work, generally allowed impeachment for acts ''by which the safety of the State may be endangered.'' And consider the words of the highly respected (and later Supreme Court Justice) James Iredell, speaking in the North Carolina ratifying convention: ''I suppose the only instances, in which the President would be liable to impeachment, would be where he had received a bribe, or had acted from some corrupt motive or other.'' By way of explanation, Iredell referred to a situation in which ''the President has received a bribe . . . from a foreign power, and, under the influence of that bribe, had address enough with the Senate, by artifices and misrepresentations, to seduce their consent to a pernicious treaty.''

James Wilson, a convention delegate from Pennsylvania, wrote similarly in his 1791 ''Lectures on Law'': ''In the United States and in Pennsylvania, impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments.'' Another early commentator went so far as to say that ''the legitimate causes of impeachment . . . can have reference only to public character, and official duty. . . . In general, those offenses, which may be committed equally by a private person, as a public officer, are not the subjects of impeachment.''

This history casts new light on the famous 1970 statement of Gerald Ford, then a representative from Michigan, that a high crime and misdemeanor ''is whatever a majority of the House of Representatives considers it to be.'' In a practical sense, of course, Ford was right; no court would review a decision to impeach. But in a constitutional sense, he was quite wrong; the framers were careful to circumscribe the power of the House of Representatives by sharply limiting the category of legitimately impeachable offenses.

The Constitution is not always read to mean what the founders intended it to mean, and Madison's notes hardly answer every question. But under any reasonable theory of constitutional interpretation, the current allegations against Clinton fall far short of the permissible grounds for removing a president from office. Of course, perjury and obstruction of justice could be impeachable offenses if they involved, for example, lies about unlawful manipulation of elections. It might even be possible to count as impeachable ''corruption'' the extraction of sexual favors in return for public benefits of some kind. But nothing of this kind has been alleged thus far. A decision to impeach President Clinton would not and should not be subject to judicial review. But for those who care about the Constitution's words, and the judgment of its authors, there is a good argument that it would nonetheless be unconstitutional.—Cass Sunstein, who teaches at the University of Chicago School of Law, is the author of ''Legal Reasoning and Political Conflict'' (Oxford University Press).

[From the New York Times, Oct. 1, 1998]

''AN EASY LINE TO DRAW''

(By Robert F. Drinan and Wayne Owens)

This is not the first time the House Judiciary Committee has been called on to determine whether actions of the President in his private life rise to the level of ''high crimes and misdemeanors.'' In 1974, we were members of the House Judiciary Committee that considered evidence that Richard Nixon committed tax fraud while President. The panel concluded that personal misconduct is not an impeachable offense.

The evidence against President Nixon was convincing. He had claimed a $565,000 deduction on his taxes for the donation of his Vice Presidential papers, but the loophole that allowed the deduction was closed in 1969. The IRS concluded that the documents for the donation had been signed in 1970 and backdated. There was persuasive evidence that Nixon was personally involved in the decision, making him criminally liable for tax fraud.

But the committee decided by a vote of 26 to 12 that he should not be impeached for tax fraud because it did not involve official conduct or abuse of Presidential powers.

As one of the committee's most partisan Democrats, Jerry Waldie, said, ''Though I find the conduct of the President to have been shabby, to have been unacceptable, and to have been disgraceful even, this is not an abuse of power sufficient to warrant impeachment.''

This bipartisan conclusion was made easier because the first order of business when the committee convened in 1974 was to discuss what the standards should be for impeachment. Without such standards, the impeachment process could become a partisan free-for-all.

The committee stipulated from the beginning that ''because impeachment of a President is a grave step for the nation, it is predicted upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the Presidential office.''

The current House Judiciary Committee would do well to ''follow the precedents set in the Nixon hearings,'' as the chairman, Henry Hyde, recently pledged to do. If the panel applies the standard that emerged in 1974, it will decide that the charges against Clinton do not fall under the articles of impeachment.—Robert F. Drinan and Wayne Owens are former Democratic Representatives from, respectively, Massachusetts and Utah.

RECENT STATEMENTS COMPARING THE LEWINSKY MATTER TO WATERGATE BY INDIVIDUALS CLOSELY INVOLVED IN WATERGATE

''With Mr. Nixon, of course, you had really serious abuse of high office. He engaged in wiretapping of newsmen and government officials. He ordered break-ins—the staff did—of government institutions, and then there was a cover-up where there was clearly no question when you're paying hush money that you're seeking silence of those involved. So, the width and breadth of Watergate was much different than the single incident we have involved here.''—John Dean (CNN, 9/11/98)

''The offenses being investigated are totally different. . . . In the aggregate, Watergate was serious, piece-by-piece subversion of presidential accountability to the Congress and public. Those are very wide differences from Whitewater and Monica

Lewinsky.''—Elliot Richardson (Associated Press, 9/10/98)

Asked if the Starr Report established grounds for impeachment, Ben-Veniste answered, ''No, I don't. And I believe that the report itself is a flagrant and arrogant misuse of the power and the authority of an independent counsel. It had been reported that Mr. Starr was going to follow the example of the Watergate prosecutors in transmitting evidence as a statute permits him to do relating to his view of impeachable offenses. Instead, he has set himself up, not only as investigator and prosecutor, but as judge and jury and has had the arrogance to write articles of impeachment as to make an argument here, a prosecution argument for the removal of the President of the United States. This report has gone so far beyond what he was authorized to do that is has now merged Starr, the prosecutor, and Star the Supermarket tabloid.''—Richard Ben-Veniste (Meet the Press, 9/13/98)

''I think we have to remember what the crimes in Watergate were. Watergate was about a vast and pervasive abuse of power by a President who ordered break-ins; who ordered fire bombings; who ordered illegal wiretappings; who ordered a squad of goons to thwart the constitutional electoral process. We've seen nothing like that here.''—Carl Bernstein (CNN Saturday Morning News, 9/12/98)

[From the New York Times, Oct. 4, 1998]

''THE PATH BACK TO DIGNITY''

(By Gerald R. Ford)

GRAND RAPIDS, MICH.—Almost exactly 25 years have passed since Richard Nixon nominated me to replace the disgraced Spiro Agnew as Vice President. In the contentious days of autumn 1973, my confirmation was by no means assured. Indeed, a small group of House Democrats, led by Bella Abzug, risked a constitutional crisis in order to pursue their own agenda.

''We can get control and keep control,'' Ms. Abzug told the Speaker of the House, Carl Albert.

The group hoped, eventually, to replace Nixon himself with Mr. Albert.

The Speaker, true to form, refused to have anything to do with the scheme. And so on Dec. 6, 1973, the House voted 387 to 35 to confirm my nomination on accordance with the 25th Amendment to the Constitution.

When I succeeded to the Presidency, in August 1974, my immediate and overriding priority was to draw off the poison that had seeped into the nation's bloodstream during two years of scandal and sometimes ugly partisanship. Some Americans have yet to forgive me for pardoning my predecessor. In the days leading up to that hugely controversial action, I didn't take a poll for guidance, but I did say more than a few prayers. In the end I listened to only one voice, that of my conscience. I didn't issue the pardon for Nixon's sake, but for the country's.

A generation later, Americans once again confront the specter of impeachment. From the day, last January, when the Monica Lewinsky story first came to light, I have refrained publicly from making any substantive comments. I have done so because I haven't known enough of the facts—and because I know all too well that a President's responsibilities are, at the best of times, onerous. In common with the other former Presidents, I have had to wish to increase those burdens. Moreover, I resolved to say nothing unless my words added constructively to the national discussion.

This much now seems clear: whether or not President Clinton has broken any laws, he has broke faith with those who elected him. A leader of rare gifts, one who set out to change history by convincing the electorate that he and his party wore the mantle of individual responsibility and personal accountability, the President has since been forced to take refuge in legalistic evasions, while his defenders resort to the insulting mantra that ''everybody does it.''

The best evidence that everybody doesn't do it is the genuine outrage occasioned by the President's conduct and by the efforts of some White House surrogates to minimize its significance or savage his critics.

The question confronting us, then is not whether the President has done wrong, but rather, what is an appropriate form of punishment for his wrongdoing. A simple apology is inadequate, and a fine would trivialize his misconduct by treating it as a mere question of monetary restitution.

At the same time, the President is not the only one who stands before the bar of judgment. It has been said that Washington is a town of marble and mud. Often in these past few months it has seemed that we were all in danger of sinking into the mire.

Twenty-five years after leaving it, I still consider myself a man of the House. I never forget that my elevation to the Presidency came about through Congressional as well as constitutional mandate. My years in the White House were devoted to restoring public confidence in institutions of popular governance. Now as then, I care more about preserving respect for those institutions than I do about the fate of any individual temporarily entrusted with office.

This is why I think the time has come to pause and consider the long-term consequences of removing this President from office based on the evidence at hand. The President's hairsplitting legalisms, objectionable as they may be, are but the foretaste of a protracted and increasingly divisive debate over those deliberately imprecise words ''high crimes and misdemeanors.'' The Framers, after all, dealt in eternal truths, not glossy deceit.

Moving with dispatch, the House Judiciary Committee should be able to conclude a preliminary inquiry into possible grounds for impeachment before the end of the year. Once that process is completed, and barring unexpected new revelations, the full House might then consider the following resolution to the crisis.

Each year it is customary for a President to journey down Pennsylvania Avenue and appear before a joint session of Congress to deliver his State of the Union address. One of the binding rituals of our democracy, it takes on added grandeur from its surroundings—there, in that chamber where so much of the American story has been written, and where the ghosts of Woodrow Wilson, Franklin Roosevelt and Dwight Eisenhower call succeeding generations to account.

Imagine a very different kind of Presidential appearance in the closing days of this year, not at the rostrum familiar to viewers from moments of triumph, but in the well of the House. Imagine a President receiving not an ovation from the people's representatives, but a harshly worded rebuke as rendered by members of both parties. I emphasize: this would be a rebuke, not a rebuttal by the President.

On the contrary, by his appearance the President would accept full responsibility for his actions, as well as for his subsequent efforts to delay or impede the investigation of them. No spinning, no semantics, no evasiveness or blaming others for his plight.

Let all this be done without partisan exploitation or mean-spiritedness. Let it be dignified, honest and, above all, cleansing. The result, I believe, would be the first moment of majesty in an otherwise squalid year.

Anyone who confuses this scenario with a slap on the wrist, or a censure written in disappearing ink, underestimates the historic impact of such a pronouncement. Nor should anyone forget the power of television to foster indelible images in the national memory—not unlike what happened on the solemn August noontime in 1974 when I stood in the East Room and declared our long national nightmare to be over.

At 85, I have no general personal or political agenda, nor do I have any interest in ''rescuing'' Bill Clinton. But I do care, passionately, about rescuing the country I love from further turmoil or uncertainty.

More than a way out of the current mess, most Americans want a way up to something better. In the midst of a far graver national crisis, Lincoln observed, ''The occasion is piled high with difficulty, and we must rise with the occasion.'' We should remember those words in the days ahead. Better yet, we should be guided by them.—Gerald R. Ford, the 38th President of the United States, was a Republican member of the House of Representatives from 1949 to 1973.

Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to the gentlewoman from Houston, Texas (Ms. SHEILA JACKSON-LEE), an able member of our Committee on the Judiciary who was working until midnight on the floor.

(Ms. JACKSON-LEE asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE. Mr. Speaker, I thank the distinguished gentleman from Michigan (Mr. CONYERS) for yielding me this time, and I thank my democratic colleagues for the convictions they have shared with America today and for helping them understand this most somber challenge and the high constitutional that we may have.

To my colleagues on the other side of the aisle, truth matters, but the Constitution also matters. The President's behavior was reprehensible, outrageous, and disappointing. But as George Mason indicated, impeachable offenses are those dangerous and great offenses against the Constitution. They constitute a subversion of the Constitution.

Members gathered in 1974 and refused to impeach Richard Nixon on the personal charge of tax evasion. It must be that we understand what these constitutional standards are for impeachment high crimes and misdemeanors—would that be private sexual acts—it appears not.

Mr. Speaker, I wish in my Republican friends' attempt to explain to the American people that they stand by the Constitution that they would have implored their own counsel, Mr. Shippers, and, of course, Mr. Starr, not to hide the truth, for the presentations made by both men did not forthrightly acknowledge that Monica Lewinsky said, ''No one ever asked me to lie and I was never promised a job for my silence.'' I am concerned about this uneven presenting of the facts.

Democrats do not want a cover-up. We simply want to have an inquiry that is fair, that is expeditious, and is not open-ended and is not a fishing expedition.

What is perjury? Perjury is lying; however perjury must be proven. Sev-

eral defenses if raised would disprove lying—such truth, or whether the proponent thought he or she was telling the truth, and materiality. My friends on the other side of the aisle are rushing to judgment. But I am reminded of the words of Congresswoman Barbara Jordan, ''It is reason and not passion which must guide our deliberations, guide our debate, and guide our decision.'' We must proceed deliberately—not eager to accuse without the facts.

Mr. Speaker, I implore my colleagues, to let reason guide us. And then let me say to my constituents and those who face a moral dilemma, I have been in churches in my district, they believe in redemption. And, yes, the President has sinned. But those of you who want to rise and cast the first stone, my question is: Who has not sinned?

And whatever we do today, those of us who have received death threats in our office, attacks against our children because of the hysteria that has been created by this Congress, I simply ask that we give this proceeding a chance to be fair, to act judiciously, and to follow the Constitution.

Lastly, might I say I believe that we will survive this together as a Nation and we will do this if we let constitutional principals guide us for Isaiah 40:31 says, ''They that wait upon the Lord shall renew their strength. They shall mount up with wings as eagles and they shall walk and not be faint.''

Mr. Speaker, I will stand for the preservation of the Constitution.

It is fate that has put us all here today.

But history will reflect—and tell the story of how we acted today—whether or not the Constitution matters. Truth does matter, but the Constitution dictates that impeachable offenses be grounded in attempts to subvert the Constitution. I am supporting the democratic amendment today that focuses our review, establishes the constitutional standards, and allows us to bring this inquiry to closure by the end of the year.

Truth matters and the Constitution matters. The President is not above the law, however, neither is he beneath the law. We need to act with reason, not fury, harmony not acrimony, with deliberation, not recklessness, with constitutional discharge, and not with opinion, and speculation with justice and fairness and not injustice and unfairness.

Mr. Speaker, in November of 1992 President William Jefferson Clinton was elected President of the United States by focusing on the economy and using the slogan ''It's the Economy Stupid.'' I come here today with mixed feelings. We come here today not to focus on the economy, but the Constitution. It's the Constitution that matters!

Article II, Section IV states that,

the President . . . shall be removed from Office on Impeachment for, and Conviction of, treason, Bribery, or other High Crimes and Misdemeanors.

It's the Constitution that matters! The Framers of our Constitution set the standard. George Mason, one of the Framers, stated that ''high crimes and misdemeanors'' refers to Presidential actions that are ''great and dangerous offenses'' to attempt to subvert the Constitution.'' The noted legal scholar from Yale University Professor, Charles Black, writes in his Impeachment Handbook that,

In the English practice from which the Framers borrowed the phrase, ''High Crimes and Misdemeanors'' . . . was intended to redress public offenses committed by public officials in violation of the public trust and duties. It was designed to be justified for the gravest wrongs—offenses against the Constitution itself.

This is our standard. It is clear that while we have no conduct or allegations showing the President to have committed either treason or bribery, we must focus our attention on two questions. One, what is a ''high crime and misdemeanor or an impeachable offense?, and two, did the President of the United States commit any high crimes and misdemeanors or an impeachable offense? Those are the questions, and it is up to the Congress to find the answers.

We are at this point today because the President of the United States had an affair with a White House intern and he didn't want anyone to know about it, and that was wrong. However, what we have heard or seen thus far does not set out a prima facie case for impeachment.

On the floor for consideration today is a Republican ''privileged resolution'' on the question to launch an impeachment inquiry ''to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach the President.'' There are no limits to their investigation and no establishment of the necessary constitutional standards.

Twenty-five years ago, this committee undertook the constitutional task of considering the impeachment of President Nixon. The process was painstaking, careful, and deliberative, and both the Nation and the world were reassured that America's 200 year-old Constitution worked.

Impeachment is final, nonappealable without further remedy, a complete rejection of the people's will and thereby, I believe it must be done fully beyond a doubt and without rancor or vengeance—complying with every woven thread of the Constitution. Today, by contrast, the world and the American people have been alternatively puzzled, confused, and appalled by the reckless media circus our automatic dumping of documents has produced.

On July 24, 1974, the House Judiciary Committee had a meeting to consider the Impeachment of President Richard Nixon. One of my predecessors of the 18th Congressional District of Texas, the late, great, Barbara Jordan said that,

My faith in the Constitution is whole, it is complete, it is total. I am not going to sit here and be an idle spectator to the diminution, the subversion, the destruction of the Constitution.

So I, like my predecessor come not to subvert or destroy the Constitution, but to uphold it.

I am fully aware like most of my colleagues, that this privileged resolution only allows for a 10-minute motion to recommit, and not the regular full time allotted to consider a Democratic amendment. In order for this process to be fair and balanced and for the American people to truly hear both sides of this debate the House should waive House Rule IX, and allow the Democratic amendment to be considered, for a certain designated time. The Republicans refused that request.

While the Republican resolution does not have a time certain for the inquiry to end, the Democratic amendment calls for the Judiciary Committee to make a full recommendation to the House concerning Articles of Impeachment by no later than December 31, 1998. This is a compromise. There must be fairness and balance. The Democrats have also yielded on the provision which allows the House to consider other pertinent matters, as long as it is referred by the Independent Counsel, and not arbitrarily decided by Congress. This impeachment inquiry must be limited in scope and have a time certain. On February 6, 1974, Congressman Hutchinson, then the ranking Republican on the committee spoke on the floor of the House about the Watergate inquiry and said,

The resolution before you carries no cutoff date. Although charges have raged in the media there has yet to be demonstrated any evidence of impeachable conduct. Therefore, if by the end of April no such evidence has been produced, the committee should so report to the House and end its labors.

The American people have spoken and they have said that this has gone on too long. This can not be an endless process. There must be time certain or the House should ''end its labors.''

So far what we have in Congress is the word of one man, an Independent Counsel who is not duly elected by the people. We have convoluted facts, inconsistent stories and versions, possible illegal tape recordings, but no real hard evidence.

In Act V of Macbeth, William Shakespeare writes,

Life's but a walking shadow, a poor player That struts and frets his hour upon the stage, And then is heard no more; it is a tale Told by an idiot, full of sound and fury, Signifying nothing.

That's what we have so far Mr. Speaker. We have fury, but no facts, and a tale told by a nonelected official that is full of allegations, not yet fact signifying anything. As the Watergate Committee's February 1974 Staff Report explained, ''In an impeachment proceeding a President is called to account for abusing powers that only a President possesses.'' In Watergate, as in all prior impeachments, the allegations concerned official misconduct that threatened to subvert the constitutional order or balance, not private misbehavior. Impeachment is not a personal punishment. In all of American history, no official has been impeached for misbehavior unrelated to his official responsibilities. I make no attempt to excuse the President's behavior, but as we vote on whether to launch a full scale impeachment inquiry, I admonish my colleagues that we must adhere to the constitution and the writings of the Framers. It's the Constitution that matters!

As James Wilson explained in the Pennsylvania ratification convention: ''far from being above the laws, [the President] is amenable to them in this private character as [a] citizen, and in his public character by impeachment.'' The Constitution imposes a grave and serious responsibility on us to protect the fabric of the Constitution. To perform our job requires that we investigate the facts thoroughly before we begin dealing with what our predecessors called ''delicate issues of basic constitutional

law.'' We must avoid prejudging the issues or turning this solemn duty into another forum for partisan wrangling. The Republican resolution on the floor today, which may result in the House acting without all the facts, weakens the foundation of the Constitution.

The former Congressman and now a renowned Georgetown Law Professor, Father Drinan, who served on the House Judiciary Committee during the Watergate Impeachment hearings stated that,

There is no such thing as a Democratic or Republican approach to the allegation of impeachment, The House of Representatives is now involved in a proceeding which was described by George Mason [a Founding Father] as the Constitution providing for the regular punishment of the executive when his misconduct should deserve it'' but also ''for his honorable acquittal when he should be unjustly accused.

It was George Washington, the first President of the United States who said in his Farewell Address on September 17, 1796, ''Let me now . . . warn you in the most solemn manner against the baneful effects of the spirit of party.''

This should be a nonpartisan debate, and a constitutional debate. We need to act with reason, not fury, harmony not acrimony, with deliberation . . . not recklessness, with constitutional discharge, and not with opinions and speculation, with justice and fairness, and not injustice and unfairness.

I hope my colleagues will allow for full consideration and debate of the Democratic amendment which is focused and fair. I leave you with the words of Martin Luther King, who said, ''Injustice anywhere is a threat to justice everywhere . . . whatever affects one directly, affects all indirectly.'' It's the Constitution that matters Mr. Speaker, and I hope today it will rule.

Mr. HYDE. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. SMITH), a distinguished member of the committee.

(Mr. SMITH of Texas asked and was given permission to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, others continue to argue or continue to imply that this inquiry is only about a personal relationship, but that is like saying Watergate was only about picking a lock or that the Boston Tea Party was only about tea.

During a similar investigation of President Nixon 24 years ago, there was little focus on the burglary. The Committee on the Judiciary and the special prosecutor rightly wanted to know, as we should today, whether the President lied to the American people, obstructed justice or abused his office.

While some try to describe this scandal as private, the President's own Attorney General found that there existed credible evidence of criminal wrongdoing.

This is not a decision to go forward with an inquiry into a personal relationship. It is about examining the most public of relationships, between a witness and the courts, between the President and the American people.

It is about respect for the law, respect for the office of the presidency, respect for the American people, respect for the officers of the Court, respect for women and ultimately about self-respect.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. ACKERMAN).

(Mr. ACKERMAN asked and was given permission to revise and extend his remarks.)

Mr. ACKERMAN. Mr. Speaker, I rise in passionate objection and opposition to the resolution.

Mr. CONYERS. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from California (Ms. PELOSI).

Ms. PELOSI. Mr. Speaker, I thank the gentleman from Michigan (Mr. CONYERS) for yielding.

Mr. Speaker, I rise in opposition to the Hyde resolution, and in doing so point out the inconsistency of the Republican majority. At the start of this Congress, the Republican majority gave you, Mr. Speaker, the highest honor this House can bestow: The speakership. For the freshman Republicans, this was the first vote that they cast in this House. The Republican majority did this after you, Mr. Speaker, were charged with and admitted to lying under oath to the Ethics Committee about the conduct of your political affairs.

How inconsistent then, Mr. Speaker, for this same Republican majority to move to an impeachment inquiry of the President for lying about his personal life. Our Republican majority have said lying under oath is a dagger in the heart of the legal system. We all agree that lying is wrong, but why the double standard?

I urge my colleagues to reject this Republican double standard which exalts the Speaker and moves to impeach the President. I urge my colleagues to vote no on the Hyde resolution.

Mr. HYDE. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Utah (Mr. CANNON), a member of the Committee on the Judiciary.

Mr. CANNON. Mr. Speaker, I would like to associate myself with the views expressed by the chairman, the gentleman from Illinois (Mr. HYDE), and also by those expressed by the gentleman from Ohio (Mr. KUCINICH).

I am proud that my Republican colleagues have spent more than 5 times as much time reviewing the Starr referral material than my Democratic colleagues.

This is a solemn occasion and I feel the full weight of the responsibility that we are assuming today.

Some would trivialize this debate by giving it the name of a young intern or by referring to other important matters that face the Nation. They know that this is or they should know that this is inappropriate. Americans want this matter brought to closure. That can only occur if we fully determine the facts, place those facts in the context of the law and weigh the proper response that will preserve the integrity of the office of the presidency and the integrity of our Nation.

Mr. Speaker, as a member of the Committee on the Judiciary, I pledge to work diligently to move this matter forward.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. DAVIS).

(Mr. DAVIS of Illinois asked and was given permission to revise and extend his remarks.)

Mr. DAVIS of Illinois. Mr. Speaker, I rise in opposition to the Hyde resolution.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon (Mr. DEFAZIO).

(Mr. DEFAZIO asked and was given permission to revise and extend his remarks.)

Mr. DEFAZIO. Mr. Speaker, I rise in support of the Democratic alternative and in opposition to the open-ended Republican resolution of inquiry.

Mr. Speaker, the question of impeaching a sitting President has only come before the House of Representatives three times in our nation's history. There's a very good reason this has happened so seldom. Our nation's founders deliberately set very high standards for impeachment in order to spare the nation the trauma of such an inherently divisive debate and to maintain a strong and independent Presidency. At a time like this, we all have a responsibility to rise above party politics and short term political considerations. We are not just debating the fate of this President. We are setting precedents that will have a profound and long-lasting effect on our constitutional system of government.

The issue before the House today is whether we will initiate a lengthy and open-ended impeachment inquiry that will paralyze our government and throw this nation into a prolonged constitutional crisis, or whether we will demand a focused and speedy resolution of this matter. After carefully considering the evidence so far produced by Independent Counsel Kenneth Starr, I have concluded that the nation's interests are best served by an impeachment inquiry that is thorough, but focused—comprehensive, but promptly concluded.

This debate is already preventing Congress from addressing important issues facing the nation—including issues like the future of Social Security, health care reform and improving our educational system. There is no profit to the people of the United States in a drawn-out impeachment debate that could go on for another year or more. We have the information we need to conclude this matter by the end of this year. The Republican leadership should work with Democratic leaders to make that happen.

President Clinton's behavior has been outrageous, reckless and morally offensive. He flatly lied to the American people and may have committed perjury in a civil lawsuit. Mr. Starr also alleges that the President obstructed justice and otherwise abused his office.

Reasonable people can differ over whether these charges—if true—constitute the kind of offenses that warrant the national trauma of impeachment. For that reason, if for no other, I believe the Judiciary Committee should consider the evidence brought forward by the Independent Counsel, as well as any new evidence he sees fit to refer to us, and decide

without delay whether to forward articles of impeachment to the House. But I strongly disagree with the delay tactics and the blatantly unfair and partisan approach adopted by Republican leaders—a strategy aimed more at improving their party's election prospects than at promoting the national interest.

Impeachment of a President is not a matter for Congress to take lightly or use for narrow partisan purposes. By its very nature, impeachment repudiates the will of the people as expressed in a popular election. it severely undermines the separation of powers, which is at the core of our system of government. And in the long term, it would weaken not only the office of the President, but the nation's strength and prestige in international affairs.

For those reasons and others, I oppose the Republican leadership's drawn-out and open-ended impeachment inquiry proposal and will vote today in favor of the alternative: a prompt and focused impeachment inquiry aimed at resolving this crisis and putting these issues behind us, one way or another.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington (Mr. MCDERMOTT), my dear friend.

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks, and to include extraneous matter.)

Mr. MCDERMOTT. Mr. Speaker, I rise in opposition to the Hyde amendment.

Mr. MCDERMOTT. Mr. Speaker, in 1789, the Founding Fathers wrote a Constitution designed to create a stable government. They established a democracy of the people—not a parliamentary democracy—because they did not want a government that would change whenever the executive fell into disfavor with the majority party. The Founding Fathers wanted a government of laws, not people, so they made only one option available to change the chief executive outside of an election by the people—impeachment. Impeachment was prescribed only in unique and extraordinary circumstances.

The impeachment process was vaguely outlined in the Constitution and the established criteria are very few. Article II, Section 4 says that the President, ''Shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.'' Impeachment does not require criminal acts. In fact, the House Report on the Constitutional Grounds of Presidential Impeachment states, ''the emphasis has been on the significant effects of the conduct—undermining the integrity of the office, disregard of constitutional duties and oath of office, arrogation of power, abuse of the governmental process, adverse impact on the system of government.'' The bar was set high so that impeachment would be neither casual nor easy for fear that we would undermine the stability of the office. Alexander Hamilton summed up the dangers of impeachment by saying, ''there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.''

Hamilton's warning seems prophetic today. Aside from its partisan nature, the situation before us is quite unusual. It is the first time an Independent Counsel has presented findings to the Congress for determination of the need for an impeachment process. Secondly, the House of Representatives undermined the process when they ignored the precedents which have been followed in the evaluation and released large volumes of testimony and documents collected in the grand jury process to not only the Congress but to the world at large.

This has allowed the full membership of the House of Representatives and the public to come to conclusions before the process of impeachment has begun. The polls would suggest that the public does not favor removing the President from office but it is less clear what they feel is an adequate sanction.

Today, the members of the House will be confronted with the question of whether or not an impeachment inquiry should begin. I will vote against an inquiry for the following reason:

The evidence presented to the Congress by Mr. Starr does not support the charge of an impeachable offense. When all is said and done, the President made some false statements under oath about a sexual relationship and lied to many people about that relationship. While I in no way condone the President's behavior, I have concluded that it requires no further investigation and does not support impeachment.

The framers of the Constitution did not anticipate litigation against a president in a sexual harassment case or investigation by an independent counsel. The framers limited impeachment to the kinds of improprieties—treason, bribery, and the like—that threatened the nation for the benefit of the individual. We have no such case before us. His actions, while totally unacceptable, do not rise to the level of a high crime or misdemeanor. The President's actions do not threaten our ability to act decisively in the world of politics for the benefit of all Americans, sadly, the House of Representative's actions do.

[From the National Law Journal, Oct. 5, 1998]

TOP PROFS: NOT ENOUGH TO IMPEACH

NLJ 'JURY' OF 12 CON-LAW EXPERTS WEIGHS EVIDENCE

(By Harvey Berkman)

ON A 'JURY' OF 12 constitutional law professors, all but two told The National Law Journal that, from a constitutional standpoint, President Clinton should not be impeached for the things Independent Counsel Kenneth W. Starr claims he did.

Some of the scholars call the question a close one, but most suggest that it is not; they warn that impeaching William Jefferson Clinton for the sin he admits or the crimes he denies would flout the Founding Fathers' intentions.

''On the charges as we now have them, assuming there is no additional report [from Mr. Starr], impeaching the president would probably be unconstitutional,'' asserts Cass R. Sunstein, co-author of a treatise on constitutional law, who teaches at the University of Chicago Law School.

The first reason for this conclusion is that the one charge indisputably encompassed by the concept of impeachment—abuse of power—stands on the weakest argument and evidence.

''The allegations that invoking privileges and otherwise using the judicial system to shield information . . . is an abuse of power that should lead to impeachment and removal from office is not only frivolous, but also dangerous,'' says Laurence H. Tribe, of Harvard Law School.

The second reason is that the Starr allegation for which the evidence is disturbingly strong—perjury—stems directly from acts the Founders would have considered personal, not governmental, and so is not the sort of issue they intended to allow Congress to cite to remove a president from office.

NO 'LARGE-SCALE INFIDELITY'

Says Professor Sunstein, ''Even collectively, the allegations don't constitute the kind of violation of loyalty to the United States or large-scale infidelity to the Constitution that would justify impeachment, given the Framers' decision that impeachment should follow only from treason, bribery or other like offenses . . . What we have in the worst case here is a pattern of lying to cover up a sexual relationship, which is very far from what the Framers thought were grounds for getting rid of a president.''

Douglas W. Kmiec, who spent four years in the Justice Department's Office of Legal Counsel and now teaches at Notre Dame Law School, agrees: ''The fundamental point is the one that Hamilton makes in Federalist 65: Impeachment is really a remedy for the republic; it is not intended as personal punishment for a crime.

''There's no question that William Jefferson Clinton has engaged in enormous personal misconduct and to some degree has exhibited disregard for the public interest in doing so, he says. But does that mean that it is gross neglect—gross in the sense of being measured not by whether we have to remove the children from the room when the president's video is playing, but by whether [alleged terrorist Osama] bin Laden is now not being properly monitored or budget agreements aren't being made?''

Adds Prof. John E. Nowak, of the University of Illinois College of Law, the impeachment clause was intended ''to protect political stability in this country, rather than move us toward a parliamentary system whereby the dominant legislative party can decide that the person running the country is a bad person and get rid of him.'' Mr. Nowak co-authored a constitutional law hornbook and a multivolume treatise with fellow Illinois professor Ronald Rotunda, with whom he does not discuss these matters because Professor Rotunda is an adviser to Mr. Starr.

''It seems hard to believe that anything in the report . . . could constitute grounds for an impeachment on other than purely political grounds.'' Professor Nowak says. ''If false statements by the president to other members of the executive branch are the equivalent of a true misuse of office . . . I would think that the prevailing legislative party at any time in our history when the president was of a different party could have cooked up . . . ways that he had misused the office.''

And that, says Prof. A.E. Dick Howard, who has been teaching constitutional law and history for 30 years, would be a step in a direction the Founders never intended to go.

''The Framers started from a separation-of-powers basis and created a presidential system, not a parliamentary system, and they meant for it to be difficult for Congress to remove a president—not impossible, but difficult,'' says Professor Howard, of the University of Virginia School of Law. ''We risk diluting that historical meaning if we permit a liberal reading of the impeachment power—which is to say: If in doubt, you don't impeach.''

Many of the scholars point to the White House's acquisition of FBI files on Republicans as an example of something that could warrant the Clintons' early return to Little Rock—but only if it were proved that these files were acquired intentionally and malevolently misused. The reason that would be

grounds for impeachment, while his activities surrounding Monica Lewinsky would not, the professors say, is that misuse of FBI files would implicate Mr. Clinton's powers as president. But if Mr. Starr has found any such evidence, he has not sent it to Congress, which he is statutorily bound to do.

One professor who believes there is no doubt that President Clinton's behavior in the Lewinsky matter merits his impeachment is John O. McGinnis, who teaches at Yeshiva University, Benjamin N. Cardozo School of Law. ''I don't think we want a parliamentary system, although I would point out that it's not as though we're really going to have a change in power. If Clinton is removed there will be Gore, sort of a policy clone of Clinton. A parliamentary system suggests a change in party power. That fear is somewhat overblown.''

Professor McGinnis considers the reasons for impeachment obvious. ''I don't think the Constitution cares one whit what sort of incident [the alleged felonies] come from,'' he says. ''The question is, 'Can you have a perjurer and someone who obstructs justice as president?' And it seems to me self-evident that you cannot. The whole structure of our country depends on giving honest testimony under law. That's the glue of the rule of law. You can go back to Plato, who talks about the crucial-ness of oaths in a republic. It's why perjury and obstruction of justice are such dangerous crimes.''

This argument has some force, says Professor Kmiec, but the public is hesitant to impeach in this case because of a feeling that ''the entire process started illegitimately, that the independent counsel statute is flawed and that the referral in this case was even more flawed, in that it was done somewhat hastily by the attorney general.''

Jesse H. Choper, a professor at the University of California at Berkeley School of Law (Boalt Hall) and co-author of a con-law casebook now in its seventh edition, agrees that perjury, committed for any reason, can count as an impeachable offense. ''The language says 'high crimes and misdemeanor.' and [perjury] is a felony, so my view is that it comes within the [constitutional] language. But whether we ought to throw a president out of office because he lied under oath in order to cover up an adulterous affair . . . my judgment as a citizen would be that it's not enough.''

A JUDGE WOULD BE IMPEACHED

Many of the professors say Mr. Clinton would almost certainly be impeached for precisely what he has done, were he a judge rather than the president. That double standard, they say, is contemplated by the Constitution in a roundabout way. Says Professor Kmeic, ''The places where personal misbehavior is raised have entirely been in the context of judicial officers. There is a healthy amount of scholarship that suggests that one of the things true about judicial impeachments (which is not true of executive impeachments) is the additional phraseology saying that judges serve in times of good behavior. The counterargument is that there is only one impeachment clause, applying to executive and judicial alike. But . . . our history is that allegations of profanity and drunkenness, gross personal misbehavior, have come up only in the judicial context.''

In addition to history, there is another reason for making it harder to impeach presidents, says Akhil Reed Amar, who teaches constitutional law at Yale Law School and who recently published a book on the Bill of Rights: ''When you impeach a judge, you're not undoing a national election . . . The questions to ask is whether [President Clinton's] misconduct is so serious and malignant as to justify undoing a national election, canceling the votes of millions and putting the nation through a severe trauma.''

THEY'RE UNCOMFORTABLE

None of these arguments, however, is to suggest that the professors are comfortable with what they believe the president may well be doing: persistently repeating a single, essential lie—that his encounters did not meet the definition of sexual relations at his Paula Jones deposition. Mr. Clinton admits that this definition means he could never have touched any part of her body with the intent to inflame or satiate her desire. It is an assertion that clashes not only with Ms. Lewinsky's recounting of her White House trysts to friends, erstwile friends and the grand jury, but also with human nature.

''That's one of the two things that trouble me most about his testimony—that he continues to insist on the quite implausible proposition [of] 'Look, Ma, no hands,' which is quite inconsistent with Monica Lewinsky's testimony, and that he's doing that in what appears to be quite a calculated way,'' Professor Tribe laments. ''But I take some solace in the fact that [a criminal prosecution of perjury] awaits him when he leaves office.''

Professor Amar agrees that ''whatever . . . crimes he may have committed, he'll have to answer for it when he leaves office, and that is the punishment that will fit his crime.''

Also disturbing to Professor Tribe is the president's apparent comfort with a peculiar concept of what it means to tell the truth, a concept the professor describes as ''It may be deceptive, but if you can show it's true under a magnifying glass tilted at a certain angle, you're OK.''

But even that distortion, he believes, does not reach the high bar the Founders set for imposing on presidents the political equivalent of capital punishment.

''It would be a disastrous precedent to say that when one's concept of truth makes it harder for people to trust you, that that fuzzy fact is enough to say there has been impeachable conduct,'' Professor Tribe says. ''That would move us very dramatically toward a parliamentary system. Whether someone is trustworthy is very much in the eye of the beholder. The concept of truth revealed in his testimony makes it much harder to have confidence in him, but the impeachment process cannot be equated with a vote of no confidence without moving us much closer to a parliamentary system.''

Professor Kmiec does suggest that something stronger than simple ''no confidence'' might form the possible basis for impeachment. Call it ''no confidence at all.'' ''It is possible that one could come to the conclusion that the president's credibility is so destroyed that he'd have difficulty functioning as an effective president,'' Professor Kmiec says, ''But the public doesn't seem to think so, and I don't know that foreign leaders think so,'' given the standing ovation Mr. Clinton received at the United Nations.

In the end, Professor Howard says that he opposes impeachment under these conditions not only because the past suggests it is inappropriate, but also because of the dangerous precedent it would set. ''Starting with the Supreme Court's devastatingly unfortunate and totally misconceived opinion [in Clinton v. Jones, which allowed Ms. Jones's suit to proceed against the president while he was still in office], this whole controversy has played out in a way that makes it possible for every future president to be harassed at every turn by his political enemies,'' Professor Howard warns. ''To draw fine lines and say that any instance of stepping across that line becomes impeachable invites a president's enemies to lay snares at every turn in the path. I'm not sure we want a system that works that way.''

The other ''jurors'' on this panel of constitutional law professors were:

The one essentially abstaining ''juror'': Michael J. Gerhardt, of the College of William and Mary, Marshall-Wythe School of Law.

Douglas Laycock, of The University of Texas School of Law.

Thomas O. Sargentich, co-director of the program on law and government at American University, Washington College of Law.

Suzanna A. Sherry, professor at the University of Minnesota Law School.

N O T I C E

Incomplete record of House proceedings. Except for concluding business which follows, today's House proceedings will be continued in the next issue of the Record.

CONFERENCE REPORT ON H.R. 1853, CARL D. PERKINS VOCATIONAL-TECHNICAL EDUCATION ACT OF 1998

Mr. Goodling submitted the following conference report and statement on the bill (H.R. 1853) to amend the Carl D. Perkins Vocational and Applied Technology Education Act:

CONFERENCE REPORT (105–800)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1853), to amend the Carl D. Perkins Vocational and Applied Technology Education Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; AMENDMENT.

(a) SHORT TITLE.—This Act may be cited as the ''Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998''.

(b) AMENDMENT.—The Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.) is amended to read as follows:

''SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

''(a) SHORT TITLE.—This Act may be cited as the 'Carl D. Perkins Vocational and Technical Education Act of 1998.

''(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

''SEC. 2. PURPOSE.

''The purpose of this Act is to develop more fully the academic, vocational, and technical skills of secondary students and postsecondary students who elect to enroll in vocational and technical education programs, by—

''(1) building on the efforts of States and localities to develop challenging academic standards;

''(2) promoting the development of services and activities that integrate academic, vocational, and technical instruction, and that link secondary and postsecondary education for participating vocational and technical education students;

''(3) increasing State and local flexibility in providing services and activities designed to develop, implement, and improve vocational and technical education, including tech-prep education; and

''(4) disseminating national research, and providing professional development and technical assistance, that will improve vocational and technical education programs, services, and activities.

''SEC. 3. DEFINITIONS.

''In this Act:

''(1) ADMINISTRATION.—The term 'administration', when used with respect to an eligible agency or eligible recipient, means activities necessary for the proper and efficient performance of the eligible agency or eligible recipient's duties under this Act, including supervision, but does not include curriculum development activities, personnel development, or research activities.

''(2) ALL ASPECTS OF AN INDUSTRY.—The term 'all aspects of an industry' means strong experience in, and comprehensive understanding of, the industry that the individual is preparing to enter.

''(3) AREA VOCATIONAL AND TECHNICAL EDUCATION SCHOOL.—The term 'area vocational and technical education school' means—

''(A) a specialized public secondary school used exclusively or principally for the provision of vocational and technical education to individuals who are available for study in preparation for entering the labor market;

''(B) the department of a public secondary school exclusively or principally used for providing vocational and technical education in not fewer than 5 different occupational fields to individuals who are available for study in preparation for entering the labor market;

''(C) a public or nonprofit technical institution or vocational and technical education school used exclusively or principally for the provision of vocational and technical education to individuals who have completed or left secondary school and who are available for study in preparation for entering the labor market, if the institution or school admits as regular students both individuals who have completed secondary school and individuals who have left secondary school; or

''(D) the department or division of an institution of higher education, that operates under the policies of the eligible agency and that provides vocational and technical education in not fewer than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if the department or division admits as regular students both individuals who have completed secondary school and individuals who have left secondary school.

''(4) CAREER GUIDANCE AND ACADEMIC COUNSELING.—The term 'career guidance and academic counseling' means providing access to information regarding career awareness and planning with respect to an individual's occupational and academic future that shall involve guidance and counseling with respect to career options, financial aid, and postsecondary options.

''(5) CHARTER SCHOOL.—The term 'charter school' has the meaning given the term in section 10306 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8066).

''(6) COOPERATIVE EDUCATION.—The term 'cooperative education' means a method of instruction of education for individuals who, through written cooperative arrangements between a school and employers, receive instruction, including required academic courses and related vocational and technical education instruction, by alternation of study in school with a job in any occupational field, which alternation shall be planned and supervised by the school and employer so that each contributes to the education and employability of the individual, and may include an arrangement in which work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

''(7) DISPLACED HOMEMAKER.—The term 'displaced homemaker' means an individual who—

''(A)(i) has worked primarily without remuneration to care for a home and family, and for that reason has diminished marketable skills;

''(ii) has been dependent on the income of another family member but is no longer supported by that income; or

''(iii) is a parent whose youngest dependent child will become ineligible to receive assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) not later than 2 years after the date on which the parent applies for assistance under this title; and

''(B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

''(8) EDUCATIONAL SERVICE AGENCY.—The term 'educational service agency' has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965.

''(9) ELIGIBLE AGENCY.—The term 'eligible agency' means a State board designated or created consistent with State law as the sole State agency responsible for the administration of vocational and technical education or for supervision of the administration of vocational and technical education in the State.

''(10) ELIGIBLE INSTITUTION.—The term 'eligible institution' means—

''(A) an institution of higher education;

''(B) a local educational agency providing education at the postsecondary level;

''(C) an area vocational and technical education school providing education at the postsecondary level;

''(D) a postsecondary educational institution controlled by the Bureau of Indian Affairs or operated by or on behalf of any Indian tribe that is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 452 et seq.);

''(E) an educational service agency; or

''(F) a consortium of 2 or more of the entities described in subparagraphs (A) through (E).

''(11) ELIGIBLE RECIPIENT.—The term 'eligible recipient' means—

''(A) a local educational agency, an area vocational and technical education school, an educational service agency, or a consortium, eligible to receive assistance under section 131; or

''(B) an eligible institution or consortium of eligible institutions eligible to receive assistance under section 132.

''(12) GOVERNOR.—The term 'Governor' means the chief executive officer of a State or an outlying area.

''(13) INDIVIDUAL WITH LIMITED ENGLISH PROFICIENCY.—The term 'individual with limited English proficiency' means a secondary school student, an adult, or an out-of-school youth, who has limited ability in speaking, reading, writing, or understanding the English language, and—

''(A) whose native language is a language other than English; or

''(B) who lives in a family or community environment in which a language other than English is the dominant language.

''(14) INDIVIDUAL WITH A DISABILITY.—

''(A) IN GENERAL.—The term 'individual with a disability' means an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)).

''(B) INDIVIDUALS WITH DISABILITIES.—The term 'individuals with disabilities' means more than 1 individual with a disability.

''(15) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has

the meaning given the term in section 101 of the Higher Education Act of 1965.

''(16) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

''(17) NONTRADITIONAL TRAINING AND EMPLOYMENT.—The term 'nontraditional training and employment' means occupations or fields of work, including careers in computer science, technology, and other emerging high skill occupations, for which individuals from one gender comprise less than 25 percent of the individuals employed in each such occupation or field of work.

''(18) OUTLYING AREA.—The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

''(19) POSTSECONDARY EDUCATIONAL INSTITUTION.—The term 'postsecondary educational institution' means—

''(A) an institution of higher education that provides not less than a 2-year program of instruction that is acceptable for credit toward a bachelor's degree;

''(B) a tribally controlled college or university; or

''(C) a nonprofit educational institution offering certificate or apprenticeship programs at the postsecondary level.

''(20) SCHOOL DROPOUT.—The term 'school dropout' means an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.

''(21) SECONDARY SCHOOL.—The term 'secondary school' has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

''(22) SECRETARY.—The term 'Secretary' means the Secretary of Education.

''(23) SPECIAL POPULATIONS.—The term 'special populations' means—

''(A) individuals with disabilities;

''(B) individuals from economically disadvantaged families, including foster children;

''(C) individuals preparing for nontraditional training and employment;

''(D) single parents, including single pregnant women;

''(E) displaced homemakers; and

''(F) individuals with other barriers to educational achievement, including individuals with limited English proficiency.

''(24) STATE.—The term 'State', unless otherwise specified, means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each outlying area.

''(25) SUPPORT SERVICES.—The term 'support services' means services related to curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.

''(26) TECH-PREP PROGRAM.—The term 'tech-prep program' means a program of study that—

''(A) combines at least 2 years of secondary education (as determined under State law) and 2 years of postsecondary education in a nonduplicative sequential course of study;

''(B) strengthens the applied academic component of vocational and technical education through the integration of academic, and vocational and technical, instruction;

''(C) provides technical preparation in an area such as engineering technology, applied science, a mechanical, industrial, or practical art or trade, agriculture, a health occupation, business, or applied economics;

''(D) builds student competence in mathematics, science, and communications (including through applied academics) in a coherent sequence of courses; and

''(E) leads to an associate degree or a certificate in a specific career field, and to high skill, high wage employment, or further education.

''(27) TRIBALLY CONTROLLED COLLEGE OR UNIVERSITY.—The term 'tribally controlled college or university' has the meaning given such term in section 2 of the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801(a)(4)).

''(28) TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL AND TECHNICAL INSTITUTION.—The term 'tribally controlled postsecondary vocational and technical institution' means an institution of higher education (as defined in section 101 of the Higher Education Act of 1965, except that paragraph (2) of such section shall not be applicable and the reference to Secretary in paragraph (5)(A) of such section shall be deemed to refer to the Secretary of the Interior) that—

''(A) is formally controlled, or has been formally sanctioned or chartered, by the governing body of an Indian tribe or Indian tribes;

''(B) offers a technical degree or certificate granting program;

''(C) is governed by a board of directors or trustees, a majority of whom are Indians;

''(D) demonstrates adherence to stated goals, a philosophy, or a plan of operation, that fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurships and self-sustaining economic infrastructures on reservations;

''(E) has been in operation for at least 3 years;

''(F) holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational and technical education; and

''(G) enrolls the full-time equivalent of not less than 100 students, of whom a majority are Indians.

(29) VOCATIONAL AND TECHNICAL EDUCATION.—The term 'vocational and technical education' means organized educational activities that—

''(A) offer a sequence of courses that provides individuals with the academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a baccalaureate, master's, or doctoral degree) in current or emerging employment sectors; and

''(B) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, of an individual.

''(30) VOCATIONAL AND TECHNICAL STUDENT ORGANIZATION.—

''(A) IN GENERAL.—The term 'vocational and technical student organization' means an organization for individuals enrolled in a vocational and technical education program that engages in vocational and technical activities as an integral part of the instructional program.

''(B) STATE AND NATIONAL UNITS.—An organization described in subparagraph (A) may have State and national units that aggregate the work and purposes of instruction in vocational and technical education at the local level.

''SEC. 4. TRANSITION PROVISIONS.

''The Secretary shall take such steps as the Secretary determines to be appropriate to provide for the orderly transition to the authority of this Act from any authority under provisions of the Carl D. Perkins Vocational and Applied Technology Education Act, as such Act was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998.

''SEC. 5. PRIVACY.

''(a) GEPA.—Nothing in this Act shall be construed to supersede the privacy protections afforded parents and students under section 444 of the General Education Provisions Act (20 U.S.C. 1232g), as added by the Family Educational Rights and Privacy Act of 1974 (section 513 of Public Law 93–380; 88 Stat. 571).

''(b) PROHIBITION ON DEVELOPMENT OF NATIONAL DATABASE.—Nothing in this Act shall be construed to permit the development of a national database of personally identifiable information on individuals receiving services under this Act.

''SEC. 6. LIMITATION.

''All of the funds made available under this Act shall be used in accordance with the requirements of this Act. None of the funds made available under this Act may be used to provide funding under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 et seq.) or to carry out, through programs funded under this Act, activities that were funded under the School-To-Work Opportunities Act of 1994, unless the programs funded under this Act serve only those participants eligible to participate in the programs under this Act.

''SEC. 7. SPECIAL RULE.

''In the case of a local community in which no employees are represented by a labor organization, for purposes of this Act the term 'representatives of employees' shall be substituted for 'labor organization'.

''SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated to carry out this Act (other than sections 114, 117, and 118, and title II) such sums as may be necessary for each of the fiscal years 1999 through 2003.

''TITLE I—VOCATIONAL AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES

''PART A—ALLOTMENT AND ALLOCATION

''SEC. 111. RESERVATIONS AND STATE ALLOTMENT.

''(a) RESERVATIONS AND STATE ALLOTMENT.—

''(1) RESERVATIONS.—From the sum appropriated under section 8 for each fiscal year, the Secretary shall reserve—

''(A) 0.2 percent to carry out section 115;

''(B) 1.50 percent to carry out section 116, of which—

''(i) 1.25 percent of the sum shall be available to carry out section 116(b); and

''(ii) 0.25 percent of the sum shall be available to carry out section 116(h); and

''(C) in the case of each of the fiscal years 2000 through 2003, 0.54 percent to carry out section 503 of Public Law 105–220.

''(2) STATE ALLOTMENT FORMULA.—Subject to paragraphs (3) and (4), from the remainder of the sums appropriated under section 8 and not reserved under paragraph (1) for a fiscal year, the Secretary shall allot to a State for the fiscal year—

''(A) an amount that bears the same ratio to 50 percent of the sums being allotted as the product of the population aged 15 to 19 inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

''(B) an amount that bears the same ratio to 20 percent of the sums being allotted as the product of the population aged 20 to 24, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

''(C) an amount that bears the same ratio to 15 percent of the sums being allotted as the product of the population aged 25 to 65, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States; and

''(D) an amount that bears the same ratio to 15 percent of the sums being allotted as the amounts allotted to the State under subparagraphs (A), (B), and (C) for such years bears to the sum of the amounts allotted to all the States under subparagraphs (A), (B), and (C) for such year.

''(3) MINIMUM ALLOTMENT.—

''(A) IN GENERAL.—Notwithstanding any other provision of law and subject to subparagraphs

(B) and (C), and paragraph (4), no State shall receive for a fiscal year under this subsection less than ½ of 1 percent of the amount appropriated under section 8 and not reserved under paragraph (1) for such fiscal year. Amounts necessary for increasing such payments to States to comply with the preceding sentence shall be obtained by ratably reducing the amounts to be paid to other States.

''(B) REQUIREMENT.—No State, by reason of the application of subparagraph (A), shall receive for a fiscal year more than 150 percent of the amount the State received under this subsection for the preceding fiscal year (or in the case of fiscal year 1999 only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998).

''(C) SPECIAL RULE.—

''(i) IN GENERAL.—Subject to paragraph (4), no State, by reason of the application of subparagraph (A), shall be allotted for a fiscal year more than the lesser of—

''(I) 150 percent of the amount that the State received in the preceding fiscal year (or in the case of fiscal year 1999 only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998); and

''(II) the amount calculated under clause (ii).

''(ii) AMOUNT.—The amount calculated under this clause shall be determined by multiplying—

''(I) the number of individuals in the State counted under paragraph (2) in the preceding fiscal year; by

''(II) 150 percent of the national average per pupil payment made with funds available under this section for that year (or in the case of fiscal year 1999, only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998).

''(4) HOLD HARMLESS.—

''(A) IN GENERAL.—No State shall receive an allotment under this section for a fiscal year that is less than the allotment the State received under part A of title I of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2311 et seq.) (as such part was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998) for fiscal year 1998.

''(B) RATABLE REDUCTION.—If for any fiscal year the amount appropriated for allotments under this section is insufficient to satisfy the provisions of subparagraph (A), the payments to all States under such subparagraph shall be ratably reduced.

''(b) REALLOTMENT.—If the Secretary determines that any amount of any State's allotment under subsection (a) for any fiscal year will not be required for such fiscal year for carrying out the activities for which such amount has been allotted, the Secretary shall make such amount available for reallotment. Any such reallotment among other States shall occur on such dates during the same year as the Secretary shall fix, and shall be made on the basis of criteria established by regulation. No funds may be reallotted for any use other than the use for which the funds were appropriated. Any amount reallotted to a State under this subsection for any fiscal year shall remain available for obligation during the succeeding fiscal year and shall be deemed to be part of the State's allotment for the year in which the amount is obligated.

''(c) ALLOTMENT RATIO.—

''(1) IN GENERAL.—The allotment ratio for any State shall be 1.00 less the product of—

''(A) 0.50; and

''(B) the quotient obtained by dividing the per capita income for the State by the per capita income for all the States (exclusive of the Commonwealth of Puerto Rico and the United States Virgin Islands), except that—

''(i) the allotment ratio in no case shall be more than 0.60 or less than 0.40; and

''(ii) the allotment ratio for the Commonwealth of Puerto Rico and the United States Virgin Islands shall be 0.60.

''(2) PROMULGATION.—The allotment ratios shall be promulgated by the Secretary for each fiscal year between October 1 and December 31 of the fiscal year preceding the fiscal year for which the determination is made. Allotment ratios shall be computed on the basis of the average of the appropriate per capita incomes for the 3 most recent consecutive fiscal years for which satisfactory data are available.

''(3) DEFINITION OF PER CAPITA INCOME.—For the purpose of this section, the term 'per capita income' means, with respect to a fiscal year, the total personal income in the calendar year ending in such year, divided by the population of the area concerned in such year.

''(4) POPULATION DETERMINATION.—For the purposes of this section, population shall be determined by the Secretary on the basis of the latest estimates available to the Department of Education.

''(d) DEFINITION OF STATE.—For the purpose of this section, the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

''SEC. 112. WITHIN STATE ALLOCATION.

''(a) IN GENERAL.—From the amount allotted to each State under section 111 for a fiscal year, the State board (hereinafter referred to as the 'eligible agency') shall make available—

''(1) not less than 85 percent for distribution under section 131 or 132, of which not more than 10 percent of the 85 percent may be used in accordance with subsection (c);

''(2) not more than 10 percent to carry out State leadership activities described in section 124, of which—

''(A) an amount equal to not more than 1 percent of the amount allotted to the State under section 111 for the fiscal year shall be available to serve individuals in State institutions, such as State correctional institutions and institutions that serve individuals with disabilities; and

''(B) not less than $60,000 and not more than $150,000 shall be available for services that prepare individuals for nontraditional training and employment; and

''(3) an amount equal to not more than 5 percent, or $250,000, whichever is greater, for administration of the State plan, which may be used for the costs of—

''(A) developing the State plan;

''(B) reviewing the local plans;

''(C) monitoring and evaluating program effectiveness;

''(D) assuring compliance with all applicable Federal laws; and

''(E) providing technical assistance.

''(b) MATCHING REQUIREMENT.—Each eligible agency receiving funds made available under subsection (a)(3) shall match, from non-Federal sources and on a dollar-for-dollar basis, the funds received under subsection (a)(3).

''(c) RESERVE.—

''(1) IN GENERAL.—From amounts made available under subsection (a)(1) to carry out this subsection, an eligible agency may award grants to eligible recipients for vocational and technical education activities described in section 135 in—

''(A) rural areas;

''(B) areas with high percentages of vocational and technical education students; and

''(C) areas with high numbers of vocational and technical students; and

''(D) communities negatively impacted by changes resulting from the amendments made by the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998 to the within State allocation under section 231 of the Carl D. Perkins Vocational and Applied Technology Education Act (as such section 231 was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998).

''(2) SPECIAL RULE.—Each eligible agency awarding a grant under this subsection shall use the grant funds to serve at least 2 of the categories described in subparagraphs (A) through (D) of paragraph (1).

''SEC. 113. ACCOUNTABILITY.

''(a) PURPOSE.—The purpose of this section is to establish a State performance accountability system, comprised of the activities described in this section, to assess the effectiveness of the State in achieving statewide progress in vocational and technical education, and to optimize the return of investment of Federal funds in vocational and technical education activities.

''(b) STATE PERFORMANCE MEASURES.—

''(1) IN GENERAL.—Each eligible agency, with input from eligible recipients, shall establish performance measures for a State that consist of—

''(A) the core indicators of performance described in paragraph (2)(A);

''(B) any additional indicators of performance (if any) identified by the eligible agency under paragraph (2)(B); and

''(C) a State adjusted level of performance described in paragraph (3)(A) for each core indicator of performance, and State levels of performance described in paragraph (3)(B) for each additional indicator of performance.

''(2) INDICATORS OF PERFORMANCE.—

''(A) CORE INDICATORS OF PERFORMANCE.—Each eligible agency shall identify in the State plan core indicators of performance that include, at a minimum, measures of each of the following:

''(i) Student attainment of challenging State established academic, and vocational and technical, skill proficiencies.

''(ii) Student attainment of a secondary school diploma or its recognized equivalent, a proficiency credential in conjunction with a secondary school diploma, or a postsecondary degree or credential.

''(iii) Placement in, retention in, and completion of, postsecondary education or advanced training, placement in military service, or placement or retention in employment.

''(iv) Student participation in and completion of vocational and technical education programs that lead to nontraditional training and employment.

''(B) ADDITIONAL INDICATORS OF PERFORMANCE.—An eligible agency, with input from eligible recipients, may identify in the State plan additional indicators of performance for vocational and technical education activities authorized under the title.

''(C) EXISTING INDICATORS.—If a State previously has developed State performance measures that meet the requirements of this section, the State may use such performance measures to measure the progress of vocational and technical education students.

''(D) STATE ROLE.—Indicators of performance described in this paragraph shall be established solely by each eligible agency with input from eligible recipients.

''(3) LEVELS OF PERFORMANCE.—

''(A) STATE ADJUSTED LEVELS OF PERFORMANCE FOR CORE INDICATORS OF PERFORMANCE.—

''(i) IN GENERAL.—Each eligible agency, with input from eligible recipients, shall establish in the State plan submitted under section 122, levels of performance for each of the core indicators of performance described in paragraph (2)(A) for vocational and technical education activities authorized under this title. The levels of performance established under this subparagraph shall, at a minimum—

''(I) be expressed in a percentage or numerical form, so as to be objective, quantifiable, and measurable; and

''(II) require the State to continually make progress toward improving the performance of vocational and technical education students.

''(ii) IDENTIFICATION IN THE STATE PLAN.—Each eligible agency shall identify, in the State plan submitted under section 122, levels of performance for each of the core indicators of performance for the first 2 program years covered by the State plan.

''(iii) AGREEMENT ON STATE ADJUSTED LEVELS OF PERFORMANCE FOR FIRST 2 YEARS.—The Secretary and each eligible agency shall reach agreement on the levels of performance for each of the core indicators of performance, for the first 2 program years covered by the State plan, taking into account the levels identified in the State plan under clause (ii) and the factors described in clause (vi). The levels of performance agreed to under this clause shall be considered to be the State adjusted level of performance for the State for such years and shall be incorporated into the State plan prior to the approval of such plan.

''(iv) ROLE OF THE SECRETARY.—The role of the Secretary in the agreement described in clauses (iii) and (v) is limited to reaching agreement on the percentage or number of students who attain the State adjusted levels of performance.

''(v) AGREEMENT ON STATE ADJUSTED LEVELS OF PERFORMANCE FOR 3RD, 4TH AND 5TH YEARS.—Prior to the third program year covered by the State plan, the Secretary and each eligible agency shall reach agreement on the State adjusted levels of performance for each of the core indicators of performance for the third, fourth and fifth program years covered by the State plan, taking into account the factors described in clause (vi). The State adjusted levels of performance agreed to under this clause shall be considered to be the State adjusted levels of performance for the State for such years and shall be incorporated into the State plan.

''(vi) FACTORS.—The agreement described in clause (iii) or (v) shall take into account—

''(I) how the levels of performance involved compare with the State adjusted levels of performance established for other States taking into account factors including the characteristics of participants when the participants entered the program and the services or instruction to be provided; and

''(II) the extent to which such levels of performance promote continuous improvement on the indicators of performance by such State.

''(vii) REVISIONS.—If unanticipated circumstances arise in a State resulting in a significant change in the factors described in clause (vi)(II), the eligible agency may request that the State adjusted levels of performance agreed to under clause (iii) or (vi) be revised. The Secretary shall issue objective criteria and methods for making such revisions.

''(B) LEVELS OF PERFORMANCE FOR ADDITIONAL INDICATORS.—Each eligible agency shall identify in the State plan, State levels of performance for each of the additional indicators of performance described in paragraph (2)(B). Such levels shall be considered to be the State levels of performance for purposes of this title.

''(c) REPORT.—

''(1) IN GENERAL.—Each eligible agency that receives an allotment under section 111 shall annually prepare and submit to the Secretary a report regarding—

''(A) the progress of the State in achieving the State adjusted levels of performance on the core indicators of performance; and

''(B) information on the levels of performance achieved by the State with respect to the additional indicators of performance, including the levels of performance for special populations.

''(2) SPECIAL POPULATIONS.—The report submitted by the eligible agency in accordance with paragraph (1) shall include a quantifiable description of the progress special populations participating in vocational and technical education programs have made in meeting the State adjusted levels of performance established by the eligible agency.

''(3) INFORMATION DISSEMINATION.—The Secretary—

''(A) shall make the information contained in such reports available to the general public;

''(B) shall disseminate State-by-State comparisons of the information; and

''(C) shall provide the appropriate committees of Congress copies of such reports.

''SEC. 114. NATIONAL ACTIVITIES.

''(a) PROGRAM PERFORMANCE INFORMATION.—

''(1) IN GENERAL.—The Secretary shall collect performance information about, and report on, the condition of vocational and technical education and on the effectiveness of State and local programs, services, and activities carried out under this title in order to provide the Secretary and Congress, as well as Federal, State, local, and tribal agencies, with information relevant to improvement in the quality and effectiveness of vocational and technical education. The Secretary annually shall report to Congress on the Secretary's aggregate analysis of performance information collected each year pursuant to this title, including an analysis of performance data regarding special populations.

''(2) COMPATIBILITY.—The Secretary shall, to the extent feasible, ensure that the performance information system is compatible with other Federal information systems.

''(3) ASSESSMENTS.—As a regular part of its assessments, the National Center for Education Statistics shall collect and report information on vocational and technical education for a nationally representative sample of students. Such assessment may include international comparisons.

''(b) MISCELLANEOUS PROVISIONS.—

''(1) COLLECTION OF INFORMATION AT REASONABLE COST.—The Secretary shall take such action as may be necessary to secure at reasonable cost the information required by this title. To ensure reasonable cost, the Secretary, in consultation with the National Center for Education Statistics, the Office of Vocational and Adult Education, and an entity assisted under section 118 shall determine the methodology to be used and the frequency with which information is to be collected.

''(2) COOPERATION OF STATES.—All eligible agencies receiving assistance under this Act shall cooperate with the Secretary in implementing the information systems developed pursuant to this Act.

''(c) RESEARCH, DEVELOPMENT, DISSEMINATION, EVALUATION AND ASSESSMENT.—

''(1) SINGLE PLAN.—

''(A) IN GENERAL.—The Secretary may, directly or through grants, contracts, or cooperative agreements, carry out research, development, dissemination, evaluation and assessment, capacity building, and technical assistance with regard to the vocational and technical education programs under this Act. The Secretary shall develop a single plan for such activities.

''(B) PLAN.—Such plan shall—

''(i) identify the vocational and technical education activities described in subparagraph (A) the Secretary will carry out under this section;

''(ii) describe how the Secretary will evaluate such vocational and technical education activities in accordance with paragraph (3); and

''(iii) include such other information as the Secretary determines to be appropriate.

''(2) INDEPENDENT ADVISORY PANEL.—The Secretary shall appoint an independent advisory panel, consisting of vocational and technical education administrators, educators, researchers, and representatives of labor organizations, businesses, parents, guidance and counseling professionals, and other relevant groups, to advise the Secretary on the implementation of the assessment described in paragraph (3), including the issues to be addressed, the methodology of the studies involved, and the findings and recommendations resulting from the assessment. The panel shall submit to the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Secretary an independent analysis of the findings and recommendations resulting from the assessment described in paragraph (3). The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the panel established under this subsection.

''(3) EVALUATION AND ASSESSMENT.—

''(A) IN GENERAL.—From amounts made available under paragraph (8), the Secretary shall provide for the conduct of an independent evaluation and assessment of vocational and technical education programs under this Act through studies and analyses conducted independently through grants, contracts, and cooperative agreements that are awarded on a competitive basis.

''(B) CONTENTS.—The assessment required under paragraph (1) shall include descriptions and evaluations of—

''(i) the extent to which State, local, and tribal entities have developed, implemented, or improved State and local vocational and technical education programs and the effect of programs assisted under this Act on that development, implementation, or improvement, including the capacity of State, tribal, and local vocational and technical education systems to achieve the purpose of this Act;

''(ii) the extent to which expenditures at the Federal, State, tribal, and local levels address program improvement in vocational and technical education, including the impact of Federal allocation requirements (such as within-State allocation formulas) on the delivery of services;

''(iii) the preparation and qualifications of teachers of vocational and technical, and academic, curricula in vocational and technical education programs, as well as shortages of such teachers;

''(iv) participation of students in vocational and technical education programs;

''(v) academic and employment outcomes of vocational and technical education, including analyses of—

''(I) the number of vocational and technical education students and tech-prep students who meet State adjusted levels of performance;

''(II) the extent and success of integration of academic, and vocational and technical, education for students participating in vocational and technical education programs; and

''(III) the extent to which vocational and technical education programs prepare students for subsequent employment in high-wage, high-skill careers or participation in postsecondary education;

''(vi) employer involvement in, and satisfaction with, vocational and technical education programs;

''(vii) the use and impact of educational technology and distance learning with respect to vocational and technical education and tech-prep programs; and

''(viii) the effect of State adjusted levels of performance and State levels of performance on the delivery of vocational and technical education services.

''(C) REPORTS.—

''(i) IN GENERAL.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate—

''(I) an interim report regarding the assessment on or before January 1, 2002; and

''(II) a final report, summarizing all studies and analyses that relate to the assessment and that are completed after the assessment, on or before July 1, 2002.

''(ii) PROHIBITION.—Notwithstanding any other provision of law, the reports required by

this subsection shall not be subject to any review outside the Department of Education before their transmittal to the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Secretary, but the President, the Secretary, and the independent advisory panel established under paragraph (2) may make such additional recommendations to Congress with respect to the assessment as the President, the Secretary, or the panel determine to be appropriate.

''(4) COLLECTION OF STATE INFORMATION AND REPORT.—

''(A) IN GENERAL.—The Secretary may collect and disseminate information from States regarding State efforts to meet State adjusted levels of performance described in section 113.

''(B) REPORT.—The Secretary shall gather any information collected pursuant to subparagraph (A) and submit a report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

''(5) RESEARCH.—

''(A) IN GENERAL.—The Secretary, after consulting with the States, shall award grants, contracts, or cooperative agreements on a competitive basis to an institution of higher education, a public or private nonprofit organization or agency, or a consortium of such institutions, organizations, or agencies to establish a national research center or centers—

''(i) to carry out research for the purpose of developing, improving, and identifying the most successful methods for successfully addressing the education, employment, and training needs of participants in vocational and technical education programs, including research and evaluation in such activities as—

''(I) the integration of vocational and technical instruction, and academic, secondary and postsecondary instruction;

''(II) education technology and distance learning approaches and strategies that are effective with respect to vocational and technical education;

''(III) State adjusted levels of performance and State levels of performance that serve to improve vocational and technical education programs and student achievement; and

''(IV) academic knowledge and vocational and technical skills required for employment or participation in postsecondary education;

''(ii) to carry out research to increase the effectiveness and improve the implementation of vocational and technical education programs, including conducting research and development, and studies, providing longitudinal information or formative evaluation with respect to vocational and technical education programs and student achievement;

''(iii) to carry out research that can be used to improve teacher training and learning in the vocational and technical education classroom, including—

''(I) effective inservice and preservice teacher education that assists vocational and technical education systems; and

''(II) dissemination and training activities related to the applied research and demonstration activities described in this subsection, which may also include serving as a repository for information on vocational and technical skills, State academic standards, and related materials; and

''(iv) to carry out such other research as the Secretary determines appropriate to assist State and local recipients of funds under this Act.

''(B) REPORT.—The center or centers conducting the activities described in subparagraph (A) shall annually prepare a report of key research findings of such center or centers and shall submit copies of the report to the Secretary, the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, the Library of Congress, and each eligible agency.

''(C) DISSEMINATION.—The center or centers shall conduct dissemination and training activities based upon the research described in subparagraph (A).

''(6) DEMONSTRATIONS AND DISSEMINATION.—

''(A) DEMONSTRATION PROGRAM.—The Secretary is authorized to carry out demonstration vocational and technical education programs, to replicate model vocational and technical education programs, to disseminate best practices information, and to provide technical assistance upon request of a State, for the purposes of developing, improving, and identifying the most successful methods and techniques for providing vocational and technical education programs assisted under this Act.

''(B) DEMONSTRATION PARTNERSHIP.—

''(i) IN GENERAL.—The Secretary shall carry out a demonstration partnership project involving a 4-year, accredited postsecondary institution, in cooperation with local public education organizations, volunteer groups, and private sector business participants to provide program support, and facilities for education, training, tutoring, counseling, employment preparation, specific skills training in emerging and established professions, and for retraining of military medical personnel, individuals displaced by corporate or military restructuring, migrant workers, as well as other individuals who otherwise do not have access to such services, through multisite, multistate distance learning technologies.

''(ii) PROGRAM.—Such program may be carried out directly or through grants, contracts, cooperative agreements, or through the national center or centers established under paragraph (5).

''(7) DEFINITION.—In this section, the term 'institution of higher education' has the meaning given the term in section 101 of the Higher Education Act of 1965.

''(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 1999 and each of the 4 succeeding fiscal years.

''SEC. 115. ASSISTANCE FOR THE OUTLYING AREAS.

''(a) OUTLYING AREAS.—From funds reserved pursuant to section 111(a)(1)(A), the Secretary shall—

''(1) make a grant in the amount of $500,000 to Guam; and

''(2) make a grant in the amount of $190,000 to each of American Samoa and the Commonwealth of the Northern Mariana Islands.

''(b) REMAINDER.—Subject to the provisions of subsection (a), the Secretary shall make a grant of the remainder of funds reserved pursuant to section 111(a)(1)(A) to the Pacific Region Educational Laboratory in Honolulu, Hawaii, to make grants for vocational and technical education and training in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, for the purpose of providing direct vocational and technical educational services, including—

''(1) teacher and counselor training and retraining;

''(2) curriculum development; and

''(3) the improvement of vocational and technical education and training programs in secondary schools and institutions of higher education, or improving cooperative education programs involving both secondary schools and institutions of higher education.

''(c) LIMITATION.—The Pacific Region Educational Laboratory may use not more than 5 percent of the funds received under subsection (b) for administrative costs.

''(d) RESTRICTION.—Notwithstanding any other provision of law, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall not receive any funds under this title for any fiscal year that begins after September 30, 2001.

''SEC. 116. NATIVE AMERICAN PROGRAM.

''(a) DEFINITIONS.—In this section:

''(1) ALASKA NATIVE.—The term 'Alaska Native' means a Native as such term is defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

''(2) BUREAU FUNDED SCHOOL.—The term 'Bureau funded school' has the meaning given the term in section 1146 of the Education Amendments of 1978 (25 U.S.C. 2026).

''(3) INDIAN, INDIAN TRIBE, AND TRIBAL ORGANIZATION.—The terms 'Indian', 'Indian tribe', and 'tribal organization' have the meanings given the terms in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(4) NATIVE HAWAIIAN.—The term 'Native Hawaiian' means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

''(5) NATIVE HAWAIIAN ORGANIZATION.—The term 'Native Hawaiian organization' has the meaning given the term in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912).

''(b) PROGRAM AUTHORIZED.—

''(1) AUTHORITY.—From funds reserved under section 111(a)(1)(B)(i), the Secretary shall make grants to and enter into contracts with Indian tribes, tribal organizations, and Alaska Native entities to carry out the authorized programs described in subsection (d), except that such grants or contracts shall not be awarded to secondary school programs in Bureau funded schools.

''(2) INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—The grants or contracts described in this section (other than in subsection (i)) that are awarded to any Indian tribe or tribal organization shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) and shall be conducted in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, which are relevant to the programs administered under this subsection.

''(3) SPECIAL AUTHORITY RELATING TO SECONDARY SCHOOLS OPERATED OR SUPPORTED BY THE BUREAU OF INDIAN AFFAIRS.—An Indian tribe, a tribal organization, or an Alaska Native entity, that receives funds through a grant made or contract entered into under paragraph (1) may use the funds to provide assistance to a secondary school operated or supported by the Bureau of Indian Affairs to enable such school to carry out vocational and technical education programs.

''(4) MATCHING.—If sufficient funding is available, the Bureau of Indian Affairs shall expend an amount equal to the amount made available under this subsection, relating to programs for Indians, to pay a part of the costs of programs funded under this subsection. During each fiscal year the Bureau of Indian Affairs shall expend not less than the amount expended during the prior fiscal year on vocational and technical education programs, services, and technical activities administered either directly by, or under contract with, the Bureau of Indian Affairs, except that in no year shall funding for such programs, services, and activities be provided from accounts and programs that support other Indian education programs. The Secretary and the Assistant Secretary of the Interior for Indian Affairs shall prepare jointly a plan for the expenditure of funds made available and for the evaluation of programs assisted under this subsection. Upon the completion of a joint plan for the expenditure of the funds and the evaluation of the programs, the Secretary shall assume responsibility for the administration of the program, with the assistance and consultation of the Bureau of Indian Affairs.

''(5) REGULATIONS.—If the Secretary promulgates any regulations applicable to subsection (b)(2), the Secretary shall—

''(A) confer with, and allow for active participation by, representatives of Indian tribes, tribal organizations, and individual tribal members; and

''(B) promulgate the regulations under subchapter III of chapter 5 of title 5, United States Code, commonly known as the ''Negotiated Rulemaking Act of 1990''.

''(6) APPLICATION.—Any Indian tribe, tribal organization, or Bureau funded school eligible to receive assistance under subsection (b) may apply individually or as part of a consortium with another such Indian tribe, tribal organization, or Bureau funded school.

''(c) AUTHORIZED ACTIVITIES.—

''(1) AUTHORIZED PROGRAMS.—Funds made available under this section shall be used to carry out vocational and technical education programs consistent with the purpose of this Act.

''(2) STIPENDS.—

''(A) IN GENERAL.—Funds received pursuant to grants or contracts awarded under subsection (b) may be used to provide stipends to students who are enrolled in vocational and technical education programs and who have acute economic needs which cannot be met through work-study programs.

''(B) AMOUNT.—Stipends described in subparagraph (A) shall not exceed reasonable amounts as prescribed by the Secretary.

''(d) GRANT OR CONTRACT APPLICATION.—In order to receive a grant or contract under this section an organization, tribe, or entity described in subsection (b) shall submit an application to the Secretary that shall include an assurance that such organization, tribe, or entity shall comply with the requirements of this section.

''(e) RESTRICTIONS AND SPECIAL CONSIDERATIONS.—The Secretary may not place upon grants awarded or contracts entered into under subsection (b) any restrictions relating to programs other than restrictions that apply to grants made to or contracts entered into with States pursuant to allotments under section 111(a). The Secretary, in awarding grants and entering into contracts under this paragraph, shall ensure that the grants and contracts will improve vocational and technical education programs, and shall give special consideration to—

''(1) programs that involve, coordinate with, or encourage tribal economic development plans; and

''(2) applications from tribally controlled colleges or universities that—

''(A) are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational and technical education; or

''(B) operate vocational and technical education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of vocational and technical education programs.

''(f) CONSOLIDATION OF FUNDS.—Each organization, tribe, or entity receiving assistance under this section may consolidate such assistance with assistance received from related programs in accordance with the provisions of the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C 3401 et seq.).

''(g) NONDUPLICATIVE AND NONEXCLUSIVE SERVICES.—Nothing in this section shall be construed—

''(1) to limit the eligibility of any organization, tribe, or entity described in subsection (b) to participate in any activity offered by an eligible agency or eligible recipient under this title; or

''(2) to preclude or discourage any agreement, between any organization, tribe, or entity described in subsection (b) and any eligible agency or eligible recipient, to facilitate the provision of services by such eligible agency or eligible recipient to the population served by such eligible agency or eligible recipient.

''(h) NATIVE HAWAIIAN PROGRAMS.—From the funds reserved pursuant to section 111(a)(1)(B)(ii), the Secretary shall award grants to or enter into contracts with organizations primarily serving and representing Native Hawaiians which are recognized by the Governor of the State of Hawaii to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the provisions of this section for the benefit of Native Hawaiians.

''SEC. 117. TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL AND TECHNICAL INSTITUTIONS.

''(a) GRANTS AUTHORIZED.—The Secretary shall, subject to the availability of appropriations, make grants pursuant to this section to tribally controlled postsecondary vocational and technical institutions to provide basic support for the education and training of Indian students.

''(b) USE OF GRANTS.—Amounts made available pursuant to this section shall be used for vocational and technical education programs.

''(c) AMOUNT OF GRANTS.—

''(1) IN GENERAL.—If the sums appropriated for any fiscal year for grants under this section are not sufficient to pay in full the total amount which approved applicants are eligible to receive under this section for such fiscal year, the Secretary shall first allocate to each such applicant who received funds under this part for the preceding fiscal year an amount equal to 100 percent of the product of the per capita payment for the preceding fiscal year and such applicant's Indian student count for the current program year, plus an amount equal to the actual cost of any increase to the per capita figure resulting from inflationary increases to necessary costs beyond the institution's control.

''(2) PER CAPITA DETERMINATION.—For the purposes of paragraph (1), the per capita payment for any fiscal year shall be determined by dividing the amount available for grants to tribally controlled postsecondary vocational and technical institutions under this section for such program year by the sum of the Indian student counts of such institutions for such program year. The Secretary shall, on the basis of the most accurate data available from the institutions, compute the Indian student count for any fiscal year for which such count was not used for the purpose of making allocations under this section.

''(d) APPLICATIONS.—Any tribally controlled postsecondary vocational and technical institution that desires to receive a grant under this section shall submit an application to the Secretary in such manner and form as the Secretary may require.

''(e) EXPENSES.—

''(1) IN GENERAL.—The Secretary shall, subject to the availability of appropriations, provide for each program year to each tribally controlled postsecondary vocational and technical institution having an application approved by the Secretary, an amount necessary to pay expenses associated with—

''(A) the maintenance and operation of the program, including development costs, costs of basic and special instruction (including special programs for individuals with disabilities and academic instruction), materials, student costs, administrative expenses, boarding costs, transportation, student services, daycare and family support programs for students and their families (including contributions to the costs of education for dependents), and student stipends;

''(B) capital expenditures, including operations and maintenance, and minor improvements and repair, and physical plant maintenance costs, for the conduct of programs funded under this section; and

''(C) costs associated with repair, upkeep, replacement, and upgrading of the instructional equipment.

''(2) ACCOUNTING.—Each institution receiving a grant under this section shall provide annually to the Secretary an accurate and detailed accounting of the institution's operating and maintenance expenses and such other information concerning costs as the Secretary may reasonably require.

''(f) OTHER PROGRAMS.—

''(1) IN GENERAL.—Except as specifically provided in this Act, eligibility for assistance under this section shall not preclude any tribally controlled postsecondary vocational and technical institution from receiving Federal financial assistance under any program authorized under the Higher Education Act of 1965, or any other applicable program for the benefit of institutions of higher education or vocational and technical education.

''(2) PROHIBITION ON ALTERATION OF GRANT AMOUNT.—The amount of any grant for which tribally controlled postsecondary vocational and technical institutions are eligible under this section shall not be altered because of funds allocated to any such institution from funds appropriated under the Act of November 2, 1921 (commonly known as the 'Snyder Act') (42 Stat. 208, chapter 115; 25 U.S.C. 13).

''(3) PROHIBITION ON CONTRACT DENIAL.—No tribally controlled postsecondary vocational and technical institution for which an Indian tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under the Act of November 2, 1921, may be denied a contract for such portion under the Indian Self-Determination and Education Assistance Act (except as provided in that Act), or denied appropriate contract support to administer such portion of the appropriated funds.

''(g) NEEDS ESTIMATE AND REPORT ON FACILITIES AND FACILITIES IMPROVEMENT.—

''(1) NEEDS ESTIMATE.—The Secretary shall, based on the most accurate data available from the institutions and Indian tribes whose Indian students are served under this section, and in consideration of employment needs, economic development needs, population training needs, and facilities needs, prepare an actual budget needs estimate for each institution eligible under this section for each subsequent program year, and submit such budget needs estimate to Congress in such a timely manner as will enable the appropriate committees of Congress to consider such needs data for purposes of the uninterrupted flow of adequate appropriations to such institutions. Such data shall take into account the purposes and requirements of part A of title IV of the Social Security Act.

''(2) STUDY OF TRAINING AND HOUSING NEEDS.—

''(A) IN GENERAL.—The Secretary shall conduct a detailed study of the training, housing, and immediate facilities needs of each institution eligible under this section. The study shall include an examination of—

''(i) training equipment needs;

''(ii) housing needs of families whose heads of households are students and whose dependents have no alternate source of support while such heads of households are students; and

''(iii) immediate facilities needs.

''(B) REPORT.—The Secretary shall report to Congress not later than July 1, 2000, on the results of the study required by subparagraph (A).

''(C) CONTENTS.—The report required by subparagraph (B) shall include the number, type, and cost of meeting the needs described in subparagraph (A), and rank each institution by relative need.

''(D) PRIORITY.—In conducting the study required by subparagraph (A), the Secretary shall give priority to institutions that are receiving assistance under this section.

''(3) LONG-TERM STUDY OF FACILITIES.—

''(A) IN GENERAL.—The Secretary shall provide for the conduct of a long-term study of the facilities of each institution eligible for assistance under this section.

''(B) CONTENTS.—The study required by subparagraph (A) shall include a 5-year projection

of training facilities, equipment, and housing needs and shall consider such factors as projected service population, employment, and economic development forecasting, based on the most current and accurate data available from the institutions and Indian tribes affected.

''(C) SUBMISSION.—The Secretary shall submit to Congress a detailed report on the results of such study not later than the end of the 18-month period beginning on the date of enactment of this Act.

''(h) DEFINITIONS.—In this section:

''(1) INDIAN.—The terms 'Indian' and 'Indian tribe' have the meanings given the terms in section 2 of the Tribally Controlled College or University Assistance Act of 1978.

''(2) INDIAN STUDENT COUNT.—The term 'Indian student count' means a number equal to the total number of Indian students enrolled in each tribally controlled postsecondary vocational and technical institution, determined as follows:

''(A) REGISTRATIONS.—The registrations of Indian students as in effect on October 1 of each year.

''(B) SUMMER TERM.—Credits or clock hours toward a certificate earned in classes offered during a summer term shall be counted toward the computation of the Indian student count in the succeeding fall term.

''(C) ADMISSION CRITERIA.—Credits or clock hours toward a certificate earned in classes during a summer term shall be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of such student on the basis of the student's ability to benefit from the education or training offered. The institution shall be presumed to have established such criteria if the admission procedures for such studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. No credit earned by such student for purposes of obtaining a secondary school degree or its recognized equivalent shall be counted toward the computation of the Indian student count.

''(D) DETERMINATION OF HOURS.—Indian students earning credits in any continuing education program of a tribally controlled postsecondary vocational and technical institution shall be included in determining the sum of all credit or clock hours.

''(E) CONTINUING EDUCATION.—Credits or clock hours earned in a continuing education program shall be converted to the basis that is in accordance with the institution's system for providing credit for participation in such programs.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $4,000,000 for fiscal year 1999 and each of the 4 succeeding fiscal years.

''SEC. 118. OCCUPATIONAL AND EMPLOYMENT INFORMATION.

''(a) NATIONAL ACTIVITIES.—From funds appropriated under subsection (f), the Secretary, in consultation with appropriate Federal agencies, is authorized—

''(1) to provide assistance to an entity to enable the entity—

''(A) to provide technical assistance to State entities designated under subsection (b) to enable the State entities to carry out the activities described in subsection (b);

''(B) to disseminate information that promotes the replication of high quality practices described in subsection (b);

''(C) to develop and disseminate products and services related to the activities described in subsection (b); and

''(2) to award grants to States that designate State entities in accordance with subsection (b) to enable the State entities to carry out the State level activities described in subsection (b).

''(b) STATE LEVEL ACTIVITIES.—In order for a State to receive a grant under this section, the eligible agency and the Governor of the State shall jointly designate an entity in the State—

''(1) to provide support for a career guidance and academic counseling program designed to promote improved career and education decisionmaking by individuals (especially in areas of career information delivery and use);

''(2) to make available to students, parents, teachers, administrators, and counselors, and to improve accessibility with respect to, information and planning resources that relate educational preparation to career goals and expectations;

''(3) to equip teachers, administrators, and counselors with the knowledge and skills needed to assist students and parents with career exploration, educational opportunities, and education financing.

''(4) to assist appropriate State entities in tailoring career-related educational resources and training for use by such entities;

''(5) to improve coordination and communication among administrators and planners of programs authorized by this Act and by section 15 of the Wagner-Peyser Act at the Federal, State, and local levels to ensure nonduplication of efforts and the appropriate use of shared information and data; and

''(6) to provide ongoing means for customers, such as students and parents, to provide comments and feedback on products and services and to update resources, as appropriate, to better meet customer requirements.

''(c) NONDUPLICATION.—

''(1) WAGNER-PEYSER ACT.—The State entity designated under subsection (b) may use funds provided under subsection (b) to supplement activities under section 15 of the Wagner-Peyser Act to the extent such activities do not duplicate activities assisted under such section.

''(2) PUBLIC LAW 105-220.—None of the functions and activities assisted under this section shall duplicate the functions and activities carried out under Public Law 105-220.

''(d) FUNDING RULE.—Of the amounts appropriated to carry out this section, the Federal entity designated under subsection (a) shall use—

''(1) not less than 85 percent to carry out subsection (b); and

''(2) not more than 15 percent to carry out subsection (a).

''(e) REPORT.—The Secretary, in consultation with appropriate Federal agencies, shall prepare and submit to the appropriate committees of Congress, an annual report that includes—

''(1) an identification of activities assisted under this section during the prior program year;

''(2) a description of the specific products and services assisted under this section that were delivered in the prior program year; and

''(3) an assessment of the extent to which States have effectively coordinated activities assisted under this section with activities authorized under section 15 of the Wagner-Peyser Act.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1999 through 2003.

''PART B—STATE PROVISIONS

''SEC. 121. STATE ADMINISTRATION.

''(a) ELIGIBLE AGENCY RESPONSIBILITIES.—

''(1) IN GENERAL.—The responsibilities of an eligible agency under this title shall include—

''(A) coordination of the development, submission, and implementation of the State plan, and the evaluation of the program, services, and activities assisted under this title, including preparation for nontraditional training and employment;

''(B) consultation with the Governor and appropriate agencies, groups, and individuals including parents, students, teachers, representatives of businesses, labor organizations, eligible recipients, State and local officials, and local program administrators, involved in the planning, administration, evaluation, and coordination of programs funded under this title;

''(C) convening and meeting as an eligible agency (consistent with State law and procedure for the conduct of such meetings) at such time as the eligible agency determines necessary to carry out the eligible agency's responsibilities under this title, but not less than 4 times annually; and

''(D) the adoption of such procedures as the eligible agency considers necessary to—

''(i) implement State level coordination with the activities undertaken by the State boards under section 111 of Public Law 105–220; and

''(ii) make available to the service delivery system under section 121 of Public Law 105–220 within the State a listing of all school dropout, postsecondary, and adult programs assisted under this title.

''(2) EXCEPTION.—Except with respect to the responsibilities set forth in paragraph (1), the eligible agency may delegate any of the other responsibilities of the eligible agency that involve the administration, operation, supervision of activities assisted under this title, in whole or in part, to 1 or more appropriate State agencies.

''SEC. 122. STATE PLAN.

''(a) STATE PLAN.—

''(1) IN GENERAL.—Each eligible agency desiring assistance under this title for any fiscal year shall prepare and submit to the Secretary a State plan for a 5-year period, together with such annual revisions as the eligible agency determines to be necessary.

''(2) REVISIONS.—Each eligible agency—

''(A) may submit such annual revisions of the State plan to the Secretary as the eligible agency determines to be necessary; and

''(B) shall, after the second year of the 5 year State plan, conduct a review of activities assisted under this title and submit any revisions of the State plan that the eligible agency determines necessary to the Secretary.

''(3) HEARING PROCESS.—The eligible agency shall conduct public hearings in the State, after appropriate and sufficient notice, for the purpose of affording all segments of the public and interested organizations and groups (including employers, labor organizations, and parents), an opportunity to present their views and make recommendations regarding the State plan. A summary of such recommendations and the eligible agency's response to such recommendations shall be included in the State plan.

''(b) PLAN DEVELOPMENT.—

''(1) IN GENERAL.—The eligible agency shall develop the State plan in consultation with teachers, eligible recipients, parents, students, interested community members, representatives of special populations, representatives of business and industry, and representatives of labor organizations in the State, and shall consult the Governor of the State with respect to such development.

''(2) ACTIVITIES AND PROCEDURES.—The eligible agency shall develop effective activities and procedures, including access to information needed to use such procedures, to allow the individuals described in paragraph (1) to participate in State and local decisions that relate to development of the State plan.

''(c) PLAN CONTENTS.—The State plan shall include information that—

''(1) describes the vocational and technical education activities to be assisted that are designed to meet or exceed the State adjusted levels of performance, including a description of—

''(A) the secondary and postsecondary vocational and technical education programs to be carried out, including programs that will be carried out by the eligible agency to develop, improve, and expand access to quality, state-of-the-art technology in vocational and technical education programs;

''(B) the criteria that will be used by the eligible agency in approving applications by eligible recipients for funds under this title;

''(C) how such programs will prepare vocational and technical education students for opportunities in postsecondary education or entry

into high skill, high wage jobs in current and emerging occupations; and

''(D) how funds will be used to improve or develop new vocational and technical education courses;

''(2) describes how comprehensive professional development (including initial teacher preparation) for vocational and technical, academic, guidance, and administrative personnel will be provided;

''(3) describes how the eligible agency will actively involve parents, teachers, local businesses (including small- and medium-sized businesses), and labor organizations in the planning, development, implementation, and evaluation of such vocational and technical education programs;

''(4) describes how funds received by the eligible agency through the allotment made under section 111 will be allocated—

''(A) among secondary school vocational and technical education, or postsecondary and adult vocational and technical education, or both, including the rationale for such allocation; and

''(B) among any consortia that will be formed among secondary schools and eligible institutions, and how funds will be allocated among the members of the consortia, including the rationale for such allocation;

''(5) describes how the eligible agency will—

''(A) improve the academic and technical skills of students participating in vocational and technical education programs, including strengthening the academic, and vocational and technical, components of vocational and technical education programs through the integration of academics with vocational and technical education to ensure learning in the core academic, and vocational and technical, subjects, and provide students with strong experience in, and understanding of, all aspects of an industry; and

''(B) ensure that students who participate in such vocational and technical education programs are taught to the same challenging academic proficiencies as are taught to all other students;

''(6) describes how the eligible agency will annually evaluate the effectiveness of such vocational and technical education programs, and describe, to the extent practicable, how the eligible agency is coordinating such programs to ensure nonduplication with other existing Federal programs;

''(7) describes the eligible agency's program strategies for special populations;

''(8) describes how individuals who are members of the special populations—

''(A) will be provided with equal access to activities assisted under this title;

''(B) will not be discriminated against on the basis of their status as members of the special populations; and

''(C) will be provided with programs designed to enable the special populations to meet or exceed State adjusted levels of performance, and prepare special populations for further learning and for high skill, high wage careers;

''(9) describe what steps the eligible agency shall take to involve representatives of eligible recipients in the development of the State adjusted levels of performance;

''(10) provides assurances that the eligible agency will comply with the requirements of this title and the provisions of the State plan, including the provision of a financial audit of funds received under this title which may be included as part of an audit of other Federal or State programs;

''(11) provides assurances that none of the funds expended under this title will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity, the employees of the purchasing entity, or any affiliate of such an organization;

''(12) describes how the eligible agency will report data relating to students participating in vocational and technical education in order to adequately measure the progress of the students, including special populations;

''(13) describes how the eligible agency will adequately address the needs of students in alternative education programs, if appropriate;

''(14) describes how the eligible agency will provide local educational agencies, area vocational and technical education schools, and eligible institutions in the State with technical assistance;

''(15) describes how vocational and technical education relates to State and regional occupational opportunities;

''(16) describes the methods proposed for the joint planning and coordination of programs carried out under this title with other Federal education programs;

''(17) describes how funds will be used to promote preparation for nontraditional training and employment;

''(18) describes how funds will be used to serve individuals in State correctional institutions;

''(19) describes how funds will be used effectively to link secondary and postsecondary education;

''(20) describes how the eligible agency will ensure that the data reported to the eligible agency from local educational agencies and eligible institutions under this title and the data the eligible agency reports to the Secretary are complete, accurate, and reliable; and

''(21) contains the description and information specified in sections 112(b)(8) and 121(c) of Public Law 105–220 concerning the provision of services only for postsecondary students and school dropouts.

''(d) PLAN OPTION.—The eligible agency may fulfill the requirements of subsection (a) by submitting a plan under section 501 of Public Law 105–220.

''(e) PLAN APPROVAL.—

''(1) IN GENERAL.—The Secretary shall approve a State plan, or a revision to an approved State plan, unless the Secretary determines that—

''(A) the State plan, or revision, respectively, does not meet the requirements of this section; or

''(B) the State's levels of performance on the core indicators of performance consistent with section 113 are not sufficiently rigorous to meet the purpose of this Act.

''(2) DISAPPROVAL.—The Secretary shall not finally disapprove a State plan, except after giving the eligible agency notice and an opportunity for a hearing.

''(3) CONSULTATION.—The eligible agency shall develop the portion of each State plan relating to the amount and uses of any funds proposed to be reserved for adult vocational and technical education, postsecondary vocational and technical education, tech-prep education, and secondary vocational and technical education after consultation with the State agency responsible for supervision of community colleges, technical institutes, or other 2-year postsecondary institutions primarily engaged in providing postsecondary vocational and technical education, and the State agency responsible for secondary education. If a State agency finds that a portion of the final State plan is objectionable, the State agency shall file such objections with the eligible agency. The eligible agency shall respond to any objections of the State agency in the State plan submitted to the Secretary.

''(4) TIMEFRAME.—A State plan shall be deemed approved by the Secretary if the Secretary has not responded to the eligible agency regarding the State plan within 90 days of the date the Secretary receives the State plan.

''(f) TRANSITION.—This section shall be subject to section 4 for fiscal year 1999 only, with respect to activities under this section.

''SEC. 123. IMPROVEMENT PLANS.

''(a) STATE PROGRAM IMPROVEMENT PLAN.—If a State fails to meet the State adjusted levels of performance described in the report submitted under section 113(c), the eligible agency shall develop and implement a program improvement plan in consultation with appropriate agencies, individuals, and organizations for the first program year succeeding the program year in which the eligible agency failed to meet the State adjusted levels of performance, in order to avoid a sanction under subsection (d).

''(b) LOCAL EVALUATION.—Each eligible agency shall evaluate annually, using the State adjusted levels of performance, the vocational and technical education activities of each eligible recipient receiving funds under this title.

''(c) LOCAL IMPROVEMENT PLAN.—

''(1) IN GENERAL.—If, after reviewing the evaluation, the eligible agency determines that an eligible recipient is not making substantial progress in achieving the State adjusted levels of performance, the eligible agency shall—

''(A) conduct an assessment of the educational needs that the eligible recipient shall address to overcome local performance deficiencies;

''(B) enter into an improvement plan based on the results of the assessment, which plan shall include instructional and other programmatic innovations of demonstrated effectiveness, and where necessary, strategies for appropriate staffing and staff development; and

''(C) conduct regular evaluations of the progress being made toward reaching the State adjusted levels of performance.

''(2) CONSULTATION.—The eligible agency shall conduct the activities described in paragraph (1) in consultation with teachers, parents, other school staff, appropriate agencies, and other appropriate individuals and organizations.

''(d) SANCTIONS.—

''(1) TECHNICAL ASSISTANCE.—If the Secretary determines that an eligible agency is not properly implementing the eligible agency's responsibilities under section 122, or is not making substantial progress in meeting the purpose of this Act, based on the State adjusted levels of performance, the Secretary shall work with the eligible agency to implement improvement activities consistent with the requirements of this Act.

''(2) FAILURE.—If an eligible agency fails to meet the State adjusted levels of performance, has not implemented an improvement plan as described in paragraph (1), has shown no improvement within 1 year after implementing an improvement plan as described in paragraph (1), or has failed to meet the State adjusted levels of performance for 2 or more consecutive years, the Secretary may, after notice and opportunity for a hearing, withhold from the eligible agency all, or a portion of, the eligible agency's allotment under this title. The Secretary may waive the sanction under this paragraph due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

''(3) FUNDS RESULTING FROM REDUCED ALLOTMENTS.—

''(A) IN GENERAL.—The Secretary shall use funds withheld under paragraph (2), for a State served by an eligible agency, to provide (through alternative arrangements) services and activities within the State to meet the purpose of this Act.

''(B) REDISTRIBUTION.—If the Secretary cannot satisfactorily use funds withheld under paragraph (2), then the amount of funds retained by the Secretary as a result of a reduction in an allotment made under paragraph (2) shall be redistributed to other eligible agencies in accordance with section 111.

''SEC. 124. STATE LEADERSHIP ACTIVITIES.

''(a) GENERAL AUTHORITY.—From amounts reserved under section 112(a)(2), each eligible agency shall conduct State leadership activities.

''(b) REQUIRED USES OF FUNDS.—The State leadership activities described in subsection (a) shall include—

''(1) an assessment of the vocational and technical education programs carried out with funds under this title that includes an assessment of how the needs of special populations are being met and how such programs are designed to enable special populations to meet State adjusted levels of performance and prepare the special populations for further learning or for high skill, high wage careers;

''(2) developing, improving, or expanding the use of technology in vocational and technical education that may include—

''(A) training of vocational and technical education personnel to use state-of-the-art technology, that may include distance learning;

''(B) providing vocational and technical education students with the academic, and vocational and technical, skills that lead to entry into the high technology and telecommunications field; or

''(C) encouraging schools to work with high technology industries to offer voluntary internships and mentoring programs;

''(3) professional development programs, including providing comprehensive professional development (including initial teacher preparation) for vocational and technical, academic, guidance, and administrative personnel, that—

''(A) will provide inservice and preservice training in state-of-the-art vocational and technical education programs and techniques, effective teaching skills based on research, and effective practices to improve parental and community involvement; and

''(B) will help teachers and personnel to assist students in meeting the State adjusted levels of performance established under section 113;

''(C) will support education programs for teachers of vocational and technical education in public schools and other public school personnel who are involved in the direct delivery of educational services to vocational and technical education students to ensure that such teachers stay current with the needs, expectations, and methods of industry; and

''(D) is integrated with the professional development activities that the State carries out under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6001 et seq.) and title II of the Higher Education Act of 1965;

''(4) support for vocational and technical education programs that improve the academic, and vocational and technical, skills of students participating in vocational and technical education programs by strengthening the academic, and vocational and technical, components of such vocational and technical education programs through the integration of academics with vocational and technical education to ensure learning in the core academic, and vocational and technical, subjects;

''(5) providing preparation for nontraditional training and employment;

''(6) supporting partnerships among local educational agencies, institutions of higher education, adult education providers, and, as appropriate, other entities, such as employers, labor organizations, parents, and local partnerships, to enable students to achieve State academic standards, and vocational and technical skills;

''(7) serving individuals in State institutions, such as State correctional institutions and institutions that serve individuals with disabilities; and

''(8) support for programs for special populations that lead to high skill, high wage careers.

''(c) PERMISSIBLE USES OF FUNDS.—The leadership activities described in subsection (a) may include—

''(1) technical assistance for eligible recipients;

''(2) improvement of career guidance and academic counseling programs that assist students in making informed academic, and vocational and technical education, decisions;

''(3) establishment of agreements between secondary and postsecondary vocational and technical education programs in order to provide postsecondary education and training opportunities for students participating in such vocational and technical education programs, such as tech-prep programs;

''(4) support for cooperative education;

''(5) support for vocational and technical student organizations, especially with respect to efforts to increase the participation of students who are members of special populations;

''(6) support for public charter schools operating secondary vocational and technical education programs;

''(7) support for vocational and technical education programs that offer experience in, and understanding of, all aspects of an industry for which students are preparing to enter;

''(8) support for family and consumer sciences programs;

''(9) support for education and business partnerships;

''(10) support to improve or develop new vocational and technical education courses;

''(11) providing vocational and technical education programs for adults and school dropouts to complete their secondary school education; and

''(12) providing assistance to students, who have participated in services and activities under this title, in finding an appropriate job and continuing their education.

''(d) RESTRICTION ON USES OF FUNDS.—An eligible agency that receives funds under section 112(a)(2) may not use any of such funds for administrative costs.

''PART C—LOCAL PROVISIONS

''SEC. 131. DISTRIBUTION OF FUNDS TO SECONDARY SCHOOL PROGRAMS.

''(a) DISTRIBUTION FOR FISCAL YEAR 1999.—Except as provided in section 133 and as otherwise provided in this section, each eligible agency shall distribute the portion of the funds made available under section 112(a)(1) to carry out this section for fiscal year 1999 to local educational agencies within the State as follows:

''(1) SEVENTY PERCENT.—From 70 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 70 percent as the amount such local educational agency was allocated under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the preceding fiscal year bears to the total amount received under such section by all local educational agencies in the State for such preceding fiscal year.

''(2) TWENTY PERCENT.—From 20 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 20 percent as the number of students with disabilities who have individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)) served by such local educational agency for the preceding fiscal year bears to the total number of such students served by all local educational agencies in the State for such preceding fiscal year.

''(3) TEN PERCENT.—From 10 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 10 percent as the number of students enrolled in schools and adults enrolled in training programs under the jurisdiction of such local educational agency for the preceding fiscal year bears to the number of students enrolled in schools and adults enrolled in training programs under the jurisdiction of all local educational agencies in the State for such preceding fiscal year.

''(b) SPECIAL DISTRIBUTION RULES FOR SUCCEEDING FISCAL YEARS.—Except as provided in section 133 and as otherwise provided in this section, each eligible agency shall distribute the portion of funds made available under section 112(a)(1) to carry out this section for fiscal year 2000 and succeeding fiscal years to local educational agencies within the State as follows:

''(1) 30 PERCENT.—30 percent shall be allocated to such local educational agencies in proportion to the number of individuals aged 15 through 19, inclusive, who reside in the school district served by such local educational agency for the preceding fiscal year compared to the total number of such individuals who reside in the school districts served by all local educational agencies in the State for such preceding fiscal year.

''(2) 70 PERCENT.—70 percent shall be allocated to such local educational agencies in proportion to the number of individuals aged 15 through 19, inclusive, who reside in the school district served by such local educational agency from families with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved for the fiscal year for which the determination is made compared to the number of such individuals who reside in the school districts served by all the local educational agencies in the State for such preceding fiscal year.

''(c) WAIVER FOR MORE EQUITABLE DISTRIBUTION.—The Secretary may waive the application of subsection (b) in the case of any eligible agency that submits to the Secretary an application for such a waiver that—

''(1) demonstrates that a proposed alternative formula more effectively targets funds on the basis of poverty (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) to local educational agencies within the State than the formula described in subsection (b); and

''(2) includes a proposal for such an alternative formula.

''(d) MINIMUM ALLOCATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a local educational agency shall not receive an allocation under subsection (a) unless the amount allocated to such agency under subsection (a) is greater than $15,000. A local educational agency may enter into a consortium with other local educational agencies for purposes of meeting the minimum allocation requirement of this paragraph.

''(2) WAIVER.—The eligible agency shall waive the application of paragraph (1) in any case in which the local educational agency—

''(A)(i) is located in a rural, sparsely populated area, or

''(ii) is a public charter school operating secondary vocational and technical education programs; and

''(B) demonstrates that the local educational agency is unable to enter into a consortium for purposes of providing activities under this part.

''(3) REDISTRIBUTION.—Any amounts that are not allocated by reason of paragraph (1) or paragraph (2) shall be redistributed to local educational agencies that meet the requirements of paragraph (1) or (2) in accordance with the provisions of this section.

''(e) LIMITED JURISDICTION AGENCIES.—

''(1) IN GENERAL.—In applying the provisions of subsection (a), no eligible agency receiving assistance under this title shall allocate funds to a local educational agency that serves only elementary schools, but shall distribute such funds to the local educational agency or regional educational agency that provides secondary school services to secondary school students in the same attendance area.

''(2) SPECIAL RULE.—The amount to be allocated under paragraph (1) to a local educational agency that has jurisdiction only over secondary schools shall be determined based on the number of students that entered such secondary schools in the previous year from the elementary schools involved.

''(f) ALLOCATIONS TO AREA VOCATIONAL AND TECHNICAL EDUCATION SCHOOLS AND EDUCATIONAL SERVICE AGENCIES.—

''(1) IN GENERAL.—Each eligible agency shall distribute the portion of funds made available under section 112(a)(1) for any fiscal year by such eligible agency for secondary school vocational and technical education activities under this section to the appropriate area vocational and technical education school or educational service agency in any case in which the area vocational and technical education school or educational service agency, and the local educational agency concerned—

''(A) have formed or will form a consortium for the purpose of receiving funds under this section; or

''(B) have entered into or will enter into a cooperative arrangement for such purpose.

''(2) ALLOCATION BASIS.—If an area vocational and technical education school or educational service agency meets the requirements of paragraph (1), then the amount that would otherwise be distributed to the local educational agency shall be allocated to the area vocational and technical education school, the educational service agency, and the local educational agency based on each school, agency or entity's relative share of students who are attending vocational and technical education programs (based, if practicable, on the average enrollment for the preceding 3 years;

''(3) APPEALS PROCEDURE.—The eligible agency shall establish an appeals procedure for resolution of any dispute arising between a local educational agency and an area vocational and technical education school or an educational service agency with respect to the allocation procedures described in this section, including the decision of a local educational agency to leave a consortium or terminate a cooperative arrangement.

''(g) CONSORTIUM REQUIREMENTS.—

''(1) ALLIANCE.—Any local educational agency receiving an allocation that is not sufficient to conduct a program which meets the requirements of section 135 is encouraged to—

''(A) form a consortium or enter into a cooperative agreement with an area vocational and technical education school or educational service agency offering programs that meet the requirements of section 135; and

''(B) transfer such allocation to the area vocational and technical education school or educational service agency; and

''(C) operate programs that are of sufficient size, scope, and quality to be effective.

''(2) FUNDS TO CONSORTIUM.—Funds allocated to a consortium formed to meet the requirements of this paragraph shall be used only for purposes and programs that are mutually beneficial to all members of the consortium and can be used only for programs authorized under this title. Such funds may not be reallocated to individual members of the consortium for purposes or programs benefiting only one member of the consortium.

''(h) DATA.—The Secretary shall collect information from eligible agencies regarding the specific dollar allocations made available by the eligible agency for vocational and technical education programs under subsections (a), (b), (c), and (d) and how these allocations are distributed to local educational agencies, area vocational and technical education schools, and educational service agencies, within the State in accordance with this section.

''(i) SPECIAL RULE.—Each eligible agency distributing funds under this section shall treat a secondary school funded by the Bureau of Indian Affairs within the State as if such school were a local educational agency within the State for the purpose of receiving a distribution under this section.

"SEC. 132. DISTRIBUTION OF FUNDS FOR POST-SECONDARY VOCATIONAL AND TECHNICAL EDUCATION PROGRAMS.

''(a) ALLOCATION.—

''(1) IN GENERAL.—Except as provided in subsections (b) and (c) and section 133, each eligible agency shall distribute the portion of the funds made available under section 112(a)(1) to carry out this section for any fiscal year to eligible institutions or consortia of eligible institutions within the State.

''(2) FORMULA.—Each eligible institution or consortium of eligible institutions shall be allocated an amount that bears the same relationship to the portion of funds made available under section 112(a)(1) to carry out this section for any fiscal year as the sum of the number of individuals who are Federal Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in programs meeting the requirements of section 135 offered by such institution or consortium in the preceding fiscal year bears to the sum of the number of such recipients enrolled in such programs within the State for such year.

''(3) CONSORTIUM REQUIREMENTS.—

''(A) IN GENERAL.—In order for a consortium of eligible institutions described in paragraph (2) to receive assistance pursuant to such paragraph, such consortium shall operate joint projects that—

''(i) provide services to all postsecondary institutions participating in the consortium; and

''(ii) are of sufficient size, scope, and quality to be effective.

''(B) FUNDS TO CONSORTIUM.—Funds allocated to a consortium formed to meet the requirements of this section shall be used only for purposes and programs that are mutually beneficial to all members of the consortium and shall be used only for programs authorized under this title. Such funds may not be reallocated to individual members of the consortium for purposes or programs benefiting only one member of the consortium.

''(4) WAIVER.—The eligible agency may waive the application of paragraph (3)(A)(i) in any case in which the eligible institution is located in a rural, sparsely populated area.

''(b) WAIVER FOR MORE EQUITABLE DISTRIBUTION.—The Secretary may waive the application of subsection (a) if an eligible agency submits to the Secretary an application for such a waiver that—

''(1) demonstrates that the formula described in subsection (a) does not result in a distribution of funds to the eligible institutions or consortia within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula will result in such a distribution; and

''(2) includes a proposal for such an alternative formula.

''(c) MINIMUM GRANT AMOUNT.—

''(1) IN GENERAL.—No institution or consortium shall receive an allocation under this section in an amount that is less than $50,000.

''(2) REDISTRIBUTION.—Any amounts that are not distributed by reason of paragraph (1) shall be redistributed to eligible institutions or consortia in accordance with this section.

"SEC. 133. SPECIAL RULES FOR VOCATIONAL AND TECHNICAL EDUCATION.

''(a) SPECIAL RULE FOR MINIMAL ALLOCATION.—

''(1) GENERAL AUTHORITY.—Notwithstanding the provisions of sections 131 and 132 and in order to make a more equitable distribution of funds for programs serving the areas of greatest economic need, for any program year for which a minimal amount is made available by an eligible agency for distribution under section 131 or 132, such State may distribute such minimal amount for such year—

''(A) on a competitive basis; or

''(B) through any alternative method determined by the State.

''(2) MINIMAL AMOUNT.—For purposes of this section, the term 'minimal amount' means not more than 15 percent of the total amount made available for distribution under section 112(a)(1).

''(b) REDISTRIBUTION.—

''(1) IN GENERAL.—In any academic year that an eligible recipient does not expend all of the amounts the eligible recipient is allocated for such year under section 131 or 132, such eligible recipient shall return any unexpended amounts to the eligible agency to be reallocated under section 131 or 132, as appropriate.

''(2) REDISTRIBUTION OF AMOUNTS RETURNED LATE IN AN ACADEMIC YEAR.—In any academic year in which amounts are returned to the eligible agency under section 131 or 132 and the eligible agency is unable to reallocate such amounts according to such sections in time for such amounts to be expended in such academic year, the eligible agency shall retain such amounts for distribution in combination with amounts provided under section 112(a)(1) for the following academic year.

''(c) CONSTRUCTION.—Nothing in section 131 or 132 shall be construed—

''(1) to prohibit a local educational agency or a consortium thereof that receives assistance under section 131, from working with an eligible institution or consortium thereof that receives assistance under section 132, to carry out secondary school vocational and technical education programs in accordance with this title;

''(2) to prohibit an eligible institution or consortium thereof that receives assistance under section 132, from working with a local educational agency or consortium thereof that receives assistance under section 131, to carry out postsecondary and adult vocational and technical education programs in accordance with this title; or

''(3) to require a charter school, that provides vocational and technical education programs and is considered a local educational agency under State law, to jointly establish the charter school's eligibility for assistance under this title unless the charter school is explicitly permitted to do so under the State's charter school statute.

''(d) CONSISTENT APPLICATION.—For purposes of this section, the eligible agency shall provide funds to charter schools offering vocational and technical education programs in the same manner as the eligible agency provides those funds to other schools. Such vocational and technical education programs within a charter school shall be of sufficient size, scope, and quality to be effective.

"SEC. 134. LOCAL PLAN FOR VOCATIONAL AND TECHNICAL EDUCATION PROGRAMS.

''(a) LOCAL PLAN REQUIRED.—Any eligible recipient desiring financial assistance under this part shall, in accordance with requirements established by the eligible agency (in consultation with such other educational entities as the eligible agency determines to be appropriate) submit a local plan to the eligible agency. Such local plan shall cover the same period of time as the period of time applicable to the State plan submitted under section 122.

''(b) CONTENTS.—The eligible agency shall determine requirements for local plans, except that each local plan shall—

''(1) describe how the vocational and technical education programs required under section 135(b) will be carried out with funds received under this title;

''(2) describe how the vocational and technical education activities will be carried out with respect to meeting State adjusted levels of performance established under section 113;

''(3) describe how the eligible recipient will—

''(A) improve the academic and technical skills of students participating in vocational and technical education programs by strengthening the academic, and vocational and technical, components of such programs through the integration of academics with vocational and technical education programs through a coherent sequence of courses to ensure learning in the core academic, and vocational and technical, subjects;

''(B) provide students with strong experience in and understanding of all aspects of an industry; and

''(C) ensure that students who participate in such vocational and technical education programs are taught to the same challenging academic proficiencies as are taught for all other students;

''(4) describe how parents, students, teachers, representatives of business and industry, labor organizations, representatives of special populations, and other interested individuals are involved in the development, implementation, and evaluation of vocational and technical education programs assisted under this title, and how such individuals and entities are effectively informed about, and assisted in understanding, the requirements of this title;

''(5) provide assurances that the eligible recipient will provide a vocational and technical education program that is of such size, scope, and quality to bring about improvement in the quality of vocational and technical education programs;

''(6) describe the process that will be used to independently evaluate and continuously improve the performance of the eligible recipient;

''(7) describe how the eligible recipient—

''(A) will review vocational and technical education programs, and identify and adopt strategies to overcome barriers that result in lowering rates of access to or lowering success in the programs, for special populations; and

''(B) will provide programs that are designed to enable the special populations to meet the State adjusted levels of performance;

''(8) describe how individuals who are members of the special populations will not be discriminated against on the basis of their status as members of the special populations;

''(9) describe how funds will be used to promote preparation for nontraditional training and employment; and

''(10) describe how comprehensive professional development (including initial teacher preparation) for vocational and technical, academic, guidance, and administrative personnel will be provided.

''SEC. 135. LOCAL USES OF FUNDS.

''(a) GENERAL AUTHORITY.—Each eligible recipient that receives funds under this part shall use such funds to improve vocational and technical education programs.

''(b) REQUIREMENTS FOR USES OF FUNDS.—Funds made available to eligible recipients under this part shall be used to support vocational and technical education programs that—

''(1) strengthen the academic, and vocational and technical, skills of students participating in vocational and technical education programs by strengthening the academic, and vocational and technical, components of such programs through the integration of academics with vocational and technical education programs through a coherent sequence of courses to ensure learning in the core academic, and vocational and technical, subjects;

''(2) provide students with strong experience in and understanding of all aspects of an industry;

''(3) develop, improve, or expand the use of technology in vocational and technical education, which may include—

''(A) training of vocational and technical education personnel to use state-of-the-art technology, which may include distance learning;

''(B) providing vocational and technical education students with the academic, and vocational and technical, skills that lead to entry into the high technology and telecommunications field; or

''(C) encouraging schools to work with high technology industries to offer voluntary internships and mentoring programs;

''(4) provide professional development programs to teachers, counselors, and administrators, including—

''(A) inservice and preservice training in state-of-the-art vocational and technical education programs and techniques, in effective teaching skills based on research, and in effective practices to improve parental and community involvement;

''(B) support of education programs for teachers of vocational and technical education in public schools and other public school personnel who are involved in the direct delivery of educational services to vocational and technical education students, to ensure that such teachers and personnel stay current with all aspects of an industry;

''(C) internship programs that provide business experience to teachers; and

''(D) programs designed to train teachers specifically in the use and application of technology;

''(5) develop and implement evaluations of the vocational and technical education programs carried out with funds under this title, including an assessment of how the needs of special populations are being met;

''(6) initiate, improve, expand, and modernize quality vocational and technical education programs;

''(7) provide services and activities that are of sufficient size, scope, and quality to be effective; and

''(8) link secondary vocational and technical education and postsecondary vocational and technical education, including implementing tech-prep programs.

''(c) PERMISSIVE.—Funds made available to an eligible recipient under this title may be used—

''(1) to involve parents, businesses, and labor organizations as appropriate, in the design, implementation, and evaluation of vocational and technical education programs authorized under this title, including establishing effective programs and procedures to enable informed and effective participation in such programs;

''(2) to provide career guidance and academic counseling for students participating in vocational and technical education programs;

''(3) to provide work-related experience, such as internships, cooperative education, school-based enterprises, entrepreneurship, and job shadowing that are related to vocational and technical education programs;

''(4) to provide programs for special populations;

''(5) for local education and business partnerships;

''(6) to assist vocational and technical student organizations;

''(7) for mentoring and support services;

''(8) for leasing, purchasing, upgrading or adapting equipment, including instructional aides;

''(9) for teacher preparation programs that assist individuals who are interested in becoming vocational and technical education instructors, including individuals with experience in business and industry;

''(10) for improving or developing new vocational and technical education courses;

''(11) to provide support for family and consumer sciences programs;

''(12) to provide vocational and technical education programs for adults and school dropouts to complete their secondary school education;

''(13) to provide assistance to students who have participated in services and activities under this title in finding an appropriate job and continuing their education;

''(14) to support nontraditional training and employment activities; and

''(15) to support other vocational and technical education activities that are consistent with the purpose of this Act.

''(d) ADMINISTRATIVE COSTS.—Each eligible recipient receiving funds under this part shall not use more than 5 percent of the funds for administrative costs associated with the administration of activities assisted under this section.

''TITLE II—TECH-PREP EDUCATION

''SEC. 201. SHORT TITLE.

''This title may be cited as the 'Tech-Prep Education Act'.

''SEC. 202. DEFINITIONS.

''(a) In this title:

''(1) ARTICULATION AGREEMENT.—The term 'articulation agreement' means a written commitment to a program designed to provide students with a non duplicative sequence of progressive achievement leading to degrees or certificates in a tech-prep education program.

''(2) COMMUNITY COLLEGE.—The term 'community college'—

''(A) means an institution of higher education, as defined in section 101 of the Higher Education Act of 1965, that provides not less than a 2-year program that is acceptable for full credit toward a bachelor's degree; and

''(B) includes tribally controlled colleges or universities.

''(3) TECH-PREP PROGRAM.—The term 'tech-prep program' means a program of study that—

''(A) combines at a minimum 2 years of secondary education (as determined under State law) with a minimum of 2 years of postsecondary education in a nonduplicative, sequential course of study;

''(B) integrates academic, and vocational and technical, instruction, and utilizes work-based and worksite learning where appropriate and available;

''(C) provides technical preparation in a career field such as engineering technology, applied science, a mechanical, industrial, or practical art or trade, agriculture, health occupations, business, or applied economics;

''(D) builds student competence in mathematics, science, reading, writing, communications, economics, and workplace skills through applied, contextual academics, and integrated instruction, in a coherent sequence of courses;

''(E) leads to an associate or a baccalaureate degree or a postsecondary certificate in a specific career field; and

''(F) leads to placement in appropriate employment or to further education.

''SEC. 203. STATE ALLOTMENT AND APPLICATION.

''(a) IN GENERAL.—For any fiscal year, the Secretary shall allot the amount made available under section 206 among the States in the same manner as funds are allotted to States under paragraph (2) of section 111(a).

''(b) PAYMENTS TO ELIGIBLE AGENCIES.—The Secretary shall make a payment in the amount of a State's allotment under subsection (a) to the eligible agency that serves the State and has an application approved under subsection (c).

''(c) STATE APPLICATION.—Each eligible agency desiring assistance under this title shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

''SEC. 204. TECH-PREP EDUCATION.

''(a) GRANT PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—From amounts made available to each eligible agency under section 203, the eligible agency, in accordance with the provisions of this title, shall award grants, on a competitive basis or on the basis of a formula determined by the eligible agency, for tech-prep education programs described in subsection (c). The grants shall be awarded to consortia between or among—

''(A) a local educational agency, an intermediate educational agency or area vocational and technical education school serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs; and

''(B)(i) a nonprofit institution of higher education that offers—

''(I) a 2-year associate degree program, or a 2-year certificate program, and is qualified as institutions of higher education pursuant to section 102 of the Higher Education Act of 1965, including an institution receiving assistance under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 et seq.) and a tribally controlled postsecondary vocational and technical institution; or

''(II) a 2-year apprenticeship program that follows secondary instruction,

if such nonprofit institution of higher education is not prohibited from receiving assistance under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) pursuant to the provisions of section 435(a)(3) of such Act (20 U.S.C. 1083(a)); or

''(ii) a proprietary institution of higher education that offers a 2-year associate degree program and is qualified as an institution of higher education pursuant to section 102 of the Higher Education Act of 1965, if such proprietary institution of higher education is not subject to a default management plan required by the Secretary.

''(2) SPECIAL RULE.—In addition, a consortium described in paragraph (1) may include 1 or more—

''(A) institutions of higher education that award a baccalaureate degree; and

''(B) employer or labor organizations.

''(b) DURATION.—Each grant recipient shall use amounts provided under the grant to develop and operate a 4- or 6-year tech-prep education program described in subsection (c).

''(c) CONTENTS OF TECH-PREP PROGRAM.—Each tech-prep program shall—

''(1) be carried out under an articulation agreement between the participants in the consortium;

''(2) consist of at least 2 years of secondary school preceding graduation and 2 years or more of higher education, or an apprenticeship program of at least 2 years following secondary instruction, with a common core of required proficiency in mathematics, science, reading, writing, communications, and technologies designed to lead to an associate's degree or a postsecondary certificate in a specific career field;

''(3) include the development of tech-prep programs for both secondary and postsecondary, including consortium, participants in the consortium that—

''(A) meets academic standards developed by the State;

''(B) links secondary schools and 2-year postsecondary institutions, and if possible and practicable, 4-year institutions of higher education through nonduplicative sequences of courses in career fields, including the investigation of opportunities for tech-prep secondary students to enroll concurrently in secondary and postsecondary coursework;

''(C) uses, if appropriate and available, work-based or worksite learning in conjunction with business and all aspects of an industry; and

''(D) uses educational technology and distance learning, as appropriate, to involve all the consortium partners more fully in the development and operation of programs;

''(4) include in-service training for teachers that—

''(A) is designed to train vocational and technical teachers to effectively implement tech-prep programs;

''(B) provides for joint training for teachers in the tech-prep consortium;

''(C) is designed to ensure that teachers and administrators stay current with the needs, expectations, and methods of business and all aspects of an industry;

''(D) focuses on training postsecondary education faculty in the use of contextual and applied curricula and instruction; and

''(E) provides training in the use and application of technology;

''(5) include training programs for counselors designed to enable counselors to more effectively—

''(A) provide information to students regarding tech-prep education programs;

''(B) support student progress in completing tech-prep programs;

''(C) provide information on related employment opportunities;

''(D) ensure that such students are placed in appropriate employment; and

''(E) stay current with the needs, expectations, and methods of business and all aspects of an industry;

''(6) provide equal access, to the full range of technical preparation programs, to individuals who are members of special populations, including the development of tech-prep program services appropriate to the needs of special populations; and

''(7) provide for preparatory services that assist participants in tech-prep programs.

''(d) ADDITIONAL AUTHORIZED ACTIVITIES.—Each tech-prep program may—

''(1) provide for the acquisition of tech-prep program equipment;

''(2) acquire technical assistance from State or local entities that have designed, established, and operated tech-prep programs that have effectively used educational technology and distance learning in the delivery of curricula and services and in the articulation process; and

''(3) establish articulation agreements with institutions of higher education, labor organizations, or businesses located inside or outside the State and served by the consortium, especially with regard to using distance learning and educational technology to provide for the delivery of services and programs.

''SEC. 205. CONSORTIUM APPLICATIONS.

''(a) IN GENERAL.—Each consortium that desires to receive a grant under this title shall submit an application to the eligible agency at such time and in such manner as the eligible agency shall prescribe.

''(b) PLAN.—Each application submitted under this section shall contain a 5-year plan for the development and implementation of tech-prep programs under this title, which plan shall be reviewed after the second year of the plan.

''(c) APPROVAL.—The eligible agency shall approve applications based on the potential of the activities described in the application to create an effective tech-prep program.

''(d) SPECIAL CONSIDERATION.—The eligible agency, as appropriate, shall give special consideration to applications that—

''(1) provide for effective employment placement activities or the transfer of students to baccalaureate degree programs;

''(2) are developed in consultation with business, industry, institutions of higher education, and labor organizations;

''(3) address effectively the issues of school dropout prevention and reentry and the needs of special populations;

''(4) provide education and training in areas or skills in which there are significant workforce shortages, including the information technology industry; and

''(5) demonstrate how tech-prep programs will help students meet high academic and employability competencies.

''(e) EQUITABLE DISTRIBUTION OF ASSISTANCE.—In awarding grants under this title, the eligible agency shall ensure an equitable distribution of assistance between urban and rural consortium participants.

''SEC. 206. REPORT.

''Each eligible agency that receives a grant under this title annually shall prepare and submit to the Secretary a report on the effectiveness of the tech-prep programs assisted under this title, including a description of how grants were awarded within the State.

''SEC. 207. DEMONSTRATION PROGRAM.

''(a) DEMONSTRATION PROGRAM AUTHORIZED.—From funds appropriated under subsection (e) for a fiscal year, the Secretary shall award grants to consortia described in section 204(a) to enable the consortia to carry out tech-prep education programs.

''(b) PROGRAM CONTENTS.—Each tech-prep program referred to in subsection (a)—

''(1) shall—

''(A) involve the location of a secondary school on the site of a community college;

''(B) involve a business as a member of the consortium; and

''(C) require the voluntary participation of secondary school students in the tech-prep education program; and

''(2) may provide summer internships at a business for students or teachers.

''(c) APPLICATION.—Each consortium desiring a grant under this section shall submit an application to the Secretary at such time, in such manner and accompanied by such information as the Secretary may require.

''(d) APPLICABILITY.—The provisions of sections 203, 204, 205, and 206 shall not apply to this section, except that—

''(1) the provisions of section 204(a) shall apply for purposes of describing consortia eligible to receive assistance under this section;

''(2) each tech-prep education program assisted under this section shall meet the requirements of paragraphs (1), (2), (3)(A), (3)(B), (3)(C), (3)(D), (4), (5), (6), and (7) of section 204(c), except that such paragraph (3)(B) shall be applied by striking '', and if possible and practicable, 4-year institutions of higher education through nonduplicative sequences of courses in career fields''; and

''(3) in awarding grants under this section, the Secretary shall give special consideration to consortia submitting applications under subsection (c) that meet the requirements of paragraphs (1), (3), (4), and (5) of section 205(d), except that such paragraph (1) shall be applied by striking ''or the transfer of students to baccalaureate degree programs''.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $25,000,000 for fiscal year 1999 and each of the 4 succeeding fiscal years.

''SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated to carry out this title (other than section 207) such sums as may be necessary for fiscal year 1999 and each of the 4 succeeding fiscal years.

''TITLE III—GENERAL PROVISIONS

''PART A—FEDERAL ADMINISTRATIVE PROVISIONS

''SEC. 311. FISCAL REQUIREMENTS.

''(a) SUPPLEMENT NOT SUPPLANT.—Funds made available under this Act for vocational and technical education activities shall supplement, and shall not supplant, non-Federal funds expended to carry out vocational and technical education activities and tech-prep activities.

''(b) MAINTENANCE OF EFFORT.—

''(1) DETERMINATION.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), no payments shall be made under this Act for any fiscal year to a State for vocational and technical education programs or tech-prep programs unless the Secretary determines that the fiscal effort per student or the aggregate expenditures of such State for vocational and technical education programs for the fiscal year preceding the fiscal year for which the determination is made, equaled or exceeded such effort or expenditures for vocational and technical education programs, for the second fiscal year preceding the fiscal year for which the determination is made.

''(B) COMPUTATION.—In computing the fiscal effort or aggregate expenditures pursuant to subparagraph (A), the Secretary shall exclude capital expenditures, special one-time project costs, and the cost of pilot programs.

''(C) DECREASE IN FEDERAL SUPPORT.—If the amount made available for vocational and technical education programs under this Act for a fiscal year is less than the amount made available for vocational and technical education programs under this Act for the preceding fiscal year, then the fiscal effort per student or the aggregate expenditures of a State required by subparagraph (B) for such preceding fiscal year shall be decreased by the same percentage as the percentage decrease in the amount so made available.

''(2) WAIVER.—The Secretary may waive the requirements of this section, with respect to not more than 5 percent of expenditures by any eligible agency for 1 fiscal year only, on making a

determination that such waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the eligible agency to meet such requirements, such as a natural disaster or an unforeseen and precipitous decline in financial resources. No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort or aggregate expenditures required under this section for years subsequent to the year covered by such waiver. The fiscal effort or aggregate expenditures for the subsequent years shall be computed on the basis of the level of funding that would, but for such waiver, have been required.

''SEC. 312. AUTHORITY TO MAKE PAYMENTS.

''Any authority to make payments or to enter into contracts under this Act shall be available only to such extent or in such amounts as are provided in advance in appropriation Acts.

''SEC. 313. CONSTRUCTION.

''Nothing in this Act shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of a private, religious, or home school, regardless of whether a home school is treated as a private school or home school under State law. This section shall not be construed to bar students attending private, religious, or home schools from participation in programs or services under this Act.

''SEC. 314. VOLUNTARY SELECTION AND PARTICIPATION.

''No funds made available under this Act shall be used—

''(1) to require any secondary school student to choose or pursue a specific career path or major; and

''(2) to mandate that any individual participate in a vocational and technical education program, including a vocational and technical education program that requires the attainment of a federally funded skill level, standard, or certificate of mastery.

''SEC. 315. LIMITATION FOR CERTAIN STUDENTS.

''No funds received under this Act may be used to provide vocational and technical education programs to students prior to the seventh grade, except that equipment and facilities purchased with funds under this Act may be used by such students.

''SEC. 316. FEDERAL LAWS GUARANTEEING CIVIL RIGHTS.

''Nothing in this Act shall be construed to be inconsistent with applicable Federal law prohibiting discrimination on the basis of race, color, sex, national origin, age, or disability in the provision of Federal programs or services.

''SEC. 317. AUTHORIZATION OF SECRETARY.

''For the purposes of increasing and expanding the use of technology in vocational and technical education instruction, including the training of vocational and technical education personnel as provided in this Act, the Secretary is authorized to receive and use funds collected by the Federal Government from fees for the use of property, rights-of-way, and easements under the control of Federal departments and agencies for the placement of telecommunications services that are dependent, in whole or in part, upon the utilization of general spectrum rights for the transmission or reception of such services.

''SEC. 318. PARTICIPATION OF PRIVATE SCHOOL PERSONNEL.

''An eligible agency or eligible recipient that uses funds under this Act for inservice and preservice vocational and technical education professional development programs for vocational and technical education teachers, administrators, and other personnel may, upon request, permit the participation in such programs of vocational and technical education teachers, administrators, and other personnel in nonprofit private schools offering vocational and technical education programs located in the geographical area served by such agency or recipient.

''PART B—STATE ADMINISTRATIVE PROVISIONS

''SEC. 321. JOINT FUNDING.

''(a) GENERAL AUTHORITY.—Funds made available to eligible agencies under this Act may be used to provide additional funds under an applicable program if—

''(1) such program otherwise meets the requirements of this Act and the requirements of the applicable program;

''(2) such program serves the same individuals that are served under this Act;

''(3) such program provides services in a coordinated manner with services provided under this Act; and

''(4) such funds are used to supplement, and not supplant, funds provided from non-Federal sources.

''(b) APPLICABLE PROGRAM.—For the purposes of this section, the term ''applicable program'' means any program under any of the following provisions of law:

''(1) Chapters 4 and 5 of subtitle B of title I of Public Law 105–220.

''(2) The Wagner-Peyser Act.

''(c) USE OF FUNDS AS MATCHING FUNDS.—For the purposes of this section, the term 'additional funds' does not include funds used as matching funds.

''SEC. 322. PROHIBITION ON USE OF FUNDS TO INDUCE OUT-OF-STATE RELOCATION OF BUSINESSES.

''No funds provided under this Act shall be used for the purpose of directly providing incentives or inducements to an employer to relocate a business enterprise from one State to another State if such relocation will result in a reduction in the number of jobs available in the State where the business enterprise is located before such incentives or inducements are offered.

''SEC. 323. STATE ADMINISTRATIVE COSTS.

''(a) GENERAL RULE.—Except as provided in subsection (b), for each fiscal year for which an eligible agency receives assistance under this Act, the eligible agency shall provide, from non-Federal sources for the costs the eligible agency incurs for the administration of programs under this Act an amount that is not less than the amount provided by the eligible agency from non-Federal sources for such costs for the preceding fiscal year.

''(b) EXCEPTION.—If the amount made available for administration of programs under this Act for a fiscal year is less than the amount made available for administration of programs under this Act for the preceding fiscal year, the amount the eligible agency is required to provide from non-Federal sources for costs the eligible agency incurs for administration of programs under this Act shall be the same percentage as the amount made available for administration of programs under this Act.

''SEC. 324. LIMITATION ON FEDERAL REGULATIONS.

''The Secretary may issue regulations under this Act only to the extent necessary to administer and ensure compliance with the specific requirements of this Act.

''SEC. 325. STUDENT ASSISTANCE AND OTHER FEDERAL PROGRAMS.

''(a) ATTENDANCE COSTS NOT TREATED AS INCOME OR RESOURCES.—The portion of any student financial assistance received under this Act that is made available for attendance costs described in subsection (b) shall not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

''(b) ATTENDANCE COSTS.—The attendance costs described in this subsection are—

''(1) tuition and fees normally assessed a student carrying an academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in that course of study; and

''(2) an allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

''(c) COSTS OF VOCATIONAL AND TECHNICAL EDUCATION SERVICES.—Funds made available under this Act may be used to pay for the costs of vocational and technical education services required in an individualized education plan developed pursuant to section 614(d) of the Individuals with Disabilities Education Act and services necessary to meet the requirements of section 504 of the Rehabilitation Act of 1973 with respect to ensuring equal access to vocational and technical education.''.

SEC. 2. PROMOTING SCHOLAR-ATHLETE COMPETITIONS.

Section 10104 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8004) is amended—

(1) in subsection (a), by striking ''to be held in 1995'' and inserting ''to be held in 1999''; and

(2) in subsection (b)—

(A) in paragraph (4), by striking ''in the summer of 1995'' and inserting ''in the summer of 1999'';

(B) in paragraph (5), by striking ''in 1996 and thereafter, as well as replicate such program''; and

(C) in paragraph (6), by striking ''1995'' and inserting ''1999''.

SEC. 3. REFERENCES TO CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT.

(a) IMMIGRATION AND NATIONALITY ACT.—Section 245A(h)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1255a(h)(4)(C)) is amended by striking ''Vocational Education Act of 1963'' and inserting ''Carl D. Perkins Vocational and Technical Education Act of 1998''.

(b) NATIONAL DEFENSE AUTHORIZATION ACT.—Section 4461 of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 1143 note) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(c) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—The Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended—

(1) in section 1114(b)(2)(C)(v) (20 U.S.C. 6314(b)(2)(C)(v)), by striking ''Carl D. Perkins Vocational and Applied Technical Education Act,'' and inserting ''Carl D. Perkins Vocational and Technical Education Act of 1998'';

(2) in section 9115(b)(5) (20 U.S.C. 7815(b)(5)), by striking ''Carl D. Perkins Vocational and Technical Education Act'' and inserting ''Carl D. Perkins Vocational and Technical Education Act of 1998'';

(3) in section 14302(a)(2) (20 U.S.C. 8852(a)(2))—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively; and

(4) in the matter preceding subparagraph (A) of section 14307(a)(1) (20 U.S.C. 8857(a)(1)), by striking ''Carl D. Perkins Vocational and Applied Technology Technical Education Act'' and inserting ''Carl D. Perkins Vocational and Technical Education Act of 1998''.

(d) EQUITY IN EDUCATIONAL LAND-GRANT STATUS ACT OF 1994.—Section 533(c)(4)(A) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note) is amended by striking ''(20 U.S.C. 2397h(3)'' and inserting '', as such section was in effect on the day preceding the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998''.

(e) IMPROVING AMERICA'S SCHOOLS ACT OF 1994.—Section 563 of the Improving America's Schools Act of 1994 (20 U.S.C. 6301 note) is amended by striking ''the date of enactment of an Act reauthorizing the Carl D. Perkins Vocational and Technical Education Act (20 U.S.C. 2301 et seq.)'' and inserting ''July 1, 1999''.

(f) WORKFORCE INVESTMENT ACT OF 1998.—Section 101(3) of the Workforce Investment Act of 1998 (29 U.S.C. 2801(3)) is amended by striking ''section 521 of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471)'' and inserting ''section 3 of the Carl D. Perkins Vocational and Technical Education Act of 1998''.

(g) APPALACHIAN REGIONAL DEVELOPMENT ACT OF 1965.—Section 214(c) of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 214(c)) is amended by striking ''Carl D. Perkins Vocational Education Act'' and inserting ''Carl D. Perkins Vocational and Technical Education Act of 1998''.

(h) VOCATIONAL EDUCATION AMENDMENTS OF 1968.—Section 104 of the Vocational Education Amendments of 1968 (82 Stat. 1091) is amended by striking ''section 3 of the Carl D. Perkins Vocational Education Act'' and inserting ''the Carl D. Perkins Vocational and Technical Education Act of 1998''.

(i) OLDER AMERICANS ACT OF 1965.—The Older Americans Act of 1965 (42 U.S.C. 3001 et seq.) is amended—

(1) in section 502(b)(1)(N)(i) (42 U.S.C. 3056(b)(1)(N)(i)), by striking ''or the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)''; and

(2) in section 505(d)(2) (42 U.S.C. 3056c(d)(2))—

(A) by striking ''employment and training programs'' and inserting ''workforce investment activities''; and

(B) by striking ''the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)'' and inserting ''the Carl D. Perkins Vocational and Technical Education Act of 1998''.

SEC. 4. ADULT EDUCATION AND FAMILY LITERACY.

The Adult Education and Family Literacy Act (20 U.S.C. 9201 et seq.) is amended—

(1) in section 224, by adding at the end the following:

''(g) TRANSITION.—The provisions of this section shall be subject to section 506(b).''; and

(2) by amending paragraph (2) of section 506(b) to read as follows:

''(2) LIMITATION.—The authority to take actions under paragraph (1) shall apply until July 1, 2000.''.

SEC. 5. TECHNICAL AND CONFORMING AMENDMENTS.

(a) WORKFORCE INVESTMENT ACT OF 1998.—Section 121 of the Workforce Investment Act of 1998 (29 U.S.C. 2841) is amended—

(1) in subsection (b)(1)(B)(iv), by inserting before the semicolon the following: ''(other than part C of title I of such Act and subject to subsection (f))''; and

(2) by adding at the end the following:

''(f) APPLICATION TO CERTAIN VOCATIONAL REHABILITATION PROGRAMS.—

''(1) LIMITATION.—Nothing in this section shall be construed to apply to part C of title I of the Rehabilitation Act of 1973 (29 U.S.C. 741).

''(2) CLIENT ASSISTANCE.—Nothing in this Act shall be construed to require that any entity carrying out a client assistance program authorized under section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732)—

''(A) violate the requirement of section 112(c)(1)(A) of that Act that the entity be independent of any agency which provides treatment, services, or rehabilitation to individuals under that Act; or

''(B) carry out any activity not authorized under section 112 of that Act (including appropriate Federal regulations).''.

(b) WAGNER-PEYSER ACT.—

(1) IN GENERAL.—Section 15 of the Wagner-Peyser Act (as added by section 309 of the Workforce Investment Act of 1998) is amended—

(A) in subsection (a)(2)(A)(i), by striking ''under'' and all that follows through ''for which'' and inserting ''under the provisions of this section for any purpose other than the statistical purposes for which''; and

(B) in subsection (e)(2)(G), by striking ''complementary'' and inserting ''complementarity''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect July 2, 1999.

(c) REHABILITATION ACT OF 1973.—Section 725(c)(7) of the Rehabilitation Act of 1973 (as amended by section 410 of the Workforce Investment Act of 1998) is amended by striking ''management,'' and all that follows and inserting ''management;''.

SEC. 6. REPEALS AND EXTENSIONS OF PREVIOUS HIGHER EDUCATION AMENDMENTS PROVISIONS.

(a) HIGHER EDUCATION AMENDMENTS OF 1986.—Title XIII of the Higher Education Amendments of 1986 (Public Law 99–498) is repealed.

(b) HIGHER EDUCATION AMENDMENTS OF 1992.—The following provisions of the Higher Education Amendments of 1992 (Public Law 102–325) are repealed:

(1) Parts E, F, and G of title XIII.

(2) Title XIV.

(3) Parts A, B, C, and D of title XV.

And the Senate agree to the same.

BILL GOODLING,
HOWARD ''BUCK'' MCKEON,
FRANK RIGGS,
JOHN E. PETERSON,
SAM JOHNSON,
BILL CLAY,
MATTHEW G. MARTINEZ,
DALE E. KILDEE,
Managers on the Part of the House.

JIM JEFFORDS,
DAN COATS,
JUDD GREGG,
BILL FRIST,
MIKE DEWINE,
MICHAEL B. ENZI,
TIM HUTCHINSON,
SUSAN COLLINS,
MITCH MCCONNELL,
TED KENNEDY,
CHRIS DODD,
TOM HARKIN,
BARBARA A. MIKULSKI,
PAUL WELLSTONE,
JACK REED,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1853) to amend the Carl D. Perkins Vocational and Applied Technology Education Act, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE I—VOCATIONAL AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES

The Conference agreement improves vocational and technical education by strengthening academics, broadening vocational opportunities for students, sending more money to the local level, and increasing flexibility for State and local program needs.

FORMULA PROVISIONS

The Conference agreement authorizes such sums for Fiscal Years 1999–2003.

Federal to State formula

The House bill changes the formula provisions in the Act. The Federal to State formula allots basic State grant funds to States based upon two populations. Fifty percent would be sent based upon the population aged 15–19 in each State, and 50 percent based upon the population aged 20–24 in the State. This distribution would be subject to each State receiving a minimum amount of one half of one percent of the total grant amounts (small state minimum). State allotments would be adjusted by the per capita income of the State, with the maximum adjustment ratio being 0.55 and the minimum being 0.4.

The Senate bill follows current law.

The Conference agreement follows the Senate bill.

Outlying areas

Both bills provide for grants of $500,000 made to Guam, and $190,000 each to American Samoa, and the Commonwealth of the Northern Marianna Islands from reserved funds. In addition, both bills require the Freely Associated States (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) to compete for their allotment with Guam and American Samoa.

The House bill terminates funding for the Freely Associated States (the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau) on September 30, 2001.

The Senate bill terminates funding for the Freely Associated States (the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau) on September 30, 2004.

The Conference agreement follows the House bill.

Within State formula

The House bill requires States to send 90 percent of their basic State grant to the local level for secondary, postsecondary, and adult vocational education activities. Of this 90 percent, a State may reserve up to ten percent for rural (five percent) and urban (five percent) areas in the State. A State is required to reserve eight percent of the basic State grant for State leadership activities and two percent for administrative activities.

The Senate bill maintains several key set-asides found in current law. The Senate bill allocates 75 percent of the State grant for secondary, postsecondary, and adult vocational and technical education activities. The bill allows States to reserve 14 percent of their allotment for State leadership activities, ten percent for administration, and one percent for programming for criminal offenders.

The Conference agreement allocates 85 percent of the State grant for secondary, postsecondary, and adult vocational and technical education programs at the local level. Of this allocation, ten percent may be made available to award grants to rural areas; areas with high percentages of vocational and technical education students; areas with high numbers of vocational and technical education students; and communities negatively impacted as a result of changes in the new within State formula. In adopting this change, the Conferees recognize the inequities inherent in any formula toward rural areas and provide through this reserve a mechanism for States to compensate for these inequities. In addition to rural areas, the Conferees realize that the formula may not adequately reflect those schools or local areas that have a high percentage or population of students in vocational technical education programs.

The agreement also authorizes the State eligible agency to reserve an amount equal to ten percent of the total allotment for State leadership activities. Included in the funds reserved for State Leadership activities, up to one percent of the total allotment shall be used to serve criminal offenders, and not less than $60,000 but no more than $150,000 shall be used for services targeting

preparation for nontraditional training and employment. The Conference agreement authorizes the State eligible agency to reserve up to five percent of the total allotment, or $250,000 (whichever is greater), for State administrative activities. This may be used for the costs of developing a State plan, reviewing a local plan, monitoring and evaluating the effectiveness of a program, assuring the compliance with all of the applicable federal laws, or providing technical assistance. Each State that receives this financial assistance shall match the reserve funds on a dollar-for-dollar basis.

NATIONAL ACTIVITIES

Both bills require the Secretary to develop and implement a plan for evaluation and dissemination of vocational and technical education programs. Both bills include provisions with regard to what is to be included in the evaluation and assessment plans. In addition, both bills allow the Secretary to award grants to establish national research centers. Demonstration and dissemination activities are also included. Both bills also require information collection on vocational and technical education programs. Adequate information on access to vocational and technical education by secondary students with disabilities is maintained in the data system.

The House bill extends the authorization of the National Occupational Information Coordinating Committee.

The Senate bill had no comparable provision.

The Conference agreement includes authority for the Secretary of Education to designate an entity at the national level to carry out certain functions related to occupational and employment information for vocational and technical education programs. The agreements also gives authority to the Secretary to award grants to designated State entities, which may include State Occupational Information Coordinating Committees established prior to enactment of this Act, to carry out State activities related to such information. The agreement prohibits any duplication of activities authorized under section 15 of the Wagner-Peyser Act. The Conferees expect the Secretary of Education, in carrying out this section, to consult with the Bureau of Labor Statistics and the Employment and Training Administration in order to avoid any duplication of activities.

INDIAN AND NATIVE HAWAIIAN PROGRAM AND TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL AND TECHNICAL INSTITUTIONS

Section 103 of the House bill authorizes grants to Indian tribes, tribal organizations, and Alaska Native entities for the purposes of carrying out vocational and technical education, but bars Bureau Funded secondary schools from receiving assistance under this Section. The Secretary is also directed to enter into contracts with organizations primarily serving Native Hawaiian programs. In addition, section 104 of the House bill also authorizes the Secretary to make grants to tribally controlled postsecondary vocational and technical institutions.

Section 114 of the Senate bill authorizes the Secretary to enter into grants or contracts to Indian tribes, tribal organizations, Bureau funded schools, and organizations primarily serving native Hawaiians for the purposes of carrying out vocational and technical education programs. Any organization that receives a grant or enters into a contract would be required to establish adjusted levels of performance to be achieved by students served and evaluate the quality and effectiveness of the program. In addition, the Section 115 of the Senate bill also authorizes the Secretary to make grants to tribally controlled postsecondary vocational and technical institutions.

The Conference agreement follows the Senate bill with regard to the issuance of grants or contracts to Indian tribes, tribal organizations, but adds Alaska Native entities as eligible to receive a grant or enter into a contract. The agreement follows the House bill with regard to the majority of the provisions relating to tribally controlled postsecondary vocational and technical education institutions, including the maintenance of a separate authorization of appropriations for these activities. In addition, the agreement follows the Senate bill on the requirement to conduct needs estimates and reports on facility quality. The Conference agreement closely follows current law on these provisions.

STATE ORGANIZATIONAL AND PLANNING RESPONSIBILITIES

State plan

The House bill requires a State plan to be for a minimum of five years. The plan would describe the vocational and technical education programs that would be carried out with funds received by the State. In addition, the plan would describe how funds received by the State would be allocated; describe how the State would improve the academic and technical skills of vocational technical education students; ensure that participating students are taught to the same academic proficiencies as are provided all other students; and describe how the State would evaluate the effectiveness of the programs annually.

The Senate bill requires a State plan to be for a minimum of three years. The plan would describe the vocational education activities designed to meet the State adjusted levels of performance. It would also describe how funds would be allocated. The plan would describe how funds would be used to expand and improve technology in instruction; to serve individuals in correctional institutions; and to link secondary and postsecondary education.

The Conference agreement follows the House bill with a few modifications. The State plan is to include information that describes the vocational education activities to be assisted that are designed to meet the State adjusted levels of performance. The plan is to be reviewed prior to the third program year. In addition, the plan describes the eligible agency's program strategies for special populations.

State leadership

Required use of funds

The House bill requires State leadership funds to be used for activities targeting the use of technology, professional development, and support for programs that improve the academic and technical skills of participating vocational technical education students.

The Senate bill requires State leadership funds be used for monitoring and evaluating the quality and improvement of vocational and technical education activities and for improving and expanding technology. In addition, the bill requires that funds be used to provide comprehensive professional development. The bill also requires that funds be used to: provide preparation for nontraditional training and employment; support tech-prep education activities; support partnerships among LEAs, institutions of higher education, adult education providers, and other entities; and to serve individuals in State institutions.

The Conference agreement merges the provisions of the two bills. The agreement also includes support for programs for special populations, and describes how funds will be used to serve individuals in correctional institutions.

Permissive use of funds

The House bill allows State leadership funds to be used for technical support of eligible recipients and to establish agreements between secondary and postsecondary programs. It also allows funds to be used for: support for programs for special populations; cooperative education; vocational student organizations; support for public charter schools operating secondary vocational and technical education programs; and programs that offer experience in all aspects of an industry for which students would be preparing to enter. In addition funds may be used for: family and consumer sciences programs; corrections education; education and business partnerships; and to improve or develop new vocational and technical education courses.

The Senate bill permits funds to be used for an array of activities, including support for vocational student organizations, and to provide programs for adults and school dropouts. It also allows funds to be used to provide assistance to participating students in finding a job and continuing their education.

The Conference agreement merges the provisions of the two bills.

Substate formula at the secondary level

The House bill phases in a new secondary substate formula over five years. Year one would operate under current law, and subsequent years would transition to a formula based 60 percent on poverty of individuals aged 15–19, and 40 percent on the population of individuals aged 15–19. The minimum grant would be $10,000. The House bill also includes a waiver ability for States that develop an alternative formula that more effectively targets funds on the basis of poverty to Local Educational Agencies (LEAs).

The Senate bill follows current law on the distribution of funds, but raises the minimum grant to $25,000.

The Conference agreement changes the secondary substate formula over two years. In the first year of the reauthorization, funds for secondary activities would be distributed under current law. Beginning in year two, seventy percent of the funds would be distributed based upon each LEA's share of the individuals aged 15–19 from economically disadvantaged families, and 30 percent distributed based upon the LEA's share of population aged 15–19. The agreement follows the House bill with regard to the waiver authority, and maintains current law with regard to the minimum grant of $15,000.

Substate funding at the postsecondary level

The House bill follows current law on the postsecondary substate formula, which is based upon an institution's share of Pell Grant recipients. It sets the minimum grant at $35,000. The bill also allows the Secretary to waive requirements to permit alternative formulas.

The Senate bill follows current law for the postsecondary substate formula, but sets the minimum grant at $65,000.

The Conference agreement follows current law with regard to the formula, the minimum grant of $50,000, and waiver authority.

ACCOUNTABILITY

The House bill requires the State to develop performance measures to measure the progress of the State. If the State has not demonstrated improvement in meeting its performance measures for 2 or more consecutive years, the Secretary may withhold all, or a portion of, the allotment. In addition, each eligible agency that receives an allotment must annually prepare and submit a report to the Secretary on the State's performance. This report is to include, in addition to other things, a description of the progress of special populations.

The Senate bill requires the Secretary to publish performance measures to assess the

progress of each eligible agency. Each eligible agency is to negotiate with the Secretary the adjusted levels of performance. Each eligible agency is to annually evaluate the vocational and technical education and tech-prep activities to determine the progress. If an organization is not making substantial progress, it is to conduct an assessment, enter into an improvement plan based on the assessment, and conduct regular evaluations of the progress being made. If the organization continues to not demonstrate improvement, the Secretary may withhold all, or a portion of, the allotment. The eligible agency that receives the allotment is to report annually on the progress made, including a description of the progress of special populations.

The Conference agreement requires the State performance measures to be established solely by the State, and are to include core indicators of performance. The State adjusted levels of performance shall be agreed upon by the State adjusted levels of performance shall be agreed upon by the State eligible agency (with input from local eligible recipients) and the Secretary for the first two program years covered by the State plan. Prior to the third program year, the Secretary and eligible agency shall reach agreement on the core indicators of performance for the third, fourth and fifth program years. Each eligible agency that receives this allotment shall prepare and submit an annual report to the Secretary describing the agency's progress.

LOCAL PROVISIONS

LOCAL USES OF FUNDS

Required use of funds

The House bill requires funds to be used for strengthening the academic and technical skills of participating students by strengthening the program components through the integration of academics with vocational and technical education; developing, improving, or expanding the use of technical in vocational and technical education; and providing professional development programs.

The Senate bill requires funds to be used to integrate academic education with vocational and technical education for particapting student; to improve or expand the use of technology in vocational and technical education, including professional development; to provide professional development activities to teachers, counselors, and administrators; to develop and implement performance management systems and evaluations; to initiate and improve quality programs; to link secondary and postsecondary education, including tech-prep programs; to develop implement programs that provide access to quality programs for participating students, including special populations; to promote preparation for nontraditional training and employment.

The Conference agreement follows the majority of the provisions in the House bill. The agreement also requires funds to be used for programs designed to train teachers specifically in the use of technology; to provide services and activities that are of sufficient size, scope, and quality to be effective; and to link, secondary and postsecondary vocational and technical education, including implementing tech-prep programs.

Permissive use of funds

The House bill permits funds to be used for establishing agreements between secondary and postsecondary vocational and technical education programs; involving parents, businesses, and employee representatives in the design and implementation of programs; providing career counseling; providing work related experience; programs for special populations; local education and business partnerships; vocational and technical student organizations; mentoring and support services; equipment used on the programs; establishing programs and procedures that allow students and their parents to participate directly in decisions that influence the programs; teacher preparation programs; improving or developing new vocational and technical education programs; and support for family and consumer sciences programs.

The Senate bill allows funds to be used for providing guidance and counseling to participating students; supporting vocational and technical student organizations; student internships; providing vocational and technical education programs for adults and school dropouts; acquiring and adapting equipment; providing assistance to students in finding an appropriate job and continuing their education; and supporting other vocational and technical education activities.

The Conference agreement merges the two bills.

TITLE II—TECH-PREP PROGRAMS

The House bill permits the eligible agency to award grants to consortia on a competitive basis or on the basis of formula, in order to develop and operate a four to six year tech-prep education program. The tech-prep program is to be carried out with agreement among the participants in the consortium; consist of at least two years secondary school and two years higher education or a two year apprenticeship program; include the development of tech-prep education program components appropriate to the participants; include in-service training for teachers and training programs for counselors; provide equal access to tech-prep programs; and provide for preparatory services that assist participants.

The Senate bill permits the eligible agency to award grants to consortia for the development and operation of programs designed to provide tech-prep education. The tech-prep program is to be carried out with agreement among the participants; consist of at least two years of secondary school, two years of higher education or a two year apprenticeship program; include the development of tech-prep education programs for participants; meet State academic standards; link secondary schools and two-year postsecondary institutions; use work-based or worksite learning along with business and industry; use educational technology and distance learning; include a professional development program for teachers and training programs for counselors; provide equal access to tech-prep programs; and provide preparatory programs to assist special populations.

Both bills include provisions regarding the application process. The Conference agreement provides for grants to be awarded. These grants are to be awarded on a competitive basis or on the basis of formula. The agreement merges the House and the Senate bill with regard to the contents of the program. In addition, the agreement authorizes additional activities, including the acquisition of tech-prep education equipment, acquisition of technical assistance from State or local entities, the establishment of articulation agreements. The agreement also follows the House bill on the allotment provisions, but the Senate bill on appropriations and demonstration programs.

TITLE III—GENERAL PROVISIONS

Both bills clarify that the funds received under this Act shall be used to supplement, not supplant, the amount of funds that would be made available from non-Federal sources for vocational and technical education. Both bills also mandate that nothing in this Act shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of a private, religious, or home school.

The House bill includes provisions clarifying that: none of the funds under this Act shall be used for students prior to the seventh grade; and that none of the funds under the Act shall be used to require any secondary school student to choose or pursue a specific career path or major or to mandate participation in a vocational and technical education program or attain a federally funded skill level, standard, or certificate of mastery. the bill further includes provisions clarifying that: nothing in the Act shall be construed to be inconsistent with Federal laws guaranteeing civil rights; permits the participation of personnel in non-profit private schools; allows the State to use additional funds under applicable programs; and prohibits funds to be used for the sole purpose of providing incentives to relocate a business from one State to another.

The Conference agreement generally follows the House bill, but merges provisions from both bills.

DEFINITIONS

SPECIAL POPULATIONS

The House bill includes individuals with disabilities, economically disadvantaged individuals, individuals with limited English proficiency, and individuals participating in nontraditional training and employment when describing special populations.

The Senate bill includes low-income individuals including foster children, individuals with disabilities, single parents and displaced homemakers, and individuals with other barriers to educational achievement including individuals with limited English proficiency when describing special populations.

The Conference agreement defines special populations as individuals with disabilities; individuals from economically disadvantaged families, including foster children; individuals preparing for non-traditional training and employment; single parents, including single pregnant women; displaced homemakers; and individuals with other barriers to educational achievement, including individuals with limited English proficiency.

BILL GOODLING,
HOWARD ''BUCK'' MCKEON,
FRANK RIGGS,
JOHN E. PETERSON,
SAM JOHNSON,
BILL CLAY,
MATTHEW G. MARTINEZ,
DALE E. KILDEE,
Managers on the Part of the House.

JIM JEFFORDS,
DAN COATS,
JUDD GREGG,
BILL FRIST,
MIKE DEWINE,
MICHAEL B. ENZI,
TIM HUTCHINSON,
SUSAN COLLINS,
MITCH MCCONNELL,
TED KENNEDY,
CHRIS DODD,
TOM HARKIN,
BARBARA A. MIKULSKI,
PAUL WELLSTONE,
JACK REED,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 2281, DIGITAL MILLENNIUM COPYRIGHT ACT

Mr. COBLE submitted the following conference report and statement on the bill (H.R. 2281) to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes:

CONFERENCE REPORT (H. REPT. 105–796)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2281), to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Digital Millennium Copyright Act''.

SEC. 2. TABLE OF CONTENTS.

TITLE I—WIPO TREATIES IMPLEMENTATION

SEC. 101. SHORT TITLE.

This title may be cited as the ''WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998''.

SEC. 102. TECHNICAL AMENDMENTS.

(a) DEFINITIONS.—Section 101 of title 17, United States Code, is amended—

(1) by striking the definition of ''Berne Convention work'';

(2) in the definition of ''The 'country of origin' of a Berne Convention work''—

(A) by striking ''The 'country of origin' of a Berne Convention work, for purposes of section 411, is the United States if'' and inserting ''For purposes of section 411, a work is a 'United States work' only if'';

(B) in paragraph (1)—

(i) in subparagraph (B) by striking ''nation or nations adhering to the Berne Convention'' and inserting ''treaty party or parties'';

(ii) in subparagraph (C) by striking ''does not adhere to the Berne Convention'' and inserting ''is not a treaty party''; and

(iii) in subparagraph (D) by striking ''does not adhere to the Berne Convention'' and inserting ''is not a treaty party''; and

(C) in the matter following paragraph (3) by striking ''For the purposes of section 411, the 'country of origin' of any other Berne Convention work is not the United States.'';

(3) by inserting after the definition of ''fixed'' the following:

''The 'Geneva Phonograms Convention' is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland, on October 29, 1971.'';

(4) by inserting after the definition of ''including'' the following:

''An 'international agreement' is—

''(1) the Universal Copyright Convention;

''(2) the Geneva Phonograms Convention;

''(3) the Berne Convention;

''(4) the WTO Agreement;

''(5) the WIPO Copyright Treaty;

''(6) the WIPO Performances and Phonograms Treaty; and

''(7) any other copyright treaty to which the United States is a party.'';

(5) by inserting after the definition of ''transmit'' the following:

''A 'treaty party' is a country or intergovernmental organization other than the United States that is a party to an international agreement.'';

(6) by inserting after the definition of ''widow'' the following:

''The 'WIPO Copyright Treaty' is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.'';

(7) by inserting after the definition of ''The 'WIPO Copyright Treaty''' the following:

''The 'WIPO Performances and Phonograms Treaty' is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996.''; and

(8) by inserting after the definition of ''work made for hire'' the following:

''The terms 'WTO Agreement' and 'WTO member country' have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.''.

(b) SUBJECT MATTER OF COPYRIGHT; NATIONAL ORIGIN.—Section 104 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1) by striking ''foreign nation that is a party to a copyright treaty to which the United States is also a party'' and inserting ''treaty party'';

(B) in paragraph (2) by striking ''party to the Universal Copyright Convention'' and inserting ''treaty party'';

(C) by redesignating paragraph (5) as paragraph (6);

(D) by redesignating paragraph (3) as paragraph (5) and inserting it after paragraph (4);

(E) by inserting after paragraph (2) the following:

''(3) the work is a sound recording that was first fixed in a treaty party; or'';

(F) in paragraph (4) by striking ''Berne Convention work'' and inserting ''pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party''; and

(G) by inserting after paragraph (6), as so redesignated, the following:

''For purposes of paragraph (2), a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be.''; and

(2) by adding at the end the following new subsection:

''(d) EFFECT OF PHONOGRAMS TREATIES.—Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.''.

(c) COPYRIGHT IN RESTORED WORKS.—Section 104A(h) of title 17, United States Code, is amended—

(1) in paragraph (1), by striking subparagraphs (A) and (B) and inserting the following:

''(A) a nation adhering to the Berne Convention;

''(B) a WTO member country;

''(C) a nation adhering to the WIPO Copyright Treaty;

''(D) a nation adhering to the WIPO Performances and Phonograms Treaty; or

''(E) subject to a Presidential proclamation under subsection (g).'';

(2) by amending paragraph (3) to read as follows:

''(3) The term 'eligible country' means a nation, other than the United States, that—

''(A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;

''(B) on such date of enactment is, or after such date of enactment becomes, a nation adhering to the Berne Convention;

''(C) adheres to the WIPO Copyright Treaty;

''(D) adheres to the WIPO Performances and Phonograms Treaty; or

''(E) after such date of enactment becomes subject to a proclamation under subsection (g).'';

(3) in paragraph (6)—

(A) in subparagraph (C)(iii) by striking ''and'' after the semicolon;

(B) at the end of subparagraph (D) by striking the period and inserting ''; and''; and

(C) by adding after subparagraph (D) the following:

''(E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording.'';

(4) in paragraph (8)(B)(i)—

(A) by inserting ''of which'' before ''the majority''; and

(B) by striking ''of eligible countries''; and

(5) by striking paragraph (9).

(d) REGISTRATION AND INFRINGEMENT ACTIONS.—Section 411(a) of title 17, United States Code, is amended in the first sentence—

(1) by striking ''actions for infringement of copyright in Berne Convention works whose country of origin is not the United States and''; and

(2) by inserting ''United States'' after ''no action for infringement of the copyright in any''.

(e) STATUTE OF LIMITATIONS.—Section 507(a) of title 17, United State Code, is amended by striking ''No'' and inserting ''Except as expressly provided otherwise in this title, no''.

SEC. 103. COPYRIGHT PROTECTION SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION.

(a) IN GENERAL.—Title 17, United States Code is amended by adding at the end the following new chapter:

''CHAPTER 12—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

''§ 1201. Circumvention of copyright protection systems

''(a) VIOLATIONS REGARDING CIRCUMVENTION OF TECHNOLOGICAL MEASURES.—(1)(A) No person shall circumvent a technological measure that effectively controls access to a work protected under this title. The prohibition contained in the preceding sentence shall take effect at the end of the 2-year period beginning on the date of the enactment of this chapter.

''(B) The prohibition contained in subparagraph (A) shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title, as determined under subparagraph (C).

''(C) During the 2-year period described in subparagraph (A), and during each succeeding 3-year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall make the determination in a rulemaking proceeding on the record for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works. In conducting such rulemaking, the Librarian shall examine—

''(i) the availability for use of copyrighted works;

''(ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;

''(iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

''(iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

''(v) such other factors as the Librarian considers appropriate.

''(D) The Librarian shall publish any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (C), that noninfringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3-year period.

''(E) Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), may be used as a defense in any action to enforce any provision of this title other than this paragraph.

''(2) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that—

''(A) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected under this title;

''(B) has only limited commercially significant purpose or use other than to circumvent a technological measure that effectively controls access to a work protected under this title; or

''(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological measure that effectively controls access to a work protected under this title.

''(3) As used in this subsection—

''(A) to 'circumvent a technological measure' means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and

''(B) a technological measure 'effectively controls access to a work' if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

''(b) ADDITIONAL VIOLATIONS.—(1) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that—

''(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof;

''(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof; or

''(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof.

''(2) As used in this subsection—

''(A) to 'circumvent protection afforded by a technological measure' means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological measure; and

''(B) a technological measure 'effectively protects a right of a copyright owner under this title' if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under this title.

''(c) OTHER RIGHTS, ETC., NOT AFFECTED.—(1) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.

''(2) Nothing in this section shall enlarge or diminish vicarious or contributory liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

''(3) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subsection (a)(2) or (b)(1).

''(4) Nothing in this section shall enlarge or diminish any rights of free speech or the press for activities using consumer electronics, telecommunications, or computing products.

''(d) EXEMPTION FOR NONPROFIT LIBRARIES, ARCHIVES, AND EDUCATIONAL INSTITUTIONS.—(1) A nonprofit library, archives, or educational institution which gains access to a commercially exploited copyrighted work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this title shall not be in violation of subsection (a)(1)(A). A copy of a work to which access has been gained under this paragraph—

''(A) may not be retained longer than necessary to make such good faith determination; and

''(B) may not be used for any other purpose.

''(2) The exemption made available under paragraph (1) shall only apply with respect to a work when an identical copy of that work is not reasonably available in another form.

''(3) A nonprofit library, archives, or educational institution that willfully for the purpose of commercial advantage or financial gain violates paragraph (1)—

''(A) shall, for the first offense, be subject to the civil remedies under section 1203; and

''(B) shall, for repeated or subsequent offenses, in addition to the civil remedies under section 1203, forfeit the exemption provided under paragraph (1).

''(4) This subsection may not be used as a defense to a claim under subsection (a)(2) or (b), nor may this subsection permit a nonprofit library, archives, or educational institution to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, component, or part thereof, which circumvents a technological measure.

''(5) In order for a library or archives to qualify for the exemption under this subsection, the collections of that library or archives shall be—

''(A) open to the public; or

''(B) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field.

''(e) LAW ENFORCEMENT, INTELLIGENCE, AND OTHER GOVERNMENT ACTIVITIES.—This section does not prohibit any lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term 'information security' means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

''(f) REVERSE ENGINEERING.—(1) Notwithstanding the provisions of subsection (a)(1)(A), a person who has lawfully obtained the right to use a copy of a computer program may circumvent a technological measure that effectively controls access to a particular portion of that program for the sole purpose of identifying and analyzing those elements of the program that are necessary to achieve interoperability of an independently created computer program with other programs, and that have not previously been readily available to the person engaging in the circumvention, to the extent any such acts of identification and analysis do not constitute infringement under this title.

''(2) Notwithstanding the provisions of subsections (a)(2) and (b), a person may develop and employ technological means to circumvent a technological measure, or to circumvent protection afforded by a technological measure, in order to enable the identification and analysis under paragraph (1), or for the purpose of enabling interoperability of an independently created computer program with other programs, if such means are necessary to achieve such interoperability, to the extent that doing so does not constitute infringement under this title.

''(3) The information acquired through the acts permitted under paragraph (1), and the means permitted under paragraph (2), may be made available to others if the person referred to in paragraph (1) or (2), as the case may be, provides such information or means solely for the purpose of enabling interoperability of an independently created computer program with other programs, and to the extent that doing so does not constitute infringement under this title or violate applicable law other than this section.

''(4) For purposes of this subsection, the term 'interoperability' means the ability of computer programs to exchange information, and of such programs mutually to use the information which has been exchanged.

''(g) ENCRYPTION RESEARCH.—

''(1) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'encryption research' means activities necessary to identify and analyze flaws and vulnerabilities of encryption technologies applied to copyrighted works, if these activities are conducted to advance the state of knowledge in the field of encryption technology or to assist in the development of encryption products; and

''(B) the term 'encryption technology' means the scrambling and descrambling of information using mathematical formulas or algorithms.

''(2) PERMISSIBLE ACTS OF ENCRYPTION RESEARCH.—Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that

subsection for a person to circumvent a technological measure as applied to a copy, phonorecord, performance, or display of a published work in the course of an act of good faith encryption research if—

''(A) the person lawfully obtained the encrypted copy, phonorecord, performance, or display of the published work;

''(B) such act is necessary to conduct such encryption research;

''(C) the person made a good faith effort to obtain authorization before the circumvention; and

''(D) such act does not constitute infringement under this title or a violation of applicable law other than this section, including section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.

''(3) FACTORS IN DETERMINING EXEMPTION.—In determining whether a person qualifies for the exemption under paragraph (2), the factors to be considered shall include—

''(A) whether the information derived from the encryption research was disseminated, and if so, whether it was disseminated in a manner reasonably calculated to advance the state of knowledge or development of encryption technology, versus whether it was disseminated in a manner that facilitates infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security;

''(B) whether the person is engaged in a legitimate course of study, is employed, or is appropriately trained or experienced, in the field of encryption technology; and

''(C) whether the person provides the copyright owner of the work to which the technological measure is applied with notice of the findings and documentation of the research, and the time when such notice is provided.

''(4) USE OF TECHNOLOGICAL MEANS FOR RESEARCH ACTIVITIES.—Notwithstanding the provisions of subsection (a)(2), it is not a violation of that subsection for a person to—

''(A) develop and employ technological means to circumvent a technological measure for the sole purpose of that person performing the acts of good faith encryption research described in paragraph (2); and

''(B) provide the technological means to another person with whom he or she is working collaboratively for the purpose of conducting the acts of good faith encryption research described in paragraph (2) or for the purpose of having that other person verify his or her acts of good faith encryption research described in paragraph (2).

''(5) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this chapter, the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly report to the Congress on the effect this subsection has had on—

''(A) encryption research and the development of encryption technology;

''(B) the adequacy and effectiveness of technological measures designed to protect copyrighted works; and

''(C) protection of copyright owners against the unauthorized access to their encrypted copyrighted works.

The report shall include legislative recommendations, if any.

''(h) EXCEPTIONS REGARDING MINORS.—In applying subsection (a) to a component or part, the court may consider the necessity for its intended and actual incorporation in a technology, product, service, or device, which—

''(1) does not itself violate the provisions of this title; and

''(2) has the sole purpose to prevent the access of minors to material on the Internet.

''(i) PROTECTION OF PERSONALLY IDENTIFYING INFORMATION.—

(1) CIRCUMVENTION PERMITTED.—Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to circumvent a technological measure that effectively controls access to a work protected under this title, if—

''(A) the technological measure, or the work it protects, contains the capability of collecting or disseminating personally identifying information reflecting the online activities of a natural person who seeks to gain access to the work protected;

''(B) in the normal course of its operation, the technological measure, or the work it protects, collects or disseminates personally identifying information about the person who seeks to gain access to the work protected, without providing conspicuous notice of such collection or dissemination to such person, and without providing such person with the capability to prevent or restrict such collection or dissemination;

''(C) the act of circumvention has the sole effect of identifying and disabling the capability described in subparagraph (A), and has no other effect on the ability of any person to gain access to any work; and

''(D) the act of circumvention is carried out solely for the purpose of preventing the collection or dissemination of personally identifying information about a natural person who seeks to gain access to the work protected, and is not in violation of any other law.

''(2) INAPPLICABILITY TO CERTAIN TECHNOLOGICAL MEASURES.—This subsection does not apply to a technological measure, or a work it protects, that does not collect or disseminate personally identifying information and that is disclosed to a user as not having or using such capability.

''(j) SECURITY TESTING.—

''(1) DEFINITION.—For purposes of this subsection, the term 'security testing' means accessing a computer, computer system, or computer network, solely for the purpose of good faith testing, investigating, or correcting, a security flaw or vulnerability, with the authorization of the owner or operator of such computer, computer system, or computer network.

''(2) PERMISSIBLE ACTS OF SECURITY TESTING.—Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to engage in an act of security testing, if such act does not constitute infringement under this title or a violation of applicable law other than this section, including section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.

''(3) FACTORS IN DETERMINING EXEMPTION.—In determining whether a person qualifies for the exemption under paragraph (2), the factors to be considered shall include—

''(A) whether the information derived from the security testing was used solely to promote the security of the owner or operator of such computer, computer system or computer network, or shared directly with the developer of such computer, computer system, or computer network; and

''(B) whether the information derived from the security testing was used or maintained in a manner that does not facilitate infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security.

''(4) USE OF TECHNOLOGICAL MEANS FOR SECURITY TESTING.—Notwithstanding the provisions of subsection (a)(2), it is not a violation of that subsection for a person to develop, produce, distribute or employ technological means for the sole purpose of performing the acts of security testing described in subsection (2), provided such technological means does not otherwise violate section (a)(2).

''(k) CERTAIN ANALOG DEVICES AND CERTAIN TECHNOLOGICAL MEASURES.—

''(1) CERTAIN ANALOG DEVICES.—

''(A) Effective 18 months after the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in any—

''(i) VHS format analog video cassette recorder unless such recorder conforms to the automatic gain control copy control technology;

''(ii) 8mm format analog video cassette camcorder unless such camcorder conforms to the automatic gain control technology;

''(iii) Beta format analog video cassette recorder, unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 1,000 Beta format analog video cassette recorders sold in the United States in any one calendar year after the date of the enactment of this chapter;

''(iv) 8mm format analog video cassette recorder that is not an analog video cassette camcorder, unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 20,000 such recorders sold in the United States in any one calendar year after the date of the enactment of this chapter; or

''(v) analog video cassette recorder that records using an NTSC format video input and that is not otherwise covered under clauses (i) through (iv), unless such device conforms to the automatic gain control copy control technology.

''(B) Effective on the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in—

''(i) any VHS format analog video cassette recorder or any 8mm format analog video cassette recorder if the design of the model of such recorder has been modified after such date of enactment so that a model of recorder that previously conformed to the automatic gain control copy control technology no longer conforms to such technology; or

''(ii) any VHS format analog video cassette recorder, or any 8mm format analog video cassette recorder that is not an 8mm analog video cassette camcorder, if the design of the model of such recorder has been modified after such date of enactment so that a model of recorder that previously conformed to the four-line colorstripe copy control technology no longer conforms to such technology.

Manufacturers that have not previously manufactured or sold a VHS format analog video cassette recorder, or an 8mm format analog cassette recorder, shall be required to conform to the four-line colorstripe copy control technology in the initial model of any such recorder manufactured after the date of the enactment of this chapter, and thereafter to continue conforming to the four-line colorstripe copy control technology. For purposes of this subparagraph, an analog video cassette recorder 'conforms to' the four-line colorstripe copy control technology if it records a signal that, when played back by the playback function of that recorder in the normal viewing mode, exhibits, on a reference display device, a display containing distracting visible lines through portions of the viewable picture.

''(2) CERTAIN ENCODING RESTRICTIONS.—No person shall apply the automatic gain control copy control technology or colorstripe copy control technology to prevent or limit consumer copying except such copying—

''(A) of a single transmission, or specified group of transmissions, of live events or of audiovisual works for which a member of the public has exercised choice in selecting the transmissions, including the content of the transmissions or the time of receipt of such transmissions, or both, and as to which such member is charged a separate fee for each such transmission or specified group of transmissions;

''(B) from a copy of a transmission of a live event or an audiovisual work if such transmission is provided by a channel or service where payment is made by a member of the public for such channel or service in the form of a subscription fee that entitles the member of the public to receive all of the programming contained in such channel or service;

''(C) from a physical medium containing one or more prerecorded audiovisual works; or

''(D) from a copy of a transmission described in subparagraph (A) or from a copy made from a physical medium described in subparagraph (C).

In the event that a transmission meets both the conditions set forth in subparagraph (A) and those set forth in subparagraph (B), the transmission shall be treated as a transmission described in subparagraph (A).

''(3) INAPPLICABILITY.—This subsection shall not—

''(A) require any analog video cassette camcorder to conform to the automatic gain control copy control technology with respect to any video signal received through a camera lens;

''(B) apply to the manufacture, importation, offer for sale, provision of, or other trafficking in, any professional analog video cassette recorder; or

''(C) apply to the offer for sale or provision of, or other trafficking in, any previously owned analog video cassette recorder, if such recorder was legally manufactured and sold when new and not subsequently modified in violation of paragraph (1)(B).

''(4) DEFINITIONS.—For purposes of this subsection:

''(A) An 'analog video cassette recorder' means a device that records, or a device that includes a function that records, on electromagnetic tape in an analog format the electronic impulses produced by the video and audio portions of a television program, motion picture, or other form of audiovisual work.

''(B) An 'analog video cassette camcorder' means an analog video cassette recorder that contains a recording function that operates through a camera lens and through a video input that may be connected with a television or other video playback device.

''(C) An analog video cassette recorder 'conforms' to the automatic gain control copy control technology if it—

''(i) detects one or more of the elements of such technology and does not record the motion picture or transmission protected by such technology; or

''(ii) records a signal that, when played back, exhibits a meaningfully distorted or degraded display.

''(D) The term 'professional analog video cassette recorder' means an analog video cassette recorder that is designed, manufactured, marketed, and intended for use by a person who regularly employs such a device for a lawful business or industrial use, including making, performing, displaying, distributing, or transmitting copies of motion pictures on a commercial scale.

''(E) The terms 'VHS format,' '8mm format,' 'Beta format,' 'automatic gain control copy control technology,' 'colorstripe copy control technology,' 'four-line version of the colorstripe copy control technology,' and 'NTSC' have the meanings that are commonly understood in the consumer electronics and motion picture industries as of the date of the enactment of this chapter.

''(5) VIOLATIONS.—Any violation of paragraph (1) of this subsection shall be treated as a violation of subsection (b)(1) of this section. Any violation of paragraph (2) of this subsection shall be deemed an 'act of circumvention' for the purposes of section 1203(c)(3)(A) of this chapter.

''§ 1202. Integrity of copyright management information

''(a) FALSE COPYRIGHT MANAGEMENT INFORMATION.—No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement—

''(1) provide copyright management information that is false, or

''(2) distribute or import for distribution copyright management information that is false.

''(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION.—No person shall, without the authority of the copyright owner or the law—

''(1) intentionally remove or alter any copyright management information,

''(2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or

''(3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

''(c) DEFINITION.—As used in this section, the term 'copyright management information' means any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form, except that such term does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work:

''(1) The title and other information identifying the work, including the information set forth on a notice of copyright.

''(2) The name of, and other identifying information about, the author of a work.

''(3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright.

''(4) With the exception of public performances of works by radio and television broadcast stations, the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work.

''(5) With the exception of public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audiovisual work.

''(6) Terms and conditions for use of the work.

''(7) Identifying numbers or symbols referring to such information or links to such information.

''(8) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.

''(d) LAW ENFORCEMENT, INTELLIGENCE, AND OTHER GOVERNMENT ACTIVITIES.—This section does not prohibit any lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term 'information security' means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

''(e) LIMITATIONS ON LIABILITY.—

''(1) ANALOG TRANSMISSIONS.—In the case of an analog transmission, a person who is making transmissions in its capacity as a broadcast station, or as a cable system, or someone who provides programming to such station or system, shall not be liable for a violation of subsection (b) if—

''(A) avoiding the activity that constitutes such violation is not technically feasible or would create an undue financial hardship on such person; and

''(B) such person did not intend, by engaging in such activity, to induce, enable, facilitate, or conceal infringement of a right under this title.

''(2) DIGITAL TRANSMISSIONS.—

''(A) If a digital transmission standard for the placement of copyright management information for a category of works is set in a voluntary, consensus standard-setting process involving a representative cross-section of broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems, a person identified in paragraph (1) shall not be liable for a violation of subsection (b) with respect to the particular copyright management information addressed by such standard if—

''(i) the placement of such information by someone other than such person is not in accordance with such standard; and

''(ii) the activity that constitutes such violation is not intended to induce, enable, facilitate, or conceal infringement of a right under this title.

''(B) Until a digital transmission standard has been set pursuant to subparagraph (A) with respect to the placement of copyright management information for a category or works, a person identified in paragraph (1) shall not be liable for a violation of subsection (b) with respect to such copyright management information, if the activity that constitutes such violation is not intended to induce, enable, facilitate, or conceal infringement of a right under this title, and if—

''(i) the transmission of such information by such person would result in a perceptible visual or aural degradation of the digital signal; or

''(ii) the transmission of such information by such person would conflict with—

''(I) an applicable government regulation relating to transmission of information in a digital signal;

''(II) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted by a voluntary consensus standards body prior to the effective date of this chapter; or

''(III) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted in a voluntary, consensus standards-setting process open to participation by a representative cross-section of broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems.

''(3) DEFINITIONS.—As used in this subsection—

''(A) the term 'broadcast station' has the meaning given that term in section 3 of the Communications Act of 1934 (47 U.S.C. 153)); and

''(B) the term 'cable system' has the meaning given that term in section 602 of the Communications Act of 1934 (47 U.S.C. 522)).

''§ 1203. Civil remedies

''(a) CIVIL ACTIONS.—Any person injured by a violation of section 1201 or 1202 may bring a civil action in an appropriate United States district court for such violation.

''(b) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

''(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a violation, but in no event shall impose a prior restraint on free speech or the press protected under the 1st amendment to the Constitution;

''(2) at any time while an action is pending, may order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation;

''(3) may award damages under subsection (c);

''(4) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof;

''(5) in its discretion may award reasonable attorney's fees to the prevailing party; and

''(6) may, as part of a final judgment or decree finding a violation, order the remedial modification or the destruction of any device or product

involved in the violation that is in the custody or control of the violator or has been impounded under paragraph (2).

''(c) AWARD OF DAMAGES.—

''(1) IN GENERAL.—Except as otherwise provided in this title, a person committing a violation of section 1201 or 1202 is liable for either—

''(A) the actual damages and any additional profits of the violator, as provided in paragraph (2), or

''(B) statutory damages, as provided in paragraph (3).

''(2) ACTUAL DAMAGES.—The court shall award to the complaining party the actual damages suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

''(3) STATUTORY DAMAGES.—(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than $200 or more than $2,500 per act of circumvention, device, product, component, offer, or performance of service, as the court considers just.

''(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than $2,500 or more than $25,000.

''(4) REPEATED VIOLATIONS.—In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within three years after a final judgment was entered against the person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

''(5) INNOCENT VIOLATIONS.—

''(A) IN GENERAL.—The court in its discretion may reduce or remit the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

''(B) NONPROFIT LIBRARY, ARCHIVES, OR EDUCATIONAL INSTITUTIONS.—In the case of a nonprofit library, archives, or educational institution, the court shall remit damages in any case in which the library, archives, or educational institution sustains the burden of proving, and the court finds, that the library, archives, or educational institution was not aware and had no reason to believe that its acts constituted a violation.

''§1204. Criminal offenses and penalties

''(a) IN GENERAL.—Any person who violates section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain—

''(1) shall be fined not more than $500,000 or imprisoned for not more than 5 years, or both, for the first offense; and

''(2) shall be fined not more than $1,000,000 or imprisoned for not more than 10 years, or both, for any subsequent offense.

''(b) LIMITATION FOR NONPROFIT LIBRARY, ARCHIVES, OR EDUCATIONAL INSTITUTION.—Subsection (a) shall not apply to a nonprofit library, archives, or educational institution.

''(c) STATUTE OF LIMITATIONS.—No criminal proceeding shall be brought under this section unless such proceeding is commenced within five years after the cause of action arose.

''§1205. Savings clause

''Nothing in this chapter abrogates, diminishes, or weakens the provisions of, nor provides any defense or element of mitigation in a criminal prosecution or civil action under, any Federal or State law that prevents the violation of the privacy of an individual in connection with the individual's use of the Internet.''.

(b) CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code, is amended by adding after the item relating to chapter 11 the following:

''12. Copyright Protection and Management Systems ..... 1201''.

SEC. 104. EVALUATION OF IMPACT OF COPYRIGHT LAW AND AMENDMENTS ON ELECTRONIC COMMERCE AND TECHNOLOGICAL DEVELOPMENT.

(a) EVALUATION BY THE REGISTER OF COPYRIGHTS AND THE ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION.—The Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly evaluate—

(1) the effects of the amendments made by this title and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code; and

(2) the relationship between existing and emergent technology and the operation of sections 109 and 117 of title 17, United States Code.

(b) REPORT TO CONGRESS.—The Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall, not later than 24 months after the date of the enactment of this Act, submit to the Congress a joint report on the evaluation conducted under subsection (a), including any legislative recommendations the Register and the Assistant Secretary may have.

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) AMENDMENTS RELATING TO CERTAIN INTERNATIONAL AGREEMENTS.—(1) The following shall take effect upon the entry into force of the WIPO Copyright Treaty with respect to the United States:

(A) Paragraph (5) of the definition of ''international agreement'' contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

(B) The amendment made by section 102(a)(6) of this Act.

(C) Subparagraph (C) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

(D) Subparagraph (C) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

(2) The following shall take effect upon the entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States:

(A) Paragraph (6) of the definition of ''international agreement'' contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

(B) The amendment made by section 102(a)(7) of this Act.

(C) The amendment made by section 102(b)(2) of this Act.

(D) Subparagraph (D) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

(E) Subparagraph (D) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

(F) The amendments made by section 102(c)(3) of this Act.

TITLE II—ONLINE COPYRIGHT INFRINGEMENT LIABILITY LIMITATION

SEC. 201. SHORT TITLE.

This title may be cited as the ''Online Copyright Infringement Liability Limitation Act''.

SEC. 202. LIMITATIONS ON LIABILITY FOR COPYRIGHT INFRINGEMENT.

(a) IN GENERAL.—Chapter 5 of title 17, United States Code, is amended by adding after section 511 the following new section:

''§512. Limitations on liability relating to material online

''(a) TRANSITORY DIGITAL NETWORK COMMUNICATIONS.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider's transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if—

''(1) the transmission of the material was initiated by or at the direction of a person other than the service provider;

''(2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;

''(3) the service provider does not select the recipients of the material except as an automatic response to the request of another person;

''(4) no copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and

''(5) the material is transmitted through the system or network without modification of its content.

''(b) SYSTEM CACHING.—

''(1) LIMITATION ON LIABILITY.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which—

''(A) the material is made available online by a person other than the service provider,

''(B) the material is transmitted from the person described in subparagraph (A) through the system or network to a person other than the person described in subparagraph (A) at the direction of that other person, and

''(C) the storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in subparagraph (B), request access to the material from the person described in subparagraph (A),

if the conditions set forth in paragraph (2) are met.

(2) CONDITIONS.—The conditions referred to in paragraph (1) are that—

''(A) the material described in paragraph (1) is transmitted to the subsequent users described in paragraph (1)(C) without modification to its content from the manner in which the material was transmitted from the person described in paragraph (1)(A);

''(B) the service provider described in paragraph (1) complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available, except that this subparagraph applies only if those rules are not used by the person described in paragraph (1)(A) to prevent or unreasonably impair the intermediate storage to which this subsection applies;

''(C) the service provider does not interfere with the ability of technology associated with the material to return to the person described in paragraph (1)(A) the information that would have been available to that person if the material had been obtained by the subsequent users described in paragraph (1)(C) directly from that person, except that this subparagraph applies only if that technology—

''(i) does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material;

''(ii) is consistent with generally accepted industry standard communications protocols; and

''(iii) does not extract information from the provider's system or network other than the information that would have been available to the person described in paragraph (1)(A) if the subsequent users had gained access to the material directly from that person;

''(D) if the person described in paragraph (1)(A) has in effect a condition that a person must meet prior to having access to the material, such as a condition based on payment of a fee or provision of a password or other information, the service provider permits access to the stored material in significant part only to users of its system or network that have met those conditions and only in accordance with those conditions; and

''(E) if the person described in paragraph (1)(A) makes that material available online without the authorization of the copyright owner of the material, the service provider responds expeditiously to remove, or disable access to, the material that is claimed to be infringing upon notification of claimed infringement as described in subsection (c)(3), except that this subparagraph applies only if—

''(i) the material has previously been removed from the originating site or access to it has been disabled, or a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled; and

''(ii) the party giving the notification includes in the notification a statement confirming that the material has been removed from the originating site or access to it has been disabled or that a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled.

''(c) INFORMATION RESIDING ON SYSTEMS OR NETWORKS AT DIRECTION OF USERS.—

''(1) IN GENERAL.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

''(A)(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;

''(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

''(iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

''(B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

''(C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

''(2) DESIGNATED AGENT.—The limitations on liability established in this subsection apply to a service provider only if the service provider has designated an agent to receive notifications of claimed infringement described in paragraph (3), by making available through its service, including on its website in a location accessible to the public, and by providing to the Copyright Office, substantially the following information:

''(A) the name, address, phone number, and electronic mail address of the agent.

''(B) other contact information which the Register of Copyrights may deem appropriate.

The Register of Copyrights shall maintain a current directory of agents available to the public for inspection, including through the Internet, in both electronic and hard copy formats, and may require payment of a fee by service providers to cover the costs of maintaining the directory.

''(3) ELEMENTS OF NOTIFICATION.—

''(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

''(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

''(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

''(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

''(iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

''(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

''(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

''(B)(i) Subject to clause (ii), a notification from a copyright owner or from a person authorized to act on behalf of the copyright owner that fails to comply substantially with the provisions of subparagraph (A) shall not be considered under paragraph (1)(A) in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.

''(ii) In a case in which the notification that is provided to the service provider's designated agent fails to comply substantially with all the provisions of subparagraph (A) but substantially complies with clauses (ii), (iii), and (iv) of subparagraph (A), clause (i) of this subparagraph applies only if the service provider promptly attempts to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions of subparagraph (A).

''(d) INFORMATION LOCATION TOOLS.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider—

''(1)(A) does not have actual knowledge that the material or activity is infringing;

''(B) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

''(C) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

''(2) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

''(3) upon notification of claimed infringement as described in subsection (c)(3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity, except that, for purposes of this paragraph, the information described in subsection (c)(3)(A)(iii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that reference or link.

''(e) LIMITATION ON LIABILITY OF NONPROFIT EDUCATIONAL INSTITUTIONS.—(1) When a public or other nonprofit institution of higher education is a service provider, and when a faculty member or graduate student who is an employee of such institution is performing a teaching or research function, for the purposes of subsections (a) and (b) such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) such faculty member's or graduate student's knowledge or awareness of his or her infringing activities shall not be attributed to the institution, if—

''(A) such faculty member's or graduate student's infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding 3-year period, for a course taught at the institution by such faculty member or graduate student;

''(B) the institution has not, within the preceding 3-year period, received more than 2 notifications described in subsection (c)(3) of claimed infringement by such faculty member or graduate student, and such notifications of claimed infringement were not actionable under subsection (f); and

''(C) the institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, the laws of the United States relating to copyright.

''(2) INJUNCTIONS.—For the purposes of this subsection, the limitations on injunctive relief contained in subsections (j)(2) and (j)(3), but not those in (j)(1), shall apply.

''(f) MISREPRESENTATIONS.—Any person who knowingly materially misrepresents under this section—

''(1) that material or activity is infringing, or

''(2) that material or activity was removed or disabled by mistake or misidentification,

shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

''(g) REPLACEMENT OF REMOVED OR DISABLED MATERIAL AND LIMITATION ON OTHER LIABILITY.—

''(1) NO LIABILITY FOR TAKING DOWN GENERALLY.—Subject to paragraph (2), a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

''(2) EXCEPTION.—Paragraph (1) shall not apply with respect to material residing at the direction of a subscriber of the service provider on a system or network controlled or operated by or for the service provider that is removed, or to which access is disabled by the service provider, pursuant to a notice provided under subsection (c)(1)(C), unless the service provider—

''(A) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;

''(B) upon receipt of a counter notification described in paragraph (3), promptly provides the

person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in 10 business days; and

''(C) replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.

''(3) CONTENTS OF COUNTER NOTIFICATION.—To be effective under this subsection, a counter notification must be a written communication provided to the service provider's designated agent that includes substantially the following:

''(A) A physical or electronic signature of the subscriber.

''(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.

''(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

''(D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

''(4) LIMITATION ON OTHER LIABILITY.—A service provider's compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).

''(h) SUBPOENA TO IDENTIFY INFRINGER.—

''(1) REQUEST.—A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection.

''(2) CONTENTS OF REQUEST.—The request may be made by filing with the clerk—

''(A) a copy of a notification described in subsection (c)(3)(A);

''(B) a proposed subpoena; and

''(C) a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

''(3) CONTENTS OF SUBPOENA.—The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

''(4) BASIS FOR GRANTING SUBPOENA.—If the notification filed satisfies the provisions of subsection (c)(3)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the service provider.

''(5) ACTIONS OF SERVICE PROVIDER RECEIVING SUBPOENA.—Upon receipt of the issued subpoena, either accompanying or subsequent to the receipt of a notification described in subsection (c)(3)(A), the service provider shall expeditiously disclose to the copyright owner or person authorized by the copyright owner the information required by the subpoena, notwithstanding any other provision of law and regardless of whether the service provider responds to the notification.

''(6) RULES APPLICABLE TO SUBPOENA.—Unless otherwise provided by this section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum.

''(i) CONDITIONS FOR ELIGIBILITY.—

''(1) ACCOMMODATION OF TECHNOLOGY.—The limitations on liability established by this section shall apply to a service provider only if the service provider—

''(A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and

''(B) accommodates and does not interfere with standard technical measures.

''(2) DEFINITION.—As used in this subsection, the term 'standard technical measures' means technical measures that are used by copyright owners to identify or protect copyrighted works and—

''(A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

''(B) are available to any person on reasonable and nondiscriminatory terms; and

''(C) do not impose substantial costs on service providers or substantial burdens on their systems or networks.

''(j) INJUNCTIONS.—The following rules shall apply in the case of any application for an injunction under section 502 against a service provider that is not subject to monetary remedies under this section:

''(1) SCOPE OF RELIEF.—(A) With respect to conduct other than that which qualifies for the limitation on remedies set forth in subsection (a), the court may grant injunctive relief with respect to a service provider only in one or more of the following forms:

''(i) An order restraining the service provider from providing access to infringing material or activity residing at a particular online site on the provider's system or network.

''(ii) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is engaging in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

''(iii) Such other injunctive relief as the court may consider necessary to prevent or restrain infringement of copyrighted material specified in the order of the court at a particular online location, if such relief is the least burdensome to the service provider among the forms of relief comparably effective for that purpose.

''(B) If the service provider qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms:

''(i) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is using the provider's service to engage in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

''(ii) An order restraining the service provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, online location outside the United States.

''(2) CONSIDERATIONS.—The court, in considering the relevant criteria for injunctive relief under applicable law, shall consider—

''(A) whether such an injunction, either alone or in combination with other such injunctions issued against the same service provider under this subsection, would significantly burden either the provider or the operation of the provider's system or network;

''(B) the magnitude of the harm likely to be suffered by the copyright owner in the digital network environment if steps are not taken to prevent or restrain the infringement;

''(C) whether implementation of such an injunction would be technically feasible and effective, and would not interfere with access to noninfringing material at other online locations; and

''(D) whether other less burdensome and comparably effective means of preventing or restraining access to the infringing material are available.

''(3) NOTICE AND EX PARTE ORDERS.—Injunctive relief under this subsection shall be available only after notice to the service provider and an opportunity for the service provider to appear are provided, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the service provider's communications network.

''(k) DEFINITIONS.—

''(1) SERVICE PROVIDER.—(A) As used in subsection (a), the term 'service provider' means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

''(B) As used in this section, other than subsection (a), the term 'service provider' means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

''(2) MONETARY RELIEF.—As used in this section, the term 'monetary relief' means damages, costs, attorneys' fees, and any other form of monetary payment.

''(l) OTHER DEFENSES NOT AFFECTED.—The failure of a service provider's conduct to qualify for limitation of liability under this section shall not bear adversely upon the consideration of a defense by the service provider that the service provider's conduct is not infringing under this title or any other defense.

''(m) PROTECTION OF PRIVACY.—Nothing in this section shall be construed to condition the applicability of subsections (a) through (d) on—

''(1) a service provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with a standard technical measure complying with the provisions of subsection (i); or

''(2) a service provider gaining access to, removing, or disabling access to material in cases in which such conduct is prohibited by law.

''(n) CONSTRUCTION.—Subsections (a), (b), (c), and (d) describe separate and distinct functions for purposes of applying this section. Whether a service provider qualifies for the limitation on liability in any one of those subsections shall be based solely on the criteria in that subsection, and shall not affect a determination of whether that service provider qualifies for the limitations on liability under any other such subsection.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by adding at the end the following:

''512. Limitations on liability relating to material online.''.

SEC. 203. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE III-COMPUTER MAINTENANCE OR REPAIR COPYRIGHT EXEMPTION

SEC. 301. SHORT TITLE.

This title may be cited as the ''Computer Maintenance Competition Assurance Act''.

SEC. 302. LIMITATIONS ON EXCLUSIVE RIGHTS; COMPUTER PROGRAMS.

Section 117 of title 17, United States Code, is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) MAKING OF ADDITIONAL COPY OR ADAPTATION BY OWNER OF COPY.—Notwithstanding'';

(2) by striking ''Any exact'' and inserting the following:

''(b) LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.—Any exact''; and

(3) by adding at the end the following:

''(c) MACHINE MAINTENANCE OR REPAIR.—Notwithstanding the provisions of section 106, it is not an infringement for the owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if—

''(1) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

''(2) with respect to any computer program or part thereof that is not necessary for that machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

''(d) DEFINITIONS.—For purposes of this section—

''(1) the 'maintenance' of a machine is the servicing of the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

''(2) the 'repair' of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.''.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. PROVISIONS RELATING TO THE COMMISSIONER OF PATENTS AND TRADEMARKS AND THE REGISTER OF COPYRIGHTS

(a) COMPENSATION.—(1) Section 3(d) of title 35, United States Code, is amended by striking ''prescribed by law for Assistant Secretaries of Commerce'' and inserting ''in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code''.

(2) Section 701(e) of title 17, United States Code, is amended—

(A) by striking ''IV'' and inserting ''III''; and

(B) by striking ''5315'' and inserting ''5314''.

(3) Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

''Register of Copyrights.''.

(b) CLARIFICATION OF AUTHORITY OF THE COPYRIGHT OFFICE.—Section 701 of title 17, United States Code, is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following:

''(b) In addition to the functions and duties set out elsewhere in this chapter, the Register of Copyrights shall perform the following functions:

''(1) Advise Congress on national and international issues relating to copyright, other matters arising under this title, and related matters.

''(2) Provide information and assistance to Federal departments and agencies and the Judiciary on national and international issues relating to copyright, other matters arising under this title, and related matters.

''(3) Participate in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright, other matters arising under this title, and related matters, including as a member of United States delegations as authorized by the appropriate Executive branch authority.

''(4) Conduct studies and programs regarding copyright, other matters arising under this title, and related matters, the administration of the Copyright Office, or any function vested in the Copyright Office by law, including educational programs conducted cooperatively with foreign intellectual property offices and international intergovernmental organizations.

''(5) Perform such other functions as Congress may direct, or as may be appropriate in furtherance of the functions and duties specifically set forth in this title.''

SEC. 402. EPHEMERAL RECORDINGS.

Section 112(a) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by inserting ''(1)'' after ''(a)'';

(3) by inserting after ''under a license'' the following: '', including a statutory license under section 114(f),'';

(4) by inserting after ''114(a),'' the following: ''or for a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission and that makes a broadcast transmission of a performance of a sound recording in a digital format on a nonsubscription basis,''; and

(5) by adding at the end the following:

''(2) In a case in which a transmitting organization entitled to make a copy or phonorecord under paragraph (1) in connection with the transmission to the public of a performance or display of a work is prevented from making such copy or phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the work, the copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such copy or phonorecord as permitted under that paragraph, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such copies or phonorecords as permitted under paragraph (1) of this subsection.''.

SEC. 403. LIMITATIONS ON EXCLUSIVE RIGHTS; DISTANCE EDUCATION.

(a) RECOMMENDATIONS BY REGISTER OF COPYRIGHTS.—Not later than 6 months after the date of the enactment of this Act, the Register of Copyrights, after consultation with representatives of copyright owners, nonprofit educational institutions, and nonprofit libraries and archives, shall submit to the Congress recommendations on how to promote distance education through digital technologies, including interactive digital networks, while maintaining an appropriate balance between the rights of copyright owners and the needs of users of copyrighted works. Such recommendations shall include any legislation the Register of Copyrights considers appropriate to achieve the objective described in the preceding sentence.

(b) FACTORS.—In formulating recommendations under subsection (a), the Register of Copyrights shall consider—

(1) the need for an exemption from exclusive rights of copyright owners for distance education through digital networks;

(2) the categories of works to be included under any distance education exemption;

(3) the extent of appropriate quantitative limitations on the portions of works that may be used under any distance education exemption;

(4) the parties who should be entitled to the benefits of any distance education exemption;

(5) the parties who should be designated as eligible recipients of distance education materials under any distance education exemption;

(6) whether and what types of technological measures can or should be employed to safeguard against unauthorized access to, and use or retention of, copyrighted materials as a condition of eligibility for any distance education exemption, including, in light of developing technological capabilities, the exemption set out in section 110(2) of title 17, United States Code;

(7) the extent to which the availability of licenses for the use of copyrighted works in distance education through interactive digital networks should be considered in assessing eligibility for any distance education exemption; and

(8) such other issues relating to distance education through interactive digital networks that the Register considers appropriate.

SEC. 404. EXEMPTION FOR LIBRARIES AND ARCHIVES.

Section 108 of title 17, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''Notwithstanding'' and inserting ''Except as otherwise provided in this title and notwithstanding'';

(B) by inserting after ''no more than one copy or phonorecord of a work'' the following: '', except as provided in subsections (b) and (c)''; and

(C) in paragraph (3) by inserting after ''copyright'' the following: ''that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section'';

(2) in subsection (b)—

(A) by striking ''a copy or phonorecord'' and inserting ''three copies or phonorecords'';

(B) by striking ''in facsimile form''; and

(C) by striking ''if the copy or phonorecord reproduced is currently in the collections of the library or archives.'' and inserting ''if—

''(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

''(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.''; and

(3) in subsection (c)—

(A) by striking ''a copy or phonorecord'' and inserting ''three copies or phonorecords'';

(B) by striking ''in facsimile form'';

(C) by inserting ''or if the existing format in which the work is stored has become obsolete,'' after ''stolen,''; and

(D) by striking ''if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.'' and inserting ''if—

''(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

''(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.''; and

(E) by adding at the end the following:

''For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.''.

SEC. 405. SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS; EPHEMERAL RECORDINGS.

(a) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.—Section 114 of title 17, United States Code, is amended as follows:

(1) Subsection (d) is amended—

(A) in paragraph (1) by striking subparagraph (A) and inserting the following:

''(A) a nonsubscription broadcast transmission;''; and

(B) by amending paragraph (2) to read as follows:

''(2) STATUTORY LICENSING OF CERTAIN TRANSMISSIONS.—The performance of a sound recording publicly by means of a subscription digital audio transmission not exempt under paragraph (1), an eligible nonsubscription transmission, or a transmission not exempt under paragraph (1) that is made by a preexisting satellite digital audio radio service shall be subject to statutory licensing, in accordance with subsection (f) if—

''(A)(i) the transmission is not part of an interactive service;

''(ii) except in the case of a transmission to a business establishment, the transmitting entity does not automatically and intentionally cause any device receiving the transmission to switch from one program channel to another; and

''(iii) except as provided in section 1002(e), the transmission of the sound recording is accompanied, if technically feasible, by the information encoded in that sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer;

''(B) in the case of a subscription transmission not exempt under paragraph (1) that is made by a preexisting subscription service in the same transmission medium used by such service on July 31, 1998, or in the case of a transmission not exempt under paragraph (1) that is made by a preexisting satellite digital audio radio service—

''(i) the transmission does not exceed the sound recording performance complement; and

''(ii) the transmitting entity does not cause to be published by means of an advance program schedule or prior announcement the titles of the specific sound recordings or phonorecords embodying such sound recordings to be transmitted; and

''(C) in the case of an eligible nonsubscription transmission or a subscription transmission not exempt under paragraph (1) that is made by a new subscription service or by a preexisting subscription service other than in the same transmission medium used by such service on July 31, 1998—

''(i) the transmission does not exceed the sound recording performance complement, except that this requirement shall not apply in the case of a retransmission of a broadcast transmission if the retransmission is made by a transmitting entity that does not have the right or ability to control the programming of the broadcast station making the broadcast transmission, unless—

''(I) the broadcast station makes broadcast transmissions—

''(aa) in digital format that regularly exceed the sound recording performance complement; or

''(bb) in analog format, a substantial portion of which, on a weekly basis, exceed the sound recording performance complement; and

''(II) the sound recording copyright owner or its representative has notified the transmitting entity in writing that broadcast transmissions of the copyright owner's sound recordings exceed the sound recording performance complement as provided in this clause;

''(ii) the transmitting entity does not cause to be published, or induce or facilitate the publication, by means of an advance program schedule or prior announcement, the titles of the specific sound recordings to be transmitted, the phonorecords embodying such sound recordings, or, other than for illustrative purposes, the names of the featured recording artists, except that this clause does not disqualify a transmitting entity that makes a prior announcement that a particular artist will be featured within an unspecified future time period, and in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, the requirement of this clause shall not apply to a prior oral announcement by the broadcast station, or to an advance program schedule published, induced, or facilitated by the broadcast station, if the transmitting entity does not have actual knowledge and has not received written notice from the copyright owner or its representative that the broadcast station publishes or induces or facilitates the publication of such advance program schedule, or if such advance program schedule is a schedule of classical music programming published by the broadcast station in the same manner as published by that broadcast station on or before September 30, 1998;

''(iii) the transmission—

''(I) is not part of an archived program of less than 5 hours duration;

''(II) is not part of an archived program of 5 hours or greater in duration that is made available for a period exceeding 2 weeks;

''(III) is not part of a continuous program which is of less than 3 hours duration; or

''(IV) is not part of an identifiable program in which performances of sound recordings are rendered in a predetermined order, other than an archived or continuous program, that is transmitted at—

''(aa) more than 3 times in any 2-week period that have been publicly announced in advance, in the case of a program of less than 1 hour in duration, or

''(bb) more than 4 times in any 2-week period that have been publicly announced in advance, in the case of a program of 1 hour or more in duration,

except that the requirement of this subclause shall not apply in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, unless the transmitting entity is given notice in writing by the copyright owner of the sound recording that the broadcast station makes broadcast transmissions that regularly violate such requirement;

''(iv) the transmitting entity does not knowingly perform the sound recording, as part of a service that offers transmissions of visual images contemporaneously with transmissions of sound recordings, in a manner that is likely to cause confusion, to cause mistake, or to deceive, as to the affiliation, connection, or association of the copyright owner or featured recording artist with the transmitting entity or a particular product or service advertised by the transmitting entity, or as to the origin, sponsorship, or approval by the copyright owner or featured recording artist of the activities of the transmitting entity other than the performance of the sound recording itself;

''(v) the transmitting entity cooperates to prevent, to the extent feasible without imposing substantial costs or burdens, a transmission recipient or any other person or entity from automatically scanning the transmitting entity's transmissions alone or together with transmissions by other transmitting entities in order to select a particular sound recording to be transmitted to the transmission recipient, except that the requirement of this clause shall not apply to a satellite digital audio service that is in operation, or that is licensed by the Federal Communications Commission, on or before July 31, 1998;

''(vi) the transmitting entity takes no affirmative steps to cause or induce the making of a phonorecord by the transmission recipient, and if the technology used by the transmitting entity enables the transmitting entity to limit the making by the transmission recipient of phonorecords of the transmission directly in a digital format, the transmitting entity sets such technology to limit such making of phonorecords to the extent permitted by such technology;

''(vii) phonorecords of the sound recording have been distributed to the public under the authority of the copyright owner or the copyright owner authorizes the transmitting entity to transmit the sound recording, and the transmitting entity makes the transmission from a phonorecord lawfully made under the authority of the copyright owner, except that the requirement of this clause shall not apply to a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, unless the transmitting entity is given notice in writing by the copyright owner of the sound recording that the broadcast station makes broadcast transmissions that regularly violate such requirement;

''(viii) the transmitting entity accommodates and does not interfere with the transmission of technical measures that are widely used by sound recording copyright owners to identify or protect copyrighted works, and that are technically feasible of being transmitted by the transmitting entity without imposing substantial costs on the transmitting entity or resulting in perceptible aural or visual degradation of the digital signal, except that the requirement of this clause shall not apply to a satellite digital audio service that is in operation, or that is licensed under the authority of the Federal Communications Commission, on or before July 31, 1998, to the extent that such service has designed, developed, or made commitments to procure equipment or technology that is not compatible with such technical measures before such technical measures are widely adopted by sound recording copyright owners; and

''(ix) the transmitting entity identifies in textual data the sound recording during, but not before, the time it is performed, including the title of the sound recording, the title of the phonorecord embodying such sound recording, if any, and the featured recording artist, in a manner to permit it to be displayed to the transmission recipient by the device or technology intended for receiving the service provided by the transmitting entity, except that the obligation in this clause shall not take effect until 1 year after the date of the enactment of the Digital Millennium Copyright Act and shall not apply in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, or in the case in which devices or technology intended for receiving the service provided by the transmitting entity that have the capability to display such textual data are not common in the marketplace.''.

(2) Subsection (f) is amended—

(A) in the subsection heading by striking ''NONEXEMPT SUBSCRIPTION'' and inserting ''CERTAIN NONEXEMPT'';

(B) in paragraph (1)—

(i) in the first sentence—

(I) by striking ''(1) No'' and inserting ''(1)(A) No'';

(II) by striking ''the activities'' and inserting ''subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services''; and

(III) by striking ''2000'' and inserting ''2001''; and

(ii) by amending the third sentence to read as follows: ''Any copyright owners of sound recordings, preexisting subscription services, or preexisting satellite digital audio radio services may submit to the Librarian of Congress licenses

covering such subscription transmissions with respect to such sound recordings.''; and

(C) by striking paragraphs (2), (3), (4), and (5) and inserting the following:

''(B) In the absence of license agreements negotiated under subparagraph (A), during the 60-day period commencing 6 months after publication of the notice specified in subparagraph (A), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph. In establishing rates and terms for preexisting subscription services and preexisting satellite digital audio radio services, in addition to the objectives set forth in section 801(b)(1), the copyright arbitration royalty panel may consider the rates and terms for comparable types of subscription digital audio transmission services and comparable circumstances under voluntary license agreements negotiated as provided in subparagraph (A).

''(C)(i) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in subparagraph (A) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe—

''(I) no later than 30 days after a petition is filed by any copyright owners of sound recordings, any preexisting subscription services, or any preexisting satellite digital audio radio services indicating that a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational; and

''(II) in the first week of January, 2001, and at 5-year intervals thereafter.

''(ii) The procedures specified in subparagraph (B) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1) during a 60-day period commencing—

''(I) 6 months after publication of a notice of the initiation of voluntary negotiation proceedings under subparagraph (A) pursuant to a petition under clause (i)(I) of this subparagraph; or

''(II) on July 1, 2001, and at 5-year intervals thereafter.

''(iii) The procedures specified in subparagraph (B) shall be concluded in accordance with section 802.

''(2)(A) No later than 30 days after the date of the enactment of the Digital Millennium Copyright Act, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for public performances of sound recordings by means of eligible nonsubscription transmissions and transmissions by new subscription services specified by subsection (d)(2) during the period beginning on the date of the enactment of such Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates and terms shall distinguish among the different types of eligible nonsubscription transmission services and new subscription services then in operation and shall include a minimum fee for each such type of service. Any copyright owners of sound recordings or any entities performing sound recordings affected by this paragraph may submit to the Librarian of Congress licenses covering such eligible nonsubscription transmissions and new subscription services with respect to such sound recordings. The parties to each negotiation proceeding shall bear their own costs.

''(B) In the absence of license agreements negotiated under subparagraph (A), during the 60-day period commencing 6 months after publication of the notice specified in subparagraph (A), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the period beginning on the date of the enactment of the Digital Millennium Copyright Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates and terms shall distinguish among the different types of eligible nonsubscription transmission services then in operation and shall include a minimum fee for each such type of service, such differences to be based on criteria including, but not limited to, the quantity and nature of the use of sound recordings and the degree to which use of the service may substitute for or may promote the purchase of phonorecords by consumers. In establishing rates and terms for transmissions by eligible nonsubscription services and new subscription services, the copyright arbitration royalty panel shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the copyright arbitration royalty panel shall base its decision on economic, competitive and programming information presented by the parties, including—

''(i) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise may interfere with or may enhance the sound recording copyright owner's other streams of revenue from its sound recordings; and

''(ii) the relative roles of the copyright owner and the transmitting entity in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.

In establishing such rates and terms, the copyright arbitration royalty panel may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements negotiated under subparagraph (A).

''(C)(i) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in subparagraph (A) shall be repeated in accordance with regulations that the Librarian of Congress shall prescribe—

''(I) no later than 30 days after a petition is filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible nonsubscription service or new subscription service on which sound recordings are performed is or is about to become operational; and

''(II) in the first week of January 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with subparagraph (A).

''(ii) The procedures specified in subparagraph (B) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1) during a 60-day period commencing—

''(I) 6 months after publication of a notice of the initiation of voluntary negotiation proceedings under subparagraph (A) pursuant to a petition under clause (i)(I); or

''(II) on July 1, 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with subparagraph (A).

''(iii) The procedures specified in subparagraph (B) shall be concluded in accordance with section 802.

''(3) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more entities performing sound recordings shall be given effect in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress.

''(4)(A) The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by entities performing sound recordings.

''(B) Any person who wishes to perform a sound recording publicly by means of a transmission eligible for statutory licensing under this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording—

''(i) by complying with such notice requirements as the Librarian of Congress shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

''(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

''(C) Any royalty payments in arrears shall be made on or before the twentieth day of the month next succeeding the month in which the royalty fees are set.''.

(3) Subsection (g) is amended—

(A) in the subsection heading by striking ''SUBSCRIPTION'';

(B) in paragraph (1) in the matter preceding subparagraph (A), by striking ''subscription transmission licensed'' and inserting ''transmission licensed under a statutory license'';

(C) in subparagraphs (A) and (B) by striking ''subscription''; and

(D) in paragraph (2) by striking ''subscription''.

(4) Subsection (j) is amended—

(A) by striking paragraphs (4) and (9) and redesignating paragraphs (2), (3), (5), (6), (7), and (8) as paragraphs (3), (5), (9), (12), (13), and (14), respectively;

(B) by inserting after paragraph (1) the following:

''(2) An 'archived program' is a predetermined program that is available repeatedly on the demand of the transmission recipient and that is performed in the same order from the beginning, except that an archived program shall not include a recorded event or broadcast transmission that makes no more than an incidental use of sound recordings, as long as such recorded event or broadcast transmission does not contain an entire sound recording or feature a particular sound recording.'';

(C) by inserting after paragraph (3), as so redesignated, the following:

''(4) A 'continuous program' is a predetermined program that is continuously performed in the same order and that is accessed at a point in the program that is beyond the control of the transmission recipient.'';

(D) by inserting after paragraph (5), as so redesignated, the following:

''(6) An 'eligible nonsubscription transmission' is a noninteractive nonsubscription digital audio transmission not exempt under subsection (d)(1) that is made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including retransmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

''(7) An 'interactive service' is one that enables a member of the public to receive a transmission of a program specially created for the recipient, or on request, a transmission of a particular sound recording, whether or not as part

of a program, which is selected by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large, or in the case of a subscription service, by all subscribers of the service, does not make a service interactive, if the programming on each channel of the service does not substantially consist of sound recordings that are performed within 1 hour of the request or at a time designated by either the transmitting entity or the individual making such request. If an entity offers both interactive and noninteractive services (either concurrently or at different times), the noninteractive component shall not be treated as part of an interactive service.

''(8) A 'new subscription service' is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.'';

(E) by inserting after paragraph (9), as so redesignated, the following:

''(10) A 'preexisting satellite digital audio radio service' is a subscription satellite digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998, and any renewal of such license to the extent of the scope of the original license, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

''(11) A 'preexisting subscription service' is a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.''; and

(F) by adding at the end the following:

''(15) A 'transmission' is either an initial transmission or a retransmission.''.

(5) The amendment made by paragraph (2)(B)(i)(III) of this subsection shall be deemed to have been enacted as part of the Digital Performance Right in Sound Recordings Act of 1995, and the publication of notice of proceedings under section 114(f)(1) of title 17, United States Code, as in effect upon the effective date of that Act, for the determination of royalty payments shall be deemed to have been made for the period beginning on the effective date of that Act and ending on December 1, 2001.

(6) The amendments made by this subsection do not annul, limit, or otherwise impair the rights that are preserved by section 114 of title 17, United States Code, including the rights preserved by subsections (c), (d)(4), and (i) of such section.

(b) EPHEMERAL RECORDINGS.—Section 112 of title 17, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

''(e) STATUTORY LICENSE.—(1) A transmitting organization entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by section 114(d)(1)(C)(iv) or under a statutory license in accordance with section 114(f) is entitled to a statutory license, under the conditions specified by this subsection, to make no more than 1 phonorecord of the sound recording (unless the terms and conditions of the statutory license allow for more), if the following conditions are satisfied:

''(A) The phonorecord is retained and used solely by the transmitting organization that made it, and no further phonorecords are reproduced from it.

''(B) The phonorecord is used solely for the transmitting organization's own transmissions originating in the United States under a statutory license in accordance with section 114(f) or the limitation on exclusive rights specified by section 114(d)(1)(C)(iv).

''(C) Unless preserved exclusively for purposes of archival preservation, the phonorecord is destroyed within 6 months from the date the sound recording was first transmitted to the public using the phonorecord.

''(D) Phonorecords of the sound recording have been distributed to the public under the authority of the copyright owner or the copyright owner authorizes the transmitting entity to transmit the sound recording, and the transmitting entity makes the phonorecord under this subsection from a phonorecord lawfully made and acquired under the authority of the copyright owner.

''(3) Notwithstanding any provision of the antitrust laws, any copyright owners of sound recordings and any transmitting organizations entitled to a statutory license under this subsection may negotiate and agree upon royalty rates and license terms and conditions for making phonorecords of such sound recordings under this section and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

''(4) No later than 30 days after the date of the enactment of the Digital Millennium Copyright Act, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by paragraph (2) of this subsection during the period beginning on the date of the enactment of such Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates shall include a minimum fee for each type of service offered by transmitting organizations. Any copyright owners of sound recordings or any transmitting organizations entitled to a statutory license under this subsection may submit to the Librarian of Congress licenses covering such activities with respect to such sound recordings. The parties to each negotiation proceeding shall bear their own costs.

''(5) In the absence of license agreements negotiated under paragraph (3), during the 60-day period commencing 6 months after publication of the notice specified in paragraph (4), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of reasonable rates and terms which, subject to paragraph (6), shall be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the period beginning on the date of the enactment of the Digital Millennium Copyright Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates shall include a minimum fee for each type of service offered by transmitting organizations. The copyright arbitration royalty panel shall establish rates that most clearly represent the fees that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the copyright arbitration royalty panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

''(A) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise interferes with or enhances the copyright owner's traditional streams of revenue; and

''(B) the relative roles of the copyright owner and the transmitting organization in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.

In establishing such rates and terms, the copyright arbitration royalty panel may consider the rates and terms under voluntary license agreements negotiated as provided in paragraphs (3) and (4). The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by transmitting organizations entitled to obtain a statutory license under this subsection.

''(6) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more transmitting organizations entitled to obtain a statutory license under this subsection shall be given effect in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress.

''(7) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in paragraph (4) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, in the first week of January 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with paragraph (4). The procedures specified in paragraph (5) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1), during a 60-day period commencing on July 1, 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with paragraph (4). The procedures specified in paragraph (5) shall be concluded in accordance with section 802.

''(8)(A) Any person who wishes to make a phonorecord of a sound recording under a statutory license in accordance with this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording under section 106(1)—

''(i) by complying with such notice requirements as the Librarian of Congress shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

''(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

''(B) Any royalty payments in arrears shall be made on or before the 20th day of the month next succeeding the month in which the royalty fees are set.

''(9) If a transmitting organization entitled to make a phonorecord under this subsection is prevented from making such phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the sound recording, the copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such phonorecord as permitted under this subsection, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such phonorecords as permitted under this subsection.

''(10) Nothing in this subsection annuls, limits, impairs, or otherwise affects in any way the existence or value of any of the exclusive rights of the copyright owners in a sound recording, except as otherwise provided in this subsection, or in a musical work, including the exclusive rights to reproduce and distribute a sound recording or musical work, including by means of

a digital phonorecord delivery, under section 106(1), 106(3), and 115, and the right to perform publicly a sound recording or musical work, including by means of a digital audio transmission, under sections 106(4) and 106(6).''.

(c) SCOPE OF SECTION 112(a) OF TITLE 17 NOT AFFECTED.—Nothing in this section or the amendments made by this section shall affect the scope of section 112(a) of title 17, United States Code, or the entitlement of any person to an exemption thereunder.

(d) PROCEDURAL AMENDMENTS TO CHAPTER 8.—Section 802 of title 17, United States Code, is amended—

(1) in subsection (f)—

(A) in the first sentence by striking ''60'' and inserting ''90''; and

(B) in the third sentence by striking ''that 60-day period'' and inserting ''an additional 30-day period''; and

(2) in subsection (g) by inserting after the second sentence the following: ''When this title provides that the royalty rates or terms that were previously in effect are to expire on a specified date, any adjustment by the Librarian of those rates or terms shall be effective as of the day following the date of expiration of the rates or terms that were previously in effect, even if the Librarian's decision is rendered on a later date.''.

(e) CONFORMING AMENDMENTS.—(1) Section 801(b)(1) of title 17, United States Code, is amended in the second sentence by striking ''sections 114, 115, and 116'' and inserting ''sections 114(f)(1)(B), 115, and 116''.

(2) Section 802(c) of title 17, United States Code, is amended by striking ''section 111, 114, 116, or 119, any person entitled to a compulsory license'' and inserting ''section 111, 112, 114, 116, or 119, any transmitting organization entitled to a statutory license under section 112(f), any person entitled to a statutory license''.

(3) Section 802(g) of title 17, United States Code, is amended by striking ''sections 111, 114'' and inserting ''sections 111, 112, 114''.

(4) Section 802(h)(2) of title 17, United States Code, is amended by striking ''section 111, 114'' and inserting ''section 111, 112, 114''.

(5) Section 803(a)(1) of title 17, United States Code, is amended by striking ''sections 114, 115'' and inserting ''sections 112, 114, 115''.

(6) Section 803(a)(5) of title 17, United States Code, is amended—

(A) by striking ''section 114'' and inserting ''section 112 or 114''; and

(B) by striking ''that section'' and inserting ''those sections''.

SEC. 406. ASSUMPTION OF CONTRACTUAL OBLIGATIONS RELATED TO TRANSFERS OF RIGHTS IN MOTION PICTURES.

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

''CHAPTER 180—ASSUMPTION OF CERTAIN CONTRACTUAL OBLIGATIONS

''Sec. 4001. Assumption of contractual obligations related to transfers of rights in motion pictures.

''§ 4001. Assumption of contractual obligations related to transfers of rights in motion pictures

''(a) ASSUMPTION OF OBLIGATIONS.—(1) In the case of a transfer of copyright ownership under United States law in a motion picture (as the terms 'transfer of copyright ownership' and 'motion picture' are defined in section 101 of title 17) that is produced subject to 1 or more collective bargaining agreements negotiated under the laws of the United States, if the transfer is executed on or after the effective date of this chapter and is not limited to public performance rights, the transfer instrument shall be deemed to incorporate the assumption agreements applicable to the copyright ownership being transferred that are required by the applicable collective bargaining agreement, and the transferee shall be subject to the obligations under each such assumption agreement to make residual payments and provide related notices, accruing after the effective date of the transfer and applicable to the exploitation of the rights transferred, and any remedies under each such assumption agreement for breach of those obligations, as those obligations and remedies are set forth in the applicable collective bargaining agreement, if—

''(A) the transferee knows or has reason to know at the time of the transfer that such collective bargaining agreement was or will be applicable to the motion picture; or

''(B) in the event of a court order confirming an arbitration award against the transferor under the collective bargaining agreement, the transferor does not have the financial ability to satisfy the award within 90 days after the order is issued.

''(2) For purposes of paragraph (1)(A), 'knows or has reason to know' means any of the following:

''(A) Actual knowledge that the collective bargaining agreement was or will be applicable to the motion picture.

''(B)(i) Constructive knowledge that the collective bargaining agreement was or will be applicable to the motion picture, arising from recordation of a document pertaining to copyright in the motion picture under section 205 of title 17 or from publication, at a site available to the public on-line that is operated by the relevant union, of information that identifies the motion picture as subject to a collective bargaining agreement with that union, if the site permits commercially reasonable verification of the date on which the information was available for access.

''(ii) Clause (i) applies only if the transfer referred to in subsection (a)(1) occurs—

''(i) after the motion picture is completed, or

''(ii) before the motion picture is completed and—

''(I) within 18 months before the filing of an application for copyright registration for the motion picture under section 408 of title 17, or

''(II) if no such application is filed, within 18 months before the first publication of the motion picture in the United States.

''(C) Awareness of other facts and circumstances pertaining to a particular transfer from which it is apparent that the collective bargaining agreement was or will be applicable to the motion picture.

''(b) SCOPE OF EXCLUSION OF TRANSFERS OF PUBLIC PERFORMANCE RIGHTS.—For purposes of this section, the exclusion under subsection (a) of transfers of copyright ownership in a motion picture that are limited to public performance rights includes transfers to a terrestrial broadcast station, cable system, or programmer to the extent that the station, system, or programmer is functioning as an exhibitor of the motion picture, either by exhibiting the motion picture on its own network, system, service, or station, or by initiating the transmission of an exhibition that is carried on another network, system, service, or station. When a terrestrial broadcast station, cable system, or programmer, or other transferee, is also functioning otherwise as a distributor or as a producer of the motion picture, the public performance exclusion does not affect any obligations imposed on the transferee to the extent that it is engaging in such functions.

''(c) EXCLUSION FOR GRANTS OF SECURITY INTERESTS.—Subsection (a) shall not apply to—

''(1) a transfer of copyright ownership consisting solely of a mortgage, hypothecation, or other security interest; or

''(2) a subsequent transfer of the copyright ownership secured by the security interest described in paragraph (1) by or under the authority of the secured party, including a transfer through the exercise of the secured party's rights or remedies as a secured party, or by a subsequent transferee.

The exclusion under this subsection shall not affect any rights or remedies under law or contract.

''(d) DEFERRAL PENDING RESOLUTION OF BONA FIDE DISPUTE.—A transferee on which obligations are imposed under subsection (a) by virtue of paragraph (1) of that subsection may elect to defer performance of such obligations that are subject to a bona fide dispute between a union and a prior transferor until that dispute is resolved, except that such deferral shall not stay accrual of any union claims due under an applicable collective bargaining agreement.

''(e) SCOPE OF OBLIGATIONS DETERMINED BY PRIVATE AGREEMENT.—Nothing in this section shall expand or diminish the rights, obligations, or remedies of any person under the collective bargaining agreements or assumption agreements referred to in this section.

''(f) FAILURE TO NOTIFY.—If the transferor under subsection (a) fails to notify the transferee under subsection (a) of applicable collective bargaining obligations before the execution of the transfer instrument, and subsection (a) is made applicable to the transferee solely by virtue of subsection (a)(1)(B), the transferor shall be liable to the transferee for any damages suffered by the transferee as a result of the failure to notify.

''(g) DETERMINATION OF DISPUTES AND CLAIMS.—Any dispute concerning the application of subsections (a) through (f) shall be determined by an action in United States district court, and the court in its discretion may allow the recovery of full costs by or against any party and may also award a reasonable attorney's fee to the prevailing party as part of the costs.

''(h) STUDY.—The Comptroller General, in consultation with the Register of Copyrights, shall conduct a study of the conditions in the motion picture industry that gave rise to this section, and the impact of this section on the motion picture industry. The Comptroller General shall report the findings of the study to the Congress within 2 years after the effective date of this chapter.''.

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

''180. Assumption of Certain Contractual Obligations ..... 4001''.

SEC. 407. EFFECTIVE DATE.

Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE V—PROTECTION OF CERTAIN ORIGINAL DESIGNS

SEC. 501. SHORT TITLE.

This Act may be referred to as the ''Vessel Hull Design Protection Act''.

SEC. 502. PROTECTION OF CERTAIN ORIGINAL DESIGNS.

Title 17, United States Code, is amended by adding at the end the following new chapter:

''CHAPTER 13—PROTECTION OF ORIGINAL DESIGNS

''Sec.
''1301. Designs protected.
''1302. Designs not subject to protection.
''1303. Revisions, adaptations, and rearrangements.
''1304. Commencement of protection.
''1305. Term of protection.
''1306. Design notice.
''1307. Effect of omission of notice.
''1308. Exclusive rights.
''1309. Infringement.
''1310. Application for registration.
''1311. Benefit of earlier filing date in foreign country.
''1312. Oaths and acknowledgments.
''1313. Examination of application and issue or refusal of registration.

''§ 1301. Designs protected

''(a) DESIGNS PROTECTED.—

''(1) IN GENERAL.—The designer or other owner of an original design of a useful article which makes the article attractive or distinctive in appearance to the purchasing or using public may secure the protection provided by this chapter upon complying with and subject to this chapter.

''(2) VESSEL HULLS.—The design of a vessel hull, including a plug or mold, is subject to protection under this chapter, notwithstanding section 1302(4).

''(b) DEFINITIONS.—For the purpose of this chapter, the following terms have the following meanings:

''(1) A design is 'original' if it is the result of the designer's creative endeavor that provides a distinguishable variation over prior work pertaining to similar articles which is more than merely trivial and has not been copied from another source.

''(2) A 'useful article' is a vessel hull, including a plug or mold, which in normal use has an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article which normally is part of a useful article shall be deemed to be a useful article.

''(3) A 'vessel' is a craft, especially one larger than a rowboat, designed to navigate on water, but does not include any such craft that exceeds 200 feet in length.

''(4) A 'hull' is the frame or body of a vessel, including the deck of a vessel, exclusive of masts, sails, yards, and rigging.

''(5) A 'plug' means a device or model used to make a mold for the purpose of exact duplication, regardless of whether the device or model has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information.

''(6) A 'mold' means a matrix or form in which a substance for material is used, regardless of whether the matrix or form has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information.

''§ 1302. Designs not subject to protection

''Protection under this chapter shall not be available for a design that is—

''(1) not original;

''(2) staple or commonplace, such as a standard geometric figure, a familiar symbol, an emblem, or a motif, or another shape, pattern, or configuration which has become standard, common, prevalent, or ordinary;

''(3) different from a design excluded by paragraph (2) only in insignificant details or in elements which are variants commonly used in the relevant trades;

''(4) dictated solely by a utilitarian function of the article that embodies it; or

''(5) embodied in a useful article that was made public by the designer or owner in the United States or a foreign country more than 1 year before the date of the application for registration under this chapter.

''§ 1303. Revisions, adaptations, and rearrangements

''Protection for a design under this chapter shall be available notwithstanding the employment in the design of subject matter excluded from protection under section 1302 if the design is a substantial revision, adaptation, or rearrangement of such subject matter. Such protection shall be independent of any subsisting protection in subject matter employed in the design, and shall not be construed as securing any right to subject matter excluded from protection under this chapter or as extending any subsisting protection under this chapter.

''§ 1304. Commencement of protection

''The protection provided for a design under this chapter shall commence upon the earlier of the date of publication of the registration under section 1313(a) or the date the design is first made public as defined by section 1310(b).

''§ 1305. Term of protection

''(a) IN GENERAL.—Subject to subsection (b), the protection provided under this chapter for a design shall continue for a term of 10 years beginning on the date of the commencement of protection under section 1304.

''(b) EXPIRATION.—All terms of protection provided in this section shall run to the end of the calendar year in which they would otherwise expire.

''(c) TERMINATION OF RIGHTS.—Upon expiration or termination of protection in a particular design under this chapter, all rights under this chapter in the design shall terminate, regardless of the number of different articles in which the design may have been used during the term of its protection.

''§ 1306. Design notice

''(a) CONTENTS OF DESIGN NOTICE.—(1) Whenever any design for which protection is sought under this chapter is made public under section 1310(b), the owner of the design shall, subject to the provisions of section 1307, mark it or have it marked legibly with a design notice consisting of—

''(A) the words 'Protected Design', the abbreviation 'Prot'd Des.', or the letter 'D' with a circle, or the symbol *D*;

''(B) the year of the date on which protection for the design commenced; and

''(C) the name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner.

Any distinctive identification of the owner may be used for purposes of subparagraph (C) if it has been recorded by the Administrator before the design marked with such identification is registered.

''(2) After registration, the registration number may be used instead of the elements specified in subparagraphs (B) and (C) of paragraph (1).

''(b) LOCATION OF NOTICE.—The design notice shall be so located and applied as to give reasonable notice of design protection while the useful article embodying the design is passing through its normal channels of commerce.

''(c) SUBSEQUENT REMOVAL OF NOTICE.—When the owner of a design has complied with the provisions of this section, protection under this chapter shall not be affected by the removal, destruction, or obliteration by others of the design notice on an article.

''§ 1307. Effect of omission of notice

''(a) ACTIONS WITH NOTICE.—Except as provided in subsection (b), the omission of the notice prescribed in section 1306 shall not cause loss of the protection under this chapter or prevent recovery for infringement under this chapter against any person who, after receiving written notice of the design protection, begins an undertaking leading to infringement under this chapter.

''(b) ACTIONS WITHOUT NOTICE.—The omission of the notice prescribed in section 1306 shall prevent any recovery under section 1323 against a person who began an undertaking leading to infringement under this chapter before receiving written notice of the design protection. No injunction shall be issued under this chapter with respect to such undertaking unless the owner of the design reimburses that person for any reasonable expenditure or contractual obligation in connection with such undertaking that was incurred before receiving written notice of the design protection, as the court in its discretion directs. The burden of providing written notice of design protection shall be on the owner of the design.

''§ 1308. Exclusive rights

''The owner of a design protected under this chapter has the exclusive right to—

''(1) make, have made, or import, for sale or for use in trade, any useful article embodying that design; and

''(2) sell or distribute for sale or for use in trade any useful article embodying that design.

''§ 1309. Infringement

''(a) ACTS OF INFRINGEMENT.—Except as provided in subjection (b), it shall be infringement of the exclusive rights in a design protected under this chapter for any person, without the consent of the owner of the design, within the United States and during the term of such protection, to—

''(1) make, have made, or import, for sale or for use in trade, any infringing article as defined in subsection (e); or

''(2) sell or distribute for sale or for use in trade any such infringing article.

''(b) ACTS OF SELLERS AND DISTRIBUTORS.—A seller or distributor of an infringing article who did not make or import the article shall be deemed to have infringed on a design protected under this chapter only if that person—

''(1) induced or acted in collusion with a manufacturer to make, or an importer to import such article, except that merely purchasing or giving an order to purchase such article in the ordinary course of business shall not of itself constitute such inducement or collusion; or

''(2) refused or failed, upon the request of the owner of the design, to make a prompt and full disclosure of that person's source of such article, and that person orders or reorders such article after receiving notice by registered or certified mail of the protection subsisting in the design.

''(c) ACTS WITHOUT KNOWLEDGE.—It shall not be infringement under this section to make, have made, import, sell, or distribute, any article embodying a design which was created without knowledge that a design was protected under this chapter and was copied from such protected design.

''(d) ACTS IN ORDINARY COURSE OF BUSINESS.—A person who incorporates into that person's product of manufacture an infringing article acquired from others in the ordinary course of business, or who, without knowledge of the protected design embodied in an infringing article, makes or processes the infringing article for the account of another person in the ordinary course of business, shall not be deemed to have infringed the rights in that design under this chapter except under a condition contained in paragraph (1) or (2) of subsection (b). Accepting an order or reorder from the source of the infringing article shall be deemed ordering or reordering within the meaning of subsection (b)(2).

''(e) INFRINGING ARTICLE DEFINED.—As used in this section, an 'infringing article' is any article the design of which has been copied from a design protected under this chapter, without the consent of the owner of the protected design. An infringing article is not an illustration or picture of a protected design in an advertisement,

book, periodical, newspaper, photograph, broadcast, motion picture, or similar medium. A design shall not be deemed to have been copied from a protected design if it is original and not substantially similar in appearance to a protected design.

''(f) ESTABLISHING ORIGINALITY.—The party to any action or proceeding under this chapter who alleges rights under this chapter in a design shall have the burden of establishing the design's originality whenever the opposing party introduces an earlier work which is identical to such design, or so similar as to make prima facie showing that such design was copied from such work.

''(g) REPRODUCTION FOR TEACHING OR ANALYSIS.—It is not an infringement of the exclusive rights of a design owner for a person to reproduce the design in a useful article or in any other form solely for the purpose of teaching, analyzing, or evaluating the appearance, concepts, or techniques embodied in the design, or the function of the useful article embodying the design.

''§ 1310. Application for registration

''(a) TIME LIMIT FOR APPLICATION FOR REGISTRATION.—Protection under this chapter shall be lost if application for registration of the design is not made within two years after the date on which the design is first made public.

''(b) WHEN DESIGN IS MADE PUBLIC.—A design is made public when an existing useful article embodying the design is anywhere publicly exhibited, publicly distributed, or offered for sale or sold to the public by the owner of the design or with the owner's consent.

''(c) APPLICATION BY OWNER OF DESIGN.—Application for registration may be made by the owner of the design.

''(d) CONTENTS OF APPLICATION.—The application for registration shall be made to the Administrator and shall state—

''(1) the name and address of the designer or designers of the design;

''(2) the name and address of the owner if different from the designer;

''(3) the specific name of the useful article embodying the design;

''(4) the date, if any, that the design was first made public, if such date was earlier than the date of the application;

''(5) affirmation that the design has been fixed in a useful article; and

''(6) such other information as may be required by the Administrator.

The application for registration may include a description setting forth the salient features of the design, but the absence of such a description shall not prevent registration under this chapter.

''(e) SWORN STATEMENT.—The application for registration shall be accompanied by a statement under oath by the applicant or the applicant's duly authorized agent or representative, setting forth, to the best of the applicant's knowledge and belief—

''(1) that the design is original and was created by the designer or designers named in the application;

''(2) that the design has not previously been registered on behalf of the applicant or the applicant's predecessor in title; and

''(3) that the applicant is the person entitled to protection and to registration under this chapter.

If the design has been made public with the design notice prescribed in section 1306, the statement shall also describe the exact form and position of the design notice.

''(f) EFFECT OF ERRORS.—(1) Error in any statement or assertion as to the utility of the useful article named in the application under this section, the design of which is sought to be registered, shall not affect the protection secured under this chapter.

''(2) Errors in omitting a joint designer or in naming an alleged joint designer shall not affect the validity of the registration, or the actual ownership or the protection of the design, unless it is shown that the error occurred with deceptive intent.

''(g) DESIGN MADE IN SCOPE OF EMPLOYMENT.—In a case in which the design was made within the regular scope of the designer's employment and individual authorship of the design is difficult or impossible to ascribe and the application so states, the name and address of the employer for whom the design was made may be stated instead of that of the individual designer.

''(h) PICTORIAL REPRESENTATION OF DESIGN.—The application for registration shall be accompanied by two copies of a drawing or other pictorial representation of the useful article embodying the design, having one or more views, adequate to show the design, in a form and style suitable for reproduction, which shall be deemed a part of the application.

''(i) DESIGN IN MORE THAN ONE USEFUL ARTICLE.—If the distinguishing elements of a design are in substantially the same form in different useful articles, the design shall be protected as to all such useful articles when protected as to one of them, but not more than one registration shall be required for the design.

''(j) APPLICATION FOR MORE THAN ONE DESIGN.—More than one design may be included in the same application under such conditions as may be prescribed by the Administrator. For each design included in an application the fee prescribed for a single design shall be paid.

''§ 1311. Benefit of earlier filing date in foreign country

''An application for registration of a design filed in the United States by any person who has, or whose legal representative or predecessor or successor in title has, previously filed an application for registration of the same design in a foreign country which extends to designs of owners who are citizens of the United States, or to applications filed under this chapter, similar protection to that provided under this chapter shall have that same effect as if filed in the United States on the date on which the application was first filed in such foreign country, if the application in the United States is filed within 6 months after the earliest date on which any such foreign application was filed.

''§ 1312. Oaths and acknowledgments

''(a) IN GENERAL.—Oaths and acknowledgments required by this chapter—

''(1) may be made—

''(A) before any person in the United States authorized by law to administer oaths; or

''(B) when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any official authorized to administer oaths in the foreign country concerned, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States; and

''(2) shall be valid if they comply with the laws of the State or country where made.

''(b) WRITTEN DECLARATION IN LIEU OF OATH.—(1) The Administrator may by rule prescribe that any document which is to be filed under this chapter in the Office of the Administrator and which is required by any law, rule, or other regulation to be under oath, may be subscribed to by a written declaration in such form as the Administrator may prescribe, and such declaration shall be in lieu of the oath otherwise required.

''(2) Whenever a written declaration under paragraph (1) is used, the document containing the declaration shall state that willful false statements are punishable by fine or imprisonment, or both, pursuant to section 1001 of title 18, and may jeopardize the validity of the application or document or a registration resulting therefrom.

''§ 1313. Examination of application and issue or refusal of registration

''(a) DETERMINATION OF REGISTRABILITY OF DESIGN; REGISTRATION.—Upon the filing of an application for registration in proper form under section 1310, and upon payment of the fee prescribed under section 1316, the Administrator shall determine whether or not the application relates to a design which on its face appears to be subject to protection under this chapter, and, if so, the Register shall register the design. Registration under this subsection shall be announced by publication. The date of registration shall be the date of publication.

''(b) REFUSAL TO REGISTER; RECONSIDERATION.—If, in the judgment of the Administrator, the application for registration relates to a design which on its face is not subject to protection under this chapter, the Administrator shall send to the applicant a notice of refusal to register and the grounds for the refusal. Within 3 months after the date on which the notice of refusal is sent, the applicant may, by written request, seek reconsideration of the application. After consideration of such a request, the Administrator shall either register the design or send to the applicant a notice of final refusal to register.

''(c) APPLICATION TO CANCEL REGISTRATION.—Any person who believes he or she is or will be damaged by a registration under this chapter may, upon payment of the prescribed fee, apply to the Administrator at any time to cancel the registration on the ground that the design is not subject to protection under this chapter, stating the reasons for the request. Upon receipt of an application for cancellation, the Administrator shall send to the owner of the design, as shown in the records of the Office of the Administrator, a notice of the application, and the owner shall have a period of 3 months after the date on which such notice is mailed in which to present arguments to the Administrator for support of the validity of the registration. The Administrator shall also have the authority to establish, by regulation, conditions under which the opposing parties may appear and be heard in support of their arguments. If, after the periods provided for the presentation of arguments have expired, the Administrator determines that the applicant for cancellation has established that the design is not subject to protection under this chapter, the Administrator shall order the registration stricken from the record. Cancellation under this subsection shall be announced by publication, and notice of the Administrator's final determination with respect to any application for cancellation shall be sent to the applicant and to the owner of record.

''§ 1314. Certification of registration

''Certificates of registration shall be issued in the name of the United States under the seal of the Office of the Administrator and shall be recorded in the official records of the Office. The certificate shall state the name of the useful article, the date of filing of the application, the date of registration, and the date the design was made public, if earlier than the date of filing of the application, and shall contain a reproduction of the drawing or other pictorial representation of the design. If a description of the salient features of the design appears in the application, the description shall also appear in the certificate. A certificate of registration shall be admitted in any court as prima facie evidence of the facts stated in the certificate.

''§ 1315. Publication of announcements and indexes

''(a) PUBLICATIONS OF THE ADMINISTRATOR.—The Administrator shall publish lists and indexes of registered designs and cancellations of designs and may also publish the drawings or other pictorial representations of registered designs for sale or other distribution.

''(b) FILE OF REPRESENTATIVES OF REGISTERED DESIGNS.—The Administrator shall establish and maintain a file of the drawings or other pictorial representations of registered designs. The file shall be available for use by the public under such conditions as the Administrator may prescribe.

''§ 1316. Fees

''The Administrator shall by regulation set reasonable fees for the filing of applications to register designs under this chapter and for other services relating to the administration of this chapter, taking into consideration the cost of providing these services and the benefit of a public record.

''§ 1317. Regulations

''The Administrator may establish regulations for the administration of this chapter.

''§ 1318. Copies of records

''Upon payment of the prescribed fee, any person may obtain a certified copy of any official record of the Office of the Administrator that relates to this chapter. That copy shall be admissible in evidence with the same effect as the original.

''§ 1319. Correction of errors in certificates

''The Administrator may, by a certificate of correction under seal, correct any error in a registration incurred through the fault of the Office, or, upon payment of the required fee, any error of a clerical or typographical nature occurring in good faith but not through the fault of the Office. Such registration, together with the certificate, shall thereafter have the same effect as if it had been originally issued in such corrected form.

''§ 1320. Ownership and transfer

''(a) PROPERTY RIGHT IN DESIGN.—The property right in a design subject to protection under this chapter shall vest in the designer, the legal representatives of a deceased designer or of one under legal incapacity, the employer for whom the designer created the design in the case of a design made within the regular scope of the designer's employment, or a person to whom the rights of the designer or of such employer have been transferred. The person in whom the property right is vested shall be considered the owner of the design.

''(b) TRANSFER OF PROPERTY RIGHT.—The property right in a registered design, or a design for which an application for registration has been or may be filed, may be assigned, granted, conveyed, or mortgaged by an instrument in writing, signed by the owner, or may be bequeathed by will.

''(c) OATH OR ACKNOWLEDGEMENT OF TRANSFER.—An oath or acknowledgment under section 1312 shall be prima facie evidence of the execution of an assignment, grant, conveyance, or mortgage under subsection (b).

''(d) RECORDATION OF TRANSFER.—An assignment, grant, conveyance, or mortgage under subsection (b) shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, unless it is recorded in the Office of the Administrator within 3 months after its date of execution or before the date of such subsequent purchase or mortgage.

''§ 1321. Remedy for infringement

''(a) IN GENERAL.—The owner of a design is entitled, after issuance of a certificate of registration of the design under this chapter, to institute an action for any infringement of the design.

''(b) REVIEW OF REFUSAL TO REGISTER.—(1) Subject to paragraph (2), the owner of a design may seek judicial review of a final refusal of the Administrator to register the design under this chapter by bringing a civil action, and may in the same action, if the court adjudges the design subject to protection under this chapter, enforce the rights in that design under this chapter.

''(2) The owner of a design may seek judicial review under this section if—

''(A) the owner has previously duly filed and prosecuted to final refusal an application in proper form for registration of the design;

''(B) the owner causes a copy of the complaint in the action to be delivered to the Administrator within 10 days after the commencement of the action; and

''(C) the defendant has committed acts in respect to the design which would constitute infringement with respect to a design protected under this chapter.

''(c) ADMINISTRATOR AS PARTY TO ACTION.—The Administrator may, at the Administrator's option, become a party to the action with respect to the issue of registrability of the design claim by entering an appearance within 60 days after being served with the complaint, but the failure of the Administrator to become a party shall not deprive the court of jurisdiction to determine that issue.

''(d) USE OF ARBITRATION TO RESOLVE DISPUTE.—The parties to an infringement dispute under this chapter, within such time as may be specified by the Administrator by regulation, may determine the dispute, or any aspect of the dispute, by arbitration. Arbitration shall be governed by title 9. The parties shall give notice of any arbitration award to the Administrator, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Administrator from determining whether a design is subject to registration in a cancellation proceeding under section 1313(c).

''§ 1322. Injunctions

''(a) IN GENERAL.—A court having jurisdiction over actions under this chapter may grant injunctions in accordance with the principles of equity to prevent infringement of a design under this chapter, including, in its discretion, prompt relief by temporary restraining orders and preliminary injunctions.

''(b) DAMAGES FOR INJUNCTIVE RELIEF WRONGFULLY OBTAINED.—A seller or distributor who suffers damage by reason of injunctive relief wrongfully obtained under this section has a cause of action against the applicant for such injunctive relief and may recover such relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the injunctive relief was sought in bad faith, and, unless the court finds extenuating circumstances, reasonable attorney's fees.

''§ 1323. Recovery for infringement

''(a) DAMAGES.—Upon a finding for the claimant in an action for infringement under this chapter, the court shall award the claimant damages adequate to compensate for the infringement. In addition, the court may increase the damages to such amount, not exceeding $50,000 or $1 per copy, whichever is greater, as the court determines to be just. The damages awarded shall constitute compensation and not a penalty. The court may receive expert testimony as an aid to the determination of damages.

''(b) INFRINGER'S PROFITS.—As an alternative to the remedies provided in subsection (a), the court may award the claimant the infringer's profits resulting from the sale of the copies if the court finds that the infringer's sales are reasonably related to the use of the claimant's design. In such a case, the claimant shall be required to prove only the amount of the infringer's sales and the infringer shall be required to prove its expenses against such sales.

''(c) STATUTE OF LIMITATIONS.—No recovery under subsection (a) or (b) shall be had for any infringement committed more than 3 years before the date on which the complaint is filed.

''(d) ATTORNEY'S FEES.—In an action for infringement under this chapter, the court may award reasonable attorney's fees to the prevailing party.

''(e) DISPOSITION OF INFRINGING AND OTHER ARTICLES.—The court may order that all infringing articles, and any plates, molds, patterns, models, or other means specifically adapted for making the articles, be delivered up for destruction or other disposition as the court may direct.

''§ 1324. Power of court over registration

''In any action involving the protection of a design under this chapter, the court, when appropriate, may order registration of a design under this chapter or the cancellation of such a registration. Any such order shall be certified by the court to the Administrator, who shall make an appropriate entry upon the record.

''§ 1325. Liability for action on registration fraudulently obtained

''Any person who brings an action for infringement knowing that registration of the design was obtained by a false or fraudulent representation materially affecting the rights under this chapter, shall be liable in the sum of $10,000, or such part of that amount as the court may determine. That amount shall be to compensate the defendant and shall be charged against the plaintiff and paid to the defendant, in addition to such costs and attorney's fees of the defendant as may be assessed by the court.

''§ 1326. Penalty for false marking

''(a) IN GENERAL.—Whoever, for the purpose of deceiving the public, marks upon, applies to, or uses in advertising in connection with an article made, used, distributed, or sold, a design which is not protected under this chapter, a design notice specified in section 1306, or any other words or symbols importing that the design is protected under this chapter, knowing that the design is not so protected, shall pay a civil fine of not more than $500 for each such offense.

''(b) SUIT BY PRIVATE PERSONS.—Any person may sue for the penalty established by subsection (a), in which event one-half of the penalty shall be awarded to the person suing and the remainder shall be awarded to the United States.

''§ 1327. Penalty for false representation

''Whoever knowingly makes a false representation materially affecting the rights obtainable under this chapter for the purpose of obtaining registration of a design under this chapter shall pay a penalty of not less than $500 and not more than $1,000, and any rights or privileges that individual may have in the design under this chapter shall be forfeited.

''§ 1328. Enforcement by Treasury and Postal Service

''(a) REGULATIONS.—The Secretary of the Treasury and the United States Postal Service shall separately or jointly issue regulations for the enforcement of the rights set forth in section 1308 with respect to importation. Such regulations may require, as a condition for the exclusion of articles from the United States, that the person seeking exclusion take any one or more of the following actions:

''(1) Obtain a court order enjoining, or an order of the International Trade Commission under section 337 of the Tariff Act of 1930 excluding, importation of the articles.

''(2) Furnish proof that the design involved is protected under this chapter and that the importation of the articles would infringe the rights in the design under this chapter.

''(3) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

''(b) SEIZURE AND FORFEITURE.—Articles imported in violation of the rights set forth in section 1308 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be, except that the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of the law.

''§ 1329. Relation to design patent law

''The issuance of a design patent under title 35 for an original design for an article of manufacture shall terminate any protection of the original design under this chapter.

''§ 1330. Common law and other rights unaffected

''Nothing in this chapter shall annul or limit—

''(1) common law or other rights or remedies, if any, available to or held by any person with respect to a design which has not been registered under this chapter; or

''(2) any right under the trademark laws or any right protected against unfair competition.

''§ 1331. Administrator; Office of the Administrator

''In this chapter, the 'Administrator' is the Register of Copyrights, and the 'Office of the Administrator' and the 'Office' refer to the Copyright Office of the Library of Congress.

''§ 1332. No retroactive effect

''Protection under this chapter shall not be available for any design that has been made public under section 1310(b) before the effective date of this chapter.''.

SEC. 503. CONFORMING AMENDMENTS.

(a) TABLE OF CHAPTERS.—The table of chapters for title 17, United States Code, is amended by adding at the end the following:

''13. Protection of Original Designs .... 1301''.

(b) JURISDICTION OF DISTRICT COURTS OVER DESIGN ACTIONS.—(1) Section 1338(c) of title 28, United States Code, is amended by inserting '', and to exclusive rights in designs under chapter 13 of title 17,'' after ''title 17''.

*(2)(A) The section heading for section 1338 of title 28, United States Code, is amended by inserting ''**designs,**'' after ''**mask works,**''.*

(B) The item relating to section 1338 in the table of sections at the beginning of chapter 85 of title 28, United States Code, is amended by inserting ''designs,'' after ''mask works,''.

(c) PLACE FOR BRINGING DESIGN ACTIONS.—(1) Section 1400(a) of title 28, United States Code, is amended by inserting ''or designs'' after ''mask works''.

(2) The section heading for section 1400 of title 28, United States Code is amended to read as follows:

''§ Patents and copyrights, mask works, and designs''.

(3) The item relating to section 1400 in the table of sections at the beginning of chapter 87 of title 28, United States Code, is amended to read as follows:

''1400. Patents and copyrights, mask works, and designs.''.

(d) ACTIONS AGAINST THE UNITED STATES.—Section 1498(e) of title 28, United States Code, is amended by inserting '', and to exclusive rights in designs under chapter 13 of title 17,'' after ''title 17''.

SEC. 504. JOINT STUDY OF THE EFFECT OF THIS TITLE.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, and not later than 2 years after such date of enactment, the Register of Copyrights and the Commissioner of Patents and Trademarks shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a joint report evaluating the effect of the amendments made by this title.

(b) ELEMENTS FOR CONSIDERATION.—In carrying out subsection (a), the Register of Copyrights and the Commissioner of Patents and Trademarks shall consider—

(1) the extent to which the amendments made by this title has been effective in suppressing infringement of the design of vessel hulls;

(2) the extent to which the registration provided for in chapter 13 of title 17, United States Code, as added by this title, has been utilized;

(3) the extent to which the creation of new designs of vessel hulls have been encouraged by the amendments made by this title;

(4) the effect, if any, of the amendments made by this title on the price of vessels with hulls protected under such amendments; and

(5) such other considerations as the Register and the Commissioner may deem relevant to accomplish the purposes of the evaluation conducted under subsection (a).

SEC. 505. EFFECTIVE DATE.

The amendments made by sections 502 and 503 shall take effect on the date of the enactment of this Act and shall remain in effect until the end of the 2-year period beginning on such date of enactment. No cause of action based on chapter 13 of title 17, United States Code, as added by this title, may be filed after the end of that 2-year period.

Amend the title so as to read: ''A bill to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes.''.

And the Senate agree to the same.

From the Committee on Commerce, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

TOM BLILEY,
BILLY TAUZIN,
JOHN D. DINGELL,

From the Committee on the Judiciary, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

HENRY J. HYDE,
HOWARD COBLE,
BOB GOODLATTE,
JOHN CONYERS, Jr.,
HOWARD L. BERMAN,
Managers on the Part of the House.

ORRIN G. HATCH,
STROM THURMOND,
PATRICK J. LEAHY,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2281) to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

TITLE I—WIPO TREATIES IMPLEMENTATION

This title implements two new intellectual property treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, signed in Geneva, Switzerland in December 1996.

SECTION 101. SHORT TITLE

The House recedes to the Senate section 101. This section sets forth the short title of the Act. As between the short titles in the House bill and the Senate amendment, it is believed that the title in Section 101 of the Senate amendment more accurately reflects the effect of the Act.

SECTION 102. TECHNICAL AMENDMENTS

The Senate recedes to House section 102. This section makes technical and conforming amendments to the U.S. Copyright Act in order to comply with the obligations of the two WIPO treaties.

SECTION 103. COPYRIGHT PROTECTION SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION

The Senate recedes to House section 103 with modification. The two new WIPO Treaties include substantively identical provisions on technological measures of protection (also commonly referred to as the ''black box'' or ''anticircumvention'' provisions). These provisions require contracting parties to provide ''adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.''

Both of the new WIPO treaties also include substantively identical provisions requiring contracting parties to protect the integrity of copyright management information. The treaties define copyright management information as ''information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.''

Legislation is required to comply with both of these provisions. To accomplish this, both the House bill and the Senate amendment, in section 103, would add a new chapter (chapter twelve) to title 17 of the United States Code. This new chapter twelve includes five sections—(1) section 1201, which prohibits the circumvention of technological measures of protection; (2) section 1202, which protects the integrity of copyright management information; (3) section 1203, which provides for civil remedies for violations of sections 1201 and 1202; (4) section 1204, which provides for criminal penalties for violations of sections 1201 and 1202; and (5) section 1205, which provides a savings clause to preserve the effectiveness of federal and state laws in protecting individual privacy on the Internet. The House bill and the Senate amendment differ in several respects, primarily related to the scope and availability of exemptions from the prohibitions under section 1201.

Section 1201(a)(1)—Rulemaking by the Librarian of Congress. Section 1201(a)(1)(C) provides that the determination of affected classes of works described in subparagraph (A) shall be made by the Librarian of Congress ''upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation.'' The determination will be made in a rulemaking proceeding on the record. It is the intention of the conferees that, as is typical with other rulemaking under title 17, and in recognition of the expertise of the Copyright Office, the Register of Copyrights will conduct the rulemaking, including providing notice of the rulemaking, seeking comments from the public, consulting with the Assistant Secretary for Communications and Information

of the Department of Commerce and any other agencies that are deemed appropriate, and recommending final regulations in the report to the Librarian.

Section 1201(a) and 1202—technological measures. It is the understanding of the conferees that technological measures will most often be developed through consultative, private sector efforts by content owners, and makers of computers, consumer electronics and telecommunications devices. The conferees expect this consultative approach to continue as a constructive and positive method. One of the benefits of such consultation is to allow testing of proposed technologies to determine whether there are adverse effects on the ordinary performance of playback and display equipment in the marketplace, and to take steps to eliminate or substantially mitigate those effects before technologies are introduced. The public interest is well-served by such activities.

Persons may also choose to implement a technological measure without vetting it through an inter-industry consultative process, or without regard to the input of affected parties. Under such circumstances, such a technological measure may materially degrade or otherwise cause recurring appreciable adverse effects on the authorized performance or display of works. Steps taken by the makers or servicers of consumer electronics, telecommunications or computing products used for such authorized performances or displays solely to mitigate these adverse effects on product performance (whether or not taken in combination with other lawful product modifications) shall not be deemed a violation of sections 1201(a) or (b).

However, this construction is not meant to afford manufacturers or servicers an opportunity to give persons unauthorized access to protected content, or to exercise the rights under the Copyright Act of copyright owners in such works, under the guise of ''correcting'' a performance problem that results from the implementation of a particular technological measure. Thus, it would violate sections 1201(a) or (b) for a manufacturer or servicer to take remedial measures if they are held out for or undertaken with, or result in equipment with only limited commercially significant use other than, the prohibited purpose of allowing users to gain unauthorized access to protected content or to exercise the rights under the Copyright Act of copyright owners in such works.

With regard to section 1202, product adjustments made to eliminate recurring appreciable adverse effects on the authorized performance or display of works caused by copyright management information will not be deemed a violation of section 1202 unless such steps are held out for or undertaken with a prohibited purpose, or the requisite knowledge, of inducing, enabling, facilitating or concealing infringement of rights of copyright owners under the Copyright Act.

Section 1201(e) and 1202(d)—Law enforcement, intelligence, and other government activities. Sections 1201(e) and 1202(d) create and exception to the prohibitions of sections 1201 and 1202 for the lawfully authorized investigative, protective, or intelligence activities of an officer, agent, or employee of, the United States, a State, or a political subdivision of a State, or of persons acting pursuant to a contract with such an entity. The anticircumvention provisions of this legislation might be read to prohibit some aspects of the information security testing that is critical to preventing cyber attacks against government computers, computer systems, and computer networks. The conferees have added language to sections 1201(e) and 1202(d) to make it clear that the anticircumvention prohibition does not apply to lawfully authorized information security activities of the federal government, the states, political subdivisions of states, or persons acting within the scope of their government information security contract. In this way, the bill will permit the continuation of information security activities that protect the country against one of the greatest threats to our national security as well as to our economic security.

At the same time, this change is narrowly drafted so that it does not open the door to the very piracy the treaties are designed to prevent. For example, the term ''information security'' activities is intended to include presidential directives and executive orders concerning the vulnerabilities of a computer, computer system, or computer network. By this, the conferees intent to include the recently-issued Presidential Decision Directive 63 on Critical Infrastructure Protection. PDD–63 contains a number of initiatives to ensure that the United States takes all necessary measures to swiftly eliminate any significant vulnerability to both physical and cyber attacks on the nation's critical infrastructures, including especially our cyber systems.

The Term ''computer system'' has the same definition for purposes of this section as that term is defined in the Computer Security Act, 15 U.S.C. §278g–3(d)(1).

Subsection 1201(g)—Encryption Research. Subsection (g) permits the circumvention of access control technologies in certain circumstances for the purpose of good faith encryption research. The conferees note that section 1201(g)(3)(A) does not imply that the results of encryption research must be disseminated. There is no requirement that legitimate encryption researchers disseminate their findings in order to quality for the encryption research exemption in section 1201(g). Rather, the subsection describes circumstances in which dissemination, if any, would be weighed in determining eligibility.

Section 1201(j)—Security Testing. Subsection (j) clarifies the intended effect of the bill with respect to information security. The conferees understand this act to prohibit unauthorized circumvention of technological measures applied to works protected under title 17. The conferees recognize that technological measures may also be used to protect the integrity and security of computers, computer systems or computer networks. It is not the intent of this act to prevent persons utilizing technological measures in respect of computers, computer systems or networks from testing the security value and effectiveness of the technological measures they employ, or from contracting with companies that specialize in such security testing.

Thus, in addition to the exception for good faith encryption research contained in Section 1201(g), the conferees have adopted Section 1201(j) to resolve additional issues related to the effect of the anti-circumvention provision on legitimate information security activities. First, the conferees were concerned that Section 1201(g)'s exclusive focus on encryption-related research does not encompass the entire range of legitimate information security activities. Not every technological means that is used to provide security relies on encryption technology, or does so to the exclusion of other methods. Moreover, an individual who is legitimately testing a security technology may be doing so not to advance the state of encryption research or to develop encryption products, but rather to ascertain the effectiveness of that particular security technology.

The conferees were also concerned that the anti-circumvention provision of Section 1201(a) could be construed to inhibit legitimate forms of security testing. It is not unlawful to test the effectiveness of a security measure before it is implemented to protect the work covered under title 17. Not it is unlawful for a person who has implemented a security measure to test its effectiveness. In this respect, the scope of permissible security testing under the Act should be the same as permissible testing of a simple door lock; a prospective buyer may test the lock at the store with the store's consent, or may purchase the lock and test it at home in any manner that he or she sees fit—for example, by installing the lock on the front door and seeing if it can be picked. What that person may not do, however, it test the lock once it has been installed on someone's else's door, without the consent of the person whose property is protected by the lock.

In order to resolve these concerns, Section 1201(j) creates a exception of ''security testing.'' Section 1201(j)(1) defines ''security testing'' as obtaining access to a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting a security flaw or vulnerability, provided that the person engaging in such testing is doing so with the consent of the owner or operator of the computer, computer system, or computer network. Section 102(j)(2) provides that, notwithstanding the provisions of Section 1201(a), a person may engage in such testing, provided that the act does not constitute infringement or violate any other applicable law. Section 1201(j)(3) provides a non-exclusive list of factors that a court shall consider in determining whether a person benefits from this exception.

Section 1201(j)(4) permits an individual, notwithstanding the prohibition contained in Section 1201(a)(2), to develop, produce, distribute, or employ technological means for the sole purpose of performing acts of good faith security testing under Section 1201(j)(2), provided that technological means do not otherwise violate section 1201(a)(2). It it Congress' intent for this subsection to have application only with respect to good faith security testing. The intent is to ensure that parties engaged in good faith security testing have the tools available to them to complete such acts. The conferees understand that such tools may be coupled with additional tools that serve purposes wholly unrelated to the purposes of this Act. Eligibility for this exemption should not be precluded because these tools are coupled in such a way. The exemption would not be available, however, when such tools are coupled with a product or technology that violates section 1201(a)(2),

Section 1201(k)—Certain Analog Devices and Certain Technological Measures.—The conferees included a provision in the final legislation to require that analog video cassette recorders must conform to the two forms of copy control technology that are in wide use in the market today—the automatic gain control copy control technology and the colorstripe copy control technology. Neither are currently required elements of any format of video recorder, and the ability of each technology to work as intended depends on the consistency of design of video recorders or on incorporation of specific response elements in video recorders. Moreover, they do not employ encryption or scrambling of the content being protected.

As a consequence, these analog copy control technologies may be rendered ineffective either by redesign of video recorders or by intervention of ''black box'' devices or software ''hacks''. The conferees believe, and specifically intend, that the general circumvention prohibition in Section 1201(b)(2) will prohibit the manufacture and sale of ''black box'' devices that defeat these technologies. Moreover, the conferees believe and intend that the term ''technology'' should be read to include the software ''hacks'' of this

type, and that such ''hacks'' are equally prohibited by the general circumvention provision. Devices have been marketed that claim to ''fix'' television picture disruptions allegedly caused by these technologies. However, as described in more detail below, there is no justification for the existence of any intervention device to ''fix'' such problems allegedly caused by these technologies, including ''fixes'' allegedly related to stabilization or clean up of the picture quality. Such devices should be seen for what they are—circumvention devices prohibited by this legislation.

The conferees emphasize that this particular provision is being included in this bill in order to deal with a very specific situation involving the protection of analog television programming and prerecorded movies and other audiovisual works in relation to recording capabilities of ordinary consumer analog video cassette recorders. The conferees also acknowledge that numerous other activities are underway in the private sector to develop, test, and apply copy control technologies, particularly in the digital environment. Subject to the other requirements of this section, circumvention of these technologies may be prohibited under this Act. Moreover, in some cases, these technologies are subject to licensing arrangements that provide legally enforceable obligations. The conferees applaud these undertakings and encourage their continuation, including the inter-industry meetings and working groups that are essential to their success. If, as a result of such activities, the participants request further Congressional action, the conferees expect that the Congress, and the committees involved in this Conference specifically, will consider whether additional statutory requirements are necessary and appropriate.

Before agreeing to include this requirement in the final legislation, the conferees assured themselves in relation to two critical issues—that these analog copy control technologies do not create ''playability'' problems on normal consumer electronics products and that the intellectual property necessary for the operation of these technologies will be available on reasonable and non-discriminatory terms.

In relation to the playability issue, the conferees have received authoritative assurances that playability issues have already been resolved in relation to the current specifications for these technologies and that an inter-industry forum will be established to resolve any playability issues that may arise in the future in relation to either revisions to the copy control specifications or development of new consumer technologies and products.

As further explanation on the playability issue, the conferees understand that the existing technologies were the subject of extensive testing that included all or virtually all of the major consumer electronics manufacturers and that this testing resulted in modification of the specifications to assure that the technologies do not produce noticeable adverse effects on the normal display of content that is protected utilizing these technologies. Currently, all manufacturers are effectively ''on notice'' of the existence of these technologies and their specifications and should be able to design their products to avoid any adverse effects.

In relation to the intellectual property licensing issues, the owner of the analog copy control intellectual property—Macrovision Corporation—has written a letter to the Chairman of the Conference Committee to provide the following assurances in relation to the licenses for intellectual property necessary to implement these analog copy control technologies: (1) that its intellectual property is generally available on reasonable and non-discriminatory terms, as that phrase is used in normal industry parlance; (2) that manufacturers of the analog video cassette recorders that are required by this legislation to conform to the technologies will be provided royalty-free licenses for the use of its relevant intellectual property in any device that plays back packaged, prerecorded content, or that reads and responds to or generates or carries forward the elements of these technologies associated with such content; (3) in the same circumstances as described in (2), other manufacturers of devices that generate, carry forward, or read and respond to these technologies will be provided licenses carrying only modest fees (in the range of $25,000—in current dollars—initial payment and lesser amounts as recurring annual fees); (4) that manufacturers of other products, including set-top-boxes and devices that perform similar functions (including integrated devices containing such functionality), will receive licenses on reasonable and non-discriminatory terms, including royalty terms and other considerations; and (5) that playability issues will not be the subject of license requirements but rather will be handled through an inter-industry forum that is being established for this purpose. The conferees emphasize the need for the technology's proprietor to adhere to these assurances in all future licensing.

With regard to the specific elements of this provision:

First, these technologies operate within the general NTSC television signal environment, and the conferees understand that this means that they work in relation to television signals that are of the 525/60 interlaced type, i.e., the standard definition television signal that has been used in the United States. The S-video and Hi-8 versions of covered devises are, of course, included with the coverage. Further, the new format analog video cassette recorders that are covered by paragraph (1)(A)(v) are those that receive the 525/60 interlaced type of input.

Second, it is the conferees understanding that not all analog video signals will utilize this technology, and, obviously, a device that receives a signal that does not contain these technologies need not read and respond to what might have been there if the signal had utilized the technology.

Third, a violation of paragraph (1) is a form of circumvention under Section 1201(b)(1). Accordingly, the enforcement of this provision is through the penalty provisions applicable to Section 1201 generally. A violation of paragraph (2) is also a violation of Section 1201 and hence subject to those penalty provisions. The inclusion of paragraph (5) with regard to enforcement of paragraph (2) is intended merely to allow the particular statutory damage provisions of Section 1203 to apply to violations of this subsection.

Fourth, the conferees understand that minor modifications may be necessary in the specifications for these technologies and intend that any such modifications (and related new ''revised specifications'') should not negate in any way the requirements imposed by this subsection. The modifications should, however, be sufficiently minor that manufacturers of analog video cassette recorders should be free to continue to design products to conform to these technologies on the basis of the specifications existing, or actually implemented by manufacturers, as of the date of enactment of this Act.

Fifth, the provisions of paragraph (2) are intended to operate to allow copyright owners to use these technologies to prevent the making of a viewable copy of a pay-per-view, near video on demand, or video on demand transmission or prerecorded tape or disc containing one or more motion pictures or other audiovisual works, at the same time as consumers are afforded their customary ability to make analog copies of programming offered through other channels or services. Copyright owners may utilize these technologies to prevent the making of a ''second generation'' copy where the original transmission was through a pay television service (such as HBO, Showtime, or the like). The basic and extended basic tiers of programming services, whether provided through cable or other wireline, satellite, or future over the air terrestrial systems, may not be encoded with these technologies at all. The inclusion of paragraph (2)(D) is not intended to be read to authorize the making of a copy by consumers or others in relation to pay-per-view, near video on demand or video-on-demand transmissions or prerecorded media.

Sixth, the exclusion of professional analog video cassette recorders is necessary in order to allow the motion picture, broadcasting, and other legitimate industries and individual businesses to obtain and use equipment that is essential to their normal, lawful business operations. As a further explanation of the types of equipment that are to be subject to this exception, the following factors should be used in evaluating whether a specific product is a ''professional'' product:

(1) whether, in the preceding year, only a small number of the devices that are of the same kind, nature, and description were sold to consumers other than professionals employing such devices in a lawful business or industrial use;

(2) whether the device has special features designed for use by professionals employing the device in a lawful business or industrial use;

(3) whether the advertising, promotional and descriptive literature or other materials used to market the device were directed at professionals employing such devices in a lawful business or industrial use;

(4) whether the distribution channels and retail outlets through which the device is distributed and sold are ones used primarily to make sales to professionals employing such devices in a lawful business or industrial use; and

(5) whether the uses to which the device is most commonly put are those associated with the work of professionals employing the device in a lawful business or industrial use.

Seventh, paragraph (1)(B) contains a number of points worthy of explanation. In general, the requirement in paragraph (1)(B) is that manufacturers not materially reduce the responsiveness of their existing products and is also intended to be carried forward in the introduction of new models. This is particularly important in relation to the four-line colorstripe copy control technology, where the basic requirement in the statute is that a model of a recorder not be modified to eliminate conformance with the four-line colorstripe technology and where the standard for ''conformance'' is simply that the lines be visible and distracting in the display of a copy of material that was protected with the technology when the copy is played back, in normal viewing mode, by the recorder that made the copy and displayed on a reference display device. Specific elements of that requirement include:

(1) ''Normal viewing mode'' is intended to mean the viewing of a program in its natural sequence at the regular speed for playback and is not intended to allow ''AGC-stripping viewing modes'' to be developed. It is intended to exclude still frame or slow motion viewing from this definition.

(2) The ''reference display device'' concept is used in the legislation to acknowledge that manufacturers of analog video cassette

recorders may use a specific display device to test their responsiveness to the colorstripe technology and then may use the level of such responsiveness as their baseline to achieve compliance. The reference display device for manufacturers that make televisions is intended to be a television set also made by that manufacturer. Where an analog video cassette recorder manufacturer does not make display devices, that manufacturer may choose a display device made by another manufacturer to serve as a reference. In general, a reference display device should be one that is generally representative of display devices in the U.S. market at the time of the testing.

(3) The conferees intend that the word ''model'' should be interpreted broadly and is not to be determined exclusively by alphabetic, numeric, name, or other label. Courts should look with suspicion at ''new models'' that reduce or eliminate conformance with this technology, as compared with that manufacturer's ''previous models.'' Further, a manufacturer should not replace a previous model that showed intense lines with a model that shows weak lines in the played back picture.

For any new entrant into the VHS format analog video cassette recorder manufacturing business, the legislation provides that such a manufacturer will build its initial devices so as to be in conformance with the four-line colorstripe copy control technology based on the playback on a reference display device and thereafter not modify the design so that its products no longer conform to this technology.

Finally, the proprietor of the colorstripe copy control technology has supplied the Committee with a description of how the technology should work so as to provide the desired copy protection benefits. That description is as follows: the colorstripe copy control technology works as intended if a recorder records a signal that, when played back by the playback function of that recorder in the normal viewing mode, exhibits on a reference display device a significant distortion of color on the lines which begin with a colorstripe colorburst, or a complete or intermittent loss of color throughout at least 50% of the visible image. While the conferees realize that there may be variations among recorders in relation to this technology, the conferees expect the affected manufacturers to work with the proprietor of the technology to ensure that the basic goal of content protection through this technology is achieved. The conferees understand that content protection through this technology is to the manufacturers' benefit, as well, since it encourages content providers to release more valuable content than they might otherwise release without such protection. The conferees further intend that manufacturers should seek to respond to the colorstripe technology at the highest feasible level and should not modify their recorder designs, or substitute weaker responding recorders for stronger responding recorders in order to avoid the requirements of this subsection.

Eighth, the type of colorstrip copy control technology to which the legislation requires conformance is the four-line ''half burst'' type version of this technology. The content provider may shift, in an adaptive fashion, from no colorstripe encoding to the two-line version to the four-line version, in order to balance the copy control features of the technology against the possible playback distortion that the four-line technology occasionally creates. This legislation requires conformance only to the four-line version, but prohibits any effort to eliminate or reduce materially the effectiveness of the two-line version in relation to any particular analog video cassette recorder that, in fact, provides a response to the two-line version. The legislation also applies the ''encoding rules'' in paragraph (2) to either the two-line or four-line versions of this technology.

SECTION 104. EVALUATION OF IMPACT OF COPYRIGHT LAW AND AMENDMENTS ON ELECTRONIC COMMERCE AND TECHNOLOGICAL DEVELOPMENT

The Senate recedes to House section 105 with modification.

SECTION 105. EFFECTIVE DATE

The Senate recedes to House section 106. This section sets forth the effective date of the amendments made by this title. The corresponding sections of the House bill and the Senate amendment are substantively identical.

TITLE II—ONLINE COPYRIGHT INFRINGEMENT LIABILITY LIMITATION

Title II preserves strong incentives for service providers and copyright owners to cooperate to detect and deal with copyright infringements that take place in the digital networked environment. At the same time, it provides greater certainty to service providers concerning their legal exposure for infringements that may occur in the course of their activities.

SECTION 201. SHORT TITLE

The Senate recedes to House section 201. This section sets forth the short title of the Act. The Senate accepts the House formulation.

SECTION 202. LIMITATIONS ON LIABILITY FOR COPYRIGHT INFRINGEMENT

The Senate recedes to House section 202 with modification. This section amends chapter 5 of the Copyright Act (17 U.S.C. 501, *et. seq.*) to create a new section 512, titled ''Limitations on liability relating to material online.'' New Section 512 contains limitations on service providers' liability for five general categories of activity set forth in subsections (a) through (d) and subsection (g). As provided in subsection (l), Section 512 is not intended to imply that a service provider is or is not liable as an infringer either for conduct that qualifies for a limitation of liability or for conduct that fails to so qualify. Rather, the limitations of liability apply if the provider is found to be liable under existing principles of law. This legislation is not intended to discourage the service provider from monitoring its service for infringing material. Courts should not conclude that the service provider loses eligibility for limitations on liability under section 512 solely because it engaged in a monitoring program.

The limitations in subsections (a) through (d) protect qualifying service providers from liability for all monetary relief for direct, vicarious and contributory infringement. Monetary relief is defined in subsection (k)(2) as encompassing damages, costs, attorneys' fees, and any other form of monetary payment. These subsections also limit injunctive relief against qualifying service providers to the extent specified in subsection (j). To qualify for these protections, service providers must meet the conditions set forth in subsection (i), and service providers' activities at issue must involve a function described in subsection (a), (b), (c), (d) or (g), respectively. The liability limitations apply to networks ''operated by or for the service provider,'' thereby protecting both service providers who offer a service and subcontractors who may operate parts of, or an entire, system or network for another service provider.

Subsection (b) provides for a limitation on liability with respect to certain acts of ''system caching''. Paragraphs (5) and (6) of this subsection refer to industry standard communications protocols and technologies that are only now in the initial stages of development and deployment. The conferees expect that the Internet industry standards setting organizations, such as the Internet Engineering Task Force and the World Wide Web Consortium, will act promptly and without delay to establish these protocols so that subsection (b) can operate as intended.

Subsection (e) is included by the conferees in order to clarify the provisions of the bill with respect to the liability of nonprofit institutions of higher learning that act as service providers. This provision serves as a substitute for section 512(c)(2) of the House bill and for the study proposed by section 204 of the Senate amendment.

In general, Title II provides that a university or other public or nonprofit institution of higher education which is also a ''service provider'' (as that term is defined in title II) is eligible for the limitations on liability provided in title II to the same extent as any other service provider.

However, the conferees recognize that the university environment is unique. Ordinarily, a service provider may fail to qualify for the liability limitations in Title II simply because the knowledge or actions of one of its employees may be imputed to it under basic principles of respondeat superior and agency law. The special relationship which exists between universities and their faculty members (and their graduate student employees) when they are engaged in teaching or research is different from the ordinary employer-employee relationship. Since independence—freedom of thought, word and action—is at the core of academic freedom, the actions of university faculty and graduate student teachers and researchers warrant special consideration in the context of this legislation. This special consideration is embodied in new subsection (e), which provides special rules for determining whether universities, in their capacity as a service provider, may or may not be liable for acts of copyright infringement by faculty members or graduate students in certain circumstances.

Subsection (e)(1) provides that the online infringing actions of faculty members or graduate student employees, which occur when they are ''performing a teaching or research function,'' will not be attributed to an institution of higher education in its capacity as their employer for purposes of section 512, if certain conditions are met. For the purposes of subsections (a) and (b) of section 512, such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) of section 512 the faculty member's or graduate student's knowledge or awareness of his or her infringing activities will not be attributed to the institution, when they are performing a teaching or research function and the conditions in paragraphs (A)–(C) are met.

When the faculty member or the graduate student employee is performing a function other than teaching or research, this subsection provides no protection against liability for the institution if infringement occurs. For example, a faculty member or graduate student is performing a function other than teaching or research when the faculty member or graduate student is exercising institutional administrative responsibilities, or is carrying out operational responsibilities that relate to the institution's function as a service provider. Further, for the exemption to apply on the basis of research activity, the research must be a genuine academic exercise—i.e. a legitimate scholarly or scientific investigation or inquiry—rather than an activity which is claimed to be research

but is undertaken as a pretext for engaging in infringing activity.

In addition to the ''teaching or research function'' test, the additional liability protections contained in subsection (e)(1) do not apply unless the conditions in paragraphs (A) through (C) are satisfied. First, paragraph (A) requires that the infringing activities must not involve providing online access to instructional materials that are ''required or recommended'' for a course taught by the infringing faculty member and/or the infringing graduate student within the last three years. The reference to ''providing online access'' to instructional materials includes the use of e-mail for that purpose. The phrase ''required or recommended'' is intended to refer to instructional materials that have been formally and specifically identified in a list of course materials that is provided to all students enrolled in the course for credit; it is not intended, however, to refer to the other materials which, from time to time, the faculty member or graduate student may incidentally and informally bring to the attention of students for their consideration during the course of instruction.

Second, under paragraph (B) the institution must not have received more than two notifications of claimed infringement with respect to the particular faculty member or particular graduate student within the last three years. If more than two such notifications have been received, the institution may be considered to be on notice of a pattern of infringing conduct by the faculty member or graduate student, and the limitation of subsection (e) does not apply with respect to the subsequent infringing actions of that faculty member or that graduate student. Where more than two notifications have previously been received with regard to a particular faculty member or graduate student, the institution will only become potentially liable for the infringing actions of that faculty member or that graduate student. Any notification of infringement that gives rise to a cause of action for misrepresentation under subsection (f) does not count for purposes of paragraph (B).

Third, paragraph (C) states that the institution must provide to the users of its system or network—whether they are administrative employees, faculty, or students—materials that accurately describe and promote compliance with copyright law. The legislation allows, but does not require, the institutions to use relevant informational materials published by the U.S. Copyright Office in satisfying the condition imposed by paragraph (C).

Subsection (e)(2) defines the terms and conditions under which an injunction may be issued against an institution of higher education that is a service provider in cases to which subsection (e)(1) applies. First, all the factors and considerations taken into account by a court under 17 U.S.C. §502 will apply in the case of any application for an injunction in cases covered by this subsection. In addition, the court is also required to consider the factors of particular significance in the digital environment listed in subsection (j)(2). Finally, the provisions contained in (j)(3), concerning notice to the service provider and the opportunity to appear, are also applicable in cases to which subsection (e)(1) applies.

The conferees also want to emphasize that nothing contained in subsection (e) should be interpreted to establish new liability for institutions of higher education, including under the doctrines of respondeat superior, or of contributory liability, where liability does not now exist. Further, subsection (e) does not alter any of the existing limitations on the rights of copyright owners that are already contained in the Copyright Act. So, for example, subsection (e) has no impact on the fair use (section 107) doctrine or the availability of fair use in a university setting; similarly, section 110 of the Copyright Act dealing with classroom performance and distance learning is not changed by subsection (e). In this regard, subsection (e) is fully consistent with the rest of section 512, which neither creates any new liabilities for service providers, nor affects any defense to infringement available to a service provider. Finally, subsection (e) has no applicability to any case asserting that a university is liable for copyright infringement in any capacity other than as a service provider.

SECTION 203. EFFECTIVE DATE

The Senate recedes to House section 203. This section sets forth the effective date of the amendments made by this title. The corresponding sections of the House bill and the Senate amendment are substantively identical.

TITLE III—COMPUTER MAINTENANCE OR REPAIR COPYRIGHT EXEMPTION

SECTIONS 301–302

The Senate recedes to the House sections 301–302. These sections effect a minor, yet important clarification in section 117 of the Copyright Act to ensure that the lawful owner or lessee of a computer machine may authorize an independent service provider—a person unaffiliated with either the owner or lessee of the machine—to activate the machine for the sole purpose of servicing its hardware components. When a computer is activated, certain software or parts thereof is automatically copied into the machine's random access memory, or ''RAM''. A clarification in the Copyright Act is necessary in light of judicial decisions holding that such copying is a ''reproduction'' under section 106 of the Copyright Act (17 U.S.C. 106),[1] thereby calling into question the right of an independent service provider who is not the licensee of the computer program resident on the client's machine to even activate that machine for the purpose of servicing the hardware components. This section does not in any way alter the law with respect to the scope of the term ''reproduction'' as it is used the Copyright Act. Rather, this section it is narrowly crafted to achieve the objectives just described—namely, ensuring that an independent service provider may turn on a client's computer machine in order to service its hardware components, provided that such service provider complies with the provisions of this section designed to protect the rights of copyright owners of computer software. The corresponding sections of the House bill and the Senate amendment are substantively identical.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. PROVISIONS RELATING TO THE COMMISSIONER OF PATENTS AND TRADEMARKS AND THE REGISTER OF COPYRIGHTS

The Senate recedes to the House sections 401–402 with modification. This section provides parity in compensation between the Register of Copyrights and the Commissioner of Patent and Trademarks and clarifies the duties and functions of the Register of Copyrights.

The new subsection to be added to 17 U.S.C. §701 sets forth in express statutory language the functions presently performed by the Register of Copyrights under her general administrative authority under subsection 701(a). Like the Library of Congress, its parent agency, the Copyright Office is a hybrid entity that historically has performed both legislative and executive or administrative functions. *Eltra Corp.* v. *Ringer,* 579 F.2d 294 (4th Cir. 1978). Existing subsection 701(a) addresses some of the latter functions. New subsection 701(b) is intended to codify the other traditional roles of the Copyright Office and to confirm the Register's existing areas of jurisdiction.

Paragraph (1) of new subsection 701(b) reflects the Copyright Office's longstanding role as advisor to Congress on matters within its competence. This includes copyright and all matters within the scope of title 17 of the U.S. Code. Such advice, which often takes the form of testimony of pending legislation, is separate from testimony or other recommendations by the Administration pursuant to the President's concurrent constitutional power to make recommendations to Congress.

Paragraph (2) reflects the Copyright Office's longstanding role in advising federal agencies on matters within its competence. For example, the Copyright Office advises the U.S. Trade Representative and the State Department on an ongoing basis on the adequacy of foreign copyright laws, and serves as a technical consultant to those agencies in bilateral, regional and multilateral consultations or negotiations with other countries on copyright-related issues.

Paragraph (3) reflects the Copyright Office's longstanding role as a key participant in international meetings of various kinds, including as part of U.S. delegations as authorized by the Executive Branch, serving as substantive experts on matters within the Copyright Office's competence. Recent examples of the Copyright Office acting in the capacity include its central role on the U.S. delegation that negotiated the two new WIPO treaties at the 1996 Diplomatic Conference in Geneva, and its ongoing contributions of technical assistance in the TRIPS Council of the World Trade Organization and the Register's role as a featured speaker at numerous WIPO conferences.

Paragraph (4) describes the studies and programs that the Copyright Office has long carried out as the agency responsible for administering the copyright law and other chapters of title 17. Among the most important of these studies historically was a series of comprehensive reports on various issues produced in the 1960's as the foundation of the last general revision of U.S. copyright law, enacted as the 1976 Copyright Act. Most recently the Copyright Office has completed reports on the cable and satellite compulsory licenses, legal protection for databases, and the economic and policy implications of term extension. Consistent with the Copyright Office's role as a legislative branch agency, these studies have often included specific policy recommendations to Congress. The reference to ''programs'' includes such projects as the conferences the Copyright Office cosponsored in 1996–97 on the subject of technology-based intellectual property management, and the International Copyright Institutes that the Copyright Office has conducted for foreign government officials at least annually over the past decade, often in cooperation with WIPO.

Paragraph (5) makes clear that the functions and duties set forth in this subsection are illustrative, not exhaustive. The Register of Copyrights would continue to be able to carry out other functions under her general authority under subsection 701(a), or as Congress may direct. The latter may include specific requests by Committees for studies and recommendations on subjects within the Copyright Office's area of competence. It may also include, when appropriate or required for constitutional reasons, directions to the Office in separate legislation.

SEC. 402. EPHEMERAL RECORDINGS

The Senate recedes to House section 411 with modification. This section amends section 112 of the Copyright Act (17 U.S.C. 112)

[1] *See MAI Sys. Corp.* v. *Peak Computer,* 991 F. 2d 511 (9th Cir. 1993), cert. denied, 114 S. Ct. 671 (1994).

to address two issues concerning the application of the ephemeral recording exemption in the digital age. The first of these issues is the relationship between the ephemeral recording exemption and the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA''). The DPRA granted sound recording copyright owners the exclusive right to perform their works publicly by means of digital audio transmission, subject to certain limitations, particularly those set forth in section 114(d). Among those limitations is an exemption for nonsubscription broadcast transmissions, which are defined as those made by terrestrial broadcast stations licensed as such by the FCC. 17 U.S.C. §§114(d)(1)(A)(iii) and (j)(2). The ephemeral recording exemption presently privileges certain activities of a transmitting organization when it is entitled to transmit a performance or display under a license or transfer of copyright ownership or under the limitations on exclusive rights in sound recordings specified by section 114(a). The House bill and the Senate amendment propose changing the existing language of the ephemeral recording exemption (redesignated as 112(a)(1)) to extend explicitly to broadcasters the same privilege they already enjoy with respect to analog broadcasts.

The second of these issues is the relationship between the ephemeral recording exemption and the anticircumvention provisions that the bill adds as section 1201 of the Copyright Act. Concerns were expressed that if use of copy protection technologies became widespread, a transmitting organization might be prevented from engaging in its traditional activities of assembling transmission programs and making ephemeral recordings permitted by section 112 for purposes of its own transmissions within its local service area and of archival preservation and security. To address this concern, the House bill and the Senate amendment propose adding to section 112 a new paragraph that permits transmitting organizations to engage in activities that otherwise would violate section 1201(a)(1) in certain limited circumstances when necessary for the exercise of the transmitting organization's privilege to make ephemeral recordings under redesignated section 112(a)(1). By way of example, if a radio station could not make a permitted ephemeral recording from a commercially available phonorecord without violating section 1201(a)(1), then the radio station could request from the copyright owner the necessary means of making a permitted ephemeral recording. If the copyright owner did not then either provide a phonorecord that could be reproduced or otherwise provide the necessary means of making a permitted ephemeral recording from the phonorecord already in the possession of the radio station, the radio station would not be liable for violating section 1201(a)(1) for taking the steps necessary for engaging in activities permitted under section 112(a)(1). The radio station would, of course, be liable for violating section 1201(a)(1) if it engaged in activities prohibited by that section in other than the limited circumstances permitted by section 112(a)(1).

House section 411 is modified in two respects. First, the House provision is modified by adding a new paragraph (3) to include specific reference to section 114(f) in section 112(a) of the Copyright Act. The addition to section 112(a) of a reference to section 114(f) is intended to make clear that subscription music services, webcasters, satellite digital audio radio services and others with statutory licenses for the performance of sound recordings under section 114(f) are entitled to the benefits of section 112(a) with repsect to the sound recordings they transmit.

Second, the House provision is modified in paragraph (4). This amendment to section 112(a) is intended to clarify the application of section 112(a) to FCC-licensed broadcasters with respect to digital nonsubscription broadcast transmissions. Notwithstanding this clarification, neither the amendment in paragraph (4) of section 411 nor the creation of a statutory license in section 112(e) is in any manner intended to narrow the scope of section 112(a) or the entitlement of any transmitting entity to the exemption provided thereunder with respect to copies made for other transmissions.

SECTION 403. LIMITATIONS ON EXCLUSIVE RIGHTS; DISTANCE EDUCATION

The Senate recedes to House section 412. The corresponding sections of the House bill and the Senate amendment are substantively identical.

SECTION 404. EXEMPTION FOR LIBRARIES AND ARCHIVES

The Senate recedes to House section 413. The corresponding sections of the House bill and the Senate amendment are substantively identical.

SECTION 405. SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS; EPHEMERAL RECORDINGS

The Senate recedes to section 415 of the House bill with modification.

The amendments to sections 112 and 114 of the Copyright Act that are contained in this section of the bill are intended to achieve two purposes: first, to further a stated objective of Congress when it passed the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA'') to ensure that recording artists and record companies will be protected as new technologies affect the ways in which their creative works are used; and second, to create fair and efficient licensing mechanisms that address the complex issues facing copyright owners and copyright users as a result of the rapid growth of digital audio services. This section contains amendments to sections 112 and 114 of Title 17 as follows:

Section 114(d)(1). Exempt Transmissions and Retransmissions. Section 114(d)(1)(A) is amended to delete two exemptions that were either the cause of confusion as to the application of the DPRA to certain nonsubscription services (especially webcaster) or which overlapped with other exemptions (such as the exemption in subsection (A)(iii) for nonsubscription broadcast transmissions). The deletion of these two exemptions is not intended to affect the exemption for nonsubscription broadcast transmissions.

Section 114(d)(2). Statutory Licensing of Certain Transmissions. The amendment to subsection (d)(2) extends the availability of a statutory license for subscription transmissions to cover certain eligible nonsubscription transmissions. ''Eligible nonsubscription transmissions'' are defined in subsection (j)(6). The amendment subdivides subsection (d)(2) into three subparagraphs ((A), (B), and (C)), each of which contains conditions of a statutory license for certain nonexempt subscription and eligible nonsubscription transmissions.

The conferees note that if a sound recording copyright owner authorizes a transmitting entity to take an action with respect to that copyright owner's sound recordings that is inconsistent with the requirements set forth in section 114(d)(2), the conferees do not intend that the transmitting entity be disqualified from obtaining a statutory license by virtue of such authorized actions.

The conferees intend that counts considering claims of infringement involving violation of the requirements set forth in section 114(d)(2) should judiciously apply the doctrine of de minimis non curat lex. A transmitting entity's statutory license should not be lost, and it becomes subject to infringement damages for transmissions that have been made as part of its service, merely because, through error, it has committed nonmaterial violations of these conditions that, once recognized, are not repeated. Similarly, if a service has multiple channels, the transmitting entity's statutory license should not be lost, and it become subject to infringement damages for transmissions that have been made on other channels, merely because of a violation in connection with one channel. Conversely, courts should not apply such doctrine in cases in which repeated or intentional violations occur.

Subparagraph (A) sets forth three conditions of a statutory license applicable to all nonexempt subscription and eligible nonsubscription transmissions. These three conditions are taken from previous subsection (d)(2).

Subparagraphs (B) and (C) are alternatives: a service is subject to the conditions in one or the other in addition to those in subparagraph (A). Subparagraph (B) contains conditions applicable only to nonexempt subscription transmissions made by a preexisting subscription service in the same transmission medium as was used by the service on July 31, 1998 or a preexisting satellite digital audio radio service. A preexisting subscription service is defined in subsection (j)(11); a preexisting satellite digital audio radio service is defined in (j)(10). The purpose of distinguishing preexisting subscription services making transmissions in the same medium as on July 31, 1998, was to prevent disruption of the existing operations by such services. There was only three such services that exist: DMX (operated by TCI Music), Music Choice (operated by Digital Cable Radio Associates), and the DiSH Network (operated by Muzak). As of July 31, 1998, DMX and Music Choice made transmissions via both cable and satellite media; the DiSH Network was available only via satellite. The purpose of distinguishing the preexisting satellite digital audio radio services is similar. The two preexisting satellite digital audio radio services, CD Radio and American Mobile Radio Corporation, have purchased licenses at auction from the FCC and have begun developing their satellite systems.

The two conditions contained in subparagraph (B) are taken directly from previous subsection (d)(2). Thus, preexisting satellite digital audio radio services and the historical operations of preexisting subscription services are subject to the same five conditions for eligibility for a statutory license, as set forth in subparagraphs (A) and (B), as have applied previously to these services.

Subparagraph (C) sets forth additional conditions for a statutory license applicable to all transmissions not subject to subparagraph (B), namely all eligible nonsubscription transmissions, subscription transmissions made by a new subscription service, and subscription transmissions made by a preexisting subscription service other than those made in the same transmission medium. Subparagraph (C) contains nine conditions.

Subparagraph (C)(i) requires that transmissions subject to a statutory license cannot exceed the sound recording performance complement defined in subsection (j)(13), which is unchanged by this amendment. Subparagraph (C)(i) eliminates this requirement for retransmissions of over-the-air broadcast transmissions by a transmitting entity that does not have the right or ability to control the programming of the broadcast station making the initial broadcast transmission, subject to two limitations.

First, the retransmissions are not eligible for statutory licensing if the retransmitted

broadcast transmissions are in digital format and regularly exceed the sound recording performance complement. Second, the retransmissions are not eligible for statutory licensing if the retransmitted broadcast transmissions are in analog format and a substantial portion of the transmissions, measured on a weekly basis, violate the sound recording performance complement. In both cases, however, the retransmitter is disqualified from making its transmissions under a statutory license only if the sound recording copyright owner or its representative notifies the retransmitter in writing that the broadcast transmissions exceed the sound recording performance complement. Once notification is received, the transmitting entity making the retransmissions must cease retransmitting those broadcast transmissions that exceed the sound recording performance complement.

Subparagraph (C)(ii) imposes limitations on the types of prior announcements, in text, video or audio, that may be made by a service under the statutory license. Services may not publish advance program schedules or make prior announcements of the titles of specific sound recordings or the featured artists to be performed on the service. Moreover, services may not induce or facilitate the advance publication of schedules or the making of prior announcements, such as by providing a third party the list of songs or artists to be performed by the transmitting entity for publication or announcement by the third party. The conferees do not intend that the term ''prior announcement'' preclude a transmitting entity from identifying specific sound recordings immediately before they are performed.

However, services may generally use the names of several featured recording artists to illustrate the type of music being performed on a particular channel. Subparagraph (C)(iii) addresses limitations for archived programs and continuous programs, which are defined in subsections (j)(2) and (j)(4), respectively. Subparts (I) and (II) address archived programs. Archived programs often are available to listeners indefinitely or for a substantial period of time, thus permitting listeners to hear the same songs on demand any time the visitor wishes. Transmissions that are part of archived programs that are less than five hours long are ineligible for a statutory license. Transmissions that are part of archived programs more than five hours long are eligible only if the archived program is available on the webcaster's site or a related site for two weeks or less. The two-week limitation is to be applied in a reasonable manner to achieve the objectives of this subparagraph, so that, for example, archived programs that have been made available for two weeks are not removed from a site for a short period of time and then made available again. Furthermore, altering an archived program only in insignificant respects, such as by replacing or reordering only a small number of the songs comprising the program, does not render the program eligible for statutory licensing.

Subparagraph (C)(iii) also limits eligibility for a statutory license to transmissions that are not part of a continuous program of less than three hours duration (subparagraph (C)(iii)(III)). A listener to a continous program hears that portion of the program that is being transmitted to all listeners at the particular time that the listener accesses the program, much like a person who tunes in to an over-the-air broadcast radio station.

Finally, subparagraph (C)(iii)(IV) limits eligibility for a statutory license to transmissions that are not part of an identifiable program in which performances of sound recordings are rendered in a predetermined order that is transmitted at (a) more than three times in any two week period, which times have been publicly announced in advance, if the program is of less than one hour duration, or (b) more than four times in any two week period, which times have been publicly announced in advance, if the program is one hour or more. It is the conferee's intention that the two-week limitation in subclause (IV) be applied in a reasonable manner consistent with its purpose so that, for example, a transmitting entity does not regularly make all of the permitted repeat performances within several days.

Subparagraph (C)(iv) states that the transmitting entity may not avail itself of a statutory license if it knowingly performs a sound recording, as part of a service that offers transmissions of visual images contemporaneous with transmissions of sound recordings, in a manner that is likely to cause a listener to believe that there is an affiliation or association between the sound recording copyright owner or featured artist and a particular product or service advertised by the transmitting entity. This would cover, for example, transmitting an advertisement for a particular product or service every time a particular sound recording or artist is transmitted; it would not cover more general practices such as targeting advertisements of particular products or services to specific channels of the service according to user demographics. If, for example, advertisements are transmitted randomly while sound recordings are performed, this subparagraph would be satisfied.

Subparagraph (C)(v) provides that, in order to qualify for a statutory license, a transmitting entity must cooperate with sound recording copyright owners to prevent a transmission recipient from scanning the transmitting entity's transmissions to select particular sound recordings. In the future, a device or software may be developed that would enable its user to scan one or more digital transmissions to select particular sound recordings or artists requested by its user. Such devices or software would be the equivalent of an on demand service that would not be eligible for the statutory license. Technology may be developed to defeat such scanning, and transmitting entities taking a statutory license are required to cooperate with sound recording copyright owners to prevent such scanning, provided that such cooperation does not impose substantial costs or burdens on the transmitting entity. This requirement does not apply to a satellite digital audio service, including a preexisting satellite digital audio radio service, that is in operation, or that is licensed by the FCC, on or before July 31, 1998.

Subparagraph (C)(vi) requires that if the technology used by the transmitting entity enables the transmitting entity to limit the making by the transmission recipient of phonorecords in a digital format directly of the transmission, the transmitting entity sets such technology to limit such making of phonorecords to the extent permitted by such technology. The conferees note that some software used to ''stream'' transmissions of sound recordings enables the transmitting entity to disable such direct digital copying of the transmitted data by transmission recipients. In such circumstances the transmitting entity must disable that direct copying function. Likewise, a transmitting entity may not take affirmative steps to cause or induce the making of any copies by a transmission recipient. For example, a transmitting entity may not encourage a transmission recipient to make either digital or analog copies of the transmission such as by suggesting that recipients should record copyrighted programming transmitted by the entity.

Subparagraph (C)(vii) requires that each sound recording transmitted by the transmitting entity must have been distributed to the public under authority of the copyright owner or provided to the transmitting entity with authorization that the transmitting entity may perform such sound recording. The conferees recognize that a disturbing trend on the Internet is the unauthorized performance of sound recordings not yet released for broadcast or sale to the public. The transmission of such pre-released sound recordings is not covered by the statutory license unless the sound recording copyright owner has given explicit authorization to the transmitting entity. This subparagraph also requires that the transmission be made from a phonorecord lawfully made under the authority of the copyright owner. A phonorecord provided by the copyright owner or an authorized phonorecord purchased through commercial distribution channels would qualify. However, the transmission of bootleg sound recordings (e.g., the recording of a live musical performance without the authority of the performer, as prohibited by Chapter 11) is ineligible for a statutory license.

Subparagraph (C)(viii) conditions a statutory license on whether a transmitting entity has accommodated and does not interfere with technical measures widely used by sound recording copyright owners to identify or protect their copyrighted works. Thus, the transmitting entity must ensure that widely used forms of identifying information, embedded codes, encryption or the like are not removed during the transmission process, provided that accommodating such measures is technologically feasible, does not impose substantial costs or burdens on the transmitting entity, and does not result in perceptible degradation of the digital audio or video signals being transmitted. This requirement shall not apply to a satellite digital audio service, including a preexisting satellite digital audio radio service, that is in operation, or that is licensed under the authority of the Federal communications Commission, on or before July 31, 1998, to the extent that such service has designed, developed or made commitments to procure equipment or technology that is not compatible with such technical measures before such technical measures are widely adopted by sound recording copyright owners.

Subparagraph (C)(ix) requires transmitting entities eligible for the statutory license to identify in textual data the title of the sound recording, the title of the album on which the sound recording appears (if any), and the name of the featured recording artist. These titles and names must be made during, but not before, the performance of the sound recording. A transmitting entity must ensure that the identifying information can easily be seen by the transmission recipient in visual form. For example, the information might be displayed by the software player used on a listener's computer to decode and play the sound recordings that are transmitted. Many webcasters already provide such information, but in order to give those who do not an adequate opportunity to do so this obligation does not take effect until one year after the effective date of the amendment. This requirement does not apply to the retransmission of broadcast transmissions by a transmitting entity that does not have the right or ability to control the programming of the broadcast station making the broadcast transmission, or where devices or technology intended for receiving the service that have the capability to display the identifying information are not common in the marketplace.

Section 114(f). Licenses for Certain Nonexempt Transmissions. Section 114(f) is amended to

set forth procedures for determining reasonable rates and terms for those transmissions that qualify for statutory licensing under section 114(d)(2). Section 114(f) is divided into two parts: one applying to transmissions by preexisting subscription services and preexisting satellite digital audio radio services (subsection (f)(1)), and the other applying to transmissions by new subscription services (including subscription transmissions made by a preexisting subscription service other than those that qualify under subsection (f)(1)) as well as eligible nonsubscription transmissions (subsection (f)(2)).

Subsection (f)(1) provides for procedures applicable to subscription transmission by preexisting subscription services and preexisting satellite digital audio radio services. The conferees note that this subsection applies only to the three services considered preexisting subscription services, DMX, Music Choice and the DiSH Network, and the two services considered preexisting satellite digital audio radio services, CD Radio and American Mobile Radio Corporation. The procedures in this subsection remain the same as those applicable before the amendment, except that the rate currently in effect under prior section 114(f) is extended from December 31, 2000 until December 31, 2001. That rate currently applies to the three preexisting subscription services, and the Conferees take no position on its applicability to the two preexisting satellite digital audio radio services. Likewise, the initiation of the next voluntary negotiation period shall take place in the first week of January 2001 instead of January 2000 (subsection (f)(1)(C)(i)). These extensions are made purely to facilitate the scheduling of proceedings.

Subsection (f)(1)(B), which sets forth procedures for arbitration in the absence of negotiated license agreement, continues to provide that a copyright arbitration royalty panel should consider the objectives set forth in section 801(b)(1) as well as rates and terms for comparable types of subscription services.

Subsection (f)(2) addresses procedures applicable to eligible nonsubscription transmissions and subscription transmissions by new subscription services. The first such voluntary negotiation proceeding is to commence within 30 days after the enactment of this amendment upon publication by the Librarian of Congress of a notice in the Federal Register. The terms and rates established will cover qualified transmissions made between the effective date of this amendment and December 31, 2000, or such other date as the parties agree.

Subsection (f)(2) directs that rates and terms must distinguish between the different types of eligible nonsubscription transmission services and new subscription services then in operation. The conferees recognize that the nature of qualified transmissions may differ significantly based on a variety of factors. The conferees intend that criteria including, but not limited to, the quantity and nature of the use of sound recordings, and the degree to which use of the services substitutes for or promotes the purchase of phonorecords by consumers may account for differences in rates and terms between different types of transmissions.

Subsection (f)(2) also directs that a minimum fee should be established for each type of service. A minimum fee should ensure that copyright owners are fairly compensated in the event that other methodologies for setting rates might deny copyright owners an adequate royalty. For example, a copyright arbitration royalty panel should set a minimum fee that guarantees that a reasonable royalty rate is not diminished by different types of marketing practices or contractual relationships. For example, if the base royalty for a service were a percentage of revenues, the minimum fee might be a flat rate per year (or a flat rate per subscriber per year for a new subscription service).

Also, although subsection (f)(1) remains silent on the setting of a minimum fee for preexisting subscription services and preexisting satellite digital audio radio services, the Conferees do not intend that silence to mean that a minimum fee may or may not be established in appropriate circumstances when setting rates under subsection (f)(1) for preexisting subscription services and preexisting satellite digital audio radio services. Likewise, the absence of criteria that should be taken into account for distinguishing rates and terms for different services in subsection (f)(1) does not mean that evidence relating to such criteria may not be considered when adjusting rates and terms for preexisting subscription services and preexisting satellite digital audio radio services in the future.

Subsection (f)(2)(B) sets forth procedures in the absence of a negotiated license agreement for rates and terms for qualifying transmissions under this subsection. Consistent with existing law, a copyright arbitration proceeding should be empaneled to determine reasonable rates and terms. The test applicable to establishing rates and terms is what a willing buyer and willing seller would have arrived at in marketplace negotiations. In making that determination, the copyright arbitration royalty panel shall consider economic, competitive and programming information presented by the parties including, but not limited to, the factors set forth in clauses (i) and (ii).

Subsection (f)(2)(C) specifies that rates and terms for new subscription and eligible nonsubscription transmissions should be adjusted every two years, unless the parties agree as to another schedule. These two-year intervals are based upon the conferees' recognition that the types of transmission services in existence and the media in which they are delivered can change significantly in a short period of time.

Subsection (j)(2)—''archived program.'' A program is considered an ''archived program'' if it is prerecorded or preprogrammed, available repeatedly on demand to the public and is performed in virtually the same order from the beginning.

The exception to the definition of ''archived program'' for a recorded event or broadcast transmission is intended to allow webcasters to make available on demand transmissions of recorded events or broadcast shows that do not include performances of entire sound recordings or feature performances of sound recordings (such as a commercially released sound recording used as a theme song), but that instead use sound recordings only in an incidental manner (such as in the case of brief musical transitions in and out of commercials and music played in the background at sporting events). Some broadcast shows may be part of series that do not regularly feature performances of sound recordings but that occasionally prominently include a sound recording (such as a performance of a sound recording in connection with an appearance on the show by the recording artist). The recorded broadcast transmission of the show should not be considered an ''archived program'' merely because of such a prominent performance in a show that is part of a series that does not regularly feature performances of sound recordings. The inclusion of this exception to the definition of ''archived program'' is not intended to impose any new license requirement where the broadcast programmer or syndicator grants the webcaster the right to transmit a sound recording, such as may be the case where the sound recording has been specially created for use in a broadcast show.

Subsection 114(j)(4)—''continuous program.'' A ''continuous program'' is one that is continuously performed in the same predetermined order. Such a program generally takes the form of a loop whereby the same set of sound recordings is performed repeatedly; rather than stopping at the end of the set, the program automatically restarts generally without interruption. In contrast to an archived program (which always is accessed from the beginning of the program), a transmission recipient typically accesses a continuous program in the middle of the program. Minor alterations in the program should not render a program outside the definition of ''continuous program.''

Subsection 114(j)(6)—''eligible nonsubscription transmission''. An ''eligible nonsubscription transmission'' is one that meets the following criteria. First, the transmission must be noninteractive and nonsubscription in nature. Second, the transmission must be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings. Third, the purpose of the transmission service must be to provide audio or entertainment programming, not to sell, advertise or promote particular goods or services. Thus, for example, an ordinary commercial Web site that was primarily oriented to the promotion of a particular company or to goods or services that are unrelated to the sound recordings or entertainment programming, but that provides background music would not qualify as a service that makes eligible nonsubscription transmissions. The site's background music transmissions would need to be licensed through voluntary negotiations with the copyright owners. However, the sale or promotion of sound recordings, live concerts or other musical events does not disqualify a service making a nonsubscription transmission. Furthermore, the mere fact that a transmission service is advertiser-based or may promote itself or an affiliated entertainment service does not disqualify it from being considered an eligible nonsubscription transmission service.

Subsection 114(j)(7)—''interactive service.'' The definition of ''interactive service'' is amended in several respects. First, personalized tranmissions—those that are specially created for a particular individual—are to be considered interactive. The recipient of the transmission need not select the particular recordings in the program for it to be considered personalized, for example, the recipient might identify certain artists that become the basis of the personal program. The conferees intend that the phrase ''program specially created for the recipient'' be interpreted reasonably in light of the remainder of the definition of ''interactive service.'' For example, a service would be interactive if it allowed a small number of individuals to request that sound recordings be performed in a program specially created for that group and not available to any individuals outside of that group. In contrast, a service would not be interactive if it merely transmitted to a large number of recipients of the service's transmissions a program consisting of sound recordings requested by a small number of those listeners.

Second, a transmission of a particular sound recording on request is considered interactive ''whether or not [the sound recording is] part of a program.'' This language clarifies that if a transmission recipient is permitted to select particular sound recordings in a prerecorded or predetermined program, the transmission is considered interactive. For example, if a transmission recipient has the ability to move forward and

backward between songs in a program, the transmission is interactive. It is not necessary that the transmission recipient be able to select the actual songs that comprise the program. Additionally, a program consisting only of one sound recording would be considered interactive.

Third, the definition of ''interactive service'' is amended to clarify that certain channels or programs are not considered interactive provided that they do not substantially consist of requested sound recordings that are performed within one hour of the request or at a designated time. Thus, a service that engaged in the typical broadcast programming practice of including selections requested by listeners would not be considered interactive, so long as the programming did not substantially consist of requests regularly performed within an hour of the request, or at a time that the transmitting entity informs the recipient it will be performed.

The last sentence of the definition is intended to make clear that if a transmitting entity offers both interactive and noninteractive services then the noninteractive components are not to be treated as part of an interactive service, and thus are eligible for statutory licensing (assuming the other requirements of the statutory license are met). For example, if a Web site offered certain programming that was transmitted to all listeners who chose to receive it at the same time and also offered certain sound recordings that were transmitted to particular listeners on request, the fact that the latter are interactive transmissions would not preclude statutory licensing of the former.

Subsection 114(j)(8)—''new subscription service.'' A ''new subscription service'' is any service that is not a preexisting subscription service as defined in subsection (j)(11) or a preexisting satellite digital audio radio service as defined in subsection (j)(10).

Subsection 114(j)(10)—''preexisting satellite digital audio radio service.'' A ''preexisting satellite digital audio service'' is a subscription digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998. Subscription services offered by these licensed entities do not qualify as ''preexisting subscription services'' under section 114(j)(11) because they had not commenced making transmissions to the public for a fee on or before July 31, 1998. Only two entities received these licenses: CD Radio and American Mobile Radio Corporation.

A ''preexisting satellite digital audio radio service'' and ''preexisting subscription service'' may both include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service. Such sample channels are to be treated as part of the subscription service and should be considered in determining the royalty rate for such subscription service. The conferees do not intend that the ability to offer such sample channels be used as a means to offer a nonsubscription service under the provisions of section 114 applicable to subscription services. The term ''limited number'' should be evaluated in the context of the overall service. For example, a service consisting of 100 channels should have no more than a small percentage of its channels as sample channels.

Subsection 114(j)(11)—''preexisting subscription service.'' A ''preexisting subscription service'' is a noninteractive subscription service that was in existence and was making transmissions to the public on or before July 31, 1998, and which is making transmissions similar in character to such transmissions made on or before July 31, 1998. Only three services qualify as a preexisting subscription service—DMX, Music Choice and the DiSH Network. As of July 31, 1998, DMX and Music Choice made transmissions via both cable and satellite media; the DiSH Network was available only via satellite.

In grandfathering these services, the conferee's objective was to limit the grandfather to their existing services in the same transmission medium and to any new services in a new transmission medium where only transmissions similar to their existing service are provided. Thus, if a cable subscription music service making transmissions on July 31, 1998, were to offer the same music service through the Internet, then such Internet service would be considered part of a preexisting subscription service.

If, however, a subscription service making transmissions on July 31, 1998, were to offer a new service either in the same or new transmission medium by taking advantages of the capabilities of that medium, such new service would not qualify as a preexisting subscription service. For example, a service that offers video programming, such as advertising or other content, would not qualify as a preexisting service, provided that the video programming is not merely information about the service itself, the sound recordings being transmitted, the featured artists, composers or songwriters, or an advertisement to purchase the sound recording transmitted.

Section 114 in General. These amendments are fully subject to all the existing provisions of section 114. Specifically, these amendments and the statutory licenses they create are all fully subject to the safeguards for copyright owners of sound recordings and musical works contained in sections 114(c), 114(d)(4) and 114(i), as well as the other provisions of section 114. In addition, the conferees do not intend to affect any of the rights in section 115 that were clarified and confirmed in the DPRA.

Section 112(e)—Statutory License. Section 112(e) creates a statutory license for the making of an ''ephemeral recording'' of a sound recording by certain transmitting organizations. The new statutory license in section 112(e) is intended primarily for the benefit of entities that transmit performances of sound recordings to business establishments pursuant to the limitation on exclusive rights set forth in section 114(d)(1)(C)(iv). However, the new section 112(e) statutory license also is available to a transmitting entity with a statutory license under section 114(f) that chooses to avail itself of the section 112(e) statutory license to make more than the one phonorecord it is entitled to make under section 112(a). For example, the conferees understand that a webcaster might wish to reproduce multiple copies of a sound recording to use on different servers or to make transmissions at different transmission rates or using different transmission software. Under section 112(a), as amended by this bill, a webcaster with a section 114(f) statutory license is entitled to make only a single copy of the sound recording. Thus, the webcaster might choose to obtain a statutory license under section 112(e) to allow it to make such multiple copies. The conferees intend that the royalty rate payable under the statutory license may reflect the number of phonorecords of a sound recording made under a statutory license for use in connection with each type of service.

Ephemeral recordings of sound recordings made by certain transmitting organizations under section 112(e) may embody copyrighted musical compositions. The making of an ephemeral recording by such a transmitting organization of each copyrighted musical composition embodied in a sound recording it transmits is governed by existing section 112(a) (or section 112(a)(1) as revised by the Digital Millennium Copyright Act), and, pursuant to that section, authorization for the making of an ephemeral recording is conditioned in part on the transmitting organization being entitled to transmit to the public the performance of a musical composition under a license or transfer of the copyright.

The conditions listed in section 112(e)(1), most of which are also found in section 112(a), must be met before a transmitting organization is eligible for statutory licensing in accordance with section 112(e). First, paragraph (1)(A) provides that the transmitting organization may reproduce and retain only one phonorecord, solely for its own use (unless the terms and conditions of the statutory license allow for more). Thus, trafficking in ephemeral recordings, such as by preparing prerecorded transmission programs for use by third parties, is not permitted. This paragraph provides that the transmitting organization may reproduce and retain more than one ephemeral recording, in the manner permitted under the terms and conditions as negotiated or arbitrated under the statutory license. This provision is intended to facilitate efficient transmission technologies, such as the use of phonorecords encoded for optimal performance at different transmission rates or use of different software programs to receive the transmissions.

Second, paragraph (1)(B) requires that the phonorecord be used only for the transmitting organization's own transmissions originating in the United States, and such transmissions must be made under statutory license pursuant to section 114(f) or the exemption in section 114(d)(1)(C)(iv). Third, paragraph (1)(C) mandates that, unless preserved exclusively for archival purposes, the phonorecord be destroyed within six months from the time that the sound recording was first performed publicly by the transmitting organization. Fourth, paragraph (1)(D) limits the statutory license to reproductions of sound recordings that have been distributed to the public and that are made from a phonorecord lawfully made and acquired under the authority of the copyright owner.

Subsection (e)(3) clarifies the applicability of the antitrust laws to the use of common agents in negotiations and agreements relating to statutory licenses and other licenses. Under this subsection, the copyright owners of sound recordings and transmitting organizations entitled to obtain the statutory license in this section may negotiate collectively regarding rates and terms for the statutory license or other licenses. This subsection provides that such copyright owners and transmitting organizations may designate common agents to represent their interests to negotiate or administer such license agreements. This subsection closely follows the language of existing antitrust exemptions in copyright law, including the exemption found in the statutory licenses for transmitting sound recordings by digital audio transmission found in section 114(f).

Subsections (e)(4) and (5) address the procedures for determining rates and terms for the statutory license provided for in this section. These procedures are parallel to the procedures found in section 114(f)(2) for public performances of sound recordings by digital audio transmission by new subscription services and services making eligible Nonsubscription transmissions.

Subsection (e)(4) provides that the Librarian of Congress should publish notice of voluntary negotiation proceedings 30 days after enactment of this amendment. Such voluntary negotiation proceedings should address rates and terms for the making of ephemeral recordings under the conditions of

this section for the period beginning on the date of enactment and ending on December 31, 2000. This subsection requires that a minimum fee be established as part of the rates and terms.

In the event that interested parties do not arrive at negotiated rates and terms during the voluntary negotiation proceedings, subsection (e)(5) provides for the convening of a copyright arbitration royalty panel to determine reasonable rates and terms for the making of ephemeral recordings under this subsection. This paragraph requires the copyright arbitration royalty panel to establish rates that reflect the fees that a willing buyer and seller would have agreed to in marketplace negotiations. In so doing, the copyright arbitration royalty panel should base its decision on economic, competitive and programming information presented by the parties, including, but not limited to, such evidence as described in subparagraphs (A) and (B).

Subseciton (e)(7) states that rates and terms either negotiated or established pursuant to arbitration shall be effective for two-year periods, and the procedures set forth in subsections (e)(4) and (5) shall be repeated every two years unless otherwise agreed to by the parties.

The conferees intend that the amendments regarding the statutory licenses in sections 112 and 114 contained in section 415 of this bill apply only to those statutory licenses.

SECTION 406. ASSUMPTION OF CONTRACTUAL OBLIGATIONS RELATED TO TRANSFERS OF RIGHTS IN MOTION PICTURES

The Senate recedes to House section 416 with modification.

Paragraph (a)—Assumption of obligations. The conferees have added to paragraph (a) language that defines more specifically the meaning of the ''knows or has reason to know'' standard in subsection (a)(1). There are three ways to satisfy this standard. The first is actual knowledge that a motion picture is or will be covered by a collective bargaining agreement. Subparagraph (ii) provides for constructive knowledge, established through two alternative mechanisms: recordation with the Copyright Office or identification of the motion picture on an online web site maintained by the relevant Guild, where the site makes it possible for users to verify their access date in a commercially reasonable way. In order to ensure that the transferee has a reasonable opportunity to obtain the relevant information, these mechanisms for providing constructive notice apply with respect to transfers that take place after the motion picture is completed. They also apply to transfer that take place before the motion picture is completed, but only if the transfer is within eighteen months prior to the filing of an application for copyright registration for the motion picture or, if there is no application for registration, within eighteen months of its first publication in the United States.

The constructive notice established by recordation for purposes of application of this section is entirely separate and independent from the constructive notice established by recordation under section 205(c) of the Copyright Act. This section does not condition constructive notice on prior registration of the motion picture with the Copyright Office, and does not have any hearing on the issue of priority between conflicting transfers as described in section 205(d) of the Copyright Act.

Subparagraph (iii) provides a more general standard for circumstances where the transferee does not have actual knowledge or constructive knowledge through one of the two mechanisms set out in subparagraph (ii), but is aware of facts and circumstances about the transfer that make it apparent that the motion picture is subject to a collective bargaining agreement. Such facts and information might include, for example, budget, location of principal photography, the identity of the talent associated with a project, or the existence of a personal service contract that references terms or conditions of collective bargaining agreements.

Paragraph (b)—Scope of exclusion of transfer of public performance rights.—New paragraph (b) clarifies that the ''public performance'' exclusion from the operation of paragraph (a) is intended to include performances described in paragraph (b) that reach viewers through transmission or retransmission of programming or program services via satellite, MMDS, cable, and other means of carriage. This paragraph does not expand or restrict in any way what constitutes a ''public performance'' for any other purpose. The public performance exclusion would not be rendered inoperable simply because a transfer of public performance rights is accompanied by a transfer of limited, incidental other rights necessary to implement or facilitate the exercise of the performance rights.

Paragraph (c)—Exclusion for grants of security interests.—The purpose of this paragraph is to ensure that banks and others providing financing for motion pictures will not be made subject to the assumption of obligations required by this section merely because they obtain a security interest in the motion picture. Because the term ''transfer of copyright ownership'' is defined in section 101 of the Copyright Act to include a ''mortgage . . . or hypothecation'' of any exclusive copyright right, this could be the unintended result of the statutory language. Under this exclusion, a bank or other party would not be subject to the application of paragraph (a) based solely on the acts of taking a security interest in a motion picture, foreclosing on that interest or otherwise exercising its rights as a secured party, or transferring or authorizing transfer of copyright ownership rights secured by its security interest to a third party. Neither would any subsequent transferee downstream from the initial secured party be subject to paragraph (a). The exclusion would apply irreespective of the form or language used to grant or create the security interest.

It should be clear that the only agreements whose terms are enforced by this section are collective bargaining agreements and assumption agreements. In the course of financing a motion picture, a lender, other financier or completion guarantor may execute an inter-creditor or subordination agreement with a union including obligations with respect to the payment of residuals or the obtaining of assumption agreements. Such agreements are not within the scope of this section, and nothing in this section obligates lenders, other financiers or completion guarantors to enter into these agreements, enforces any terms thereof or diminishes any rights that the parties may have under these agreements.

Paragraph (d)—Deferral pending resolution of bona fide dispute. Paragraph (d) allows a remote transferee obligated under paragraph (a)(1) to stay enforcement of this section while there exists a bona fide dispute between the applicable union and a prior transferor regarding obligations under this section. It contemplates that union claims not subject to bona fide dispute will be payable when due under the applicable collective bargaining agreement or through application of this section. Such disputes may be manifested through grievance or arbitration claims, litigation, or other claims resolution procedures in effect between the applicable parties.

Paragraph (e)—Scope of obligations determined by private agreement. Paragraph (e) states explicitly the basic principle of operation of this section. It makes clear that the section simply provides an enforcement mechanism for obligations that have already been agreed to in a collective bargaining agreement. It is not intended to affect in any way the scope or interpretation of the provisions of, or the acts required by, any collective bargaining agreement. The rights and obligations themselves, as well as the remedies for breach, are those that have been agreed to among the parties. Accordingly, they can be changed at any time by agreement.

The collective bargaining agreements contemplate that producers will obtain assumption agreements from distributors in certain circumstances. The statute states that where a producer does not comply with the obligation and obtain an assumption agreement where required, the law will act as though the producer has in fact done so. Thus, it removes the possibility of noncompliance with the obligation to obtain an assumption agreement. It does not require assumption agreements to be obtained in circumstances where the collective bargaining agreement would not require it. If there is a dispute over the meaning and applicabiity of provisions in the collective bargaining agreement, for example over the question of which distributors must be required to execute an assumption agreement, the statue does not resolve the dispute. It only requires whatever the collective bargaining agreement would require, and relegates the parties to the dispute mechanisms set out in that agreement.

This section does not expand or diminish rights or obligations under other laws that might regulate contractual obligations beyond the purpose of enforcing assumption agreements required by applicable collective bargaining agreements. Nor does this section prevent a person or entity that is subject to obligations under an assumption agreement (whether through application of this section or otherwise) from transferring any such obligations to a subsequent transferee of the applicable copyright rights, and thereby being relieved of its own obligations under the assumption agreement, to the extent permitted by, and under the conditions established in, the applicable assumption agreements.

TITLE V—PROTECTION OF CERTAIN ORIGINAL DESIGNS

Sections 501–505. The Senate recedes to House sections 601–602 with modification.

From the Committee on Commerce for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

TOM BLILEY,
BILLY TAUZIN,
JOHN D. DINGELL,

From the Committee on Judiciary for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

HENRY J. HYDE,
HOWARD COBLE,
BOB GOODLATTE,
JOHN CONYERS, Jr.,
HOWARD L. BERMAN,

Managers on the Part of the House.

ORRIN G. HATCH,
STROM THURMOND,
PATRICK J. LEAHY,

Managers on the Part of the Senate.

□ 0140

ADJOURNMENT

Mr. LEACH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 1 o'clock and 40 minutes a.m.), the House adjourned until 9 a.m. today.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. YATES (at the request of Mr. GEPHARDT) for after 6 p.m. on Thursday, October 8, on account of wife's illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LAFALCE) to revise and extend their remarks and include extraneous material:)

Mr. BLUMENAUER, for 5 minutes, today.

Mr. HINCHEY, for 5 minutes, today.

Mr. SKAGGS, for 5 minutes, today.

Mr. CONYERS, for 5 minutes, today.

Mr. FILNER, for 5 minutes, today.

Ms. JACKSON LEE of Texas, for 5 minutes, today.

Mr. FALEOMAVAEGA, for 5 minutes, today.

Ms. CARSON, for 5 minutes today.

(The following Members (at the request of Mr. LEACH) to revise and extend their remarks and include extraneous material:)

Mr. PAUL, for 5 minutes, today.

Mr. FOX of Pennsylvania.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. LAFALCE) and to include extraneous material:)

Mr. KIND.

Mr. MATSUI.

Mr. DINGELL.

Mrs. MEEK of Florida.

Mr. PAYNE.

Mr. LEVIN.

Mr. MILLER of California.

Mr. GUTIERREZ.

Mr. HAMILTON.

Mr. HINOJOSA.

Mr. STARK.

Mr. KUCINICH.

Mrs. CAPPS.

Ms. JACKSON-LEE of Texas.

Ms. EDDIE BERNICE JOHNSON of Texas.

Mr. DEUTSCH.

Ms. PELOSI.

Mr. LANTOS.

Mr. VISCLOSKY.

Mr. EVANS.

Mr. MARTINEZ.

Mr. SANDERS.

Ms. KAPTUR.

Mr. RANGEL.

Mr. HALL of Ohio.

Mr. TORRES.

Mr. BERMAN.

Mr. ROEMER.

Mr. BONIOR.

Mr. ABERCROMBIE.

Mr. CLEMENT.

Mr. UNDERWOOD.

Mr. BORSKI.

(The following Members (at the request of Mr. LEACH) and to include extraneous material:)

Mr. OXLEY.

Mr. CAMPBELL.

Mr. GILMAN.

Mr. BARR of Georgia.

Mr. MICA.

Mr. CRANE.

Mr. EHLERS.

Mr. MILLER of Florida.

Mr. LEWIS of California.

Mr. BEREUTER.

Mr. SHUSTER.

Mr. FRELINGHUYSEN.

Mr. SMITH of New Jersey.

Mr. SOLOMON.

Ms. ROS-LEHTINEN.

Mr. MANZULLO.

Mr. FORBES.

Mrs. KELLY.

Mr. CALLAHAN.

Mr. STUMP.

BILLS PRESENTED TO THE PRESIDENT

Mr. THOMAS, from the Committee on House Oversight, reported that that committee did on this day present to the President, for his approval, bills of the House of the following titles:

H.R. 449. To provide for the orderly disposal of certain Federal lands in Clark County, Nevada, and to provide for the acquisition of environmentally sensitive lands in the State of Nevada.

H.R. 930. To require Federal employees to use Federal travel charge cards for all payments of expenses of official Government travel, to amend title 31, United States Code, to establish requirements for prepayment audits of Federal agency transportation expenses, to authorize reimbursement of Federal agency employees for taxes incurred on travel or transportation reimbursements, and to authorize test programs for the payment of Federal employee travel expenses and relocation expenses.

H.R. 1481. To amend the Great Lakes Fish and Wildlife Restoration Act of 1990 to provide for implementation of recommendations of the United States Fish and Wildlife Service contained in the Great Lakes Fishery Resources Restoration Study.

H.R. 1836. To amend chapter 89 of title 5, United States Code, to improve administration of sanctions against unfit health care providers under the Federal Employees Health Benefits Program, and for other purposes.

H.R. 3381. To direct the Secretary of the Interior to exchange land and other assets with Big Sky Lumber Co, and other entities.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 744. An act to authorize the construction of the Fall River Water Users District Rural Water System and authorize financial assistance to the Fall River Water Users District, a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes; to the Committee on Resources.

S. 736. An act to convey certain real property within the Carlsbad Project in New Mexico to the Carlsbad Irrigation District; to the Committee on Resources.

S. 1175. An act to reauthorize the Delaware Water Gap National Recreation Area Citizen Advisory Commission for 10 additional years; to the Committee on Resources.

S. 1637. An act to expedite State review of criminal records of applicants for bail enforcement officer employment, and for other purposes; to the Committee on Judiciary.

S. 1641. An act to direct the Secretary of the Interior to study alternatives for establishing a national historic trail to commemorate and interpret the history of women's rights in the United States; to the Committee on Resources.

S. 2041. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Willow Lake Natural Treatment System Project for the reclamation and reuse of water, and for other purposes; to the Committee on Resources.

S. 2086. An act to revise the boundaries of the George Washington Birthplace National Monument; to the Committee on Resources.

S. 2117. An act to authorize the construction of the Perkins County Rural Water System and authorize financial assistance to the Perkins County Rural Water System, Inc., a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes; to the Committee on Resources.

S. 2140. An act to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Denver Water Reuse project; to the Committee on Resources.

S. 2142. An act to authorize the Secretary of the Interior to convey the facilities of the Pine River Project, to allow jurisdictional transfer of lands between the Department of Agriculture, Forest Service, and the Department of the Interior, Bureau of Reclamation, and the Bureau of Indian Affairs; and for other purposes; to the Committee on Resources.

S. 2235. An act to amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage the use of school resource officers; to the Committee on the Judiciary and Education and the Workforce.

S. 2239. An act to revise the boundary of Fort Matanzas National Monument, and for other purposes; to the Committee on Resources.

S. 2240. An act to establish the Adams National Historical Park in the Commonwealth of Massachusetts, and for other purposes; to the Committee on Resources.

S. 2241. An act to provide for the acquisition of lands formerly occupied by the Franklin D. Roosevelt family at Hyde Park, New York, and for other purposes; to the Committee on Resources.

S. 2246. An act to amend the Act which established the Frederick Law Olmsted National Historic Site, in the Commonwealth of Massachusetts, by modifying the boundary, and for other purposes; to the Committee on Resources.

S. 2247. An act to permit the payment of medical expenses incurred by the United States Park Police in the performance of

duty to be made directly by the National Park Service, and for other purposes; to the Committee on Government Reform and Oversight.

S. 2248. An act to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision, when required by State law, and for other purposes; to the Committee on Resources.

S. 2284. An act to establish the Minuteman Missile National Historic Site in the State of South Dakota, and for other purposes; to the Committee on Resources and National Security.

S. 2285. An act to establish a commission, in honor of the 150th Anniversary of the Seneca Falls Convention, to further protect sites of importance in the historic efforts to secure equal rights for women, to the Committee on Resources.

S. 2309. An act to authorize the Secretary of the Interior to enter into an agreement for the construction and operation of the Gateway Visitor Center at Independence National Historical Park; to the Committee on Resources.

S. 2468. An act to designate the Biscayne National Park Visitor Center as the Dante Fascell Visitor Center; to the Committee on Resources.

S. 2584. An act to provide aviator continuation pay for military members killed in Operation Desert Shield; to the Committee on National Security.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. COBLE: Committee of Conference. Conference report on H.R. 2281. A bill to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty (Rept. 105–796). Ordered to be printed.

Mr. HANSEN: Committee on Standards of Official Conduct. Report in the matter of Representative Jay Kim (Rept. 105–797). Referred to the House Calendar.

Mr. DREIER: Committee of Rules. House Resolution 584. Resolution further providing for consideration of the bill (H.R. 4274) making appropriations for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1999, and for other purposes (Rept. 105–798). Referred to the House Calendar.

Mr. LINDER: Committee on Rules. House Resolution 586. Resolution waiving points of order against the conference report to accompany the bill (H.R. 3150) to amend title 11 of the United States Code, and for other purposes (Rept. 105–799). Referred to the House Calendar.

Mr. GOODLING: Committee of Conference. Conference report on H.R. 1853. A bill to amend the Carl D. Perkins Vocational and Applied Technology Education Act (Rept. 105–800). Ordered to be printed.

Mr. BLILEY: Committee on Commerce. H.R. 3888. A bill to amend the Communications Act of 1934 to improve the protection of consumers against ''slamming'' by telecommunications carriers, and for other purposes; with an amendment (Rept. 105–801). Referred to the Committee of the Whole House on the State of the Union.

Mr. BLILEY: Committee on Commerce. H.R. 4353. A bill to amend the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977 to improve the competitiveness of American business and promote foreign commerce, and for other purposes (Rept. 105–802). Referred to the Committee of the Whole House on the State of the Union.

REPORTED BILL SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

[Omitted from the RECORD of October 6, 1998]

Mr. BLILEY: Committee on Commerce. H.R. 3610. A bill to authorize and facilitate a program to enhance training, research and development, energy conservation and efficiency, and consumer education in the oilheat industry for the benefit of oilheat consumers and the public, and for other purposes, with an amendment; referred to the Committee on Science for a period ending not later than October 7, 1998, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(n), rule X. (Rept. 105–787, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of Rule X and clause 4 of Rule XXII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. MATSUI (for himself and Mr. NEAL of Massachusetts):

H.R. 4732. A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of bonds issued to finance electric output facilities, and for other purposes; to the Committee on Ways and Means.

By Mr. MATSUI (for himself and Mr. BONIOR):

H.R. 4733. A bill to amend the Trade Act of 1974 to consolidate and enhance the trade adjustment assistance and NAFTA transitional adjustment assistance programs under that Act, and for other purposes; to the Committee on Ways and Means.

By Mr. WELLER:

H.R. 4734. A bill to amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 to reduce the local matching amount to ensure more local communities can qualify for a grant to hire additional police officers; to the Committee on the Judiciary.

By Mr. HANSEN:

H.R. 4735. A bill to make technical corrections to the Omnibus Parks and Public Lands Management Act of 1996; to the Committee on Resources.

By Mr. BENTSEN (for himself, Mr. CRANE, Mr. GANSKE, Mr. CARDIN, Mr. RANGEL, Mr. STARK, and Mr. JEFFERSON):

H.R. 4736. A bill to amend title XVIII of the Social Security Act to ensure the proper payment of approved nursing and paramedical education programs under the Medicare Program; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. KELLY (for herself, Mr. FROST, Mr. GANSKE, Mrs. MCCARTHY of New York, Mr. GILMAN, Mr. CONDIT, Mr. LOBIONDO, and Mrs. MALONEY of New York):

H.R. 4737. A bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a minor child's congenital or developmental deformity or disorder due to trauma, infection, tumor, or disease; to the Committee on Commerce, and in addition to the Committees on Education and the Workforce, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ARCHER:

H.R. 4738. A bill to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, provide tax relief for farmers and small businesses, and for other purposes; to the Committee on Ways and Means.

By Mr. CARDIN (for himself, Mr. STARK, and Mr. JEFFERSON):

H.R. 4739. A bill to amend the Internal Revenue Code of 1986 and title XVIII of the Social Security Act to provide for comprehensive financing for graduate medical education; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CRANE:

H.R. 4740. A bill to amend the Internal Revenue Code of 1986 to permit early distributions from employee stock ownership plans for higher education expenses and first-time homebuyer purchases; to the Committee on Ways and Means.

By Mr. CRANE:

H.R. 4741. A bill to amend the Internal Revenue Code of 1986 to permit 401(k) contributions which would otherwise be limited by employer contributions to employee stock ownership plans; to the Committee on Ways and Means.

By Mr. DEFAZIO (for himself, Mr. SANDERS, and Ms. KAPTUR):

H.R. 4742. A bill to improve consumers' access to airline industry information, to promote competition in the aviation industry, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. FRANK of Massachusetts (for himself and Mr. NEAL of Massachusetts):

H.R. 4743. A bill to reauthorize the Public Safety and Community Policing Grants, and for other purposes; to the Committee on the Judiciary.

By Mr. GREENWOOD (for himself and Mr. GINGRICH):

H.R. 4744. A bill to amend the Public Health Service Act to provide for a system of sanctuaries for chimpanzees that have been designated as being no longer needed in research conducted or supported by the Public Health Service, and for other purposes; to the Committee on Commerce.

By Mr. GUTIERREZ:

H.R. 4745. A bill to establish a program to assist homeowners experiencing unavoidable, temporary difficulty making payments on mortgages insured under the National Housing Act; to the Committee on Banking and Financial Services.

By Mr. HANSEN:

H.R. 4746. A bill to provide for the settlement of the reserved water rights of the Shivwits and for the construction of certain water projects; to the Committee on Resources.

By Mr. MINGE (for himself and Mr. POMEROY):

H.R. 4747. A bill to respond to the needs of United States farmers experiencing exceptionally low commodity prices and extensive crop failures; to the Committee on Agriculture, and in addition to the Committee on

the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. QUINN:

H.R. 4748. A bill to amend title XVIII of the Social Security Act to require 6-months' advance notice to enrollees of Medicare managed care plans of termination of hospital participation under such plans; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SAXTON (by request):

H.R. 4749. A bill to approve a governing international fishery agreement between the United States and the Republic of Estonia; to the Committee on Resources.

By Mr. SAXTON (by request):

H.R. 4750. A bill to approve a governing international fishery agreement between the United States and the Republic of Lithuania; to the Committee on Resources.

By Mr. SNYDER (for himself, Mr. EVANS, Mr. KENNEDY of Massachusetts, Mr. ABERCROMBIE, Mr. PETERSON of Minnesota, Ms. CARSON, Mr. MASCARA, Mr. FILNER, Mr. RODRIGUEZ, Ms. SANCHEZ, Mr. JOHNSON of Wisconsin, Mrs. CAPPS, and Mr. MALONEY of Connecticut):

H.R. 4751. A bill to amend title 38, United States Code, to establish a presumption of service connection for the occurrence of hepatitis C in certain veterans; to the Committee on Veterans' Affairs.

By Mr. SOLOMON:

H.R. 4752. A bill to prohibit the construction of any monument, memorial, or other structure at the site of the Iwo Jima Memorial in Arlington, Virginia, until such time as an environmental impact statement is prepared for the construction; to the Committee on Resources.

By Mr. STARK:

H.R. 4753. A bill to amend title XVIII of the Social Security Act to provide for coverage of outpatient presciption drugs and home infusion drug therapy under the Medicare Program; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. THOMPSON (for himself, Mr. DICKEY, Mr. STUPAK, Mr. PICKERING, and Mr. CALLAHAN):

H.R. 4754. A bill to direct the Secretary of the Interior to conduct a 12-month study of the effects of double-crested cormorants on commercial and recreational fish species, and to require the Secretary to prepare a long-term, comprehensive population management strategy for double-crested cormorants; to the Committee on Resources.

By Mr. YOUNG of Alaska:

H.R. 4755. A bill to provide for the collection and interpretation of state of the art, non-intrusive 3-dimensional seismic data on certain federal lands in Alaska, and for other purposes; to the Committee on Resources.

By Mr. SMITH of New Jersey:

H.J. Res. 132. A joint resolution commending the veterans of service in the Army who fought in the Battle of the Bulge during World War II, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. GILMAN:

H. Con. Res. 336. Concurrent resolution condemning the Taliban regime and supporting a broad based government in Afghanistan; to the Committee on International Relations.

By Mr. CAMPBELL (for himself and Mr. PAYNE):

H. Con. Res. 337. Concurrent resolution expressing the sense of Congress that the total debt owed by 31 of the 40 Heavily Indebted Poor Countries (HIPC) to the United States should be forgiven; to the Committee on Banking and Financial Services.

By Mr. CAMPBELL:

H. Con. Res. 338. Concurrent resolution expressing the sense of the Congress that the people of Taiwan deserve to be represented in international institutions; to the Committee on International Relations.

By Mr. CAMPBELL (for himself and Mr. PAYNE):

H. Con. Res. 339. Concurrent resolution concerning economic, humanitarian, and other assistance to the northern part of Somalia; to the Committee on International Relations.

By Mr. DELAY (for himself, Mr. ROHRABACHER, Mr. HEFLEY, Mr. WELDON of Pennsylvania, Mr. FORBES, Mr. BACHUS, Mr. ADERHOLT, Mr. GIBBONS, Mr. TALENT, Mr. SESSIONS, Mr. WATTS of Oklahoma, Mr. MILLER of Florida, Mr. HAYWORTH, Mr. CRANE, Mr. SALMON, Mr. JENKINS, and Mr. PETERSON of Pennsylvania):

H. Con. Res. 340. Concurrent resolution expressing the sense of the Congress that Iraq is in unacceptable and material breach of its international obligations, that the United States should insist on the removal, destruction, or otherwise rendering harmless of Iraq's programs for biological, chemical, and nuclear weapons, and that the United States should fully support the right of inspectors with the United Nations Special Commission on Iraq to unfettered and unannounced inspections of suspected weapons facilities; to the Committee on International Relations.

By Mr. DELAY (for himself, Mr. ROHRABACHER, Mr. HEFLEY, Mr. WELDON of Pennsylvania, Mr. FORBES, Mr. BACHUS, Mr. ADERHOLT, Mr. GIBBONS, Mr. TALENT, Mr. SESSIONS, Mr. WATTS of Oklahoma, Mr. MILLER of Florida, Mr. HAYWORTH, and Mr. KNOLLENBERG):

H. Con. Res. 341. Concurrent resolution expressing the sense of the Congress that the commitment made by the United States, in conjunction with South Korea and Japan, to arrange financing and construction of 2 nuclear reactors for North Korea, and to provide fuel oil and other assistance to North Korea, should be suspended until North Korea no longer poses a nuclear threat to the peace and security of Northeast Asia or the United States; to the Committee on International Relations.

By Mr. DELAY (for himself, Mr. ROHRABACHER, Mr. HEFLEY, Mr. WELDON of Pennsylvania, Mr. FORBES, Mr. BACHUS, Mr. ADERHOLT, Mr. GIBBONS, Mr. TALENT, Mr. SESSIONS, Mr. WATTS of Oklahoma, Mr. MILLER of Florida, Mr. HAYWORTH, and Mr. CRANE):

H. Con. Res. 342. Concurrent resolution expressing the sense of the Congress that the United States should impose sanctions under the Arms Export Control Act and the Iran-Iraq Arms Non-Proliferation Act of 1992 with respect to the acquisition by Iran of advanced missile technology from other countries and should take steps to expedite the development of a missile defense system for the United States and for United States forces wherever deployed to deal with the Iranian missile threat, and should assist Israel in the acquisition of a missile defense system capable of defending all Israeli territory against Iranian missile attack; referred to the Committee on International Relations, and in addition to the Committe on National Security, for a period to be subsequently determiend by the Speaker, in each case for consideration of such provisions as fall within the jurisdiciton of the committee concerned.

By Mrs. FOWLER (for herself, Mr. SPENCE, Mr. CUNNINGHAM, Mr. ROHRABACHER, Mr. SAM JOHNSON of Texas, Mr. HEFLEY, Mr. GOODLING, Mr. SMITH of Texas, Mr. DELAY, Mr. LINDER, Mr. RILEY, Mr. MCKEON, Mr. LEWIS of California, Mr. SOLOMON, Mr. MANZULLO, Mr. COBURN, Mr. BOB SCHAFFER, Mr. MCINTOSH, Mr. GRAHAM, Mr. JENKINS, Mr. NEUMANN, Mr. SUNUNU, Mr. OXLEY, Mr. MCCOLLUM, Mr. HOBSON, Mr. BEREUTER, Mr. TAUZIN, Mr. BILIRAKIS, Mr. TRAFICANT, Mr. REDMOND, Mrs. CUBIN, Ms. DUNN of Washington, Mr. HERGER, Mr. MCINNIS, Mr. LARGENT, Mr. FOLEY, Mr. SAXTON, Mr. JONES, Mr. MCCRERY, Mr. BAKER, Mr. HAYWORTH, Mr. COLLINS, Mr. BOEHNER, Mr. NETHERCUTT, Mr. DEAL of Georgia, Mr. WICKER, and Mr. STEARNS):

H. Con. Res. 343. Concurrent resolution expressing the opposition of Congress to any deployment of United States ground forces in Kosovo, a province in southern Serbia, for peacemaking or peacekeeping purposes; to the Committee on International Relations.

By Mr. PALLONE:

H. Con. Res. 344. Concurrent resolution to express the sense of the Congress regarding North Atlantic swordfish and other highly migratory species of fish; to the Committee on Resources.

By Mr. SAXTON (for himself, Mr. SALMON, and Mr. DELAY):

H. Con. Res. 345. Concurrent resolution expressing the sense of the Congress that the President should reassert the traditional opposition of the United States to the unilateral declaration of a Palestinian State; to the Committee on International Relations.

By Mr. SMITH of Oregon (for himself, Mr. BARRETT of Nebraska, Mr. THUNE, and Mr. HILL):

H. Res. 583. A resolution expressing the sense of the House with respect to barriers between the United States and Canada with regard to certain agriculture products; referred to the Committee on Ways and Means, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiciton of the committee concerned.

By Mr. SESSIONS (for himself, Mr. BONILLA, Mr. COMBEST, Mr. THORNBERRY, Mr. SMITH of Texas, Ms. GRANGER, Mr. BRADY of Texas, Mr. BARTON of Texas, and Mr. PAUL):

H. Res. 585. A resolution expressing the sense of the House of Representatives that the Health Care Financing Administration should adhere to the statutory deadlines for implementation of the prospective payment system for home health services furnished under the Medicare Program; referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. ROUKEMA (for herself and Ms. KAPTUR):

H. Res. 587. A resolution expressing the sense of the House of Representatives with respect to the seriousness of the national problems associated with mental illness and with respect to congressional intent to establish a mental illness task force; to the Committee on Commerce.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 59: Mrs. WILSON.
H.R. 778: Mrs. CAPPS.
H.R. 779: Mrs. CAPPS.
H.R. 780: Mrs. CAPPS.
H.R. 857: Mr. BOSWELL.
H.R. 1711: Mr. ISTOOK.
H.R. 1816: Mr. FORBES.
H.R. 2001: Mr. SCARBOROUGH.
H.R. 2174: Mr. RANGEL.
H.R. 2397: Mr. BERRY, Mr. THORNBERRY, Mr. GOODLING, and Mr. HEFNER.
H.R. 2635: Mr. ADAM SMITH of Washington, Mr. HALL of Ohio, and Mr. BERMAN.
H.R. 2708: Mr. SMITH of Texas and Mr. NUSSLE.
H.R. 2882: Mr. SMITH of Texas.
H.R. 3333: Mr. OLVER.
H.R. 3435: Mr. ALLEN.
H.R. 3503: Mr. BLUMENAUER and Mr. PETRI.
H.R. 3511: Mr. OBERSTAR, Mr. WELDON of Florida, Mr. INGLIS of South Carolina, Mr. HULSHOF, Mrs. MINK of Hawaii, and Mr. STUPAK.
H.R. 3514: Mr. MASCARA.
H.R. 3622: Mr. ALLEN, Mr. DOYLE, Mr. ACKERMAN, and Ms. DEGETTE.
H.R. 3684: Mr. BACHUS.
H.R. 3794: Ms. MCCARTHY of Missouri, Mr. SANDLIN, Mr. MASCARA, and Mr. TIERNEY.
H.R. 3828: Mr. ALLEN, Ms. SLAUGHTER, Mr. THOMPSON, Mr. NORWOOD, Mrs. WILSON, Mr. STENHOLM, and Mr. CONDIT.
H.R. 4031: Mr. DAVIS of Illinois.
H.R. 4070: Mr. WEXLER.
H.R. 4175: Ms. KILPATRICK, Mr. WATT of North Carolina, and Ms. SLAUGHTER.
H.R. 4180: Mr. HINCHEY.
H.R. 4182: Mr. KANJORSKI and Mr. VISCLOSKY.
H.R. 4203: Mr. PAYNE, Mrs. TAUSCHER, and Mr. BALDACCI.
H.R. 4214: Mr. OLVER and Mrs. CAPPS.
H.R. 4291: Mr. DEGGETTE, Mr. FROST, and Mrs. THURMAN.
H.R. 4403: Ms. DELAURO.
H.R. 4415: Mr. DAN SCHAEFER of Colorado.
H.R. 4448: Mr. FORD, Mr. HASTINGS of Florida, Mr. MCNULTY, Ms. DELAURO, and Mr. GUTIERREZ.
H.R. 4449: Mr. MORAN of Kansas, Mr. MILLER of California, and Mr. SMITH of Oregon.
H.R. 4467: Mr. GEJDENSON.
H.R. 4476: Mr. DOYLE and Mr. RUSH.
H.R. 4513: Mr. BOEHLERT.
H.R. 4538: Mrs. CAPPS and Mr. HOLDEN.
H.R. 4567: Mr. BILIRAKIS, Mr. STUMP, Mrs. NORTHUP, and Mr. SUNUNU.
H.R. 4590: Ms. KAPTUR and Mr. FORBES.
H.R. 4621: Mr. BOSWELL.
H.R. 4634: Mr. PALLONE and Mr. MCGOVERN.
H.R. 4648: Mr. DELAHUNT and Mr. TIERNEY.
H.R. 4659: Mr. ENGEL.
H.R. 4674: Mr. OLVER.
H.R. 4684: Mr. ENGLISH of Pennsylvania.
H.R. 4692: Mr. SANDLIN.
H. Con. Res. 154: Mr. MCDERMOTT.
H. Con. Res. 290: Mr. METCALF, Mr. MASCARA, Mr. BOYD, Mr. GEKAS, Mr. ADAM SMITH of Washington, Mr. MCINTOSH, Mr. BURTON of Indiana, Mr. BUYER, Mr. SHADEGG, and Mr. GIBBONS.
H. Con. Res. 213: Ms. KILPATRICK.
H. Con. Res. 328: Mr. KANJORSKI, Mr. SHIMKUS, Ms. CARSON, Mr. ACKERMAN, Mr. HOUGHTON, Mr. SANDERS, Mr. MCNULTY, and Mr. PRICE of North Carolina.
H. Res. 359: Mr. MATSUI, Mr. NEAL of Massachusetts, Mr. WALSH, Mr. WOLF, Mr. SNYDER, and Mr. MEEKS of New York.
H. Res. 460: Mr. MASCARA.
H. Res. 479: Mr. TIERNEY.
H. Res. 561: Mr. GOODLING and Mr. UNDERWOOD.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 4567: Mr. ALLEN, Mr. STUPAK, and Mr. OBERSTAR.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 4567

OFFERED BY: MR. THOMAS

(Amendments in the Nature of a Substitute)

AMENDMENT NO. 1: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medicare Home Health and Veterans Health Care Improvement Act of 1998''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—MEDICARE HOME HEALTH CARE INTERIM PAYMENT SYSTEM REFINEMENT

SEC. 101. INCREASE IN PER BENEFICIARY LIMITS AND PER VISIT PAYMENT LIMITS FOR PAYMENT FOR HOME HEALTH SERVICES.

(a) INCREASE IN PER BENEFICIARY LIMITS.—Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)) is amended—

(1) in the first sentence of clause (v), by inserting ''subject to clause (viii)(I),'' before ''the Secretary'';

(2) in clause (vi)(I), by inserting ''subject to clauses (viii)(II) and (viii)(III)'' after ''fiscal year 1994''; and

(3) by adding at the end the following new clause:

''(viii)(I) In the case of a provider with a 12-month cost reporting period ending in fiscal year 1994, if the limit imposed under clause (v) (determined without regard to this subclause) for a cost reporting period beginning during or after fiscal year 1999 is less than the median described in clause (vi)(I) (but determined as if any reference in clause (v) to '98 percent' were a reference to '100 percent'), the limit otherwise imposed under clause (v) for such provider and period shall be increased by ½ of such difference.

''(II) Subject to subclause (IV), for new providers and those providers without a 12-month cost reporting period ending in fiscal year 1994, but for which the first cost reporting period begins before fiscal year 1999, for cost reporting periods beginning during or after fiscal year 1999, the per beneficiary limitation described in clause (vi)(I) shall be equal to 50 percent of the median described in such clause plus 50 percent of the sum of 75 percent of such median and 25 percent of 98 percent of the standardized regional average of such costs for the agency's census division, described in clause (v)(I). However, in no case shall the limitation under this subclause be less than the median described in clause (vi)(I) (determined as if any reference in clause (v) to '98 percent' were a reference to '100 percent').

''(III) Subject to subclause (IV), in the case of a new home health agency for which the first cost reporting period begins during or after fiscal year 1999, the limitation applied under clause (vi)(I) (but only with respect to such provider) shall be equal to 75 percent of the median described in clause (vi)(I).

''(IV) In the case of a new provider or a provider without a 12-month cost reporting period ending in fiscal year 1994, subclause (II) shall apply, instead of subclause (III), to a home health agency which filed an application for home health agency provider status under this title before September 15, 1998, or which was approved as a branch of its parent agency before such date and becomes a subunit of the parent agency or a separate agency on or after such date.

''(V) Each of the amounts specified in subclauses (I) through (III) are such amounts as adjusted under clause (iii) to reflect variations in wages among different areas.''.

(b) REVISION OF PER VISIT LIMITS.—Section 1861(v)(1)(L)(i) of such Act (42 U.S.C. 1395x(v)(1)(L)(i)) is amended—

(1) in subclause (III), by striking ''or'';

(2) in subclause (IV)—

(A) by inserting ''and before October 1, 1998,'' after ''October 1, 1997,''; and

(B) by striking the period at the end and inserting '', or''; and

(3) by adding at the end the following new subclause:

''(V) October 1, 1998, 108 percent of such median.''.

(c) EXCLUSION OF ADDITIONAL PART B COSTS FROM DETERMINATION OF PART B MONTHLY PREMIUM.—Section 1839 of such Act (42 U.S.C. 1395r) is amended—

(1) in subsection (a)(3), by inserting ''(except as provided in subsection (g))'' after ''year that''; and

(2) by adding at the end the following new subsection:

''(g) In estimating the benefits and administrative costs which will be payable from the Federal Supplementary Medical Insurance Trust Fund for a year for purposes of determining the monthly premium rate under subsection (a)(3), the Secretary shall exclude an estimate of any benefits and administrative costs attributable to the application of section 1861(v)(1)(L)(viii) or to the establishment under section 1861(v)(1)(L)(i)(V) of a per visit limit at 108 percent of the median (instead of 105 percent of the median), but only to the extent payment for home health services under this title is not being made under section 1895 (relating to prospective payment for home health services).''.

(d) REPORTS ON SUMMARY OF RESEARCH CONDUCTED BY THE SECRETARY ON THE PROSPECTIVE PAYMENT SYSTEM.—By not later than January 1, 1999, the Secretary of Health and Human Services shall submit to Congress a report on the following matters:

(1) RESEARCH.—A description of any research paid for by the Secretary on the development of a prospective payment system for home health services furnished under the

medicare care program under title XVIII of the Social Security Act, and a summary of the results of such research.

(2) SCHEDULE FOR IMPLEMENTATION OF SYSTEM.—The Secretary's schedule for the implementation of the prospective payment system for home health services under section 1895 of the Social Security Act (42 U.S.C. 1395fff).

(3) ALTERNATIVE TO 15 PERCENT REDUCTION IN LIMITS.—The Secretary's recommendations for one or more alternative means to provide for savings equivalent to the savings estimated to be made by the mandatory 15 percent reduction in payment limits for such home health services for fiscal year 2000 under section 1895(b)(3)(A) of the Social Security Act (42 U.S.C. 1395fff(b)(3)(A)), or, in the case the Secretary does not establish and implement such prospective payment system, under section 4603(e) of the Balanced Budget Act of 1997.

(e) MEDPAC REPORTS.—

(1) REVIEW OF SECRETARY'S REPORT.—Not later than 60 days after the date the Secretary of Health and Human Services submits to Congress the report under subsection (d), the Medicare Payment Advisory Commission (established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6)) shall submit to Congress a report describing the Commission's analysis of the Secretary's report, and shall include the Commission's recommendations with respect to the matters contained in such report.

(2) ANNUAL REPORT.—The Commission shall include in its annual report to Congress for June 1999 an analysis of whether changes in law made by the Balanced Budget Act of 1997, as modified by the amendments made by this section, with respect to payments for home health services furnished under the medicare program under title XVIII of the Social Security Act impede access to such services by individuals entitled to benefits under such program.

(f) GAO AUDIT OF RESEARCH EXPENDITURES.—The Comptroller General of the United States shall conduct an audit of sums obligated or expended by the Health Care Financing Administration for the research described in subsection (d)(1), and of the data, reports, proposals, or other information provided by such research.

(g) PROMPT IMPLEMENTATION.—The Secretary of Health and Human Services shall promptly issue (without regard to chapter 8 of title 5, United States Code) such regulations or program memoranda as may be necessary to effect the amendments made by this section for cost reporting periods beginning on or after October 1, 1998. In effecting the amendments made by subsection (a) for cost reporting periods beginning in fiscal year 1999, the ''median'' referred to in section 1861(v)(1)(L)(vi)(I) of the Social Security Act for such periods shall be the national standardized per beneficiary limitation specified in Table 3C published in the Federal Register on August 11, 1998, (63 FR 42926) and the ''standardized regional average of such costs'' referred to in section 1861(v)(1)(L)(v)(I) of such Act for a census division shall be the sum of the labor and nonlabor components of the standardized per-beneficiary limitation for that census division specified in Table 3B published in the Federal Register on that date (63 FR 42926) (or in Table 3D as so published with respect to Puerto Rico and Guam).

TITLE II—VETERANS MEDICARE ACCESS IMPROVEMENT

SEC. 201. IMPROVEMENT IN VETERANS' ACCESS TO SERVICES.

(a) IN GENERAL.—Title XVIII of the Social Security Act, as amended by sections 4603, 4801, and 4015(a) of the Balanced Budget Act of 1997, is amended by adding at the end the following:

''IMPROVING VETERANS' ACCESS TO SERVICES

''SEC. 1897. (a) DEFINITIONS.—In this section:

''(1) ADMINISTERING SECRETARIES.—The term 'administering Secretaries' means the Secretary of Health and Human Services and the Secretary of Veterans Affairs acting jointly.

''(2) PROGRAM.—The term 'program' means the program established under this section with respect to category A medicare-eligible veterans.

''(3) DEMONSTRATION PROJECT; PROJECT.—The terms 'demonstration project' and 'project' mean the demonstration project carried out under this section with respect to category C medicare-eligible veterans.

''(4) MEDICARE-ELIGIBLE VETERANS.—

''(A) CATEGORY A MEDICARE-ELIGIBLE VETERAN.—The term 'category A medicare-eligible veteran' means an individual—

''(i) who is a veteran (as defined in section 101(2) of title 38, United States Code) and is described in paragraph (1) or (2) of section 1710(a) of title 38, United States Code;

''(ii) who is entitled to hospital insurance benefits under part A of the medicare program and is enrolled in the supplementary medical insurance program under part B of the medicare program; and

''(iii) for whom the medical center of the Department of Veterans Affairs that is closest to the individual's place of residence is geographically remote or inaccessible from such place.

''(B) CATEGORY C MEDICARE-ELIGIBLE VETERAN.—The term 'category C medicare-eligible veteran' means an individual who—

''(i) is a veteran (as defined in section 101(2) of title 38, United States Code) and is described in section 1710(a)(3) of title 38, United States Code; and

''(ii) is entitled to hospital insurance benefits under part A of the medicare program and is enrolled in the supplementary medical insurance program under part B of the medicare program.

''(5) MEDICARE HEALTH CARE SERVICES.—The term 'medicare health care services' means items or services covered under part A or B of this title.

''(6) TRUST FUNDS.—The term 'trust funds' means the Federal Hospital Insurance Trust Fund established in section 1817 and the Federal Supplementary Medical Insurance Trust Fund established in section 1841.

''(b) PROGRAM AND DEMONSTRATION PROJECT.—

''(1) IN GENERAL.—

''(A) ESTABLISHMENT.—The administering Secretaries are authorized to establish—

''(i) a program (under an agreement entered into by the administering Secretaries) under which the Secretary of Health and Human Services shall reimburse the Secretary of Veterans Affairs, from the trust funds, for medicare health care services furnished to category A medicare-eligible veterans; and

''(ii) a demonstration project (under such an agreement) under which the Secretary of Health and Human Services shall reimburse the Secretary of Veterans Affairs, from the trust funds, for medicare health care services furnished to category C medicare-eligible veterans.

''(B) AGREEMENT.—The agreement entered into under subparagraph (A) shall include at a minimum—

''(i) a description of the benefits to be provided to the participants of the program and the demonstration project established under this section;

''(ii) a description of the eligibility rules for participation in the program and demonstration project, including any cost sharing requirements;

''(iii) a description of the process for enrolling veterans for participation in the program, which process may, to the extent practicable, be administered in the same or similar manner to the registration process established to implement section 1705 of title 38, United States Code;

''(iv) a description of how the program and the demonstration project will satisfy the requirements under this title;

''(v) a description of the sites selected under paragraph (2);

''(vi) a description of how reimbursement requirements under subsection (g) and maintenance of effort requirements under subsection (h) will be implemented in the program and in the demonstration project;

''(vii) a statement that all data of the Department of Veterans Affairs and of the Department of Health and Human Services that the administering Secretaries determine is necessary to conduct independent estimates and audits of the maintenance of effort requirement, the annual reconciliation, and related matters required under the program and the demonstration project shall be available to the administering Secretaries;

''(viii) a description of any requirement that the Secretary of Health and Human Services waives pursuant to subsection (d);

''(ix) a requirement that the Secretary of Veterans Affairs undertake and maintain outreach and marketing activities, consistent with capacity limits under the program, for category A medicare-eligible veterans;

''(x) a description of how the administering Secretaries shall conduct the data matching program under subparagraph (F), including the frequency of updates to the comparisons performed under subparagraph (F)(ii); and

''(xi) a statement by the Secretary of Veterans Affairs that the type or amount of health care services furnished under chapter 17 of title 38, United States Code, to veterans who are entitled to benefits under part A or enrolled under part B, or both, shall not be reduced by reason of the program or project.

''(C) COST-SHARING UNDER DEMONSTRATION PROJECT.—Notwithstanding any provision of title 38, United States Code, in order—

''(i) to maintain and broaden access to services,

''(ii) to encourage appropriate use of services, and

''(iii) to control costs,

the Secretary of Veterans Affairs may establish enrollment fees and copayment requirements under the demonstration project under this section consistent with subsection (d)(1). Such fees and requirements may vary based on income.

''(D) HEALTH CARE BENEFITS.—The administering Secretaries shall prescribe the minimum health care benefits to be provided under the program and demonstration project to medicare-eligible veterans enrolled in the program or project. Those benefits shall include at least all medicare health care services covered under this title.

''(E) ESTABLISHMENT OF SERVICE NETWORKS.—

''(i) USE OF VA OUTPATIENT CLINICS.—The Secretary of Veterans Affairs, to the extent practicable, shall use outpatient clinics of the Department of Veterans Affairs in providing services under the program.

''(ii) AUTHORITY TO CONTRACT FOR SERVICES.—The Secretary of Veterans Affairs may enter into contracts and arrangements with entities (such as private practitioners, providers of services, preferred provider organizations, and health care plans) for the provision of services for which the Secretary of Health and Human Services is responsible

under the program or project under this section and shall take into account the existence of qualified practitioners and providers in the areas in which the program or project is being conducted. Under such contracts and arrangements, such Secretary of Health and Human Services may require the entities to furnish such information as such Secretary may require to carry out this section.

''(F) DATA MATCH.—

''(i) ESTABLISHMENT OF DATA MATCHING PROGRAM.—The administering Secretaries shall establish a data matching program under which there is an exchange of information of the Department of Veterans Affairs and of the Department of Health and Human Services as is necessary to identify veterans who are entitled to benefits under part A or enrolled under part B, or both, in order to carry out this section. The provisions of section 552a of title 5, United States Code, shall apply with respect to such matching program only to the extent the administering Secretaries find it feasible and appropriate in carrying out this section in a timely and efficient manner.

''(ii) PERFORMANCE OF DATA MATCH.—The administering Secretaries, using the data matching program established under clause (i), shall perform a comparison in order to identify veterans who are entitled to benefits under part A or enrolled under part B, or both. To the extent such Secretaries deem appropriate to carry out this section, the comparison and identification may distinguish among such veterans by category of veterans, by entitlement to benefits under this title, or by other characteristics.

''(iii) DEADLINE FOR FIRST DATA MATCH.—The administering Secretaries shall first perform a comparison under clause (ii) by not later than October 31, 1998.

''(iv) CERTIFICATION BY INSPECTOR GENERAL.—

''(I) IN GENERAL.—The administering Secretaries may not conduct the program unless the Inspector General of the Department of Health and Human Services certifies to Congress that the administering Secretaries have established the data matching program under clause (i) and have performed a comparison under clause (ii).

''(II) DEADLINE FOR CERTIFICATION.—Not later than December 15, 1998, the Inspector General of the Department of Health and Human Services shall submit a report to Congress containing the certification under subclause (I) or the denial of such certification.

''(2) NUMBER OF SITES.—The program and demonstration project shall be conducted in geographic service areas of the Department of Veterans Affairs, designated jointly by the administering Secretaries after review of all such areas, as follows:

''(A) PROGRAM SITES.—

''(i) IN GENERAL.—Except as provided in clause (ii), the program shall be conducted in not more than 3 such areas with respect to category A medicare-eligible veterans.

''(ii) ADDITIONAL PROGRAM SITES.—Subject to the certification required under subsection (h)(1)(B)(iii), for a year beginning on or after January 1, 2003, the program shall be conducted in such areas as are designated jointly by the administering Secretaries after review of all such areas.

''(B) PROJECT SITES.—

''(i) IN GENERAL.—The demonstration project shall be conducted in not more than 3 such areas with respect to category C medicare-eligible veterans.

''(ii) MANDATORY SITE.—At least one of the areas designated under clause (i) shall encompass the catchment area of a military medical facility which was closed pursuant to either the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) or title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(3) RESTRICTION.—Funds from the program or demonstration project shall not be used for—

''(A) the construction of any treatment facility of the Department of Veterans Affairs; or

''(B) the renovation, expansion, or other construction at such a facility.

''(4) DURATION.—The administering Secretaries shall conduct and implement the program and the demonstration project as follows:

''(A) PROGRAM.—

''(i) IN GENERAL.—The program shall begin on January 1, 2000, in the sites designated under paragraph (2)(A)(i) and, subject to subsection (h)(1)(B)(iii)(II), for a year beginning on or after January 1, 2003, the program may be conducted in such additional sites designated under paragraph (2)(A)(ii).

''(ii) LIMITATION ON NUMBER OF VETERANS COVERED UNDER CERTAIN CIRCUMSTANCES.—If for a year beginning on or after January 1, 2003, the program is conducted only in the sites designated under paragraph (2)(A)(i), medicare health care services may not be provided under the program to a number of category-A medicare-eligible veterans that exceeds the aggregate number of such veterans covered under the program as of December 31, 2002.

''(B) PROJECT.—The demonstration project shall begin on January 1, 1999, and end on December 31, 2001.

''(C) IMPLEMENTATION.—The administering Secretaries may implement the program and demonstration project through the publication of regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

''(5) REPORTS.—

''(A) PROGRAM.—By not later than September 1, 1999, the administering Secretaries shall submit a copy of the agreement entered into under paragraph (1) with respect to the program to Congress.

''(B) PROJECT.—By not later than November 1, 1998, the administering Secretaries shall submit a copy of the agreement entered into under paragraph (1) with respect to the project to Congress.

''(6) REPORT ON MAINTENANCE OF LEVEL OF HEALTH CARE SERVICES.—

''(A) IN GENERAL.—The Secretary of Veterans Affairs may not implement the program at a site designated under paragraph (2)(A) unless, by not later than 90 days before the date of the implementation, the Secretary of Veterans Affairs submits to Congress and to the Comptroller General of the United States a report that contains the information described in subparagraph (B). The Secretary of Veterans Affairs shall periodically update the report under this paragraph as appropriate.

''(B) INFORMATION DESCRIBED.—For purposes of subparagraph (A), the information described in this subparagraph is a description of the operation of the program at the site and of the steps to be taken by the Secretary of Veterans Affairs to prevent the reduction of the type or amount of health care services furnished under chapter 17 of title 38, United States Code, to veterans who are entitled to benefits under part A or enrolled under part B, or both, within the geographic service area of the Department of Veterans Affairs in which the site is located by reason of the program or project.

''(c) CREDITING OF PAYMENTS.—A payment received by the Secretary of Veterans Affairs under the program or demonstration project shall be credited to the applicable Department of Veterans Affairs medical care appropriation (and within that appropriation). Any such payment received during a fiscal year for services provided during a prior fiscal year may be obligated by the Secretary of Veterans Affairs during the fiscal year during which the payment is received.

''(d) APPLICATION OF CERTAIN MEDICARE REQUIREMENTS.—

''(1) AUTHORITY.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), the program and the demonstration project shall meet all requirements of Medicare+Choice plans under part C and regulations pertaining thereto, and other requirements for receiving medicare payments, except that the prohibition of payments to Federal providers of services under sections 1814(c) and 1835(d), and paragraphs (2) and (3) of section 1862(a) shall not apply.

''(B) WAIVER.—Except as provided in paragraph (2), the Secretary of Health and Human Services is authorized to waive any requirement described under subparagraph (A), or approve equivalent or alternative ways of meeting such a requirement, but only if such waiver or approval—

''(i) reflects the unique status of the Department of Veterans Affairs as an agency of the Federal Government; and

''(ii) is necessary to carry out the program or demonstration project.

''(2) BENEFICIARY PROTECTIONS AND OTHER MATTERS.—The program and the demonstration project shall comply with the requirements of part C of this title that relate to beneficiary protections and other matters, including such requirements relating to the following areas, to the extent not inconsistent with subsection (b)(1)(B)(iii):

''(A) Enrollment and disenrollment.

''(B) Nondiscrimination.

''(C) Information provided to beneficiaries.

''(D) Cost-sharing limitations.

''(E) Appeal and grievance procedures.

''(F) Provider participation.

''(G) Access to services.

''(H) Quality assurance and external review.

''(I) Advance directives.

''(J) Other areas of beneficiary protections that the administering Secretaries determine are applicable to such program or project.

''(e) INSPECTOR GENERAL.—Nothing in the agreement entered into under subsection (b) shall limit the Inspector General of the Department of Health and Human Services from investigating any matters regarding the expenditure of funds under this title for the program and demonstration project, including compliance with the provisions of this title and all other relevant laws.

''(f) VOLUNTARY PARTICIPATION.—Participation of a category A medicare-eligible veteran in the program or category C medicare-eligible veteran in the demonstration project shall be voluntary.

''(g) PAYMENTS BASED ON REGULAR MEDICARE PAYMENT RATES.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary of Health and Human Services shall reimburse the Secretary of Veterans Affairs for services provided under the program or demonstration project at a rate equal to 95 percent of the amount paid to a Medicare+Choice organization under part C of this title with respect to such an enrollee. In cases in which a payment amount may not otherwise be readily computed, the Secretary of Health and Human Services shall establish rules for computing equivalent or comparable payment amounts.

''(2) EXCLUSION OF CERTAIN AMOUNTS.—In computing the amount of payment under paragraph (1), the following shall be excluded:

''(A) SPECIAL PAYMENTS.—Any amount attributable to an adjustment under subparagraphs (B) and (F) of section 1886(d)(5) and subsection (h) of such section.

''(B) PERCENTAGE OF CAPITAL PAYMENTS.—An amount determined by the administering Secretaries for amounts attributable to payments for capital-related costs under subsection (g) of such section.

''(3) PERIODIC PAYMENTS FROM MEDICARE TRUST FUNDS.—Payments under this subsection shall be made—

''(A) on a periodic basis consistent with the periodicity of payments under this title; and

''(B) in appropriate part, as determined by the Secretary of Health and Human Services, from the trust funds.

''(4) CAP ON REIMBURSEMENT AMOUNTS.—The aggregate amount to be reimbursed under this subsection pursuant to the agreement entered into between the administering Secretaries under subsection (b) is as follows:

''(A) PROGRAM.—With respect to category A medicare-eligible veterans, such aggregate amount shall not exceed—

''(i) for 2000, a total of $50,000,000;

''(ii) for 2001, a total of $75,000,000; and

''(iii) subject to subparagraph (B), for 2002 and each succeeding year, a total of $100,000,000.

''(B) EXPANSION OF PROGRAM.—If for a year beginning on or after January 1, 2003, the program is conducted in sites designated under subsection (b)(2)(A)(ii), the limitation under subparagraph (A)(iii) shall not apply to the program for such a year.

''(C) PROJECT.—With respect to category C medicare-eligible veterans, such aggregate amount shall not exceed a total of $50,000,000 for each of calendar years 1999 through 2001.

''(h) MAINTENANCE OF EFFORT.—

''(1) MONITORING EFFECT OF PROGRAM AND DEMONSTRATION PROJECT ON COSTS TO MEDICARE PROGRAM.—

''(A) IN GENERAL.—The administering Secretaries, in consultation with the Comptroller General of the United States, shall closely monitor the expenditures made under this title for category A and C medicare-eligible veterans compared to the expenditures that would have been made for such veterans if the program and demonstration project had not been conducted. The agreement entered into by the administering Secretaries under subsection (b) shall require the Department of Veterans Affairs to maintain overall the level of effort for services covered under this title to such categories of veterans by reference to a base year as determined by the administering Secretaries.

''(B) DETERMINATION OF MEASURE OF COSTS OF MEDICARE HEALTH CARE SERVICES.—

''(i) IMPROVEMENT OF INFORMATION MANAGEMENT SYSTEM.—Not later than October 1, 2001, the Secretary of Veterans Affairs shall improve its information management system such that, for a year beginning on or after January 1, 2002, the Secretary of Veterans Affairs is able to identify costs incurred by the Department of Veterans Affairs in providing medicare health care services to medicare-eligible veterans for purposes of meeting the requirements with respect to maintenance of effort under an agreement under subsection (b)(1)(A).

''(ii) IDENTIFICATION OF MEDICARE HEALTH CARE SERVICES.—The Secretary of Health and Human Services shall provide such assistance as is necessary for the Secretary of Veterans Affairs to determine which health care services furnished by the Secretary of Veterans Affairs qualify as medicare health care services.

''(iii) CERTIFICATION BY HHS INSPECTOR GENERAL.—

''(I) REQUEST FOR CERTIFICATION.—The Secretary of Veterans Affairs may request the Inspector General of the Department of Health and Human Services to make a certification to Congress that the Secretary of Veterans Affairs has improved its management system under clause (i) such that the Secretary of Veterans Affairs is able to identify the costs described in such clause in a reasonably reliable and accurate manner.

''(II) REQUIREMENT FOR EXPANSION OF PROGRAM.—The program may be conducted in the additional sites under paragraph (2)(A)(ii) and cover such additional category A medicare eligible veterans in such additional sites only if the Inspector General of the Department of Health and Human Services has made the certification described in subclause (I).

''(III) DEADLINE FOR CERTIFICATION.—Not later than the date that is the earlier of the date that is 60 days after the Secretary of Veterans Affairs requests a certification under subclause (I) or June 1, 2002, the Inspector General of the Department of Health and Human Services shall submit a report to Congress containing the certification under subclause (I) or the denial of such certification.

''(C) MAINTENANCE OF LEVEL OF EFFORT.—

''(i) REPORT BY SECRETARY OF VETERANS AFFAIRS ON BASIS FOR CALCULATION.—Not later than the date that is 60 days after the date on which the administering Secretaries enter into an agreement under subsection (b)(1)(A), the Secretary of Veterans Affairs shall submit a report to Congress and the Comptroller General of the United States explaining the methodology used and basis for calculating the level of effort of the Department of Veterans Affairs under the program and project.

''(ii) REPORT BY COMPTROLLER GENERAL.—Not later than the date that is 180 days after the date described in clause (i), the Comptroller General of the United States shall submit to Congress and the administering Secretaries a report setting forth the Comptroller General's findings, conclusion, and recommendations with respect to the report submitted by the Secretary of Veterans Affairs under clause (i).

''(iii) RESPONSE BY SECRETARY OF VETERANS AFFAIRS.—The Secretary of Veterans Affairs shall submit to Congress not later than 60 days after the date described in clause (ii) a report setting forth such Secretary's response to the report submitted by the Comptroller General under clause (ii).

''(D) ANNUAL REPORT BY THE COMPTROLLER GENERAL.—Not later than December 31 of each year during which the program and demonstration project is conducted, the Comptroller General of the United States shall submit to the administering Secretaries and to Congress a report on the extent, if any, to which the costs of the Secretary of Health and Human Services under the medicare program under this title increased during the preceding fiscal year as a result of the program or demonstration project.

''(2) REQUIRED RESPONSE IN CASE OF INCREASE IN COSTS.—

''(A) IN GENERAL.—If the administering Secretaries find, based on paragraph (1), that the expenditures under the medicare program under this title increased (or are expected to increase) during a fiscal year because of the program or demonstration project, the administering Secretaries shall take such steps as may be needed—

''(i) to recoup for the medicare program the amount of such increase in expenditures; and

''(ii) to prevent any such increase in the future.

''(B) STEPS.—Such steps—

''(i) under subparagraph (A)(i) shall include payment of the amount of such increased expenditures by the Secretary of Veterans Affairs from the current medical care appropriation for the Department of Veterans Affairs to the trust funds; and

''(ii) under subparagraph (A)(ii) shall include lowering the amount of payment under the program or project under subsection (g)(1), and may include, in the case of the demonstration project, suspending or terminating the project (in whole or in part).

''(i) EVALUATION AND REPORTS.—

''(1) INDEPENDENT EVALUATION BY GAO.—

''(A) IN GENERAL.—The Comptroller General of the United States shall conduct an evaluation of the program and an evaluation of the demonstration project, and shall submit annual reports on the program and demonstration project to the administering Secretaries and to Congress.

''(B) FIRST REPORT.—The first report for the program or demonstration project under subparagraph (A) shall be submitted not later than 12 months after the date on which the Secretary of Veterans Affairs first provides services under the program or project, respectively.

''(C) FINAL REPORT ON DEMONSTRATION PROJECT.—A final report shall be submitted with respect to the demonstration project not later than 3½ years after the date of the first report on the project under subparagraph (B).

''(D) CONTENTS.—The evaluation and reports under this paragraph for the program or demonstration project shall include an assessment, based on the agreement entered into under subsection (b), of the following:

''(i) Any savings or costs to the medicare program under this title resulting from the program or project.

''(ii) The cost to the Department of Veterans Affairs of providing care to category A medicare-eligible veterans under the program or to category C medicare-eligible veterans under the demonstration project, respectively.

''(iii) An analysis of how such program or project affects the overall accessibility of medical care through the Department of Veterans Affairs, and a description of the unintended effects (if any) upon the patient enrollment system under section 1705 of title 38, United States Code.

''(iv) Compliance by the Department of Veterans Affairs with the requirements under this title.

''(v) The number of category A medicare-eligible veterans or category C medicare-eligible veterans, respectively, opting to participate in the program or project instead of receiving health benefits through another health insurance plan (including benefits under this title).

''(vi) A list of the health insurance plans and programs that were the primary payers for medicare-eligible veterans during the year prior to their participation in the program or project, respectively, and the distribution of their previous enrollment in such plans and programs.

''(vii) Any impact of the program or project, respectively, on private health care providers and beneficiaries under this title that are not enrolled in the program or project.

''(viii) An assessment of the access to care and quality of care for medicare-eligible veterans under the program or project, respectively.

''(ix) An analysis of whether, and in what manner, easier access to medical centers of the Department of Veterans Affairs affects the number of category A medicare-eligible veterans or C medicare-eligible veterans, respectively, receiving medicare health care services.

''(x) Any impact of the program or project, respectively, on the access to care for category A medicare-eligible veterans or C medicare-eligible veterans, respectively, who

did not enroll in the program or project and for other individuals entitled to benefits under this title.

''(xi) A description of the difficulties (if any) experienced by the Department of Veterans Affairs in managing the program or project, respectively.

''(xii) Any additional elements specified in the agreement entered into under subsection (b).

''(xiii) Any additional elements that the Comptroller General of the United States determines is appropriate to assess regarding the program or project, respectively.

''(2) REPORTS BY SECRETARIES ON PROGRAM AND DEMONSTRATION PROJECT WITH RESPECT TO MEDICARE-ELIGIBLE VETERANS.—

''(A) DEMONSTRATION PROJECT.—Not later than 6 months after the date of the submission of the final report by the Comptroller General of the United States on the demonstration project under paragraph (1)(C), the administering Secretaries shall submit to Congress a report containing their recommendation as to—

''(i) whether there is a cost to the health care program under this title in conducting the demonstration project;

''(ii) whether to extend the demonstration project or make the project permanent; and

''(iii) whether the terms and conditions of the project should otherwise be continued (or modified) with respect to medicare-eligible veterans.

''(B) PROGRAM.—Not later than 6 months after the date of the submission of the report by the Comptroller General of the United States on the third year of the operation of the program, the administering Secretaries shall submit to Congress a report containing their recommendation as to—

''(i) whether there is a cost to the health care program under this title in conducting the program under this section;

''(ii) whether to discontinue the program with respect to category A medicare-eligible veterans; and

''(iii) whether the terms and conditions of the program should otherwise be continued (or modified) with respect to medicare-eligible veterans.

''(j) APPLICATION OF MEDIGAP PROTECTIONS TO DEMONSTRATION PROJECT ENROLLEES.—(1) Subject to paragraph (2), the provisions of section 1882(s)(3) (other than clauses (i) through (iv) of subparagraph (B)) and 1882(s)(4) shall apply to enrollment (and termination of enrollment) in the demonstration project, in the same manner as they apply to enrollment (and termination of enrollment) with a Medicare+Choice organization in a Medicare+Choice plan.

''(2) In applying paragraph (1)—

''(A) any reference in clause (v) or (vi) of section 1882(s)(3)(B) to 12 months is deemed a reference to 36 months; and

''(B) the notification required under section 1882(s)(3)(D) shall be provided in a manner specified by the Secretary of Veterans Affairs.''.

(b) REPEAL OF PLAN REQUIREMENT.—Subsection (b) of section 4015 of the Balanced Budget Act of 1997 (relating to an implementation plan for Veterans subvention) is repealed.

(c) REPORT TO CONGRESS ON A METHOD TO INCLUDE THE COSTS OF VETERANS AFFAIRS AND MILITARY FACILITY SERVICES TO MEDICARE-ELIGIBLE BENEFICIARIES IN THE CALCULATION OF MEDICARE+CHOICE PAYMENT RATES.—The Secretary of Health and Human Services shall report to the Congress by not later than January 1, 2001, on a method to phase-in the costs of military facility services furnished by the Department of Veterans Affairs or the Department of Defense to medicare-eligible beneficiaries in the calculation of an area's Medicare+Choice capitation payment. Such report shall include on a county-by- county basis—

(1) the actual or estimated cost of such services to medicare-eligible beneficiaries;

(2) the change in Medicare+Choice capitation payment rates if such costs are included in the calculation of payment rates;

(3) one or more proposals for the implementation of payment adjustments to Medicare+Choice plans in counties where the payment rate has been affected due to the failure to calculate the cost of such services to medicare-eligible beneficiaries; and

(4) a system to ensure that when a Medicare+Choice enrollee receives covered services through a facility of the Department of Veterans Affairs or the Department of Defense there is an appropriate payment recovery to the medicare program.

TITLE III—AUTHORIZATION OF ADDITIONAL EXCEPTIONS TO IMPOSITION OF PENALTIES FOR CERTAIN INDUCEMENTS

SEC. 301. AUTHORIZATION OF ADDITIONAL EXCEPTIONS TO IMPOSITION OF PENALTIES FOR PROVIDING INDUCEMENTS TO BENEFICIARIES.

(a) IN GENERAL.—Subparagraph (B) of section 1128A(i)(6) of the Social Security Act (42 U.S.C. 1320a–7a(i)(6)) is amended to read as follows:

''(B) any permissible practice described in any subparagraph of section 1128B(b)(3) or in regulations issued by the Secretary;''.

(b) EXTENSION OF ADVISORY OPINION AUTHORITY.—Section 1128D(b)(2)(A) of such Act (42 U.S.C. 1320a–7d(b)(2)(A)) is amended by inserting ''or section 1128A(i)(6)'' after ''1128B(b)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(d) INTERIM FINAL RULEMAKING AUTHORITY.—The Secretary of Health and Human Services may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment, in order to implement the amendments made by this section in a timely manner.

TITLE IV—EXPANSION OF MEMBERSHIP OF THE MEDICARE PAYMENT ADVISORY COMMISSION

SEC. 401. EXPANSION OF MEMBERSHIP OF MEDPAC TO 17.

(a) IN GENERAL.—Section 1805(c)(1) of the Social Security Act (42 U.S.C. 1395b–6(c)(1)), as added by section 4022 of the Balanced Budget Act of 1997, is amended by striking ''15'' and inserting ''17''.

(b) INITIAL TERMS OF ADDITIONAL MEMBERS.—

(1) IN GENERAL.—For purposes of staggering the initial terms of members of the Medicare Payment Advisory Commission (under section 1805(c)(3) of such Act (42 U.S.C. 1395b–6(c)(3)), the initial terms of the two additional members of the Commission provided for by the amendment under subsection (a) are as follows:

(A) One member shall be appointed for one year.

(B) One member shall be appointed for two years.

(2) COMMENCEMENT OF TERMS.—Such terms shall begin on May 1, 1999.

TITLE V—REVENUE OFFSET

SEC. 501. REVENUE OFFSET.

(a) IN GENERAL.—Subparagraph (B) of section 408A(c)(3) of the Internal Revenue Code of 1986 is amended by striking ''relates'' and all that follows and inserting ''relates, the taxpayer's adjusted gross income exceeds $145,000 ($290,000 in the case of a joint return).''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions after December 31, 1998.

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Senate

(Legislative day of Friday, October 2, 1998)

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

PRAYER

The guest Chaplain, Dr. William Hawkins, of Graves Memorial Presbyterian Church, Clinton, NC, offered the following prayer:

Gracious God, whose compassion fails not and whose mercies are fresh and new every morning, hear our prayer as we look to You in spirit and in truth. We thank You for our Nation's leaders, who in times past found in You their stay in trouble, their strength in conflict, their guide and deep resource. May it please You heavenly Father that today this gathered company will find in You the same.

As the Psalmist has exclaimed, ''Blessed is the nation whose God is the Lord'' (33:12), so may Your lordship be affirmed in our Nation and cherished always among the Members of this body. Grant unto these Senators the knowledge that they will serve our Nation best as they serve You first. Make them strong in Your strength, wise in Your wisdom, and compassionate in Your Spirit, that the legislation they propose will accomplish the greater good You would have them seek. Keep them, their families, and all those they love safe from harm, physical and spiritual, so that they can be about the affairs of our Nation with full attention and devotion.

Grant unto each a sense of divine purpose, that they know themselves here not by chance but by design. Fulfill Your intentions for them in this high office, that they will be found working together, doing that which is pleasing in Your sight and in accord with Your holy will. In Your great name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will read a communication to the Senate.

The legislative clerk read as follows:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 8, 1998.

To the Senate: Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MIKE DEWINE, a Senator from the State of Ohio, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The distinguished majority leader is recognized.

Mr. LOTT. Mr. President, I will yield to the distinguished Senator from North Carolina who will welcome our guest Chaplain for the day.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized.

WELCOME TO DR. WILLIAM HAWKINS, GUEST CHAPLAIN

Mr. FAIRCLOTH. Mr. President, I am indeed honored and happy to be here this morning with my home church preacher. Bill Hawkins has been pastor of my church for 10 years now and he has made an outstanding impression and done a great job not only for the church membership but for the city that we live in as well. He has a wife and two daughters and they mean so much to me personally and to the community we live in. He is a Virginian, but we do not intend to allow him to leave. We plan to keep him in North Carolina and we are honored that he is there. He brings the youth and vigor to our church that we so much need. We are proud to have him there.

Bill, thank you.

I yield the floor.

Mr. LOTT. Mr. President, I add my welcome to the guest Chaplain. He did a beautiful job this morning. I know he is going to be very dedicated to tending to the needs of the Senator from North Carolina, Senator FAIRCLOTH.

We are delighted to have you here.

SCHEDULE

Mr. LOTT. Mr. President, the Senate will be in a period of morning business until 10 a.m. Following morning business, under a previous order, the Senate will begin 1 hour of final debate on the conference report to accompany the VA-HUD appropriations bill. At the expiration of debate time, at approximately 11 a.m., the Senate will vote on adoption of that conference report. Following that vote, the Senate may resume consideration of the Internet tax bill. I believe we are about ready to complete action on that. We have been saying that for a week, but I think that the opposition really is minimal. When we finally get to a vote, it is going to be overwhelming. I hope those obstructing and delaying the bill will give it up and let us get to the final passage of this important legislation before we leave. I understand there is one outstanding issue remaining on that legislation. Hopefully, it can be resolved by the managers early this afternoon.

In addition to the Internet bill, the Senate may consider the intelligence reauthorization bill, the human services reauthorization bill, under a 30-minute time agreement, and, possibly, the Treasury-Postal Service appropriations bill. The Senate may also begin

consideration of the William Fletcher nomination under the previously agreed to 90-minute time agreement.

At 5 p.m., under a previous order, the Senate is scheduled to resume consideration of H.R. 10, the financial services reform bill, unless another agreement is reached. I hope we can also come to some compromise agreement on that legislation so we can get it completed. It is very important domestically and, as a matter of fact, for our ability to compete in international markets. Members should expect rollcall votes throughout the day and into the evening.

There are a number of meetings going on to resolve issues between the House and the Senate and the administration. I think a lot of good progress has been made in the last 24 hours. I felt like the dam sort of broke yesterday. We have the bankruptcy reform legislation conference report being finished now. The vocational education conference report was completed last night. That was the first time we had a vocational reauthorization in years, and certainly we need to focus on vocational education. That, coupled with the higher education bill that was signed into law 2 days ago, will begin to show that we are committed to working continuously to improve education for our children and for the families of this country in the future.

We are in a position where we are about in final agreement on the WIPO bill, the intellectual property issue, and music licensing.

A number of bills are coming to a conclusion. As soon as conference reports are available, particularly appropriations bills, they will be stuck right into the schedule, and hopefully a quick vote. We will then move with other conference reports. We hope to be able to move some Executive Calendar nominations. But that also will take a lot of cooperation.

I thank the Senators for their assistance at this critical hour.

I yield the floor.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to a period of morning business until 10 a.m. with Senators permitted to speak for up to 5 minutes.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. Mr. President, we are in morning business?

The ACTING PRESIDENT pro tempore. That is correct.

THE PRESIDENT DID THE RIGHT THING

Mr. HARKIN. Mr. President, last evening, President Clinton did the right thing, did the right thing for this country and did the right thing for our farmers and for people who live all across rural America. He did the right thing for farmers who are suffering because of a drastic drop in prices. He did the right thing for farmers who are suffering because of a loss of crop in disaster areas in the South and Upper Midwest. The President did the right thing by vetoing the woefully inadequate farm disaster bill that this Congress passed and sent to him for his signature. Now it is up to us to see what we can do to make that bill better and get it back to the President for his signature.

Rural America needs help. Farmers need assistance. Disaster-hit areas need help. And yet they do not need the woefully inadequate bill that was passed here. I likened the bill that was passed by the Congress as giving a thimbleful of water to a person dying of thirst. It may assuage their thirst momentarily, but it is not going to keep them alive. We need to give those farmers who are dying of thirst out there the adequate water they need to get them through this year and the next to keep them alive.

Mr. President, I was encouraged by what I read in Congress Daily, that the chairman of the House Appropriations Committee, Congressman LIVINGSTON, has said that they expected a veto and that after the veto comes negotiations. I do not have the exact quote, but that is about what he said. I think that gives us some hope that we can work together here, we can negotiate out some differences, and we can come up with a bill that the President will sign and that will, indeed, benefit our producers.

There are some principles that we must maintain, however. First of all, there must be adequate disaster assistance. There needs to be equitable treatment regionally both within the distribution of the disaster assistance and within the overall package of disaster-related, commodity-based assistance. That means it has to be equitable, and it has to be adequate. It does not necessarily mean the dollars have to be spread around evenly. Equitable treatment is the key for farmers who have suffered from natural disasters.

A second principle is that assistance must go to producers who need it. Assistance based on low commodity prices should be delivered to producers suffering from low commodity prices. That is the advantage of the marketing loan proposal that those on our side have advocated. The proposal just to add on some money to this so-called AMTA payment has no relationship to the level of commodity prices. And not all commodity prices are depressed equally or substantially, particularly in cotton and rice. So assistance must have some relation to market conditions.

I always wonder what it is about some of my friends on the other side. They always talk about the market, the market, the market, yet the direct payment that goes out to farmers has no relationship to the market.

Removing the loan rate caps, as we want to do, does have a relationship to the market. If the market price goes up, the exposure to the Government is less and farmers will get their money from the market and not from the Government. Just giving out a direct payment has no relationship to the market whatsoever.

I think a third principle that we must have in any negotiated settlement is assistance to actual producers. Lump cash payments in a fixed amount are less likely to remain in the hands of the actual farmer than is assistance provided in a way that is contingent on market conditions. The additional AMTA payment that is in the vetoed bill is readily identified by landlords who are in a strong position to capture the payment in land rental rates. That is why raising the marketing loans, raising those caps will get to the producers.

Another principle. We must restore the safety net. Farmers are in their current predicament in large measure because the safety net feature of previous farm bills was abandoned in the 1996 farm bill. A set cash payment does nothing to restore the safety net because it is not responsive to market conditions. By contrast, removing loan rate caps would help restore a safety net responsive to market conditions.

Two last and final principles. Some linkage to actual production. The marketing assistance loan is tied directly to actual production. The Republican plan in the vetoed bill would have provided an additional money windfall even though no crop had been produced on the land. Why would we want to do that? Let's have assistance out to farmers who actually produced a crop.

And last, let's have a major measure of fiscal responsibility. This idea of just throwing out another payment to farmers is not fiscally responsible. If commodity prices should rise next year, which we all hope will happen, our plan would cost less than expected. But if the commodity prices rise next year, after the Republican plan payment went out, we would not recapture any of that money. It would be gone. That is why raising the marketing loan caps is, indeed, more fiscally responsible than just giving out a payment.

Mr. President, I believe within those principles there is room for negotiation. I look forward to the negotiations. I hope we can very rapidly come up with a bill that will meet these principles and that the President will sign into law, because our farmers need the assistance, and the disaster areas also need that assistance.

I will yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The time for morning business has expired.

DEPARTMENT OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1999—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate the VA–HUD conference report. There are 60 minutes for debate to be equally divided.

The report will be stated.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4194), have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The Senate proceeded to consider the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1998.)

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. I yield to my distinguished colleague from Maryland for a request.

PRIVILEGE OF THE FLOOR

Ms. MIKULSKI. Mr. President, I ask unanimous consent that during consideration of the report 105–769, that Ms. Bertha Lopez, a detailee from HUD serving with the VA–HUD committee, be afforded floor privileges.

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

Ms. MIKULSKI. Thank you. I yield the floor and look forward to proceeding on our conference.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Missouri is recognized.

Mr. BOND. I thank our distinguished ranking member, Senator MIKULSKI. Before I get into the bill, let me say Senator MIKULSKI and her staff have given us tremendous cooperation, guidance and support. The process is always very difficult in this bill, but it runs much more smoothly because of her leadership, her guidance, and her deep concern for all of the programs covered.

Mr. President, I am pleased to present to the Senate the conference report on the fiscal year 1999 VA–HUD and independent agencies appropriations bill. The conference report provides $93.4 billion, including $23.3 billion in mandatory veterans' benefits. I believe this represents a fair and balanced approach to meeting the many compelling needs that are afforded this subcommittee, particularly in the face of a very tight budget allocation.

The conference report accords the highest priority to veterans' needs, providing $439 million more than the President's request for veterans' programs. Other priorities include elderly housing, protecting environmental spending, and ensuring sufficient funding for space and science.

We did our best to satisfy priorities of Senators who made special requests for such items as economic development grants, water infrastructure improvements, and similar vitally important infrastructure investments. Such requests numbered over 1,000 individual items, illustrating the level of interest and the demand for assistance provided in this bill.

We also attempted to address the administration's top concerns wherever possible, including funding for 50,000 new incremental housing vouchers, funding for the National Service Program at the current year rate, additional funding for the cleanup of Boston Harbor, and $650 million in advance funding for Superfund, contingent upon authorization and reform of the Superfund Program by August 1, 1999.

For the Department of Veterans Affairs, the conference report provides a total of $42.6 billion. This includes $17.306 billion for veterans medical care. That figure is $278 million more than the President's request, and $249 million more than the 1998 level. Thus, we have increased by just about a quarter of a billion dollars the amount of money going to veterans health care above what was available for the past fiscal year. There was a strong consensus in this body, on a bipartisan basis, that the President's request for veterans medical care was inadequate, and that additional funds were needed to ensure the highest quality care to all eligible veterans seeking care.

Funds above the President's request also provided for construction, research, State veterans nursing homes, and the processing of veterans claims. I am confident these additional funds will be spent to honor and care for our Nation's veterans.

In HUD, the conference report provides for the Department of Housing and Urban Development a total of $26 billion. Again, this is $1 billion over the President's request. We were able to provide this significant increase in funding because of additional savings from excess section 8 project-based funds as well as savings from our reform of how HUD conducts its FHA property disposition program.

Because of these savings and reforms, we have been able to increase funding for a number of important HUD programs, including increasing critically needed funding for public housing modernization from $2.55 billion to $3 billion; increasing HOPE VI to eliminate distressed public housing from $550 million to $625 million; increasing the very important local government top priority, Community Development Block Grants from $4.675 billion to $4.750 billion.

We increased HOME funds, providing the flexibility for local governments to make improvements in providing needed housing for low-income and needy residents, from $1.5 billion to $1.6 billion, and we increased funding for homeless assistance from $823 million to over $1 billion, including requirements for HUD, recapturing and reprogramming unused homeless funds.

We also included $854 million for section 202 elderly housing, and section 811 disabled housing. This is an increase of some $550 million over the President's request for the section 202 program.

This reflects the sense of this body, expressed in a resolution jointly sponsored by my ranking member and myself, saying that we could not afford an 80-percent cut in assistance for elderly housing as proposed by the Office of Management and Budget.

I want to be clear that these funding decisions for HUD do not reflect a vote of confidence for HUD. HUD remains a troubled agency with significant capacity problems and dysfunctional decisionmaking. Let me remind my colleagues that HUD remains designated as a high-risk area by the General Accounting Office, the only department-wide agency ever so designated. I am not confident that HUD is making appropriate progress. I also want to warn my colleagues that, while we have provided the additional 50,000 welfare-to-work incremental vouchers that the administration requested, HUD and we are fast approaching a train wreck. And the debris will be on our hands.

Let me call our colleagues' attention to this chart. It shows an explosion. To be specific, in fiscal year 1997 we had to appropriate $3.6 billion in budget authority for the renewal of existing section 8 vouchers. These are the renewals for people who are now receiving section 8 assistance. Because in prior years we had multiyear authorizations, those authorizations are expiring, and just to maintain the section 8 assistance we are providing we had to go up to $8.2 billion this year. We will go up next year to $11.1 billion, the year after $12.8 billion, and by 2004 we will have to find budget authority of $18.2 billion, just to maintain the section 8 certificates, the vouchers for assisted housing for those in need that we already provide.

So, this is a budgetary problem of huge magnitude and it is something that is coming. Unless we are to stop providing assistance for those who need section 8, we are going to have to find in the budget room for that much budget authority. I have asked HUD repeatedly, in hearings before our committee, to address this fiscal crisis. Yet HUD has repeatedly failed to fulfill these responsibilities. This is something this body and the House are going to have to work on next year and the year after and the year after. The problem grows significantly more severe as we move into the outyears.

The conference report, at the request of the House and the leaders of the Housing Authorization Committee in

the Senate—the distinguished chairman of that subcommittee, Senator MACK, will be addressing this later—includes a public housing reform bill entitled the ''Quality Housing and Work Responsibility Act of 1998.'' I congratulate the members of the authorizing committee for making significant and positive reforms to public and assisted housing programs. I believe that, given the legislative calendar and the situation, it was appropriate, with the advice, counsel and direction of the leadership, that we included it.

There are some issues I want to flag now because I think we may want to come back and readdress them, as we do in so many things that we pass in the housing area in this body.

I am concerned that the requirements on targeting might adversely impact the elderly poor. I am concerned about a provision that could allow HUD to micromanage housing choices of public housing families on a building-by-building basis, and I don't agree with the provision that would provide the HUD Secretary with a slush fund of some $110 million.

Most of my concerns, however, relate to provisions that will become effective in fiscal year 2000. I expect that we will continue to review these areas and we will work, as we have in the past, in full cooperation with our distinguished colleagues on the authorizing committees in both the House and the Senate and discuss these further in future bills.

Finally, this appropriations bill provides a significant increase for FHA mortgage insurance. We raised the floor from $86,000 to $109,000 and the ceiling for high-cost areas from $170,000 to $197,000. This is a critical provision. It means that families will have new and important opportunities to become homeowners.

With respect to the Environmental Protection Agency, the conference report provides $7.650 billion for EPA. That is about $200 million more than current year funding. Included in this is the President's full request for the clean water action plan which totals $150 million in new funding, principally for State grants aimed at controlling polluted runoff or nonpoint source pollution. The conference report also provides $2.125 billion for State clean water and safe drinking water revolving funds, an increase of $275 million over the President's request and $50 million over the current year.

Mr. President, I am very proud that we were able to provide this, because I think in every State, if you talk with the people who are actually doing the hard work of making sure that wastewater is cleaned up and that we have safe drinking water, they will tell you that these State revolving funds, which provide low-cost loans and enable communities to take vitally important steps necessary to ensure that they clean up their wastewater and they have safe drinking water, they will tell you that these State revolving funds are absolutely critical for meeting the long-term needs of our communities.

Back to the rest of the bill, for Superfund, the conference report provides $1.5 billion, the same as the current year funding. In addition, there is an advance appropriation of $650 million, contingent upon authorization by August 1, 1999.

Other high priorities in EPA, which we have funded, include particulate matter research, funding for the brownfields at the full request level, providing to the States the tools they need to prevent pollution, cleanup of waste sites and enforcing environmental laws. Almost half of the funds provided in this bill will go directly to the States for these purposes.

For FEMA, the Federal Emergency Management Agency, there is a total of $827 million, approximately the same amount as current year funding, with emphasis on preparing for both natural and man-made disasters.

The conference report includes the President's request of $308 million for disaster relief spending. While there are not any additional funds above the President's request for disaster relief, let me assure everyone that the current balances in the disaster relief fund are sufficient to meet all the needs at this time, including those stemming from Hurricane Georges, as well as the flooding that hit my State over the weekend and resulted in tragic deaths in the Kansas City area, as well as severe damage to homes and businesses.

We all appreciate the good work FEMA has done to help the victims struggling to recover from recent devastation, whether it is hurricanes, floods or tornadoes. Our thoughts and prayers are with the many people who suffered severe losses because of natural disasters.

In order to support efforts aimed at mitigating against future disasters, the conference report provides $25 million for predisaster mitigation grants. These funds are intended to ensure communities will be better prepared and that losses will be minimized when the next disaster strikes. We hope these funds will be well spent to strengthen the Nation's preparedness for natural disasters.

Finally, within FEMA, the conference agreement provides the full budget amount requested by the administration in July for antiterrorism activities. My ranking member and I believe this is vitally important preparation. It is something we need to be looking at in every area, and we are very proud to be able to provide this assistance for FEMA, because this is critical as part of an interagency effort aimed at preparing States and local governments for possible terrorists incidents.

For the National Aeronautics and Space Administration, NASA, the conference report provides a total of $13.665 billion. This is $200 million over the President's request, including $5.480 billion for the international space station and shuttle activities.

We remain very concerned over cost overruns, and the failure of the Russian Government to meet its obligations as a partner in the development and operation of the space station. As a result, this conference report includes requirements for NASA to address Russian noncompliance and includes a provision addressing the need for NASA to explore alternative ways of doing business with the Russians. Again, I thank my distinguished ranking member for her leadership on this issue.

For the National Science Foundation, the conference agreement provides $3.6 billion for NSF. This is $242 million above the enacted level for the past year. Included in this is $50 million for the plant genome program. Mapping the significant crop genomes is vitally important to the future of agriculture and to feeding our country and to feeding the hungry people of the world. This is an increase of $10 million over last year's level and the initial phases of what I believe will be a significant scientific breakthrough.

Before I yield to my colleague from Maryland, I do want to take this opportunity to talk about a crisis that is wreaking havoc throughout our country. That crisis is in Medicare home health benefits. They are in severe jeopardy.

The Health Care Financing Administration implemented a home health interim payment system, the IPS, which hits hundreds of home health agencies, many of which are small, freestanding providers, and has been forcing them out of business.

In Missouri alone where we had last year 230 home health care agencies, 50 agencies have already shut their doors entirely or have stopped accepting Medicare patients. One of them is the largest program in the State, the St. Louis Visiting Nurses Association, but many of them are small businesses that provide vitally needed health care services. It may be in rural areas or it may be in the inner cities, but they are serving some of the most deserving, poor elderly and disabled in our country.

The agencies that are being hit are those that serve the most complex cases, the ones with the most difficult challenges. Some parts of Missouri are losing their only source of home health care.

My hometown of Mexico, MO, has a small rural hospital. It is the Audrain Medical Center. We are very proud of it. But recently I received a letter from David Neuendorf, the medical center's chief financial officer, describing the difficulties they are facing. He stated the following:

> In Mexico the HealthCor, Beacon of Hope, and Homecare Connections agencies have closed. Other firms headquartered elsewhere have closed their Mexico offices. People who need home care in this area are simply not going to be able to get it in the future. When

they become sick enough they will end up in the hospital where they will receive more expensive treatment.

Mr. President, in Missouri we have a well known phrase: ''Show me.'' Mr. President, people in Missouri have shown me that the interim payment system is denying access to critical home health services. The IPS is the worst case of false economy I have ever seen. If the elderly and disabled cannot get care in the home, what is going to happen? They either will wind up in the emergency room very sick or they will go into institutionalized care, going into expensive nursing homes or even hospitals, or the patients simply will not get care at all.

One agency chief officer who testified before the Small Business Committee exemplifies the problem. She tells me she provides care to the most complex cases, the most difficult ones to serve in a central city area. And if this system and the proposed cuts go through, she could go out of business, and of the 350 patients she has, almost half of them would have to go immediately into nursing homes.

This means that not only will Medicare costs rise, but there will be an explosion in State and Federal Medicaid budgets. We are going to have to pay for these poor, elderly, and disabled who are very sick. If we do not take care of them in the home health setting, we are going to take care of them in less convenient, less comfortable ways for them but far more expensive ways for us.

We must demand this insane, inequitable, and punitive system be corrected before we adjourn. And there are many proposals floating around. I believe Members on both sides of the aisle of this body know stories about how serious this crisis is. Some of them provide needed relief to home health agencies, those whom they serve. Some of them merely add a few lifeboats to a sinking ship. But it is clear one important consideration is missing. It is imperative we restore access to home health care for medically complex patients, especially those in center cities and rural areas. We cannot just reshuffle the deck and cause losses to vulnerable patients.

Mr. President, I would have addressed this under the VA-HUD bill, under the FEMA's emergency budget. Unfortunately, home health care does not qualify for disaster relief. But let me assure my colleagues, that the human disaster of failing to address this home health care problem is going to be as severe, if not more severe, than many of the tragic natural disasters we address in FEMA.

Mr. President, to sum up, I am very proud of the work that we have been able to accomplish. I appreciate once again the work of my distinguished colleague. I will recognize others who have worked on this later, but now it is my pleasure to defer to the distinguished Senator from Maryland.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Thank you very much, Mr. Chairman and Mr. President.

I am really proud once again to come to the floor with my colleague, Senator BOND, to bring to the Senate's attention the 1999 VA-HUD conference report and urge that we move quickly to vote on and pass what I believe is a very solid report. This is a strong conference report, and I believe it is one which will be signed by the President of the United States. And why? Because it meets the day-to-day needs of the American people as well as the long-range needs of the United States of America.

It provides a safety net for our seniors. It gets behind our kids. It invests in science and technology and makes our world safer. It meets compelling human needs and at the same time makes public investments in Federal Laboratories that will come up with the new ideas for the new products, for the new jobs, for the 21st century.

Let's talk about a safety net for seniors. We have often said to our veterans that we are a grateful nation for the sacrifice that they have made in the wars, and many of them bear the permanent wounds of war. But I believe the way a grateful nation expresses its gratitude is not with words but with deeds. That is why I am so pleased that we are providing in the VA medical care account $17.3 billion to meet that need. This will ensure that our veterans will receive quality medical care and that whenever they enter a VA hospital or an outpatient clinic, promises made will be promises kept.

At the same time, we provided $316 million for VA medical research. VA medical research is different from NIH research. Building on basic science, it actually does research in hands-on ways to improve clinical practice—both in acute care as well as in prevention and home health care. This means that this will focus on those diseases that ravage our veterans—like diabetes and like prostate cancer as well as the Gulf War Syndrome.

In addition to what we have done for senior citizens in the veterans health care program, we also worked to make sure that there is a safety net for seniors in our housing for the elderly. Misguided budget cutters sent a budget to us cutting housing for the elderly by a half a billion dollars, and at the same time they wanted to convert those funds to vouchers. On a bipartisan basis, Senator BOND and I said that was absolutely unacceptable.

First of all, the Housing for Elderly Program is one of the most popular programs within HUD. And it is often run by nonprofit organizations, many of whom are faith-based, like Catholic Charities and Associated Jewish Charities in my own State, not only taking taxpayers' dollars and adding housing for the elderly but value adding to that. That is why we restored that cut of a half-billion dollars, to make sure that the funds are there.

We also rejected their approach to providing vouchers. Senator BOND and I really did not believe that an 80-year-old frail, elderly woman with her walker should be walking up and down the streets of St. Louis, MO, or Baltimore, MD, or any of our communities, trying to get into an apartment that might not meet the needs of the elderly, and certainly the frail elderly.

So we got rid of the misguided budget cutting and also the poor policy thinking that went into it. We are challenging HUD, however, to come up with new thinking in their housing for the elderly to develop new approaches for our seniors, and particularly those that are aging in place. There will be a demonstration project run by Catholic Charities just to do that.

At the same time, in this subcommittee, we showed our commitment to the next generation in terms of our children. Within the National Science Foundation account, we have increased the funding for the training of science teachers as well as expanding the informal science education programs to reach beyond the classroom to our children to encourage them to study math, science, and engineering.

Also, we have added assistance for the historically black colleges, as well as ones serving Hispanic institutions, to develop important laboratory infrastructure so that they can modernize their facilities, so they can provide the best quality education available.

In addition to our educational efforts in terms of our children, we also wanted to look out for their health. That is often in the Labor-HHS appropriation, but there is a secret here often in housing, in old housing in slum neighborhoods, which is that they are loaded with lead. Lead constitutes one of the biggest problems facing many of the children in my own hometown of Baltimore. And we have taken Federal dollars and increased the funding for our lead abatement program. Again, we have worked on a bipartisan basis.

Scientists and physicians at Johns Hopkins point out when a child comes into Hopkins and his or her blood is loaded with lead, the very nature of detoxification is not only painful, but it often costs in the Medicaid budget thousands of dollars. The impact of lead not only can lead to death but severe impairment of intellectual ability. By getting the lead out of our housing and getting the lead out of our bureaucracy, we will make sure we get the lead out of our children. We are very pleased to have been able to do that.

While we are looking now to the day-to-day needs of the American people, we know we have to invest in science and technology. Again, Senator BOND and I believe that public investments in science and technology will lead to the new ideas, the new products and the new jobs for the 21st century. That is why we have provided significant

funding for critical science and research at the National Science Foundation and the National Space Agency. This legislation will provide $3.6 billion in the National Science Foundation account. This is an 8 percent overall increase in funding.

The NSF has peer review programs focusing on developing cutting-edge science and technology. We want to, again, work to make sure that this money is used wisely. We believe that the National Science Foundation is on track.

In addition to that, this appropriation provides $13.6 billion for the National Space Agency. It will spur technology development, as well as look for the origins of the universe.

To my colleagues in the Senate and to those also watching, while we were working on the funding for NASA we recognized a great American hero, Senator JOHN GLENN. At the request of his colleague from Ohio, Senator DEWINE, we have renamed the NASA Lewis Research Center in Cleveland the ''John Glenn Research Center,'' which we think is an appropriate recognition. We thank the junior Senator from Ohio for making that request.

While we are working on NASA, we have been troubled about the funding for the space station and also the failure of the Russian Government to deliver its promises. We have instructed NASA to take a look at how we are going to get value for taxpayers' dollars and how we are going to get technology for taxpayers' dollars. After rather firm conversations with the National Security Advisor of the United States, as well as the Administrator, we believe we have language in our appropriations that will help us get both value and technology for our cooperation in this effort.

We are also working on a safe world. We have funded the Environmental Protection Agency to clean up our environment and also take those steps that are necessary to prevent increased environmental degradation. One of the efforts, of course, is in brownfields, which we hope will be a new tool to be able to clean up those contaminated areas and turn a brownfield into a ''green field'' for economic development.

We continue to be troubled about the lack of an authorization for Superfund. We will fund Superfund at last year's level but we encourage the authorizers to be able to move ahead and pass an authorization. We have an additional $650 million included, contingent on a reauthorization by August 1. Those are the things we believe will truly be able to help clean up our environment and do preventive work.

Certain aspects in this legislation regarding EPA are important to my home State of Maryland. In Maryland, we consider good environment is absolutely good business. That is why we thank, once again, Senator BOND for work in continuing the funding for the cleanup and revitalization of the Chesapeake Bay. The bay is important because it provides tremendous jobs in our State, from the watermen who harvest the different species, including the crabs and oysters of the bay, to other small businesses that work on the bay.

All of my colleagues in the U.S. Senate know we were hit by the terrible situation of pfiesteria—this ''X-like'' organism that sits in the mud, mutates 24 times, and then wreaks havoc with our fish. What our legislation provides is important research in pfiesteria. We hope to be able to come up with solutions that will be important not only for Maryland and the causes of it, but also that will help other parts of the country, like North Carolina, and rivers that are affected by animal wastes, with dire consequences.

We are also very pleased the Federal Emergency Management Administration has been funded. We will meet, of course, the 9–1–1 request of the United States of America, but I believe in FEMA we provided the three ''R's.'' We have funded readiness; we have funded response; and we have also funded both rehabilitation, but more importantly, prevention. This has been the hallmark, I think, of FEMA during the last 5 years, to do training at the local community and throughout this Nation, to be ready for those disasters that normally would affect a particular region, but at the same time the readiness help to move to a quick response. Often after a disaster we can't restore it to its old condition or even better, and, therefore, we need to look at ways to prevent disasters.

There is also another disaster that threatens the United States that is very deeply troubling to me. That is the whole issue of threats of terrorist attacks on our own United States of America. I know at the highest level there are coordinated task forces, particularly from our military, but within our legislation we made sure we fund FEMA's effort to do the training necessary to deal with attacks, particularly of bioterrorism and chemical weapons. We regard this as a very important effort.

I want to mention before I close the very close cooperation we have had in this bill with the authorizers on Housing and Banking. I particularly acknowledge the role of my senior Senator, Senator PAUL SARBANES, and Senator MACK of Florida. They really worked hard this year to come up with a new authorizing framework for public housing. I believe that they did it. They worked on economic integration of public housing so it doesn't remain ZIP Codes of pathology. We have worked together in our legislation. We are taking their authorization and incorporating it here to make sure that there are new housing resources. In our bill there will be 50,000 new vouchers designed for welfare-to-work, to make sure that welfare is not a way of life but a tool to a better life, and that public housing is not a way of life but a tool to a better life. We have worked cooperatively with them, and we have worked long and hard on our bill to eliminate outmoded public housing rules that only hold people in place, and often have kept people in poverty.

Also, this legislation will extend the life of HOPE VI. HOPE VI is a program that I helped develop that not only tried to eliminate the concentrations of poverty and bring down the old walls of public housing, but to create new hope and new opportunity. I am so pleased the authorizers have spent over 2 years looking at this to come up with a new framework.

I know my own colleague, Senator SARBANES, is trying to get here to speak on this bill. If he doesn't, I know he will speak later. We were both due at a breakfast meeting in Baltimore and he covered that so I could be here to move my bill. How I like working as a team. It is really a great pleasure to me to have my senior colleague, PAUL SARBANES, on the Budget Committee, as well as on the Housing and Banking where we have worked as a team to look at the day-to-day needs of people.

He took this concept of what was happening in public housing and delved into it to come up with new ideas and a new framework. He had the support of Senator MACK, who I know has gone into public housing, talked with residents, listened to the best ideas of foundations and think tanks and also the needs of residents, as did my own senior colleague. I wish all of my colleagues could enjoy the relationship with their colleague within my State as I do. Senator SARBANES and Senator MACK have come up with a new framework. They pushed us to the wall to come up with new funding. We had to forage for the funds, but we were able to do it. We truly hope this will create hope and opportunity.

In addition to that, we are particularly appreciative of the conference report to maintain the funding for national service, which others had wanted to eliminate.

We want to thank them for that because that is also another tool for creating hope and opportunity. So that is my perspective on the VA-HUD bill. Once again, working on a bipartisan basis, we show that we can meet the day-to-day needs of our American people, as well as the long-range needs of the United States of America. I thank Senator BOND and his staff for, once again, the cooperative and bipartisan way that they have worked with my staff and myself. Senator BOND, I thank you for all of the courtesies, the collegiality, and the consultation in which we engaged on this bill. I thank you for really the professionalism of your staff, Jon Kamarck and Carrie Apostolou, who really helped me in many ways to come up with good ideas and worked with you for good solutions.

I also thank my own staff, Andy Givens and David Bowers, and Bertha Lopez, a detailee from HUD who has been with us, who has worked hard to

make sure I could fill my responsibilities. I thank them for their hard work and effort.

In closing, I also want to say that over on the House side, another member of VA–HUD is retiring. We pay our respects to Congressman LOUIS STOKES, who has also really helped move this bill forward.

So, Mr. President, that is my perspective on the bill. In a few minutes, I know we will be moving toward a vote. I urge every single Senator on my side of the aisle to support this bipartisan effort to move the appropriations and really encourage all others with outstanding appropriations to act in the same bipartisan fashion that we have.

Mr. President, I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I join with my colleague from Maryland in expressing our appreciation to the House authorizing committee. She mentioned Senator SARBANES. I want to express my sincere appreciation to Senator MACK. They spent 4 years in ''legislative purgatory'' attempting to come up with a resolution of these very difficult and important issues.

Mr. ALLARD. Mr. President, I wish to thank the conference committee members, and in particular the chairman of the VA/HUD Appropriations Committee, Senator BOND, and the Chairman of the Housing Subcommittee, Senator MACK. I appreciate their working with me to include two provisions in public housing reform language which I feel are important.

We have worked together to include a provision to allow vouchers for crime victims. This would create an opportunity for individuals who are living in public housing units the chance to leave a bad situation if they are a victim of a crime.

Public housing residents could receive a housing voucher if they were the victim of a crime of violence that has been reported to law enforcement.

These individuals would be empowered with the choice of where they want to live and are given the freedom to determine what surroundings they desire. I strongly believe that people should have the option of vouchers when their housing is unsafe.

We have also included what I hope will be a thorough study by the General Accounting Office of the full costs of each federal housing programs. I have been dismayed by the lack of data on the cost and benefits of public housing, section 8, and voucher programs. We need better data.

Once we determine what these programs actually cost on a unit by unit basis we can better determine the best approach. I personally prefer vouchers, but I want a complete review of all these programs to help us determine the most cost effective means of providing government assisted housing as we enter the 21st century.

Again, I would like to thank the chairmen and their staff for completing action on public housing reform legislation and look forward to working with them in the future.

CLARIFYING THE STATEMENT OF THE MANAGERS ACCOMPANYING THE VA–HUD CONFERENCE REPORT

Mr. LAUTENBERG. Mr. President, I want to clarify a section in the statement of the managers accompanying the VA–HUD conference report. The language urges EPA not to spend any funds or require any parties to dredge contaminated sediments until completion of a National Academy of Sciences report on dredging technology. The report may take two years to complete. It is my understanding that the language is not intended to limit EPA's authority during the next two years with respect to dredging contaminated sediments that pose a substantial threat to public health or the environment where EPA has found that dredging is an appropriate response action.

Mr. BOND. The Senator is correct. The statement of the managers is not intended to limit the EPA's authority with respect to dredging contaminated sediments that pose a substantial threat to public health or the environment where EPA has found, consistent with its contaminated sediment management strategy, that dredging is an appropriate response action.

ECONOMIC DEVELOPMENT INITIATIVES

Mr. SPECTER. Mr. President, I have sought recognition to thank Chairman BOND for his inclusion of funding within the Economic Development Initiatives account for three important projects in Pittsburgh, Wilkes-Barre, and Philadelphia, Pennsylvania that I requested.

The conference report also includes $2 million for the City of Pittsburgh to redevelop the LTV site in Hazelwood, Pennsylvania. These funds can be used by the city to clean up and prepare the site for eventual reuse. One possibility being contemplated in the area is an effort to attract the Sun Oil Company to build a new coke facility which create hundreds of new jobs.

I am pleased that we have been able to increase the level of funding in the bill from $750,000 to $1 million for the downtown revitalization project in Wilkes-Barre which is also a top priority for Mayor Tom McGroarty and Congressman PAUL KANJORSKI.

I am also pleased that the conference report includes $50,000 for a project in Central and South Philadelphia, which is plagued with an average annual family income of $7,600, a 45 percent unemployment rate, and a 50 percent high school drop-out rate. These funds are intended to provide initial resources for the development of a job training and business center to generate employment in this section of Philadelphia. The renewal project is spearheaded by Universal Community Homes, a not-for-profit community development corporation which has a strong presence in the city, and which has received grants from the Department of Housing and Urban Development for housing and other initiatives which are geared toward improving the quality of life for low-income families. In January of this year, I had the opportunity to visit Universal Community Homes to tour their facilities. More importantly, I met with individuals who directly benefit from the programs and services delivered by Universal Community Homes. Members of the media and community leaders were also present to bring to my attention that the South Central Philadelphia sections of the city are in critical need of a job training and business center.

I take this opportunity to clarify with Chairman BOND that it is the conferees' intent that Universal Community Homes is the appropriate applicant for the EDI grant for Central and South Philadelphia.

Mr. BOND. I thank my colleague for his comments and have appreciated his input on worthwhile projects in Pennsylvania. I agree with his understanding that the conferees intend that Universal Community Homes is the appropriate applicant for the funds provided for a job training and business center Central and South Philadelphia.

NEW ENGLAND HEALTH SYSTEM

Mr. LIEBERMAN. Mr. President, I rise with my colleague from Connecticut for the purpose of a colloquy with the Chairman and the Senator from Vermont. Is the Chairman aware of the financial constraints facing the veterans health system in New England's VISN 1?

Mr. BOND. Yes, the Chair is aware of the financial constraints in New England.

Mr. LIEBERMAN. Mr. President, news accounts have indicated that New England's veteran health care system will suffer additional cuts despite recent efficiency and consolidation efforts. Veterans could find themselves cut off from health services throughout the region. Is the Chairman aware that without additional dollars administrators will have to cut deeply into valuable health care programs and basic administrative support services?

Mr. BOND. I am well aware that the New England region has had to make significant reductions in health care costs, in part because of the VA funding formula.

Mr. DODD. I know the Chairman knows that the veterans in VISN 1 live in a region that stretches from Connecticut to Maine. The budget for our region's medical care has dropped from $854 million in fiscal year 1996 to $809 million in fiscal year 1998. I have been informed by the Department of Veterans Affairs that the New England region will endure yet another budget cut in fiscal year 1999. I hope that the Appropriations Committee will take note of the impact these reductions are having on facilities across New England.

Mr. LEAHY. Mr. President, as is the Chairman, I am a member of the VA/

HUD Subcommittee that funds the Department of Veterans Affairs. He knows my personal concern about the situation facing our veterans in New England. The Appropriations Committee added $278 million in this conference report for veterans medical care, a significant increase over the President's budget request. It was my understanding that a portion of this increase will go to New England. Am I correct in that assumption?

Mr. BOND. The Senator from Vermont is correct. All networks will receive some part of these additional funds, and these funds will help New England and all regions address some critical funding issues.

Mr. LEAHY. I look forward to working with the Senator from Missouri on this issue in the coming year, and I thank him for his leadership on all issues affecting our nation's veterans.

Mr. LIEBERMAN. As did my colleague from Vermont, I thank my friend from Missouri for his consideration on this issue of profound importance to New England veterans.

NOTICE OF PREPAYMENT

Mr. WELLSTONE. Mr. President, I rise today to speak on an important provision of the FY1999 VA/HUD appropriations bill. Thanks to the hard work and grassroots efforts of tenants and housing advocates across the country, this VA/HUD bill includes a 5 month minimum requirement to notify tenants and communities of an owner's intent to repay his or her federally assisted mortgage.

This provision helps tenants of Section 236 and Section 221(d)(3) housing as created by the National Housing Act for federally assisted, privately owned affordable housing. Under the Section 221 program, the federal government insures the mortgages on certain rental housing; under the Section 236 program, the federal government subsidizes the interest payments that owners of rental housing made on the mortgages. Both of these programs offer the security of a federal subsidy for building owners in return for their maintaining these buildings as affordable housing. Regulatory agreements signed between HUD and the building owners restrict the rents which could be charged on the units within the building so long as the mortgage is insured or subsidized by HUD. To be eligible, an owner signs a 40 year mortgage; however, the owner can prepay the mortgage or end the contract after 20 years and has the ability to remove that building from the pool of affordable housing.

Twenty years have now passed, and the legislative housing initiatives of the 1980s have failed to curb the collapse of this once sturdy guarantee of affordable housing for low-income families and individuals. One major provision is that owners of a Section 236 project simply need to give their tenants a 30-60 day notice that the property is under the prepayment process. All too often the prepayment of the mortgage by the owners results in a tremendous loss to the tenants of that project. Without the federally backed restriction on rents that can be charged, the prepayment of the mortgage opens the door to new owners who on average have increased the tenants monthly rent by 49%.

This increase in rent forces low-income tenants out of their homes. This increase in rent forces these tenants to search for new housing, often in rental markets with exceptionally low vacancy rates. At the same time the supply of low-income housing takes a big hit, fewer and fewer units are available with each prepayment of Section 236 housing for the low-income families in desperate need of adequate housing.

Mr. President, the Senate version of the VA/HUD bill included a provision to give tenants of Section 236 housing a fair notice—one full year—of the owner's intent to prepay the mortgage on the building. This critical one year notice was designed to accomplish two goals. First, it would have given the tenants a notice of the owner's prepayment intentions. For some tenants, especially those living in the Minneapolis/St. Paul Metropolitan area, finding housing has been extremely difficult. The vacancy rate is at 1.9%. It was simply unreasonably to expect those tenants to find alternative housing within only 30 days with such a low vacancy rate. In fact, it has been nearly impossible for low-income tenants and families to find adequate housing in such a short time in such a tight housing market. Secondly, the one year notice would have given a community the critical time necessary to begin to formulate options to keep that building available for those in need of affordable housing. I am pleased that the Senate is on record supporting the need for a fair notice to tenants.

Unfortunately, the conference report does not include the full extent of my provision. The one-year notice period was reduced in the VA/HUD Conference Committee. It was reduced to not shorter than five months, but not longer than a nine months notice by owners. In addition, the provision now includes an enactment date effective 150 days after passage of the bill. Clearly, I am not enthusiastic about this revision to the notice requirement, but it is certainly an improvement over the current requirement of 30–60 days. As a result, the shorter time may only buy additional time for the families facing the increase in rent and their eventual move to alternative housing. I fear that the 5–9 months will not accord non-profits and communities with the necessary time to purchase the building and maintain those units as affordable housing.

However, this revised provision does put the right foot forward. Not only is it a public acknowledgment that Congress sees the prepayment of Section 236 and Section 231 housing as a potential crisis facing the market, it gives tenants and communities the framework to find affordable alternatives for low-income families. This is only the first step. To truly restore fairness to the housing situation, tenants should have a longer period of time—one year or longer advance notice. The Senate is on record in support of a one-year notice and the next Congress should move to increase the notice period again. I am proud of the work that has been done, but I believe we have to do more.

I thank my colleagues for supporting this important provision. While the revisions in the conference report may be the best possible solution to the crisis facing the tens of thousands of families dealing with the prepayment of their building, it does provide a necessary improvement to existing law.

Mr. KERRY. Mr. President, I rise in support of the VA–HUD Appropriations bill. I thank Chairman BOND and Senator MIKULSKI for their success in bringing this bill to the floor with such widespread support. Balancing the many competing needs in an appropriations bill is never an easy task, and Senators BOND and MIKULSKI and all of the other conferees should be proud of the work they have done.

As ranking member of the Subcommittee on Housing Opportunity and Community Development, I am particularly pleased with the appropriations for the Department of Housing and Urban Development. The Fiscal Year 1999 appropriations for HUD is the agency's best in the past 10 years. Roughly $2 billion more has been appropriated for Fiscal Year 1999 than was made available in 1998. These gains would not have been possible without the tireless efforts of Secretary Cuomo, who delivered a strong and thoughtful budget request to the appropriators last January.

The Fiscal Year 1999 HUD appropriations bill symbolizes a renewed commitment to meet our nation's severe housing shortages. Today, only about one out of every 4 households in need of housing assistance receives it. Of the roughly 12 million families that need housing assistance but do not receive it, almost half have worst case housing needs. These families are paying more than half of their incomes every month in rent, or live in physically substandard Housing, or both.

The appropriations bill will help address this need by funding 50,000 new section 8 vouchers, many of which will be targeted to people moving from welfare to work. These vouchers establish a crucial link between housing and employment opportunities, while simultaneously helping those who are making a concerted effort to get off of welfare assistance. They are important tools whose significance cannot be overstated given the uncertainty of welfare reform.

Furthermore, this bill changes current law so that housing authorities no longer have to hold off on reissuing vouchers and certificates for a period of three months upon turnover. Repealing this delay will provide section 8

vouchers to as many as 40,000 more low-income families each year. I commend the appropriators for recognizing the need for this resource, and implementing this important change.

The conference report also reaffirms our nation's commitment to homeownership by expanding the FHA single family mortgage insurance program. We are currently seeing record levels of homeownership in this country, and HUD should take great pride in this accomplishment. But not all of those who qualify for homeownership are afforded an opportunity to purchase a home in the neighborhood of their choice. The Fiscal Year 1999 appropriations bill will help address this inequity by raising the FHA loan limits in both high cost urban areas and lower cost rural areas. These new loan limits will enable roughly 17,000 additional families to become homeowners each year.

The conferees are also to be commended for increasing the levels of funding for a number of important HUD programs. Funding for the CDBG program, the HOME program, the public Housing capital fund, the HOPE VI program, the homeless assistance fund, Fair Housing initiatives, HOPWA, Housing for Elderly and Disabled, and the Lead Hazard Abatement program have been significantly increased for Fiscal Year 1999. These funding levels, many of which are higher than the Administration's request, demonstrate the appropriators' commitment to supporting housing and economic development initiatives despite other competing needs contained in this appropriations bill.

I am especially pleased that the appropriators have chosen to fund the Youthbuild program at $42.5 million for Fiscal Year 1999—$7.5 million over what was enacted in 1998. Youthbuild, which I helped pass into law, provides on-site training in construction skills, as well as off-site academic and job skill lessons, to at-risk youth between the ages of 16 and 24. Approximately 7,300 young people have participated in Youthbuild programs to date, and many more-at-risk youth will be able to benefit in the future from the increased resources that have been devoted to this program.

Mr. President, I would also like to express my support for the public housing reform act which was attached to the conference report. As ranking member of the Subcommittee on Housing Opportunity and Community Development, I have worked closely with Senator MACK, Senator SARBANES, Secretary CUOMO, Representative KENNEDY and Representative LAZIO to develop this compromise measure. I am very proud of the final product.

The public housing reform act successfully achieves a delicate balance: it deregulates public housing authorities while simultaneously requiring them to better the lives of the residents they serve. For instance, the reform measure permanently repeals Federal preferences, which had the unintended consequence of concentrating poverty in public housing developments. The bill allows PHAs to develop their own preferences, including a preference for working families, but requires that at least 40 percent of all public housing units and 75 percent of all section 8 units that become available each year be provided to people making below 30 percent of area median income. These protections, which I fought very hard for on the Senate floor and which are better than current law, will benefit residents at all income levels by facilitating the creation of mixed income developments.

The value of mixed income developments cannot be overstated. Working families stabilize communities by offering hope and opportunity in environments of despair. In recognition of this important principle, the reform bill will require housing authorities to develop plans for the economic desegregation of their distressed communities. Each PHA must develop their plan in consultation with its residents, and all plans will be submitted to HUD for approval. The economic desegregation plan was incorporated into the bill at the strong urging of Secretary Cuomo, and I am confident that HUD officials will be committed to making this provision work.

The Reform Act eliminates many burdensome requirements for housing authorities. One-for-one replacement rules, which prevented PHAs from demolishing vacant public housing projects and building lower density developments, have been repealed. Total development costs have been revised to allow housing authorities to construct more viable communities. And PHAs will be permitted to use their Federal funds in a more flexible manner, including investment in mixed finance developments that attract private capital.

But with this freedom comes a new responsibility: housing authorities must involve residents in the decisions that will affect their lives. The Reform Act will empower residents in important ways. They will sit on PHA boards, they will participate in the PHA planning process, and they will be offered greater opportunity to manage their own developments or solicit alternative management entities.

Other provisions in the public housing reform act will benefit residents more directly. For instance, the bill includes a mandatory earned income disregard so that public housing residents who are unemployed, or who have been on welfare assistance, will not be charged any additional rent for a one year period after finding a job. The bill permits and encourages PHAs to establish escrow accounts for residents—accounts which residents can use to fund homeownership activities, moving expenses, education expenses, or other self sufficiency initiatives. The bill also retains the Tenant Opportunity Program as a separately funded grant program, and mandates that at least 25 percent of available funds under this program be distributed directly to qualified resident organizations.

The public housing bill also makes a real commitment to expanding homeownership opportunities for low income Americans. PHAs will now be permitted to use a portion of their capital funds in support of homeownership activities for public housing residents, and families can now use their Section 8 vouchers to help cover the cost of mortgage payments.

In short, the Public Housing Reform Act will go a long way towards improving the lives of the millions of Americans who are receiving Federal housing assistance. It is a nice complement to the funding increases contained in the rest of the VA–HUD bill—increases which will help many more Americans who are in dire need of housing assistance. I urge all of my colleagues to show their support for both of these important initiatives by voting in favor of the VA–HUD conference report.

Mr. DOMENICI. Mr. President, I rise in strong support of the conference agreement on H.R. 4194, the VA–HUD appropriations bill for 1999.

This bill provides new budget authority of $93.3 billion and new outlays of $54.0 billion to finance operations of the Departments of Veterans Affairs and Housing and Urban Development, the Environmental Protection Agency, NASA, and other independent agencies.

I congratulate the distinguished subcommittee chairman and ranking member for producing a bill that not only is within the subcommittee's 302(b) allocation, but that also can be signed by the President. When outlays from prior-year BA and other adjustments are taken into account, the bill totals $91.9 billion in BA and $102.1 billion in outlays. The total bill is exactly at the Senate subcommittee's 302(b) nondefense allocation for budget authority and is under the outlay allocation by $197 million. The bill is exactly at the defense allocation for both BA and outlays.

I note that this appropriations bill does include significant authorizing legislation, including a major reauthorization of public housing programs, and that some of the provisions have a revenue impact which will go on the paygo scorecard.

Mr. President, I ask unanimous consent to insert into the RECORD a table displaying the Budget Committee scoring of the conference agreement on H.R. 4194.

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

H.R. 4194, VA–HUD APPROPRIATIONS, 1999—SPENDING COMPARISONS—CONFERENCE REPORT

[Fiscal year 1999, in millions of dollars]

	De-fense	Non-de-fense	Crime	Man-datory	Total
Conference Report:					
Budget authority	131	69,914		21,885	91,930

H.R. 4194, VA–HUD APPROPRIATIONS, 1999—SPENDING COMPARISONS—CONFERENCE REPORT—Continued

[Fiscal year 1999, in millions of dollars]

	De-fense	Non-de-fense	Crime	Man-datory	Total
Outlays	127	80,364		21,570	102,061
Senate 302(b) allocation:					
Budget authority	131	69,914		21,885	91,930
Outlays	127	80,561		21,570	102,258
1998 Enacted:					
Budget authority	131	69,286		21,332	90,749
Outlays	139	80,250		20,061	100,450
President's request:					
Budget authority	131	69,957		21,885	91,973
Outlays	127	81,000		21,570	102,697
House-passed bill:					
Budget authority	130	70,899		21,885	92,914
Outlays	126	80,373		21,570	102,069
Senate-passed bill:					
Budget authority	131	69,855		21,885	91,871
Outlays	127	80,653		21,570	102,350
CONFERENCE REPORT COMPARED TO:					
Senate 302(b) allocation:					
Budget authority					
Outlays		−197			−197
1998 Enacted:					
Budget authority		628		553	1,181
Outlays	−12	114		1,509	1,611
President's request:					
Budget authority		−43			−43
Outlays		−636			−636
House-passed bill:					
Budget authority	1	−985			−984
Outlays	1	−9			−8
Senate-passed bill:					
Budget authority		59			59
Outlays		−289			−289

Note: Details may not add to totals due to rounding. Totals adjusted for consistency with current scorekeeping conventions. Prepared by SBC Majority Staff, 10/07/98.

PROVISIONS IN THE QUALITY HOUSING AND WORK RESPONSIBILITY ACT OF 1998

Mr. MACK. Mr. President, I would like to enter into a colloquy with the distinguished ranking member of the Banking Committee, Senator SARBANES, to clarify various provisions in the Quality Housing and Work Responsibility Act of 1998 and discuss the understandings reached among conferees regarding these provisions.

Section 508 requires a disregard of earned income under some circumstances, including persons who obtain employment after one year of unemployment. The rules defining ''unemployment'' for this purpose should provide sufficient flexibility so that a family member who may have a brief, temporary period of employment during the preceding year would not be ineligible for the disregard. At the same time, the rules must not encourage households to change their employment patterns to take advantage of the disregard.

Section 519 provides guidance for a new Operating Fund formula, including that agencies will ''benefit'' from increases in rental income due to increases in earned income by families in occupancy. The extent of this benefit will be determined in the negotiated rulemaking on the Operating Fund formula. More generally, the Operating Fund formula should not be skewed against or discourage mixing of incomes in public housing that is consistent with the bill's objectives. With respect to the Capital Fund formula, the possibility of having an incentive to encourage agencies to leverage other resources, including through mixed-finance transactions, should be considered during the negotiated rulemaking process.

Section 520 amends the current definition of total development costs, but retains the current law directive in section 6(b)(2) of the United States Housing Act that these guidelines are to allow publicly bid construction of good and sound quality. In the past, HUD has not interpreted this reference in a way that allows for sufficiently durable construction, of a nature that will reduce maintenance and repair costs and will assure that public housing meets reasonable community standards. The Department should interpret this section as requiring the use of indices such as the R.S. Means cost index for construction of ''average'' quality and the Marshal & Swift cost index for construction of ''good'' quality.

Where a family is relocated due to demolition or disposition, voluntary conversion of a development to tenant-based assistance or homeownership (sections 531, 533 and 536), the family must be offered comparable housing that is located in an area that is generally not less desirable than the location of the displaced resident's housing. For purposes of this provision, the phrase ''location of the displaced resident's housing'' may be construed to mean the public housing development from which the family was vacated, rather than a larger geographic area.

Where a family is relocated due to demolition or disposition, voluntary or required conversion of public housing to tenant-based assistance or a homeownership program (sections 531, 533, 536 and 537), relocation may be to another public housing unit of the agency at a rental rate that is comparable to the rental rate applicable to the unit from which the family is vacated. However, this requirement does not mean that the rental rate always must be exactly the same. Specifically, if the agency has exercised its discretionary authority in the initial unit to charge less than thirty percent of adjusted income and that authority would be inapplicable to or inappropriate for the new unit, the comparable rent could be a rent that would apply if this discretionary authority had not been exercised (i.e., up to thirty percent of adjusted income).

With respect to public housing demolition (section 531), the conference report does not include a provision from the Senate bill that would deem applications approved if HUD did not respond within 60 days. However, HUD is urged to continue processing applications responsibly and expeditiously. In the same section, references to demolition or disposition of a ''project'' may be applied to portions of projects where only portions are undergoing demolition or disposition.

In the provisions for voluntary or required conversion of public housing to vouchers (sections 533 and 537), residents of affected developments are to be provided notification that they can remain in their dwelling unit and use tenant-based assistance if the affected development or portion is to be used as housing. In many such instances, the development may be undergoing rehabilitation, reconfiguration or demolition and new construction. If so, the resident would be entitled to stay in the same development and use tenant-based assistance, but not necessarily the same dwelling unit.

The bill provides for the possibility of transfer of housing from an agency to an eligible management entity due to the mismanagement of the agency (section 534). Such mismanagement may relate to a single housing development, rather than more widespread mismanagement.

With respect to the definition of ''mixed-finance projects'' in section 539, the requirement that a project is financially assisted by private resources means that the private resources must be greater than a de minimis amount. In addition, in the same section, new Section 35(h) of the 1937 Act applies only to a mixed-finance project that has a ''significant number'' of units other than public housing units. Therefore, this section would not apply to a mixed-finance project which had only a de minimis number of units other than public housing units.

It is intended that wherever appropriate in programs authorized throughout the bill, reasonable accommodation be made for persons with disabilities. This would apply, for example, in homeownership programs authorized by section 536. With respect to the setting of voucher payment standards authorized by section 545, agencies are urged to make payment standard adjustments to facilitate reasonable availability of suitable and accessible units and assure full participation of persons with disabilities. Subject to the availability of funds, HUD also should allow administrative fee adjustments to cover any necessary additional expenses for serving persons with disabilities fully, such as additional counseling expenses.

The provision allowing HUD to phase in the new Section 8 law, section 559, provides HUD the flexibility to apply current law to assistance obligated before October 1, 1999. This language is intended to be construed so that HUD may continue for as long as necessary to apply current law to families now assisted by Section 8, to the extent the Secretary deems appropriate.

Mr. SARBANES. I thank the Senator for the clarification and concur with the Senator's understanding of the intent of these provisions.

SECTION 226

Mr. D'AMATO. Mr. President, I would like to enter into a colloquy with my good friend Senator BOND in order to fully clarify a provision of the VA–HUD Appropriations Act for Fiscal Year 1999. I am pleased that the conferees have included language in Section 226 of the VA–HUD Appropriations Conference Report (H. Rpt. 105–769) which would clarify that existing contractual arrangements between the New York City Housing Authority

(NYCHA) and HUD are maintained. Under current practice, NYCHA is expressly allowed, under prior formula agreement with HUD, to utilize its existing allocations of operating and modernization subsidies for the benefit of certain state and city developed public housing units. While the FY 1999 VA–HUD Appropriations Act will not allocate any additional funds for these local units, the Act does include a specific statutory protection for units which were assisted prior to October 1, 1998. Thus, the current contractual relationship between NYCHA and HUD would be fully protected and maintained. I would ask the distinguished Chairman of the VA–HUD Subcommittee if my explanation is consistent with the intent of the conferees?

Mr. BOND. Mr. President, I concur with the statement by Senator D'AMATO, the Chairman of the Senate Banking Committee. The conferees were mindful of the existing situation in New York City and have fully protected existing practice in the VA–HUD Appropriations Conference Report. No provision of the Act is intended in any way to interfere with or abrogate existing contracts for the use of assistance in New York City.

Mr. D'AMATO. I thank the Chairman for his clarifying remarks and wish to express my thanks to the conferees for their consideration of the unique circumstances which exist in New York City.

THE QUALITY HOUSING AND WORK RESPONSIBILITY ACT OF 1998

Mr. D'AMATO. Mr. President, I rise to support the Quality Housing and Work Responsibility Act of 1998. This public and assisted housing reform legislation is the result of four years of delicate crafting and compromise and has bipartisan Congressional support and the endorsement of Department of Housing and Urban Development Secretary Cuomo. I support its final passage today as part of the Fiscal Year 1999 Veterans Affairs, Housing and Urban Development (HUD) and Independent Agencies appropriations bill (H.R. 4194).

Mr. President, it is with great respect that I salute the distinguished Chairman of the Banking Subcommittee on Housing Opportunity and Community Development, Senator CONNIE MACK. Senator MACK is owed a debt of gratitude for his great determination and commitment to an informed and reasoned approach to public housing reform. He consistently pursued a steadfast course toward a compromise which represents a positive change to the existing public housing system while protecting our residents whom the program serves. I commend him for his strong leadership and effective stewardship of this landmark legislation.

I also commend Banking Committee Ranking Minority Member PAUL SARBANES, Housing Subcommittee Ranking Minority Member JOHN KERRY, all Members of the Banking Committee and many interested Members of the Senate for their essential guidance and leadership on this issue. Chairman KIT BOND and Ranking Member BARBARA MIKULSKI of the VA–HUD Appropriations Subcommittee deserve our appreciation for their willingness to allow this bipartisan legislation to be included in the Fiscal Year 1999 VA–HUD Appropriations Act. Our House colleagues, in particular Banking Subcommittee on Housing Chairman RICK LAZIO, Banking Committee Chairman JIM LEACH, Banking Committee Ranking Minority Member JOHN LAFALCE and Housing Subcommittee Ranking Minority Member JOE KENNEDY, all deserve thanks and appreciation. In addition, I commend and thank HUD Secretary Andrew Cuomo and his Administration for his able assistance and support of this bill. All deserve credit for their dedication to this consensus-building effort.

Resident associations, public housing authorities, low-income housing advocates, non-profit organizations, state and local officials and other affected parties have shared their views and participated in this important political and policy process. I express my thanks to all for their significant involvement which has successfully yielded a balanced, fair, and comprehensive reform bill which will enhance and revitalize affordable housing throughout our nation.

The Quality Housing and Work Responsibility Act recognizes that the vast majority of public housing is well-managed and provides over 1 million American families, elderly and disabled with decent, safe and affordable housing. It also responds to the need for improvements to the public and assisted housing system. It will protect our residents by maintaining the Brooke amendment, which caps rents at 30% of a tenant's income, and establishing a ceiling rent voluntary option as an incentive for working families. In addition, the bill will ensure that housing assistance continues to be targeted to those most in need. Forty percent of all public housing units which become vacant in any year and seventy-five percent of re-issued Section 8 vouchers will be targeted to families with incomes below thirty percent of the local area median income. It will expand homeownership opportunities for low and moderate income families. The bill also will speed the demolition of distressed housing projects through the repeal of the one-for-one replacement requirement.

The reforms contained in this Act will reduce the costs of public and assisted housing to the Federal Government by streamlining regulations, facilitating the formation of local partnerships, and leveraging additional state, local and private resources to improve the quality of the existing stock. These changes will help ensure that federal funds can be used more efficiently in order to serve additional families through the creation of mixed income communities.

Mr. President, I would like to comment in more detail on a few of the many significant provisions in the bill. The legislation recognizes that every American deserves to live in a safe and secure community. To achieve that goal, a number of safety and security provisions have been included in the bill. Specifically, the Act will allow police officers to reside in public and assisted housing, regardless of their income. Also, the Act improves tenant screening and eviction procedures against persons engaged in violent or drug-related crimes or behavior which disrupts the health, safety or right to peaceful enjoyment of the premises of other tenants or public housing employees. In addition, the Act will serve to improve coordination between housing authorities, local law enforcement agencies and resident councils, particularly in developing and implementing anti-crime strategies.

Further, at my request, the Act includes provision to ban child molesters and sexually violent predators from receiving federal housing assistance. To achieve this, local public housing agencies would be granted access to the Federal Bureau of Investigation's national database on sexually violent offenders, as well as State databases. This improved records access provision is critical to ensuring that these offenders are properly screened out and prevented from endangering our children.

Another critical safety and security measure will ensure that housing authorities have the well-defined power to ban absentee and negligent landlords from participation in the Section 8 voucher program. Currently, HUD's regulations only allow housing authorities to refuse to do business with absentee landlords on very narrow grounds. The legislation being passed today will clarify that housing authorities may cease to do business with landlords who refuse to take action against tenants who are engaged in criminal activity or who threaten the health, safety or right to peaceful enjoyment of the premises of their neighbors.

In addition, my proposals to protect the essential rights of current residents have been adopted in the Act and I commend the residents of my home State for bringing injustices to my attention so that I might act. First, the protection against eviction without good cause has been fully maintained in the Act. This is critical for the hundreds of thousands of senior, disabled and hardworking low-income New Yorkers who depend on public and assisted housing for shelter. Second, the residents' right to organize and assemble has been fully protected and extended to the project-based and Section 8 opt-out properties. It is imperative that residents have their First Amendment rights to free speech and assembly protected. Finally, the Act makes absolutely clear that no provision of the existing HUD regulation (24 CFR

964) governing resident councils is in any way abrogated by this Act. I am gratified that the Act protects the residents' right to organize and empower themselves to improve further their own communities.

Without the tireless and steadfast efforts of our staff, this bill would not have become a reality. I would like to express my appreciation and thanks to the following Senate majority and minority Banking Committee and Housing Subcommittee staff: Chris Lord, Kari Davidson, Cheh Kim, Jonathan Miller, Matthew Josephs, and Army Randel. I would also like to commend the House Banking Committee and Housing Subcommittee staff for their fine work and spirit of cooperation.

Mr. President, this landmark legislation will greatly improve the quality of life for our nation's families residing in public and assisted housing and will help to ensure the long-term viability of our nation's existing stock of affordable housing. I respectfully urge its immediate passage.

RENT CHOICE PROVISION

Mr. D'AMATO. Mr. President, I would ask my friend Senator MACK for a clarification of the provision included in the Quality Housing and Work Responsibility Act of 1998 which will grant residents a voluntary option to choose a flat rent. Several clarifying provisions have been added to the legislation to protect residents and reduce the administrative burden of such a choice on housing authorities. First, residents will be protected from being coerced into making a choice of rents which is adverse to their interest. Second, in the case of a financial hardship, residents are granted the right to an immediate change to the Brooke Amendment rent, which caps rent at no greater than thirty percent of income.

Mr. President, the Act also specifically provides that no additional administrative burden be placed on housing authorities that already administer flat rent or ceiling rent systems. If an agency's present system allows the family the opportunity to annually request a change from an income-based system to a flat or ceiling rent system, or vice-versa, the fact that rent is initially determined by an existing computer system which automatically selects the lower rent should not be considered contrary to the requirements of the Act. I would ask Senator MACK if these statements accurately describe the provisions of the Act?

Mr. MACK. Mr. President, I fully concur with the statements of my friend, Senator D'AMATO. His statements are fully consistent with my understanding of the legislation.

SECTION 8 TENANT-BASED RENEWAL TERMS

Mr. D'AMATO. Mr. President, I would like to ask Senator MACK his view of the provisions of the Quality Housing and Work Responsibility Act of 1998 that relate to the renewal of expiring tenant-based Section 8 contracts. I am greatly heartened by the inclusion of specific terms for the renewal of expiring Section 8 tenant-based contracts. The renewal terms included in the Act will ensure that housing authorities continue to receive full funding to maintain effective Section 8 assisted housing programs. The Act's renewal provision will address a number of problems which have arisen—including a very serious potential threat to affordable housing in my home State of New York—as a result of HUD's attempt to revise its method of funding renewals.

Under the renewal terms of Section 556 of the Act, housing authorities will be ensured that they receive full funding to maintain their current obligations and continue to re-issue turnover vouchers, without any attrition or loss of assistance. Housing authorities in New York will be able to continue to assist thousands of new families each year—particularly the homeless and victims of domestic violence. Without the changes included in this legislation, the New York City Housing Authority alone could have suffered a loss of over 7,000 vouchers over the next few years. This potential catastrophe has been averted.

To be more specific, Section 556 establishes a baseline for maintaining current Section 8 obligations. This baseline is to be calculated by taking into account the number of families which were actually under lease as of October 1, 1997 plus any incremental units or additional units authorized by HUD after that date. It is the explicit intent of the authors of this legislation that the units approved by HUD pursuant to its April 1, 1998 Notice shall be included in the definition of ''additional families authorized.'' Finally, HUD shall apply an inflation factor to the baseline which takes into account local factors such as actual increases in local market rents.

I would ask Senator MACK, if these statements are consistent with his views of the legislation?

Mr. MACK. Mr. President, Senator D'AMATO's comments are absolutely accurate. Section 556 of the Act was added in response to a vociferous outcry among housing authorities and low-income advocates who feared that HUD's administrative actions during Fiscal Year 1998 could have inadvertently led to a decline in housing assistance under the Section 8 program. The renewal terms included in the Act are intended to avoid such a result and will ensure that full funding for the program is maintained. I appreciate the Chairman's work to ensure that this provision will not have adverse budgetary implications.

Mr. D'AMATO. I thank the Senator for his clarifying remarks and commend him for the excellent work that went into the legislation.

DRUG ELIMINATION PROGRAM AMENDMENTS

Mr. D'AMATO. Mr. President, I would like to enter into a colloquy with the respected Chairman of the Banking Committee's Subcommittee on Housing Opportunity and Community Development, Senator CONNIE MACK and the full Committee Ranking Member, Senator PAUL SARBANES. One of the most significant provisions addressed by the Quality Housing and Work Responsibility Act of 1998 is the amendment of the Public and Assisted Housing Drug Elimination Act of 1990.

Mr. President, the Drug Elimination Program is critical to the fight against drugs and serious, violent crime in our Federal housing developments. The residents of this housing have a right to a safe and peaceful environment. The Federal Government bears a unique and overriding responsibility to ensure that residents feel secure in their homes, can walk to the store or send their children to school without fear for their physical well-being. I am especially appreciative of the inclusion of a funding mechanism which will ensure the continued direction of assistance to housing authorities with significant needs. In my home State, the Drug Elimination Program plays a critical role in communities from Buffalo, Syracuse, Rochester and Albany to Brooklyn, the Bronx and Long Island. The provisions of the Act will ensure that existing programs are placed on a solid financial foundation—without precluding assistance to new programs which meet urgent or serious crime problems.

I would ask the distinguished Chairman of the Housing Subcommittee for his views on the legislation?

Mr. MACK. Mr. President, I welcome the comments of my friend, Senator D'AMATO. Indeed, the amendments to the Public and Assisted Housing Drug Elimination Act of 1990 which we have included in the Act represent a significant improvement in the program. The amendments will provide renewable grants for agencies that meet performance standards established by HUD. In addition, housing authorities with urgent or serious crime needs are protected and will be assured an equitable amount of funding.

Mr. President, the intent of these provisions is to provide more certain funding for agencies with clear needs for funds and to assure that both current funding recipients and other agencies with urgent or serious crime problems are appropriately assisted by the program. The provisions will also reduce the administrative costs of the current application process which entails a substantial paperwork burden for agencies and HUD. Under the terms of the amendments, HUD can establish a fixed funding mechanism in which the relative needs of housing authorities are addressed with a greater amount of certainty.

Mr. SARBANES. Mr. President, I concur with my colleagues. Drug Elimination Grant funds have proven to be an extremely effective tool in fighting drugs and crime in public housing. This provision will enable housing authorities with significant needs to implement long-term strategies to continue this important fight. I

appreciate the work of the Chairman on this important issue.

Mr. D'AMATO. Mr. President, I thank both of my colleagues for their clarifying remarks.

Mr. MCCAIN. Mr. President, once again, I find myself in the unpleasant position of speaking before my colleagues about unacceptable levels of parochial projects in the VA/HUD appropriations bill. Although the level of add-ons in some portions of this conference are down, this bill still contains approximately $865 million in wasteful pork barrel spending. This is an unacceptable amount of low priority, unrequested, wasteful spending.

The level of add-ons in the Veterans Affairs section of this conference report is down. The total value of specific earmarks in the Veterans Affairs section of this conference report is about $116 million.

Let me just review some examples of items included in the bill. The bill directs $1 million for the VA's first-year costs to the Alaska Federal Health Care Partnership's proposal to develop an Alaska-wide telemedicine network to provide access to health services and health education information at VA, IHS, DOD and Coast Guard clinic facilities and linking remote installations and villages with tertiary health facilities in Anchorage and Fairbanks.

An especially troublesome expense, neither budgeted for nor requested by the Administration for the past seven years, is a provision that directs the Department of Veterans Affairs to continue the seven-year-old demonstration project involving the Clarksburg, West Virginia VAMC and the Ruby Memorial Hospital at West Virginia University. Last year, the appropriations bill contained a plus-up of $2 million to the Clarksburg VAMC that ended up on the Administration's line-item veto list and that the Administration had concluded was truly wasteful.

The VA provides first-rate research in many areas such as prosthetics. However, some of my colleagues still prefer to direct the VA to ignore their priority research programs and instead provide critical veterans health care dollars for parochial or special interest projects. For example, this bill earmarks $3 million for the Center of Excellence at the Truman Memorial VA Medical Center in Missouri for studies on hypertension, surfactants, and lupus erythematosus, and provides $6 million in the medical and prosthetic research appropriation for Musculoskeletal Disease research in Long Beach, California. It is difficult to argue against worthy research projects such as these, but they are not a priority for the Department of Veterans Affairs.

Like transportation and military construction bills, the VA appropriations funding bill is no exception for construction project additions to the President's budget request. For example, the bill adds $7.5 million in funding for the Jefferson Barracks National Cemetery in Missouri for gravesite development which will provide 13,200 grave sites for full casket interments. Although this is a worthy cause, I wonder how many other national cemetery projects in other States were leapfrogged to ensure that Missouri's cemetery received in the VA's highest priority.

In the area of critical VA, medical facility funding, again, certain projects in key members' states received priority billing, including $20.8 million add for the Louis Stokes Cleveland VA Medical Center ambulatory care renovation project in Ohio, a $9.5 million add for the Lebanon, Pennsylvania VAMC for nursing unit renovations, including providing patients with increased privacy, a $25.2 million add for construction of an ambulatory care addition at the Tucson VA Medical Center in Arizona, and provides $125,000 for renovation of the Pershing Hall building in Paris, France for memorial and private purposes.

Mr. President, we are charged with the important responsibility of dedicating funding toward the highest priorities to safeguard our environment. Yet, I am troubled that this conference report is loaded with directed earmarks toward specific projects without adequate explanation of why these projects are higher in priority than national environmental problems and needs.

I continue to hear about the number of Superfund sites that are in critical need of remediation actions or leaking background storage tanks that continue to endanger lives. Yet, the picture that I am putting together from this report is a prioritization of member interest projects. EPA's overall budget contains approximately $484,325,000 in earmarks that are directed to specific states and to national organizations.

Rather than dedicating funding toward our most pressing environmental concerns, the priorities of the conferees are earmarking spending of $125,000 for the establishment of a regional environmental finance center in Kentucky and $225,000 for a demonstration project in Maryland to determine the feasibility of using poultry litter as a fuel to general electric power.

I commend the efforts of my colleagues who worked tirelessly to rectify differences between the two chambers and present us with this conference report. Each of them have worked diligently to ensure that important housing programs and initiatives are adequately funded in a fair and objective manner.

Contained in this bill is funding for many programs vital in meeting the housing needs of our nation and for the revitalization and development of our communities. Many of the programs administered by HUD help our nation's families purchase their homes, assists low-income families obtain affordable housing, combats discrimination in the housing market, assists in rehabilitating neighborhoods and helps our nation's most vulernable—the elderly, disabled and disadvantaged have access to safe and affordable housing.

In July, I came to the Senate floor and highlighted the numerous earmarks and set asides contained in the Senate version of this bill. At that time, the egregious violations of the appropriate budgetary process in the HUD section amounted to $270.25 million dollars.

Unfortunately, I find myself coming to the floor today to again highlight the numerous earmarks and budgetary violations which remain in the conference report of this bill. In the HUD section alone there is $265.1 million in set asides or earmarks. While this amount is slightly lower than when the Senate first considered this bill it is still too great a burden for the American taxpayers.

The list of projects which received priority billing is quite long but I will highlight a few of the more egregious violations. There is $1.25 million set aside for the City of Charlotte, NC to conduct economic development in the Wilkinson Boulevard corridor, $1 million for the Audubon Institute Living Sciences Museum in New Orleans and $2 million for the Hawaii Housing Authority to construct a community resource center at Kuhio Homes/Kuhio Park Terrace in Honolulu, Hawaii.

It is difficult to believe many credible and viable community development proposals may be excluded from access to federal housing funds because such a large amount of funds have been unfairly set aside for specific projects fortunate enough to have advocates on the appropriating committee.

Finally, I would like to comment on the public housing reform bill which is now included in this funding bill. In the limited period of time I was afforded to examine this provision, I have learned that it includes several initiatives intended to enhance the quality of life for many individuals while promoting self sufficiency and personal responsibility in our communities.

While I applaud these goals and will not object to this bill based on the inclusion of this section I am gravely concerned about the process used to pass this reform bill. It concerns me that this complex measure was inserted at the last moment during conference which precluded the Senate from having sufficient time to thoroughly examine its contents and fully evaluate its objectives. This is a very serious matter which directly impacts the lives of thousands of American families and our local communities.

Certainly, this issue deserves thoughtful deliberation and careful review through the established legislative process and should not be attached at the last moment to a funding conference report. This is not the manner in which we should be implementing meaningful reform intended to benefit the citizens of our nation.

Mr. President, I have touched on only the tip if the iceberg. There is more I

could point to, were time available. I continue to look forward to the day when my trips to the floor to highlight member interest spending are no longer necessary.

The PRESIDING OFFICER. The Senator from Missouri has 7 minutes 30 seconds remaining.

Mr. BOND. I yield 7 minutes 30 seconds to the Senator from Florida. I will ask my colleague, if there is additional time remaining, if he might have 2½ minutes.

Ms. MIKULSKI. I would be happy to work with the Senator. I would like to bring to my colleague's attention that Senator SARBANES might be parachuting in, as well, to comment on the public housing initiatives. If he lands, I want to be able to accommodate him.

The PRESIDING OFFICER. The Senator from Florida is recognized for the remaining time.

Mr. MACK. Mr. President, I am pleased to rise in support of this conference report. I want to commend the chairman of the subcommittee, Senator BOND, and the ranking member, Senator MIKULSKI for bringing to the floor a well-balanced bill.

I am extremely pleased that this bill contains a comprehensive reform of the nation's system of public and assisted housing. We began this process of reforming public housing more than three years ago. Negotiating this legislation was a long, difficult and sometimes painful process. But the end result is a carefully crafted, bipartisan compromise that reflects input from the Senate, the House, and the administration. I believe it is a good bill. I appreciate the indulgence of Chairman BOND in permitting the authorizing committee to utilize the appropriations process as the vehicle to enact these important reforms, and I appreciate his long-standing support of public housing reform. In the end, it was the willingness of the Appropriations Committee to increase the level of incremental section 8 assistance that removed the last hurdle to this agreement.

I want to express special thanks to Senator PAUL SARBANES for his critical role in the development of this legislation and in the recent negotiations. I am convinced that this agreement would not have been possible without the leadership and support of the Senator from Maryland, and I can't thank him enough. I also want to thank the chairman of the Banking Committee, Senator ALFONSE D'AMATO, for his steady support and guidance over the past 3 years, and also the ranking member of the Housing Subcommittee, Senator KERRY, who has made major contributions to this legislation. This has truly been a bipartisan effort throughout.

There are so many people that have played a role in this. Obviously, the Secretary of HUD, Secretary Cuomo, and I spent many hours and many, many phone calls trying to work through this and working also with Congressman LAZIO, who made a special effort to try to find a way to bring this to a conclusion, and also the work of Congressman LEWIS, the chairman of the subcommittee on the House side. So, again, this has truly been a bipartisan effort. I thank all of those who were involved.

Since my appointment to the Banking Committee almost 10 years ago, I have visited public housing developments throughout Florida and in cities like Detroit, Chicago, and Jersey City. I have seen public housing that is well run and I have seen public housing that concentrates the very poorest of the poor in developments that are havens for crime and drug abuse and islands of welfare dependency.

On a personal note, I want to say to my colleagues that while I have been working on this specific legislation now for 4 years, I have been involved in public housing issues now for 10 years, since I have been on the Banking Committee. There are two particular thoughts that come to my mind, two visits that I made.

I spoke with individuals that lived in public housing, and that significantly affected me. I am pleased to say it has had a major role in this legislation that we developed. One person was an individual from Liberty City in Miami, who, frankly, grew up in public housing in Liberty City and saw how public housing has changed since the late 1930s. She—and I have used this term—''screamed'' at me as she was explaining to me the problems she was dealing with and how she used to have a decent place to live and how it had been destroyed over the years. Her message was heard.

I also think of a little 4, 5, or 6-year-old boy in Melbourne, FL. When we walked out of an apartment that was totally destroyed, as we walked down between these three-story buildings and saw the boarding up of windows and doors hanging by their hinges, this little fellow was walking down between the buildings. I thought to myself, what kind of future can this little fellow possibly dream of if the only environment in which he was going to live was the public housing like we saw. I wanted to share that with my colleagues.

The time is long overdue for us to eliminate the disincentives to work and economic self-sufficiency that trap people in poverty, and to ease the complex, top-down bureaucratic rules and regulations that aggravate the problems and prevent housing authorities from operating effectively and efficiently. It is time to begin the process of deconcentrating the poor, create mixed-income communities with role models and establish a foundation for building communities of hope instead of despair.

Let me make clear that this is only the beginning. The effect of these reforms won't be felt overnight. We are creating a framework for meaningful and beneficial change in our public and assisted housing system. But our ultimate success will depend on the ongoing cooperation and commitment of Congress, HUD, housing authorities, residents, and local communities.

The reforms contained in this legislation will significantly improve the nation's public housing and tenant-based rental assistance program and the lives of those who reside in federally assisted housing. The funding flexibility, substantial deregulation of the day-to-day operations and policies of public housing authorities, encouragement of mixed-finance developments, policies to deal with distressed and troubled public housing, and rent reforms will change the face of public housing for PHAs, residents, and local communities.

This bill empowers residents and promotes self-sufficiency and personal responsibility. It institutes permanent rent reforms to remove disincentives for residents to work, seek higher paying jobs and maintain family unity. Further, it expands homeownership opportunities for residents of both public and assisted housing.

It improves the living environment for public housing residents by expanding opportunities for working poor families and providing flexibility for housing authorities to leverage private resources and develop mixed-income, mixed finance communities.

It refocuses the responsibility for managing public housing back to the public housing authorities, residents and communities, it eliminates counterproductive rules and regulations, and frees public housing communities to seek innovative ways to serve residents.

The bill requires tough, swift action against PHA with severe management deficiencies and provides HUD or court-appointed receivers with the necessary tools and powers to deal with troubled agencies and to protect public housing residents.

It enhances safety and security in public housing by enhancing the ability of public housing authorities to screen out and evict criminals and drug abusers who pose a threat to their communities.

Finally, the bill enhances resident choice. It merges the section 8 voucher and certificate programs into a single, choice-based program designed to operate more effectively in the private marketplace. It repeals requirements that are administratively burdensome to landlords, such as ''take-one, take-all,'' endless lease and 90-day termination notice requirements. These reforms will make participation in the section 8 tenant-based program more attractive to private landlords and increase housing choices for lower income families.

To get to this stage, we have had to work through some very difficult and contentious issues. All sides have been willing to make concessions in the interest of compromise. I will mention only one of those issues—income targeting.

At a time when housing resources are scarce, a strong argument can be made that the bulk of housing assistance should be made available for the very poor. At the same time, there is a concern that excessive concentrations of the very poor in public housing developments have negatively affected the liveability of those developments.

The final income targeting numbers of public housing and project-based and tenant-based section 8 represent a fair compromise that will encourage mixed income communities in public housing, and ensure that tenant-based assistance remains an important tool for housing choice for very low-income families.

Mr. President, this public housing reform bill is the first comprehensive housing reform measure to pass Congress in almost six years. It is a good, bipartisan package that represents the most significant reform of public and assisted housing in decades. I urge my colleagues to adopt this conference report and I urge the President to sign the bill.

Mr. President, Senator SARBANES was not here when I mentioned earlier how much I appreciate his working with us, working with me, in trying to find ways to keep the process moving as we would hit roadblock after roadblock after roadblock. I want to extend to him publicly my appreciation for his work; also, again, to Senator MIKULSKI, and to Senator BOND. We know that we added to their difficulties. We greatly appreciate what they were able to accomplish with us.

Lastly, I want to mention some members of the staff. Jonathan Miller, and Matt Josephs of the minority staff, again, just went out of their way to help us accomplish this. David Hardiman and Melody Fennel—I thank them as well.

Chris Lord, Kari Davidson, and Cheh Kim of my staff did an outstanding job and worked endless hours to accomplish this, at moments of maybe thinking that we weren't going to make it but held in there to get the job done. I thank them.

I thank the Chair for his indulgence. I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator has 7 minutes 43 seconds remaining.

Ms. MIKULSKI. I yield such time as he may use to Senator SARBANES, and I very much appreciate his excellent work.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I thank the Chair.

First, although I am going to speak a little more later about our involvement in this process, I thank Senator MACK for his very generous and gracious comments, and I want to say that this bill would never have happened but for his very fine leadership. I am extremely indebted to him for the very positive and instructive and understanding way he moved this process forward. It has been a long and difficult process, but I am very pleased that we have arrived at this day.

First, let me express my very strong support for this bill. I want to commend Senator MIKULSKI and the chairman, Senator BOND, for their very excellent work with respect to the matters before the Appropriations Subcommittee. In particular, I want to applaud them for the excellent bill they have written with regard to the funding for the Department of Housing and Urban Development.

The President submitted a strong budget. And I am happy to see that the bill now before us responds to many of those requests.

The bill represents a well-rounded approach to housing and economic development. It provides for 50,000 new vouchers targeted to helping people move from welfare to work by eliminating the current 90-day wait on reissuing vouchers upon turnover. The bill effectively adds another 40,000 vouchers.

It provides $500 million in additional capital funds for public housing modernization to help maintain this important affordable housing resource. And the bill includes a total of $625 million for HOPE VI, the very innovative program that was created by my very able colleague, Senator MIKULSKI, which is focused on tearing down the worst, most isolated public housing projects and replacing them with mixed-income housing. Senator MIKULSKI has been an absolute champion of trying to rescue this situation which plagues many of our very large housing projects. I want to acknowledge the tremendous leadership that she has provided in this area. Working together with Senator BOND, they have fashioned I think a first-rate piece of legislation. I am very pleased to support it.

Let me say, since she is my very able colleague, what a pleasure it has been working with her. I sit on the authorizing committee. Of course, she is on the appropriating committee. Over the years we have been able to work together I think in a partnership not only for our State but for the country.

Mr. President, the primary reason I come to the floor today is to call the Senate's attention to the fact that an important piece of legislation reforming the Nation's Public Housing Program is attached to this appropriations conference report. This is a tremendous step forward. This public housing legislation I think represents a fine piece of legislative craftsmanship. It reflects a bipartisan approach to reform of our public and assisted housing.

We have been working at this problem, Senator MACK has been working at this problem for 4 years, at least. The success of this effort reflecting what is before us, is, to a very significant extent, the result of the fine leadership provided by Senator MACK as Chairman of the Housing Subcommittee of the authorizing committee; the work of Senator KERRY, the ranking member of that subcommittee, interacting with our House colleagues, and with Secretary Cuomo, who has been a tireless advocate for housing and economic development programs.

Senator MACK has taken a keen interest in the area of public housing since he took over the housing subcommittee in 1995. He has personally visited public housing projects and has spoken to administrators and residents. The commitment of his own time and concern I think is a model of how people responsible for certain programs need to understand the program, oversee the program, and then formulate the changes which will make the program work better.

Senator MACK has been a strongly positive and constructive force throughout the long and often difficult process we have followed to get this positive resolution. I am pleased to express publicly my very deep respect and appreciation for his efforts.

Mr. President, this public housing bill embodies an important bargain. We provide public housing authorities with increased flexibility to develop local situations to address housing needs in their communities but, in turn, they are required to use that flexibility to better serve their residents by creating healthier, more economically integrated communities.

The PHAs will get more flexibility in how to use operating and capital funds. It encourages them to seek new sources of private capital to both build new housing and to repair existing units. It provides more flexibility in the calculation of public housing development costs and encourages the construction of higher quality housing.

Finally, the law gives PHAs increased flexibility to admit higher income families while guaranteeing that the poor, including the working poor, continue to have access to 40 percent of the public housing units made available each year.

This new increased flexibility is not an end in itself. The purpose is to provide higher quality housing in an overall improved living environment to the families who live in public housing. We want the Public Housing Program and the Rental Voucher Program, which the appropriators have generously supported in this legislation, to be stepping stones to better lives, to provide access to better schools and more economic opportunities.

There is now a growing consensus that we need to have a mix of families with different levels of income in public housing. Such a policy will strengthen public housing projects and make them more livable communities. To ensure this outcome, the legislation requires the public housing authorities to demonstrate how they will attempt to create these more economically integrated communities. The Secretary

is required to review these plans and to ensure that housing authorities pursue them.

The bill also creates new rent rules that encourage existing tenants to go to work. There is a mandatory earned income disregard so that tenants who start working will reap the benefit of that effort at least for a year before additional payments are phased in. As a result of the special efforts of Senator KERRY, the bill deepens the targeting above the levels contained in both House and Senate bills for section 8 vouchers, requiring 75 percent of vouchers to go to lower-income families.

The bill gives tenants an important role in working with housing authorities to determine housing policies. Residents will sit on boards, and the resident advisory boards I think will be very helpful.

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

Mr. SARBANES. May I have 30 seconds, if the chairman has any time?

The PRESIDING OFFICER. All time has expired.

Mr. BOND. Mr. President, I ask unanimous consent that the distinguished Senator from Maryland have an additional minute. I ask for an additional 3 minutes on this side to afford 2 minutes to my colleague from Ohio and a minute for myself to close.

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

Mr. SARBANES. I thank the chairman.

Finally, the bill helps encourage home ownership in two ways. First, as a result of an amendment offered by Senator DODD, our able colleague from Connecticut, public housing authorities will be able to devote part of their public housing capital funds to home ownership activities. In addition, section 8 assistance will be able to be used to support home ownership.

Mr. President, I close again by thanking Senator BOND and Senator MIKULSKI for their very effective efforts. We are deeply appreciative of their cooperation. I again voice my respect for the tremendous leadership which Senator MACK provided in enabling us to achieve public housing reform which we have been striving to achieve for a number of years and to do it in a way that commands a consensus. The process we followed in working this out I really commend to all my colleagues. I think it is an example of how really to craft legislation and in the end achieve a very positive and constructive result.

Finally, I want to recognize and thank the staff for their hard work and dedication. Jonathan Miller and Matt Josephs on the Democratic side, Chris Lord, Kari Davidson, Cheh Kim, David Hardiman, and Melody Fennel from the Majority side, worked extremely well together to help us bring this finished product to the floor today.

In closing, Mr. President, I urge all my colleagues to support this important piece of legislation.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I yield 2 minutes to the distinguished Senator from Ohio.

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

Mr. DEWINE. I thank my colleague.

Mr. President, I rise today to discuss two important provisions in this bill—provisions that honor two distinguished Ohioans who are retiring from public service this year—LOU STOKES and JOHN GLENN.

Mr. President, the bill before us would name the Veterans Administration Medical Center in Cleveland, Ohio, the Louis Stokes VA Medical Center. That is a fitting tribute for a number of reasons.

First, LOU STOKES is a veteran, serving our country in the U.S. Army during the Second World War.

Second, as ranking member of the House Appropriations Subcommittee on Veterans' Affairs, LOU STOKES has demonstrated that he is a true champion on behalf of his fellow veterans.

Third, LOU STOKES in recent years has dedicated his attention to improving the quality of care at the facility that will bear his name. He has been working tirelessly with me to provide funds to improve this facility for our veterans in northeast Ohio. This bill in fact contains $20.8 million to improve the ambulatory care unit at the Stokes Medical Center. This is the latest of a lifetime of examples of how LOU STOKES has made a difference—a difference for veterans and for all his constituents.

I also am pleased and proud that the bill before us contains a provision that, in my view, represents the deepest feelings of the people of Ohio regarding our senior Senator JOHN GLENN.

Mr. President, it would be fair to say that the imagination of Ohio, and indeed of all America, has been captured by Senator GLENN's impending space voyage. It is an inspiring odyssey. It is exiciting—it reminds us of the spirit of American possibility we all thrilled to when JOHN GLENN made his first orbit back in 1962.

Senator GLENN's return to space as a member of the crew of the space shuttle *Discovery* marks the culmination of an incredible public career.

This is man who flew 149 heroic combat missions as a Marine pilot in World War II and the Korean war—facing death from enemy fighters and anti-aircraft fire.

And none of us who were alive back in 1962 can forget his historic space flight. I was in Mr. Ed Wingard's science class, at Yellow Springs High School in Yellow Springs, Ohio—we were glued to the TV. Our hearts, and the hearts of all Americans, were with him that day.

JOHN GLENN reassured us all that America didn't just have a place in space. At the height of the cold war, he reassured us that we have a place—in the future.

And that, Mr. President, brings me to the purpose of the legislation I am introducing. Even as we speak, in Cleveland, Ohio, there are some hardworking men and women of science who are keeping America strong, who are keeping us on the frontier of the human adventure. They are the brilliant, persevering, and dedicated workers of the NASA-Lewis Space Research Center.

People who understand aviation know how crucially important the cutting-edge work of the NASA-Lewis scientists is, for America's economic and technological future.

Mr. President, what more fitting tribute could there be to our distinguished colleague, Senator GLENN, than to rename this facility—in his honor?

That, Mr. President, is the purpose of this legislation. It recognizes not just a man's physical accomplishments—but his spirit. It inspired us in 1962. It inspires us this year. And it will remain strong in the work of all those who expand America's frontiers.

The facility would be renamed the National Aeronautics and Space Administration John H. Glenn Research Center at Lewis Field—to honor our distinguished colleague, and also the aviation pioneer for whom it is currently named. George Lewis became Director of Aeronautical Research at the precursor to NASA in 1919. It was then called the National Advisory Committee on Aeronautics, or NACA.

Lewis visited Germany prior to World War II. When he saw their commitment to aeronautic research, he championed American investment in aeronautic improvements—and created the center which eventually bore his name.

He and JOHN GLENN are pioneers on the same American odyssey. Ohio looks to both of them with pride—and with immense gratitude for their leadership.

And I am proud, today, that we were able to include this in the bill. I thank my colleagues for that, and I also want to thank our good friend, LOUIS STOKES, who has been instrumental in shepherding this measure honoring Senator GLENN in the other body.

Mr. President, I thank the Chair and I yield the floor.

Mr. BOND. Mr. President, I thank my colleague from Ohio.

I, too, join with him in expressing appreciation for the services of our colleague, Senator GLENN, and our colleague on the House side, Congressman STOKES. I believe it is very important that we recognize them in this bill. I thank him for his comments.

Again, my sincerest thanks to Senator MIKULSKI, to Andy Givens, David Bowers, and Bertha Lopez on their side. On my side, this is a very difficult bill, and I could not have done it without the leadership of Jon Kamarck and the dedicated efforts of Carrie Apostolou and Lashawnda Leftwich.

We have the statement by the chairman of the Budget Committee saying this bill is within the budget guidelines.

I urge my colleagues to support this measure because I believe, while it has many compromises in it, they are reasonable compromises. I am most hopeful that we can have a resounding vote and see this measure signed into law.

I thank the Chair and staff for their courtesies, and I urge a yes vote on the conference report.

Mr. President, I ask for the yeas and nays on this conference report.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the VA–HUD conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

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

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 307 Leg.]

YEAS—96

Abraham	Enzi	Lugar
Akaka	Faircloth	Mack
Allard	Feingold	McCain
Ashcroft	Feinstein	McConnell
Baucus	Ford	Mikulski
Bennett	Frist	Moseley-Braun
Biden	Gorton	Moynihan
Bingaman	Graham	Murkowski
Bond	Gramm	Murray
Boxer	Grams	Nickles
Breaux	Grassley	Reed
Brownback	Gregg	Reid
Bryan	Hagel	Robb
Bumpers	Harkin	Roberts
Burns	Hatch	Rockefeller
Byrd	Hutchinson	Roth
Campbell	Hutchison	Santorum
Chafee	Inhofe	Sarbanes
Cleland	Inouye	Sessions
Coats	Jeffords	Shelby
Cochran	Johnson	Smith (NH)
Collins	Kempthorne	Smith (OR)
Conrad	Kennedy	Snowe
Coverdell	Kerrey	Specter
Craig	Kerry	Stevens
D'Amato	Kohl	Thomas
Daschle	Landrieu	Thompson
DeWine	Lautenberg	Thurmond
Dodd	Leahy	Torricelli
Domenici	Levin	Warner
Dorgan	Lieberman	Wellstone
Durbin	Lott	Wyden

NAYS—1

Kyl

NOT VOTING—3

Glenn	Helms	Hollings

The conference report was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

SENATOR GORTON RECEIVES HIS FIFTH GOLDEN GAVEL AWARD

Mr. LOTT. Mr. President, yesterday evening the senior Senator from Washington, Senator GORTON, reached 100 presiding hours in the 105th Congress for his 100 hours of service presiding over the Senate. He will be awarded the Golden Gavel. But there is an interesting point here. This is the fifth Golden Gavel that Senator GORTON has obtained in his years in the Senate—representing 500 hours presiding in the Senate Chamber.

I think most Senators will acknowledge that he does an excellent job when he is the Presiding Officer. He is one we call on quite often on Friday afternoons or late at night. He is always willing to do it. And he dedicates each one of these Golden Gavels to one of his grandchildren. He has seven. This is the fifth one; so he has two more to go.

This is an assignment that takes time and patience. I publicly thank Senator GORTON for achieving this and for the way that he is doing it for his grandchildren.

I ask my colleagues to join in expressing our appreciation.

(Applause.)

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. I do not know that anything else needs to be said, but I certainly want to join with the majority leader in offering my congratulations and my condolences for all of those hours. As one who has only been presented one Golden Gavel in my time in the Senate, I can appreciate the magnitude of the accomplishment just accomplished by the senior Senator from Washington. On behalf of all of our colleagues, I join in congratulating the Senator. I yield the floor.

INTERNET TAX FREEDOM ACT

Mr. MCCAIN. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:.

A bill (S. 442) to establish national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes.

Pending:

McCain/Wyden amendment No. 3719, to make changes in the moratorium provision.

The Senate resumed consideration of the bill.

AMENDMENT NO. 3719

Mr. MCCAIN. Mr. President, it is my understanding there is no further debate regarding the consideration of the amendment at the desk. I ask that it be adopted.

The PRESIDING OFFICER. Is there further debate?

If not, without objection, the amendment is agreed to.

The amendment (No. 3719) was agreed to.

AMENDMENT NO. 3711, AS MODIFIED

(Purpose: To define what is meant by the term ''discriminatory tax'' as used in the bill)

Mr. MCCAIN. Mr. President, I call up amendment No. 3711, as modified.

The PRESIDING OFFICER. The clerk will report.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I raise a point of order that this amendment is not germane.

The PRESIDING OFFICER. Would the Senator from Florida suspend for just a moment?

The clerk first will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3711, as modified.

The amendment is as follows:

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term ''discriminatory tax'' means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) except with respect to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, the ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

The PRESIDING OFFICER. Is there objection to the amendment being modified?

Mr. GRAHAM. Mr. President, I object to the modification of the amendment and raise a point of order that the amendment is not germane.

AMENDMENT NO. 3711

(Purpose: To define what is meant by the term ''discriminatory tax'' as used in the bill.)

Mr. MCCAIN. Mr. President, I call up amendment No. 3711.

The PRESIDING OFFICER. Does the Senator from Arizona withdraw his previous amendment?

Mr. MCCAIN. I withdraw it and call up amendment No. 3711.

The amendment (No. 3711), as modified, was withdrawn.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3711.

The amendment is as follows:

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term ''discriminatory tax'' means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) imposes the obligation to collect or pay the tax on any provider of products or services made available and obtained digitally where the location, business, or residence address of the recipient is not provided as part of the transaction or otherwise is unknown to the provider; or

(v) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) the ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Am I correct that there is not a request to modify this amendment?

The PRESIDING OFFICER. There is a properly filed request to modify the——

Mr. GRAHAM. I object to that request to modify and I raise again the point of order that the amendment is not germane.

The PRESIDING OFFICER. There is no request to modify the pending amendment. There is a duly filed motion to suspend the rules with respect to that amendment. The motion to suspend is debatable.

Is there further debate?

Mr. GRAHAM. Mr. President, point of parliamentary inquiry. Will there be a ruling on the motion of the point of order as to germanity?

The PRESIDING OFFICER. The motion to suspend the rules needs to be resolved.

Mr. GRAHAM. Further point of inquiry.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. What is the position relative to debate on the motion to suspend the rules for the purpose of considering this amendment?

The PRESIDING OFFICER. The Senate is operating under cloture, and the motion will be debatable as under the limitation of the cloture rule.

Mr. MCCAIN. Mr. President, has the Chair ruled?

The PRESIDING OFFICER. The Senator from Arizona.

MOTION TO SUSPEND THE RULES

Mr. MCCAIN. In full accordance with the rules and procedures of the Senate and pursuant to the notice filed yesterday, I move to suspend rule XXII as it applies to the consideration of amendment No. 3711.

And, Mr. President, for the information of my colleagues, I want to explain what will occur here and the significance of this vote.

By the way, as far as the modification is concerned to amendment No. 3711, since it is agreed on both sides, once we dispense with this parliamentary tactic, then obviously we will be able, by unanimous consent, to modify to satisfy a concern that was not included in the amendment.

At some point this morning we will vote to suspend the rules regarding germaneness with respect to the pending amendment. Senator WYDEN and I would have offered this amendment earlier, long before cloture was invoked, but we didn't because we were still negotiating language with other Senators—specifically, the Senator from North Dakota and other Senators—who were involved in this very important piece of legislation. We could have offered it and I am sure we could have passed the amendment, but in the environment of trying to reach overall agreement on language of this legislation we did not do it at that time. We did not propose this amendment in order to accommodate other Senators. As we all know, sometimes there are package agreements involving different parts of the legislation.

The Democratic manager of the bill, Senator DORGAN, Senator WYDEN and myself came to agreement on the language of the amendment. It was at that time, and only at that time, we were notified that a point of order would be raised against the language, even though we have been negotiating with the Senator from Florida and his staff since last August on this package. Doing so obviously is the Senator's right. I don't begrudge any Senator their right to use the rules to his or her advantage. But I do want to make it clear we tried to be fair and accommodate everyone who has left us in this position.

Simply, if we don't succeed in suspending the rules and adopting this amendment, Senator WYDEN and myself will no longer pursue this legislation. It won't pass. Internet tax freedom, at least for this year, will be dead. Because, Mr. President, failure to adopt this amendment will render this bill impotent.

I suspect that may have been the desire of some Members all along, to kill this bill. Let there be no mistake, failure of this bill will hurt the future of electronic commerce and will subject our constituents to new taxes. Yes, a vote against suspending the rules is a vote to kill the bill. Without the language of this amendment being added, the bill is meaningless; it will accomplish nothing. Therefore, we will not pursue the legislation.

But this vote means more than killing the Internet Tax Freedom Act. Adopted to this bill was Senator BRYAN's Children's Online Privacy Act. That is a very important bill that will protect children who use the Internet. It is bipartisan legislation that was passed out of the Commerce Committee by a unanimous vote. If this bill dies today, Senator BRYAN's Children Online Privacy Bill dies today.

Adopted to this bill was Senator COATS' Decency Act. That measure was adopted by a vote of 98–1 yesterday. The Coats amendment is exceedingly important to protect our children from pornography that is proliferating on the world wide web. If this bill dies today, Senator COATS' Decency Act dies today.

Adopted to this bill was Senator DODD's amendment regarding filtering. The Dodd amendment would require Internet service providers making filtering software available to families so that they can screen unwanted and harmful material from appearing on their computer. The Dodd amendment has twice been adopted by the Senate. It is important.

Adopted to this bill was Senator ABRAHAM's Digital Signature bill. This bill was reported by the Commerce Committee with no opposition.

Mr. President, if we cannot suspend the rules and adopt this amendment that is supported by both managers, the Internet tax bill is dead and so is the vital legislation sponsored by our colleagues.

Let me briefly explain why this amendment is needed. The amendment does two things. First, it clarifies what is a discriminatory tax. This is necessary because without this definition the moratorium is rendered meaningless. States and localities do not pass new laws every time a new product appears. They simply interpret existing laws to apply to the products. What we are seeking to do here is clarify that the Internet cannot be singled out for the application of a tax in a discriminatory manner. For example, if an entity has a wicket tax, or a cellular phone tax, or a microwave oven tax, it would not be able to apply such tax in a discriminatory manner solely to the Internet and thereby claim the moratorium does not apply.

Mr. President, if this definition is not included in the bill, then the moratorium is gutted.

The second part of the amendment clarifies that the location of a server or of web pages does not constitute nexus. This is exceedingly important. If an individual in Iowa, sitting at his or her desk is surfing the web and buys a product for his mother in Tennessee from a company in Maine, using a server located in Florida, the fact that the server is located in Florida should not constitute nexus for the purposes of taxation. Neither the purchaser nor the company from which merchandise was purchased, nor the recipient, under this example, lived in Florida.

So, again, this language simply clarifies this matter. We do not state that the appearance of a catalog in someone's mailbox constitutes nexus. This provision simply updates that fact in the age of the Internet.

As technology bypasses us all and the use of the web becomes more and more ubiquitous and seamless, we will need to protect the technology that is fueling our economy. The issues of Quill and of who should and should not have to pay taxes will and should be settled by the Congress and the States. But regardless of that outcome, this technology should not be harmed by onerous, discriminatory, unfair—and in many cases—outdated laws.

To close, adoption of this amendment is vital to the passage of this legislation. This vote is key to its passage. If we fail to muster the 66 votes necessary, this bill will be dead. And as I have noted, some have wanted to kill it all along. We were forced to file cloture on the motion to proceed. We were forced to file cloture on the bill. We did all we could to accommodate all Senators with interests in this bill. We protected the rights of Senators to offer and debate amendments.

We did not have to allow the senior Senator from Arkansas an opportunity to offer non-germane amendments prior to cloture we did. We could have filled the tree or sat in quorum calls awaiting the cloture vote or final vote. But the Senate functions in a spirit of comity. So the Senator from Arkansas had his opportunity and his votes.

The bill has been changed and amended. We have accepted language offered by Senator HUTCHINSON from Arkansas. We accepted language offered by my good friend Senator ENZI. I did not care for those amendments, but I accepted the will of this body and I recognized that we must move forward on this important legislation. Especially on legislation like this, accommodations and concessions have to be made.

This bill does contain amendments which I wish were not in there, but there are 100 Members here. I also agreed to go along with the will of the majority, as did the Senator from North Dakota, as did the Senator from Oregon, and many other Senators who had deep and abiding interests in this legislation.

Again, this vote is exceedingly important if we are going to pass this bill. If we waive the rules for the purpose of this amendment, we can pass the bill and send it to the House. If we waive the rules, we can protect the Internet from unfair and discriminatory taxation, and more importantly, pass legislation that is vitally important to the country.

It is my understanding, and I ask parliamentary clarification, this motion is debatable; is that true?

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCAIN. But there is still a time limit that each individual Senator is allowed under the postcloture proceedings?

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCAIN. Parliamentary inquiry; how much time is remaining to the Senator from Florida?

The PRESIDING OFFICER. The Senator from Florida has 14 minutes remaining.

Mr. MCCAIN. I yield the floor.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. BUMPERS. Mr. President, will the Senator from Oregon yield for a parliamentary inquiry?

Mr. WYDEN. If that is all I am yielding for.

Mr. BUMPERS. How much time do I have remaining on the bill?

The PRESIDING OFFICER. The Senator from Arkansas has 36 minutes remaining.

Mr. BUMPERS. I thank the Chair, and I thank the Senator from Oregon.

Mr. WYDEN. Mr. President, I urge the Senate suspend the rules and pass this important amendment.

First, let's be clear what happens if this amendment is passed. The most important thing is that the grandfather on Internet tax provision that was so central to the States is preserved and preserved completely.

Second, there is a separate section to ensure that all other existing taxes are preserved, and that there is another provision that would ensure that all ongoing liabilities—the matter the Senator from Florida says is important to the State of Connecticut—is also preserved.

After we filed this amendment last night, we again reached out to all sides to try to address concerns. I have done this now for a year and a half. The original bill that came out of the Commerce Committee, by the time it came to the floor, had more than 30 major changes. In our efforts here now to be reasonable, we have made at least another 20 changes to try to accommodate the Senator from Florida and others. In fact, the definition of a discriminatory tax—which is what this is all about—is essentially that which was used in the House, and it was agreeable to the Governors and the States when it was debated there in the House. The reason that the Senator from Arizona and I have focused on this issue is that this definition of discrimination is essential to ensure technological neutrality.

What this definition does is straightforward. It ensures that the new technology and the Internet is not discriminated against. It makes sure that a web site is treated like a catalog; catalogs aren't taxed. We don't want web sites to be singled out for selective and discriminatory treatment. The provision also makes sure that Internet service providers are, in effect, treated like the mail. The mail isn't taxed when a product is shipped to your home from a catalog merchant. Similarly, the Internet service provider should not be taxed merely for being the carriers or transmitters of information. In effect, Senator COATS recognized this in his amendment that was adopted yesterday.

So what we have done is, yesterday, we have worked with the Senator from North Dakota, Senator ENZI, and others, to address this discriminatory tax question in a way that we thought would be agreeable to the States. Overnight, we tightened up the language to deal with the grandfathering question. The minority leader, Senator DASCHLE, made some important and, I thought, useful suggestions. We incorporated those this morning to make sure that when we talk about the grandfathering provision, as it relates to South Dakota and North Dakota, the grandfather provision would tightly protect those two States. We have done that.

This Senator finds now that if we do not prevail on this point and the bill goes down, all of these efforts now for a year and a half are going to leave us in a situation where I think we will see, with respect to the Internet and the digital economy, the same problems develop that cropped up with respect to mail order and catalogs. We have had a number of people at the State and local level saying, you know, with respect to the mail-order and catalog issue, we wish we had done what you are bringing about with respect to the Internet.

We know that we have to have sensible policies so we can protect some of

the existing sources of revenue for the States. Some call it the ''old economy''; I don't. I think they are extremely important to the States. We have to respect those, while at the same time writing the ground rules for the digital economy—the economy where the Internet is going to be the infrastructure and when every few months takes us to exciting new fields and increases dramatically in revenue.

So I hope our colleagues will not cause all of the other important work that has been done here to go down. That is Senator DODD's legislation and the important work done by Senator BRYAN. There is a host of good measures that we agreed to accept as part of this legislation in an effort to be bipartisan and to accommodate our colleagues.

But, once again, the goalposts are moving. The definition of discriminatory tax that came up in the House is essentially what we are using. The Governors and the States found that acceptable. And then, after taking that kind of approach, even last night, we moved again, at the request of colleagues—and we thought they were reasonable requests—to tighten up the grandfathering provision. Now is the time to make sure that we do not gut this bill, the definition of a moratorium, and particularly don't gut a concept that we think is acceptable to our colleagues, and that is the concept of technological neutrality.

When you vote for the McCain-Wyden amendment to suspend the rules and pass this, you will be voting for a solid grandfather provision that ensures that all existing taxes are preserved. You will be voting to protect ongoing liabilities, which is what the Senator from Florida said he is concerned about, along with the Senator from Connecticut, and others. You will be voting to make sure, in a separate section, that all other existing taxes other than Internet taxes are preserved, and you will be voting for the principle of technological neutrality.

I think it would be a great mistake to gut this legislation now after all this progress has been made. I represent a State with 100,000 small businesses. These businesses are a big part of the economic future that we all want for our constituents. They cannot afford a crazy quilt of taxes that would be applied by a good chunk of the Nation's 30,000 taxing jurisdictions, based on what we have seen during this debate.

Let's do this job right. Let's do it in a thoughtful and uniform way. I urge our colleagues to support this bipartisan amendment Senator MCCAIN and I have offered. I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, for those here on the floor and those who may be watching this on C-SPAN, I apologize, because we are about to enter some very arcane and not particularly exciting discussion. But it is necessary in order to understand what this amendment does and what it doesn't do. First, what it doesn't do.

Mr. President, this amendment starts by saying on page 26 of the bill that is before us that we will strike lines 3 through line 5 on page 27. So for those of you who have access to the legislation, I ask if you will turn to those pages. If you don't have access to the amendment, I am going to make a statement.

Unfortunately, both of those who have spoken—well, Senator WYDEN is on the floor. I would like him to listen to this statement. If he feels I am misstating—since it is not my intention to have to read all of this language—would he please indicate where I am misstating. But as I read the amendment, with the exception of changing the numeration—that is, what was listed as an (a) in the Senate Finance committee language is listed as a small paragraph letter (i) in the McCain amendment number 3711. With the changes of those numerations, the words in the amendment are almost verbatim to the words that are being stricken from line 3 on page 26 through line 5 on page 27. Is that an accurate statement?

Mr. WYDEN. We are anxious to be responsive to the Senator from Florida, but we are having trouble locating this. Why don't we do this: Continue, if you will, with your address and we will try to get the page numbers right.

Mr. GRAHAM. If there is a difference, I will yield to indicate that. In my reading of the amendment, I cannot find any substantial difference between the language that was in the Finance Committee's draft and the language that is in this amendment. We are striking out on the one hand and reinserting on the other. The difference begins with a new subparagraph added by the amendment, which is subparagraph Roman numeral (iv), beginning on line 16 of page 2 of the amendment through line 22. It is my understanding that paragraph will be deleted.

Mr. WYDEN. We agreed to take that paragraph out yesterday.

Mr. GRAHAM. So that is not an issue of controversy.

And Roman numeral (v), which is the new language under discriminatory tax, is acceptable.

Two-thirds of the amendment that is offered is not in contest, either because it is in existing law—so whether we adopt the amendment or not, it is still going to be in the legislation—or it is acceptable.

All the controversy, therefore, focuses on page 3, lines 5 through 23, which is the language that has been referred to as the ''nexus'' language. This language essentially as presented in this amendment was before the Senate Finance Committee. It was reviewed by the Senate Finance Committee and, on the recommendation of both the majority and minority legal counsel, was stricken from the bill.

What was the basis, Mr. President, that the Finance Committee made such a recommendation to strike what is now the essence of lines 5 through 23 from this bill? These are the arguments that the Finance Committee was persuaded by. It determined that the areas of nexus, which relate to the subject of how much of a presence does an entity such as a business have to have in a State to make it subject to that State's tax authority. It determined that the areas of nexus were sufficiently clear under today's law that it was inappropriate to include such standards in Federal legislation.

The basis of nexus: As the Presiding Officer, who was a distinguished member of the State Senate of the State of Wyoming, knows and from his professional career as a CPA, nexus has traditionally been determined by State law, not by Federal law. Each State determines what is the necessary presence for taxation. There are, of course, limits as to State law under constitutional provision for interstate commerce. But within that standard, the States have been the determinative bodies.

According to the Finance Committee staff, there has only been one other Federal law, and that was passed 40 years ago, in 1959, which relates to the issue of federalization of what those standards of nexus would be.

So the essential position of the Finance Committee was, first, that this is a matter that was being properly dealt with at the State level, and that was not a compelling reason why we should federalize the issue of nexus.

Second, they found that no State is currently attempting to enforce a tax collection obligation on the basis of the circumstances outlined in amendment; therefore, there was no necessity for this federalization, and that it would lead to potentially increased litigation over the nuances of this language. I am going to talk about that in a moment.

Finally, that the enactment of this amendment would create special federalized rules for a very small subset of the retail community. And it is inappropriate—for a bill that is intended to cause a timeout, a pause, a moratorium, on State action to allow a commission to develop recommendations on appropriate rules for taxation—for us now to essentially preempt that whole process by federalizing a significant, albeit very niche, area of commerce.

So those are the reasons that the Senate Finance Committee voted to eliminate this language in the bill. Certainly the Finance Committee was not adverse to the thrust of the bill, because it passed the bill on a 19-to-1 vote. The idea that by failing to include this language we would be ''gutting'' the bill is, in my opinion, an extreme overstatement.

Mr. President, beyond those reasons that were given by the Finance Committee, there is also another set of concerns which have come to light as this

amendment has been increasingly in the public attention. That is the fact that there are States which either are or are potentially in litigation with various providers within the Internet industry over the question of their tax liability to a State. We have been sensitive to that in this legislation by providing a grandfather clause, which essentially protects the right of those States. As presented, this nexus amendment clause is retroactive, as the discriminatory tax definition in this bill is not covered by the general grandfather clause, and would apply to past events.

There is concern that the effect of this legislation would be to tilt the playing field in the courtroom of that litigation by making it more difficult on a retroactive basis for the States to make their arguments about an adequate nexus to the State as the basis of taxation of these Internet providers.

I don't think that this Congress wants to get into the business of intruding itself into ongoing litigation which might involve the State of Mississippi, or the State of North Dakota, or the State of Arizona, or the State of Florida, or any other State. That is not our business—to retroactively insert ourselves into that thicket of litigation.

Mr. President, it is for those reasons that I believe this amendment is defective. This Senate has adopted rules that provide that, after cloture has been invoked, the only amendments that can be considered are those that are germane to the bill.

The very fact that the sponsors of this amendment have filed what is a very unusual motion to suspend the Senate's rules as it relates to germanity is an indication that, first, they don't think it is germane; and, second, that under the rules of the Senate it should not be debatable in this postcloture environment.

As the managers and sponsors of this bill, they have had ample opportunity to get this language included throughout this long and tedious process. They have not done so. Now, in the postcloture environment, they are asking us to waive a fundamental rule of the Senate, which is, after cloture has been invoked, the cloture which was filed by the primary sponsor of the bill, now they want to be able to take up what is tacitly admitted to be a nongermane amendment, an amendment which was rejected after thorough analysis by the Senate Finance Committee, a measure which I think would have the effect of injecting us into litigation and affecting potential litigation between the States and various Internet providers.

Mr. President, I strongly urge my colleagues that we not adopt this motion, that we not change our rules, that we play by the rules that we have all agreed to, and that we play by the rules that have been in effect between States and the Internet industry in the past, and not retroactively reach back and adopt a provision which could interfere with the normal resolution of pending litigation.

Having said all of that, Mr. President, it is my hope that while this discussion has been going on, there have been good-faith efforts made to arrive at a resolution of this issue, and it would be my suggestion to have possibly a brief period by suggesting the absence of a quorum so that we might see if in fact we have arrived at a resolution that would obviate the necessity of the several steps that would be required in order to further pursue this matter. I think that would be in everybody's interest.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENZI). The clerk will call the role.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent that amendment No. 3711 be withdrawn, and I send to the desk amendment No. 3711, with a modification.

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

The amendment (No. 3711) was withdrawn.

AMENDMENT NO. 3711, AS MODIFIED

(Purpose: To define what is meant by the term ''discriminatory tax'' as used in the bill.)

The PRESIDING OFFICER. The clerk will report the new amendment as so modified.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3711, as modified.

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

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

The amendment is as follows:

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term ''discriminatory tax'' means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to Oct. 1, 1998, the sole ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online service is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

Mr. MCCAIN. Mr. President, let me say that I intend, after the Senator from Florida and the Senator from Oregon and the Senator from North Dakota and I speak on this, there is no controversy associated with it, that we would ask the amendment be agreed to. I would, at that time, request unanimous consent to withdraw my motion to suspend the rules.

The PRESIDING OFFICER. Is the Senator making that request at this time?

Mr. MCCAIN. I make that request at this time. I ask unanimous consent to withdraw my motion to suspend the rules.

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

The motion was withdrawn.

Mr. MCCAIN. Mr. President, I thank the Senator from Florida. This has been a tough battle. It has been a very difficult set of negotiations. We have disagreed on several issues, but we have reached a compromise. I thank him for his willingness to do that.

I also thank the good offices of the Senator from North Dakota whose calm demeanor has prevailed throughout this entire process we have been through. This amendment represents a compromise—another compromise—that has been made in the process of this legislation among ourselves and the Senator from Florida, and I thank him for it.

After the Senator from Florida and the Senator from Oregon speak, I hope we can adopt the amendment at that time. Then I hope we can go to final passage of this legislation.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Dakota.

Mr. DORGAN. Mr. President, the areas that have been most recently discussed with respect to this legislation are arcane, complicated areas dealing with nexus, jurisdiction of tax and so on. There are not a lot of people who understand the nuances of all of those

words and all of the provisions. That is why it was hard to sift through all of this and reach an agreement. But an agreement has been reached that I think is a good agreement, one that accomplishes the purpose of this legislation in a manner that is not injurious to any other interests.

I thank the Senator from Arizona—I would say for his patience, but he is a Senator who is impatient to get things done on the Senate floor. I understand that and accept that, as do others. That is the reason he brings a lot of legislation to the floor and is successful with it.

I thank the Senator from Oregon who has been at this task for a long, long time and has been very determined to help get this legislation through the Senate.

Let me say to the Senator from Florida, one of the admirable qualities of that Senator, among many, is his stubborn determination to make certain that when things are done here, they are done the right way and that he understands it and that the interests affected are protected in a manner that is consistent with what he views as a matter of principle. I know that is frustrating for some, but the Senator from Florida certainly has that right. He contributes to this process by being determined to make certain we understand the consequences of all of this.

I thank him for working with us now in these final moments to reach an agreement that I think is the right agreement. We will pass this legislation, and I think we have accomplished something significant.

Mr. President, let me also indicate that my staff member, Greg Rohde, who has been working on these issues for many, many years with me, has done an outstanding job, as well as have other staff who have helped work through this process. I thank him for his work. I yield the floor.

Mr. GRAHAM addressed the Chair.

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

Mr. GRAHAM. Mr. President, I understand I only have 22 seconds. I want to say some positive things. I ask that I may be yielded——

Mr. MCCAIN. I yield the Senator from Florida as much time as he may use from my time.

Mr. GRAHAM. Mr. President, I appreciate that generosity, and I will not overly indulge. Let me say, we have reached an honorable resolution to this issue which, for those who have been listening to this arcane debate, I will summarize by saying a significant issue will be made prospective in its application and not have retroactive application. Reading the language we have agreed to add to the McCain amendment 3711, which makes a portion of the nexus language prospective, in combination with the definition of ''tax on internet access,'' which was agreed to earlier, this amendment should not interfere with litigation between States and internet service providers. With that agreement, that has brought the various parties of interest into concurrence.

What I want to say, Mr. President, is the three people who have been particularly active on this issue, who are on the floor now—Senator MCCAIN of Arizona, Senator DORGAN of North Dakota, Senator WYDEN of Oregon—are three of the finest people with whom I have had the privilege to serve in public office. If America was going to judge the quality of its public officials, I would be happy to be judged by these three men.

As the Senator from Arizona said, we have had some degree of controversy, but that is the nature of the democratic process. If this were a passive and tranquil process where everybody voted 400 to 0, that would be reminiscent of the way in which the Soviet Union used to operate its parliament, not the U.S. Senate.

I think we have come to not only an appropriate resolution of this specific amendment, but I am proud where we are overall. We have achieved the purpose of having a reasonable period of timeout, with a thoughtful commission to be appointed to study some extremely complicated areas, the intersection of a legal system that is complex in areas of State-Federal relations, telecommunications and a highly complex new set of technologies.

This is an appropriate area for us to stand back and ask for the assistance of some thoughtful citizens who can bring their wisdom and experience to bear and give us the framework of some policy that then will be returned to the Senate and to the House of Representatives for enactment, as well as to the various State legislatures for their consideration.

I think we have, at the end of this process, arrived at exactly what our framers of this Constitution intended the legislative branch to do. I am proud to vote not only for this amendment but for the bill on final passage, and I look forward to the commission's work over the next several months and a return to these subjects in the year 2000 or 2002.

Again, I thank my colleagues for their very significant leadership in bringing us to this position.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Dakota.

PRIVILEGE OF THE FLOOR

Mr. DORGAN. Mr. President, I ask unanimous consent that Tyler Candee be accorded the privilege of the floor for the rest of the day.

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

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I also would like to take this opportunity to thank Mr. Russ Sullivan, who is legislative director in my office, and Kate Mahar, who has worked with him. They have been on a fast learning curve on these issues, fortunately, about 12 hours ahead of myself. I publicly thank them for their contribution to this final conclusion.

Mr. WYDEN addressed the Chair.

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

Mr. WYDEN. Thank you very much, Mr. President. I think this may well be a historic day. What the U.S. Senate is doing is beginning to write the ground rules for the digital economy. As we have seen just in the last hour again, it is going to be a tough job.

We have had just in the last hour another set of questions that have come up with respect just to the terminology that is used in this new field. For example, some States call an Internet access tax a tax on on-line services.

What we have done now as a result of the agreement among the Senator from Arizona, the Senator from North Dakota, the Senator from Florida and myself, is we have said that we are going to treat those terms the same way when, in fact, they have the same effect. I think that this exercise, while certainly laborious and difficult, is just an indication of the kind of challenges we have to overcome.

I thank particularly the Senator from Florida. He feels very strongly about this issue and has made the case again and again to me that it is important to do this job right, and I share his view. I thank him for his courtesies.

The Senator from North Dakota and I have been debating this legislation now for a year and a half, probably at a much higher decibel level than either of us would have liked.

The chairman of the committee, Chairman MCCAIN, and I have been friends for almost 20 years now. For this freshman Senator—not even a full freshman, an arrival in a special election—to have a chance to team up on this important piece of legislation is a great thrill. I thank him and his staff for all of their courtesies.

Before I make any final comments, I want to thank Ms. Carole Grunberg of our office who again and again, when this legislation simply did not look like it could go forward, persisted. And she, along with Senator DORGAN's staff and Senator MCCAIN's staff, has helped to get us to this exciting day.

I am particularly pleased, Mr. President—I will wrap up with this—for the benefits that this legislation is going to have for people without a lot of political power in America. I think about the 100,000 home-based businesses I have in my State. I think about the disabled folks who are starting little businesses in their homes. For them, the Internet is the great equalizer. It allows people who think of themselves as the little guy to basically be able to compete in the global economy with the big guys.

Unless we come up with some ways to make uniform some of these definitions and terms, which is what we have been trying to do in the last hour—and we have made some real headway and reached a success—those little guys are going to find it hard to compete.

So I look forward to continuing the discussions with our colleagues as we look to other questions with respect to the Internet. This, it seems to me, is just the beginning of the discussion rather than the end.

Mr. President, I urge my colleagues now to support this modified amendment, to support the bill, and I yield the floor.

Mr. MCCAIN addressed the Chair.

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

Mr. MCCAIN. Mr. President, I again thank Senator WYDEN, Senator DORGAN, the Senator from Florida, Senator GRAHAM, and all who were involved in this very difficult and very complex issue. I also thank my staff—all of them, including Mark Buse.

I also would like to add to the comments of the Senator from Florida, Senator GRAHAM, who said this is how the process should work. It has been very tough, very difficult, very time-consuming, but I think the magnitude of the legislation we are considering probably warranted all of that—and perhaps more. So I thank him very much. And as far as the freshman from Oregon is concerned, he has certainly earned his spurs as a member of the Commerce Committee.

By the way, I also thank the Chair for his involvement in this issue. He is probably the most computer literate Member of the U.S. Senate. We obviously value his talent and expertise and look forward to the day when he has his laptop on the floor for its use that so far we have failed to achieve but someday I hope we do.

I also mention one other person, Congressman COX over in the other body, who has also played a key role in the development of their legislation on the other side. He has done a tremendous job, Congressman COX of California.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3711, as modified.

The amendment (No. 3711), as modified, was agreed to.

AMENDMENT NO. 3718, AS FURTHER MODIFIED

Mr. MCCAIN. I send to the desk a modification to amendment No. 3718 and ask unanimous consent that it to be adopted. Mr. President, the situation is that some written language that had been included in that amendment was not legible in the printer, so we had to remodify it.

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

The amendment (No. 3718), previously agreed to, as further modified, follows:

On page 29, beginning with line 20, strike through line 19 on page 30 and insert the following:

(8) TAX.—

(A) IN GENERAL.—The term ''tax'' means—

(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or

(ii) the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity.

(B) EXCEPTION.—Such term does not include any franchise fee or similar fee imposed by a State or local franchising authority, pursuant to section 622 or 653 of the Communications Act of 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(9) TELECOMMUNICATIONS SERVICE.—The term ''telecommunications service'' has the meaning given such term in section 3(46) of the Communications Act of 1934 (47 U.S.C. 153(46)) and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986).

(10) TAX ON INTERNET ACCESS.—The term ''tax on Internet access'' means a tax on Internet access, including the enforcement or application of any new or preexisting tax on the sale or use of Internet services; unless such tax was generally imposed and actually enforced prior to October 1, 1998.

Mr. KERRY. I'd like to take a moment to express my strong support for S. 442, the Internet Tax Freedom Act. In my view, S. 442 is a necessary first step to ensure that the Internet remains user-friendly to persons and businesses who seek to use it as a primary forum in which to conduct commerce. Before I begin, I'd like to credit my colleague from Oregon, Senator WYDEN, for his hard work on this legislation and for his longtime and pioneering leadership on Internet issues, both when he was in the House and now as a member of the Commerce Committee in the Senate. I'd also like to thank Senator MCCAIN for his steadfastness and determination in ensuring that this important legislation is considered by the full Senate.

The Internet holds great promise to expand prosperity and bring ever more Americans into the national economy. In the past, to open a store and sell goods to the public, a merchant needed to find a good location for a storefront, build-out the store front, maintain its interior, pay rent and deal with myriad other business and legal concerns. All of these actions consume time and often scarce resources. To many Americans, they present an unreachably high bar to starting or maintaining a business. The Internet will allow millions of Americans to sell goods and services online, and will dispense with many of the burdensome costs involved with starting and maintaining a business. One great impediment, however, to the evolution of commerce over the Internet is the immediate threat of both disparate taxing jurisdictions and inequitable taxation.

A product offered over the Internet can be purchased by anyone with a computer and a modem, regardless of the town or state in which the person lives. Imagine needing to know the tax consequences of selling to each of the thousands of taxing jurisdictions in the country as a prerequisite to starting a business. This problem becomes even more complex if states and localities begin to impose taxes on electronic transactions or transmissions as such, in addition to sales, use and other taxes.

This legislation attempts to reasonably address this concern by imposing a brief moratorium specifically on the inequitable taxation of electronic commerce. It will allow the federal government, the states, the Internet industry and Main Street businesses a brief time-out to rationally discuss the several issues involved in Internet taxation and to develop a reasonable approach to taxation which permits electronic commerce to thrive in America. In my view, the legislation does not seek to deprive states of needed tax revenue. Senators WYDEN and MCCAIN have gone to great lengths to minimize those existing taxes that would be affected. In addition, the bill expressly grandfathers existing state taxes on Internet access. What the bill does, however, is attempt to ensure that the development of the Internet is not hampered by a hodge-podge of confusing state and local taxes.

This bill was carefully negotiated to address competing equities. States and localities certainly have very real and legitimate needs to raise revenue to support vital state and community functions. By the same token, the Internet and the promise it holds for our economy, for schools, for children and families, and for our democracy is also very compelling. It is a wholly new medium whose mechanics, subtleties and nuances few of us really understand. I do not hear any Senator stating that electronic commerce should never be the basis of tax revenue, and I do not believe any Senator is trying to permanently deprive states of inherent privileges. Instead, the bill strives to create a brief period during which we in government and those in business can attempt to better understand this new medium and create a sensible policy that permits the medium to flourish as we all want.

I urge my colleagues to support this bill.

Mr. ROTH. Mr. President, I rise to express my support for the Internet Tax Freedom Act. This legislation imposes a temporary moratorium on taxes relating to the Internet and establishes a Commission to study and make recommendations for international, Federal, state, and local government taxes of the Internet and other comparable sales.

This legislation reflects the exciting times in which we live—a time when commerce between two individuals located a thousand miles apart can take place at the speed of light. Today, names like Netscape, Amazon.com, Yahoo, and America On-Line are household names—each a successful company in a new and exciting global

business community. And they are only a few of literally thousands who provide their goods and services over the Internet.

They compete in a world where technological revolutions take place on a daily basis, and they benefit the lives of families everywhere. Even in America's most remote communities, our children have access to the seven wonders of the world, to metropolitan art museums, electronic encyclopedias, and the world's great music and literature. These companies—and the countless companies like them—are pioneers. And the new frontier is exciting, indeed.

In the new realm of cyberspace, government has three choices: lead, follow, or get out of the way. The legislation we introduce today is a clear indication that government is prepared to lead. It demonstrates that Congress is not going to allow haphazard tax policies, and a lack of foresight to get in the way of the growth and potential of this new and promising medium. It makes it clear that government's interaction with Internet commerce will be well-considered and constructive—beneficial to future prospects of Internet business and the individuals they service.

From the introduction of the Internet Tax Freedom Act, in early 1997, members of the Finance Committee expressed keen interest in considering this legislation. The Finance Committee has clear jurisdiction over state and local taxes—it's also the place for trade issues. And this July, we received a referral of the bill. We conducted a hearing on the issues and listened to witnesses detail the growth and potential of the Internet. Witnesses also articulated the many sides and concerns associated with the tax implications of Internet commerce.

Following our hearing, the Finance Committee held a markup, where we approved an amendment in the nature of a substitute to the original bill reported out of the Commerce Committee. The Finance Committee made significant improvements to the original legislation. We beefed up the trade component of the bill. We directed the USTR to examine and disclose the barriers to electronic commerce in its annual report. And we declared that it is the sense of Congress that international agreements provide that the Internet remain free from tariffs and discriminatory taxation.

The Finance Committee's substitute also shortened the moratorium period on State and local taxes relating to the Internet. We did this with an understanding that the advisory commission, set up in the legislation, would not need the five year period that was set out in the original Commerce bill. At the same time, we streamlined the Advisory Committee and focused its study responsibilities.

We took out any grandfather provision, feeling that as a policy matter, there should not be any taxes on the Internet during the moratorium period—regardless of whether some States had jumped the gun and applied existing taxes to Internet access. The Finance Committee also felt that this bill should be an example to our international negotiating partners—that if we wanted to keep grandfather provisions out of the international agreements, that we should remove them from our domestic taxation.

I recognize that there have been various floor amendments that have changed some of the things we did in the Finance Committee. Despite those amendments, the central thrust of the legislation, which is to call a time-out while a commission assesses the Internet and makes some recommendations about how we should tax electronic commerce, remains. Important international provisions—relating to trade and tariff issues—also remain unchanged.

Mr. President, I support the Internet Tax Freedom Act. It is a demonstration of Congress' understanding of the exciting potential and the opportunities that will be realized in cyberspace. It is a thoughtful approach to a very important issue. It meets current needs, and allows continued growth in this new frontier. I hope my colleagues will join me in supporting it.

Mr. MOYNIHAN. Mr. President, I first want to thank the Chairman of the Finance Committee, Senator ROTH, for his insistence that the Internet Tax Freedom Act be considered by the Finance Committee before any action on this floor. I recognize and applaud all of the effort that has gone into the other proposals dealing with this subject, and in particular we should acknowledge the work of Senators WYDEN, MCCAIN, DORGAN, GRAHAM, LIEBERMAN, and GREGG.

Since June of 1997, the chairman and I sought referral of this legislation to give the Finance Committee the opportunity to consider the important tax and trade issues related to the Internet, which by some estimates will grow to $300 billion of commercial transactions annually by the year 2000. The bill was finally referred to the Finance Committee on July 21st of this year.

That referral to the Finance Committee was consistent with Senate precedents. In recent years, the Finance Committee has had jurisdiction over at least two other pieces of legislation with direct impact on state and local taxes. Both the ''source tax'' bill that was of great interest to Senators BRYAN, REID, and BAUCUS, prohibiting states from taxing the pensions of former residents, and Senator BUMPERS' mail order sales tax proposal, requiring mail order companies to collect and remit sales taxes due on goods shipped across state lines, were referred to the Finance Committee.

The legislation before us today also deals directly with international trade. It requests that the administration continue to seek trade agreements that keep the Internet free from foreign tariffs and other trade barriers. As reported by the Finance Committee, this bill would establish trade objectives designed to guide future negotiations over the regulation of electronic commerce—issues clearly within the Finance Committee's jurisdiction.

A few comments on the substance of this legislation. I am not entirely persuaded that there is a pressing need for a federal moratorium on the power of state and local governments to impose and collect certain taxes, but it seems clear that such a moratorium does enjoy a great deal of support. The two-year moratorium period in the Finance Committee bill and the three-year period agreed to as a floor amendment during this debate is surely preferable to the six-year provision in the Commerce Committee bill.

There is some question whether such a moratorium is actually necessary. New York is proof that States do not need a directive from Congress to act on this matter: Governor Pataki and the New York State legislature have agreed on a bill exempting Internet access services from State or local sales, use, and telecommunications taxes. The Governor's legislation also makes it clear that out-of-state businesses will not be subject to State or local taxes in New York solely because they advertise on the Internet.

I am pleased that the Finance Committee's bill preserves the right of States or local governments to collect tax with respect to transactions occurring before July 29, 1998 (the date of Finance Committee action). Further, I am pleased that language has been added on the floor that goes beyond the Finance Committee bill and ''grandfathers'' any existing State and local taxes on Internet activity occurring during the period of the moratorium.

With respect to the Advisory Commission on Electronic Commerce established, a membership of 16, almost half of that in the House bill, is manageable and is more likely to lead to meaningful recommendations. An item of particular interest to me is the requirement in that the Commission examine the application of the existing Federal ''communications services'' excise tax to the Internet and Internet access. We need to know more about how and whether that tax should apply to new technology.

This bill is not perfect, but on balance I believe it deserves our support. I urge its adoption and hope it can be enacted this year.

Mr. LOTT. Mr. President, I am pleased to rise in support of the Senate's overwhelming passage today of the Internet Tax Freedom Act. This bill represents several months of thoughtful consideration and discussion among Members on both sides of the aisle to address the tax treatment of this emerging medium of commerce.

Throughout history, innovations in technology have dramatically changed lifestyles. Today, it is the Internet changing lives, and unlike any other

technology to date. It is connecting people all around the world in ways that no one at the Department of Defense ever conceived of when the network was created. It is a true testament to the fact that leadership and entrepreneurial drive is alive and well in America.

This new tool of communication and information is also fast becoming one of the most important and vibrant marketplaces in decades. It holds great promise for businesses, both large and small, to offer their products and services for sale to a worldwide market. This is good news for everyone. It means new jobs, new opportunities and choices for consumers and retailers, and ultimately more revenue for state and local governments.

Mr. President, by its very nature, the Internet does not respect the traditional boundaries of state borders or county lines used to define our tax policies today. With about 30,000 taxing jurisdictions all across America, a myriad of overlapping and burdensome taxes is a legitimate concern for consumers and businesses online. This issue needs to be explored and resolved.

The Internet Tax Freedom Act is about the potential of technology.

It is about taking a necessary and temporary time-out so that a Commission of government and industry representatives can thoroughly study electronic commerce and make sensible recommendations to Congress about a fair, uniform and consistent Internet tax structure. The moratorium will apply to discriminatory and multiple taxes as well as to taxes paid just to access the Internet.

This legislation will treat Internet sales the same as any other type of remote sale. It will not favor the Internet or disadvantage others.

Businesses and consumers using electronic commerce need and deserve some level of assurance and sense of uniformity about how they will be taxed.

Mr. President, over the past several months, I personally heard from governors and groups across the nation who expressed serious concerns about the hindering effect on electronic commerce due to ambiguous and conflicting tax treatment. I also heard from others expressing concerns about raising revenue and providing services to their citizens. Both voiced support for passage of a balanced bill that would represent their views. Adequate time was allowed for the Senate to hear what they had to say, and their concerns are reflected in the amendments and in the final bill.

Internet taxes, like many other issues faced in Congress, is not without controversy. The spirited exchange on the Senate floor during the past several days is evidence of that. I respect the differences that have been debated. I recognize the delicate balance in many of the views expressed, and appreciate the good faith efforts of my colleagues in working together to reach consensus. I know it was not easy.

Passage of this legislation was made possible by the hard work of many people.

First, I commend Senator John MCCAIN, Chairman of the Senate's Commerce Committee, for his diligent leadership and commitment to tackle this complex and contentious issue. He has been steadfast throughout this process, and to him I say thank you.

I also owe a debt of gratitude for the work and contributions of the Chairman of the Senate's Finance Committee, Senator BILL ROTH. He provided a fresh perspective on the issue of electronic commerce.

Clearly, the participation of several Members with diverse interests was integral in moving this bill forward. I am proud to see Senators from both sides of the aisle—Senator BYRON DORGAN, Senator JUDD GREGG, Senator TIM HUTCHINSON, Senator JOE LIEBERMAN, and Senator RON WYDEN—all work together in a respectful manner to get the job done.

Nothing is ever accomplished in the Senate without the dedicated efforts of staff. I want to take a moment to identify those who worked hard to prepare this legislation for consideration. From the Senate Commerce Committee: Mark Buse, Jim Drewry, Carol Grunberg, Paula Ford, Kevin Joseph, John Raidt, Mike Rawson, and Jessica Yoo. From the Finance Committee: Stan Fendley, Keith Hennessey, Jeffrey Kupfer, Brigitta Pari, Frank Polk, and Mark Prater. Other individuals participated on behalf of their Senators: Renee Bennett, Laureen Daly, Richard Glick, Hazen Marshall, Greg Rhode, Mitch Rose, Stan Sokul and Russell Sullivan. I thank them all for their efforts.

Mr. President, the current power of the Internet and its future potential will advance America into the next millennium. Passage of the Internet Tax Freedom Act is a crucial step in recognizing the significance of the Internet in electronic commerce and what it will mean in the lives of every American consumer, to American businesses, and to America's economy.

Mr. LEAHY. Mr. President, I want to add my own support to promoting electronic commerce and keeping it free from new Federal, State or local taxes. I am a cosponsor of the Internet Tax Freedom Act, S. 442.

In ways that are becoming increasingly apparent, the Internet is changing the way we do business. More than 50 million people around the world surf the net—50 million. And more and more of these users turn to the World Wide Web and the Internet to place orders with suppliers or to sell products or services to customers or to communicate with clients.

The Internet market is growing at a tremendous pace. Over the past 2 years, sales generated through the web grew more than 5,000 percent. In fact, in a recent Business Week article, electronic commerce sales are estimated to reach $379 billion by the year 2002, pumping up the Nation's gross domestic sales by $10 to $20 billion every year by 2002.

And I see it in my own State of Vermont. On my home page on the web, I have put together a section called ''Cyber Selling In Vermont.'' It is a step-by-step resource guide for exploring how you can have on-line commerce and other business uses of the Internet. It has links to businesses in Vermont that are already cyberselling.

As of today, this site includes links to web sites of more than 100 Vermont businesses doing business on the Internet. They range from the Quill Bookstore in Manchester Center to Al's Snowmobile Parts Warehouse in Newport.

For the past 3 years, I have held annual workshops on doing business on the Internet in my home State. I have received a tremendous response to these workshops from Vermont businesses of all sizes and customer bases, from Main Street merchants to boutique entrepreneurs.

At my last Doing Business on the Internet Workshop in Vermont, we had these small business owners from all over our State. They told how successful they have been selling on the web. They had such Main Street businesses as a bed and breakfast, or in one case a wool boutique, and a real estate company. One example is Megan Smith of the Vermont Inn in Killington. She attended one of my workshops. Now she is taking reservations over the net, reservations not just from Vermont, but from throughout the country. So cyberselling pays off for Vermonters.

Now Vermont businesses have an opportunity to take advantage of this tremendous growth by selling their goods on line. I have tried to be a missionary for this around our State, because I believe the Internet commerce can help Vermonters ease some of the geographic barriers that historically have limited our access to markets where our products can thrive.

The World Wide Web and Internet businesses can sell their goods all over the world in the blink of an eye, and they can do it any time of the day or night.

As this electronic commerce continues to grow—for even a small State like mine; we can see it all over the country—I hope we in Congress can be leaders in developing tax policy that will nurture this new market. I followed closely the Internet Tax Freedom Act since Senator WYDEN introduced it last summer. I want to commend the senior Senator from Oregon for his leadership on cyber tax policy.

More than 30,000 cities and towns in the United States are able to levy discriminatory sales on electronic commerce. Because of that, we need this national bill to provide the stability necessary if this electronic commerce is going to flourish.

We are not asking for a tax-free zone on the Internet. If sales taxes and

other taxes would apply to traditional sales and services under State or local law, then those taxes would also apply to Internet sales under our bill. But the bill would outlaw taxes that are applied only to Internet sales in a discriminatory manner.

We do not want somebody to kill these businesses before they even begin because they think it is some way they can pluck the money out of the pockets of those who are using the Internet. We should not allow the future of electronic commerce—electronic commerce that can greatly expand the markets of even our Main Street businesses—we should not allow it to be crushed by the weight of multiple taxation. Without this legislation, they would have faced multiple taxation, and a lot of these Internet businesses now creating jobs, now flourishing, now adding to the commerce of our States would have been wiped out of business.

This legislation creates a temporary national commission to study and recommend appropriate rules for international, Federal, State, and local government taxation of transactions over the Internet. This also will help us very, very much.

The commission would submit its findings and recommendations to Congress within the next 18 months. With the help of this commission, Congress should be able to put a tax framework in place to foster electronic commerce and protect the rights of state and local governments when the three-year moratorium ends.

During my time in the Senate, I always tried to protect the rights of Vermont state and local legislators to craft their laws free from interference from Washington. Thus, the imposition of a broad, open-ended moratorium on state and local taxes relating to the Internet in the original bill gave me pause. I certainly agreed with the goal of no new state and local taxation of online commerce, but the means were questionable.

I believe those questions have been fully answered by the changes made to this legislation during its consideration in the Commerce and Finance Committees.

I want to commend Senators BURNS, KERRY, MCCAIN, MOYNIHAN and ROTH for working with Senator WYDEN, the sponsor of the original bill, to craft a substitute bill that protects the free flow of online commerce while accommodating the rights of state and local governments.

Today there are more than 400,000 businesses selling their sales and services on the World Wide Web around the world. This explosion in web growth has led to thousands of new and exciting opportunities for businesses, from Main Street to Wall Street. The Internet Tax Freedom Act will ensure that these businesses, and many others, continue to reap the rewards of electronic commerce.

Mr. President, I am proud to cosponsor the Internet Tax Freedom Act to foster the growth of online commerce and urge my colleagues to support its swift passage into law.

Mr. LIEBERMAN. Mr. President, I want to say how pleased I am that this chamber has finally come to agreement on S. 442, the Internet Tax Freedom Act. First, I would like to thank Senator WYDEN for introducing this bill and his perseverance to see this legislation through. I would like to thank Chairman MCCAIN for his management of this bill, and Senator DORGAN for working so closely with Senator WYDEN to arrive at a compromise. I would like to thank Senator GREGG for his unwavering insistence on what he believes is right. I would like to acknowledge the efforts of Senator BUMPERS and Senator GRAHAM who come to this issue from a different viewpoint but have tried to seek a common ground in what has been a polarizing and difficult negotiation.

I truly believe the most important things accomplished by this bill will be, first, to raise the visibility of the issue of taxation of the Internet. Just having this debate in Congress has stimulated discussion and thought about the future of electronic commerce and the Internet throughout the country. Three states—Texas, South Carolina, and my home State of Connecticut—came forward and said that they did not want their States' taxes to be grandfathered into the tax moratorium, but instead preferred to stop taxing the Internet. This debate has raised the consciousness of public leaders as to the great benefits electronic commerce holds for U.S. business to improve its productivity and reach new customers, and even more importantly, the level playing field the Internet provides for small businesses. At the same time, we have become aware of the enormous problems faced by small businesses which are suddenly, over the net, selling beyond their physical reach and the uncertainties they face in the legal and tax environment in 30,000 taxing jurisdictions.

The second major benefit of this bill will be to slow down the taxation of the Internet. The moratorium in S. 442, while grandfathering in existing State taxes on Internet access, will prevent new taxes from being added.

The third, and I consider the most important, major benefit of this legislation will be the creation of a commission to draft model State legislation creating uniform categories for these new Internet companies and transactions that gives these firms some certainty as to how they will be treated tax-wise in the different States. This is the essence of the bill that Senator GREGG and myself introduced in March, called NETFAIR, S. 1888—to remove the uncertainty under which electronic commerce companies have had to operate in the United States and bring some order into the present business climate. It is our intent that this model State legislation would not preempt the States, but would be adopted by the States, at their choice.

The Senate agreed to expand the duties of the commission beyond that of drafting model State legislation to looking at the States' collection of use taxes on all remote sales. This is a legitimate area of study and of concern to the States and to their revenue base. In opposing this amendment, I was merely voicing my concern that the commission may become bogged down in a debate over the taxation of catalog sales that I fear it will not be able to stay focused on the Internet and accomplish the very useful purpose of helping create a predictable legal environment for electronic commerce. It is my hope that the commission will try to complete the draft State legislation outlined in S. 442 first before turning to this larger debate.

At this point, I want to thank Senators ROTH and MOYNIHAN and the rest of the Finance Committee members for adding the international element to this bill. The Finance Committee reminded us to consider our domestic policies toward the Internet in the context of the international environment. Just as the Internet puts small companies on an equal footing with large companies, it also is creating a new level playing field internationally. Developing countries that have not yet fully industrialized, and countries whose telephone penetration is only a fraction of that in the United States, can leap frog entire stages of technology and move straight into fiber optic and wireless technologies that will carry video, sound, data, and voice.

A number of my colleagues and I have had an opportunity to speak with John Chambers, the President and CEO of Cisco Systems, one of the major suppliers of networking equipment at a breakfast last week. He knows something about electronic commerce since his company accounted for one-third of all electronic commerce last year. I was very impressed when he said that, on his trip through Asia, the political leaders of Singapore, Malaysia, Hong Kong and China wanted to hold substantive one- to two-hour conversations with him because they understand the power on the Internet and understand that information technology will change, not just their country's economy, but the economy of the world. They understand that those countries that embrace the information age will prosper and those who don't will fall behind.

Once again, Mr. President, I want to thank my colleagues and their staffs for the extraordinary effort they made to reach this point where we can finally vote on this bill. Finally, I would like to thank Laureen Daly of my staff who put in an enormous amount of work to assure that Connecticut's constituents, businesses and government will benefit from this legislation.

Mr. WARNER. Mr. President, I rise to restate my strong support for the Internet Tax Freedom Act. I am proud to be a cosponsor of this legislation

and pleased that with end the 105th Congress legislation that brings fairness and equitable tax treatment to hundreds of Virginia Internet and online companies.

It has been a difficult week, but we have succeeded reaching a resolution on this most important issue. This moratorium is critical to the development of an industry that has become a pillar of Virginia's, and our Nation's, economy.

I will ask a resolution passed earlier this year expressing the sense of the General Assembly of Virginia that the Internet should remain free from State and local taxes.

Mr. President, I also wish to commend Governor Jim Gilmore. He has been a tireless advocate and a true leader on this issue. He was one of a handful of governors to recognize the potential of this industry and the irreparable harm that could come to it at the hands of tens of thousands of tax collectors across the Nation. He shares my view that we will remain the leader in the information technology industry only as long as we pursue policies of lower taxes and less regulation—policies that have made Virginia such an attractive home to thousands of high tech companies and their employees.

HOUSE JOINT RESOLUTION NO. 36

Expressing the sense of the General Assembly of Virginia that services which provide access to the international network of computer systems (commonly known as the Internet) and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth or its political subdivisions.

Agreed to by the House of Delegates, February 17, 1998; agreed to by the Senate, March 10, 1998.

Whereas, services which provide access to the international network of computer systems (commonly known as the Internet) and other related electronic communication services, as well as data and software transmitted via such services, have provided immeasurable social, educational, and economic benefits to the citizens of Virginia, the United States, and the world; and

Whereas, technological advancements made by and to the Internet and other related electronic communication services, as well as data and software transmitted via such services, develop at an ever-increasing rate, both qualitatively and quantitatively; and

Whereas, these advancements have been encouraged, in part, by public policies which facilitate technological innovation, research, and development; and

Whereas, companies which provide Internet access services and other related electronic communication services are making substantial capital investments in new plants and equipment; and

Whereas, it has been estimated that consumers, businesses, and others engaging in interstate and foreign commerce through the Internet or other related electronic communication services could be subject to more than 30,000 separate taxing jurisdictions in the United States alone; and

Whereas, multiple and excessive taxation places such investment at risk and discourages increased investment to provide such services, which, in turn, could put such jurisdictions at a long-term social, educational, and economic disadvantage; and

Whereas, the growth and development of electronic communication services should be nurtured and encouraged by appropriate state and federal policies; and

Whereas, the Commonwealth's exercise of its taxation and regulatory powers in relation to electronic communication services would likely impede the future viability and enhancement of Internet access services and other electronic communication services in the Commonwealth, which, in turn, could restrict access to such services, as well as data and software transmitted via such services, for all Virginians; and

Whereas, previous rulings of departments of taxation or revenue in several states have resulted in state taxes being levied on Internet service providers or Internet-related services, and have, in some cases, prompted action by those states' legislatures to overturn such rulings; and

Whereas, a majority of the states that have addressed the issue of taxing Internet-related services have chosen to exercise restraint in taxing Internet service providers and Internet-related services; and

Whereas, Virginia's existing tax code (§58.1–609.5) exempts from retail sales and use tax purchases of services where no tangible personal property is exchanged; and

Whereas, pursuant to §58.1–609.5, the Commissioner of the Department of Taxation has promulgated regulations (Title 23 Virginia Administrative Code 10–210–4040) which provide that charges for services generally are exempt from retail sales and use tax, but that services provided in connection with sales of tangible personal property are taxable; and

Whereas, in interpreting and applying Virginia's tax code and regulations, the Commissioner has ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax (P.D. 97–405, October 2, 1997); and

Whereas, in further interpreting and applying Virginia's tax code and regulations, the Commissioner has ruled that providers of Internet access services and other electronic communication services are not subject to Virginia's retail sales and use tax (P.D. 97–425, October 21, 1997); and

Whereas, services which provide access to the Internet and other related electronic communication services, as well as data and software transmitted via such services, are not tangible personal property and, therefore, should not be subject to Virginia's retail sales and use tax: now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That Internet access services and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth and its political subdivisions; and, be it

Resolved further, That P.D. 97–405 (October 2, 1997), by which the Commissioner ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax, correctly reflects the sense of the General Assembly and the law of the Commonwealth regarding this issue; and, be it

Resolved further, That P.D. 97–425 (October 21, 1997), by which the Commissioner ruled that providers of Internet access services and other related electronic communication services are not subject to Virginia's retail sales and use tax, correctly reflects the sense of the General Assembly and the law of the Commonwealth regarding this issue; and, be it

Resolved further, That, to the greatest extent possible, future rulings of the Commissioner reflect the sense of the General Assembly that Internet access services and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth and its political subdivisions; and, be it

Resolved finally, That the Clerk of the House of Delegates transmit a copy of this resolution to the Commissioner of the Department of Taxation that he may be apprised of the sense of the General Assembly in this matter.

Mr. MCCAIN. Mr. President, I ask unanimous consent that no further amendments be in order to S. 442, the Senate proceed immediately to third reading, and final passage then occur, without debate, and I further ask that the final passage vote occur now, and that paragraph 4 of rule XII be waived.

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

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

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

The PRESIDING OFFICER. (Mr. KYL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 2, as follows:

[Rollcall Vote No. 308 Leg.]

YEAS—96

Abraham	Faircloth	Lugar
Akaka	Feingold	Mack
Allard	Feinstein	McCain
Ashcroft	Ford	McConnell
Baucus	Frist	Mikulski
Bennett	Graham	Moseley-Braun
Biden	Gramm	Moynihan
Bingaman	Grams	Murkowski
Bond	Grassley	Murray
Boxer	Gregg	Nickles
Breaux	Hagel	Reed
Brownback	Harkin	Reid
Bryan	Hatch	Robb
Burns	Helms	Roberts
Byrd	Hutchinson	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inhofe	Santorum
Cleland	Inouye	Sarbanes
Coats	Jeffords	Sessions
Cochran	Johnson	Shelby
Collins	Kempthorne	Smith (NH)
Conrad	Kennedy	Smith (OR)
Coverdell	Kerrey	Snowe
Craig	Kerry	Specter
D'Amato	Kohl	Stevens
Daschle	Kyl	Thomas
DeWine	Landrieu	Thompson
Dodd	Lautenberg	Thurmond
Domenici	Leahy	Torricelli
Dorgan	Levin	Warner
Durbin	Lieberman	Wellstone
Enzi	Lott	Wyden

NAYS—2

Bumpers	Gorton

NOT VOTING—2

Glenn Hollings

The bill (S. 442), as amended was passed, as follows:

S. 442

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 ''Internet Tax Freedom Act''.

TITLE I—MORATORIUM ON CERTAIN TAXES

SEC. 101. MORATORIUM.

(a) MORATORIUM.—No State or political subdivision thereof shall impose any of the following taxes during the period beginning on October 1, 1998, and ending 3 years after the date of the enactment of this Act—

(1) taxes on Internet access, unless such tax was generally imposed and actually enforced prior to October 1, 1998; and

(2) multiple or discriminatory taxes on electronic commerce.

(b) PRESERVATION OF STATE AND LOCAL TAXING AUTHORITY.—Except as provided in this section, nothing in this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxation that is otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act.

(c) LIABILITIES AND PENDING CASES.—Nothing in this Act affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this Act affect ongoing litigation relating to such taxes.

(d) DEFINITION OF GENERALLY IMPOSED AND ACTUALLY ENFORCED.—For purposes of this section, a tax has been generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

(e) EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply in the case of any person or entity who in interstate or foreign commerce is knowingly engaged in the business of selling or transferring, by means of the World Wide Web, material that is harmful to minors unless such person or entity requires the use of a verified credit card, debit account, adult access code, or adult personal identification number, or such other procedures as the Federal Communications Commission may prescribe, in order to restrict access to such material by persons under 17 years of age.

(2) SCOPE OF EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to engaged in the business of selling or transferring material by means of the World Wide Web to the extent that the person is—

(A) a telecommunications carrier engaged in the provision of a telecommunications service;

(B) a person engaged in the business of providing an Internet access service;

(C) a person engaged in the business of providing an Internet information location tool; or

(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

(3) DEFINITIONS.—In this subsection:

(A) BY MEANS OF THE WORLD WIDE WEB.—The term ''by means of the World Wide Web'' means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol, file transfer protocol, or other similar protocols.

(B) ENGAGED IN THE BUSINESS.—The term ''engaged in the business'' means that the person who sells or transfers or offers to sell or transfer, by means of the World Wide Web, material that is harmful to minors devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income.

(C) INTERNET.—The term ''Internet'' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(D) INTERNET ACCESS SERVICE.—The term ''Internet access service'' means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

(E) INTERNET INFORMATION LOCATION TOOL.—The term ''Internet information location tool'' means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

(F) MATERIAL THAT IS HARMFUL TO MINORS.—The term ''material that is harmful to minors'' means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that—

(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(G) SEXUAL ACT; SEXUAL CONTACT.—The terms ''sexual act'' and ''sexual contact'' have the meanings given such terms in section 2246 of title 18, United States Code.

(H) TELECOMMUNICATIONS CARRIER; TELECOMMUNICATIONS SERVICE.—The terms ''telecommunications carrier'' and ''telecommunications service'' have the meanings given such terms in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(f) ADDITIONAL EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply with respect to an Internet access provider, unless, at the time of entering into an agreement with a customer for the provision of Internet access services, such provider offers such customer (either for a fee or at no charge) screening software that is designed to permit the customer to limit access to material on the Internet that is harmful to minors.

(2) DEFINITIONS.—In this subsection:

(A) INTERNET ACCESS PROVIDER.—The term 'Internet access provider' means a person engaged in the business of providing a computer and communications facility through which a customer may obtain access to the Internet, but does not include a common carrier to the extent that it provides only telecommunications services.

(B) INTERNET ACCESS SERVICES.—The term 'Internet access services' means the provision of computer and communications services through which a customer using a computer and a modem or other communications device may obtain access to the Internet, but does not include telecommunications services provided by a common carrier.

(C) SCREENING SOFTWARE.—The term ''screening software'' means software that is designed to permit a person to limit access to material on the Internet that is harmful to minors.

(3) APPLICABILITY.—Paragraph (1) shall apply to agreements for the provision of Internet access services entered into on or after the date that is 6 months after the date of enactment of this Act.

SEC. 102. ADVISORY COMMISSION ON ELECTRONIC COMMERCE.

(a) ESTABLISHMENT OF COMMISSION.—There is established a commission to be known as the Advisory Commission on Electronic Commerce (in this title referred to as the ''Commission''). The Commission shall—

(1) be composed of 19 members appointed in accordance with subsection (b), including the chairperson who shall be selected by the members of the Commission from among themselves; and

(2) conduct its business in accordance with the provisions of this title.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commissioners shall serve for the life of the Commission. The membership of the Commission shall be as follows:

(A) 3 representatives from the Federal Government, comprised of the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative (or their respective delegates).

(B) 8 representatives from State and local governments (one such representative shall be from a State or local government that does not impose a sales tax and one representative shall be from a State that does not impose an income tax).

(C) 8 representatives of the electronic commerce industry (including small business), telecommunications carriers, local retail businesses, and consumer groups, comprised of—

(i) 5 individuals appointed by the Majority Leader of the Senate;

(ii) 3 individuals appointed by the Minority Leader of the Senate;

(iii) 5 individuals appointed by the Speaker of the House of Representatives; and

(iv) 3 individuals appointed by the Minority Leader of the House of Representatives.

(2) APPOINTMENTS.—Appointments to the Commission shall be made not later than 45 days after the date of the enactment of this Act. The chairperson shall be selected not later than 60 days after the date of the enactment of this Act.

(3) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(c) ACCEPTANCE OF GIFTS AND GRANTS.—The Commission may accept, use, and dispose of gifts or grants of services or property, both real and personal, for purposes of

aiding or facilitating the work of the Commission. Gifts or grants not used at the expiration of the Commission shall be returned to the donor or grantor.

(d) OTHER RESOURCES.—The Commission shall have reasonable access to materials, resources, data, and other information from the Department of Justice, the Department of Commerce, the Department of State, the Department of the Treasury, and the Office of the United States Trade Representative. The Commission shall also have reasonable access to use the facilities of any such Department or Office for purposes of conducting meetings.

(e) SUNSET.—The Commission shall terminate 18 months after the date of the enactment of this Act.

(f) RULES OF THE COMMISSION.—

(1) QUORUM.—Nine members of the Commission shall constitute a quorum for conducting the business of the Commission.

(2) MEETINGS.—Any meetings held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

(3) OPPORTUNITIES TO TESTIFY.—The Commission shall provide opportunities for representatives of the general public, taxpayer groups, consumer groups, and State and local government officials to testify.

(4) ADDITIONAL RULES.—The Commission may adopt other rules as needed.

(g) DUTIES OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall conduct a thorough study of Federal, State and local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities.

(2) ISSUES TO BE STUDIED.—The Commission may include in the study under subsection (a)—

(A) an examination of—

(i) barriers imposed in foreign markets on United States providers of property, goods, services, or information engaged in electronic commerce and on United States providers of telecommunications services; and

(ii) how the imposition of such barriers will affect United States consumers, the competitiveness of United States citizens providing property, goods, services, or information in foreign markets, and the growth and maturing of the Internet;

(B) an examination of the collection and administration of consumption taxes on electronic commerce in other countries and the United States, and the impact of such collection on the global economy, including an examination of the relationship between the collection and administration of such taxes when the transaction uses the Internet and when it does not;

(C) an examination of the impact of the Internet and Internet access (particularly voice transmission) on the revenue base for taxes imposed under section 4251 of the Internal Revenue Code of 1986;

(D) an examination of model State legislation that—

(i) would provide uniform definitions of categories of property, goods, service, or information subject to or exempt from sales and use taxes; and

(ii) would ensure that Internet access services, online services, and communications and transactions using the Internet, Internet access service, or online services would be treated in a tax and technologically neutral manner relative to other forms of remote sales;

(E) an examination of the effects of taxation, including the absence of taxation, on all interstate sales transactions, including transactions using the Internet, on retail businesses and on State and local governments, which examination may include a review of the efforts of State and local governments to collect sales and use taxes owed on in-State purchases from out-of-State sellers; and

(F) the examination of ways to simplify Federal and State and local taxes imposed on the provision of telecommunications services.

(3) EFFECT ON THE COMMUNICATIONS ACT OF 1934.—Nothing in this section shall include an examination of any fees or charges imposed by the Federal Communications Commission or States related to—

(A) obligations under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

(B) the implementation of the Telecommunications Act of 1996 (or of amendments made by that Act).

(h) NATIONAL TAX ASSOCIATION COMMUNICATIONS AND ELECTRONIC COMMERCE TAX PROJECT.—The Commission shall, to the extent possible, ensure that its work does not undermine the efforts of the National Tax Association Communications and Electronic Commerce Tax Project.

SEC. 103. REPORT.

Not later than 18 months after the date of the enactment of this Act, the Commission shall transmit to Congress for its consideration a report reflecting the results, including such legislative recommendations as required to address the findings of the Commission's study under this title. Any recommendation agreed to by the Commission shall be tax and technologically neutral and apply to all forms of remote commerce. No finding or recommendation shall be included in the report unless agreed to by at least two-thirds of the members of the Commission serving at the time the finding or recommendation is made.

SEC. 104. DEFINITIONS.

For the purposes of this title:

(1) BIT TAX.—The term ''bit tax'' means any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital information per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications services.

(2) DISCRIMINATORY TAX.—The term ''discriminatory tax'' means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998, the sole ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

(3) ELECTRONIC COMMERCE.—The term ''electronic commerce'' means any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.

(4) INTERNET.—The term ''Internet'' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(5) INTERNET ACCESS.—The term ''Internet access'' means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services.

(6) MULTIPLE TAX.—

(A) IN GENERAL.—The term ''multiple tax'' means any tax that is imposed by one State or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision thereof (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions.

(B) EXCEPTION.—Such term shall not include a sales or use tax imposed by a State and 1 or more political subdivisions thereof on the same electronic commerce or a tax on persons engaged in electronic commerce which also may have been subject to a sales or use tax thereon.

(C) SALES OR USE TAX.—For purposes of subparagraph (B), the term ''sales or use tax'' means a tax that is imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property or services as may be defined by laws imposing such tax and which is measured by the amount of the sales price or other charge for such property or service.

(7) STATE.—The term ''State'' means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(8) TAX.—

(A) IN GENERAL.— The term ''tax'' means—

(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or

(ii) the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity.

(B) EXCEPTION.—Such term does not include any franchise fee or similar fee imposed by a State or local franchising authority, pursuant to section 622 or 653 of the

Communications Act of 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(9) TELECOMMUNICATIONS SERVICE.—The term ''telecommunications service'' has the meaning given such term in section 3(46) of the Communications Act of 1934 (47 U.S.C. 153(46)) and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986).

(10) TAX ON INTERNET ACCESS.—The term ''tax on Internet access'' means a tax on Internet access, including the enforcement or application of any new or preexisting tax on the sale or use of Internet services unless such tax was generally imposed and actually enforced prior to October 1, 1998.

TITLE II—OTHER PROVISIONS

SEC. 201. DECLARATION THAT INTERNET SHOULD BE FREE OF NEW FEDERAL TAXES.

It is the sense of Congress that no new Federal taxes similar to the taxes described in section 101(a) should be enacted with respect to the Internet and Internet access during the moratorium provided in such section.

SEC. 202. NATIONAL TRADE ESTIMATE.

Section 181 of the Trade Act of 1974 (19 U.S.C. 2241) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (A)—

(i) by striking ''and'' at the end of clause (i);

(ii) by inserting ''and'' at the end of clause (ii); and

(iii) by inserting after clause (ii) the following new clause:

''(iii) United States electronic commerce,''; and

(B) in subparagraph (C)—

(i) by striking ''and'' at the end of clause (i);

(ii) by inserting ''and'' at the end of clause (ii);

(iii) by inserting after clause (ii) the following new clause:

''(iii) the value of additional United States electronic commerce,''; and

(iv) by inserting ''or transacted with,'' after ''or invested in'';

(2) in subsection (a)(2)(E)—

(A) by striking ''and'' at the end of clause (i);

(B) by inserting ''and'' at the end of clause (ii); and

(C) by inserting after clause (ii) the following new clause:

''(iii) the value of electronic commerce transacted with,''; and

(3) by adding at the end the following new subsection:

''(d) ELECTRONIC COMMERCE.—For purposes of this section, the term 'electronic commerce' has the meaning given that term in section 104(3) of the Internet Tax Freedom Act.''.

SEC. 203. DECLARATION THAT THE INTERNET SHOULD BE FREE OF FOREIGN TARIFFS, TRADE BARRIERS, AND OTHER RESTRICTIONS.

(a) IN GENERAL.— It is the sense of Congress that the President should seek bilateral, regional, and multilateral agreements to remove barriers to global electronic commerce through the World Trade Organization, the Organization for Economic Cooperation and Development, the Trans-Atlantic Economic Partnership, the Asia Pacific Economic Cooperation forum, the Free Trade Area of the America, the North American Free Trade Agreement, and other appropriate venues.

(b) NEGOTIATING OBJECTIVES.—The negotiating objectives of the United States shall be—

(1) to assure that electronic commerce is free from—

(A) tariff and nontariff barriers;

(B) burdensome and discriminatory regulation and standards; and

(C) discriminatory taxation; and

(2) to accelerate the growth of electronic commerce by expanding market access opportunities for—

(A) the development of telecommunications infrastructure;

(B) the procurement of telecommunications equipment;

(C) the provision of Internet access and telecommunications services; and

(D) the exchange of goods, services, and digitalized information.

(c) ELECTRONIC COMMERCE.—For purposes of this section, the term ''electronic commerce'' has the meaning given that term in section 104(3).

SEC. 204. NO EXPANSION OF TAX AUTHORITY.

Nothing in this Act shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed immediately before the date of the enactment of this Act.

SEC. 205. PRESERVATION OF AUTHORITY.

Nothing in this Act shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 (Public Law 104–104) or the amendments made by such Act.

SEC. 206. SEVERABILITY.

If any provision of this Act, or any amendment made by this Act, or the application of that provision to any person or circumstance, is held by a court of competent jurisdiction to violate any provision of the Constitution of the United States, then the other provisions of that section, and the application of that provision to other persons and circumstances, shall not be affected.

TITLE III—GOVERNMENT PAPERWORK ELIMINATION ACT

SEC. 301. SHORT TITLE.

This title may be cited as the ''Government Paperwork Elimination Act''.

SEC. 302. AUTHORITY OF OMB TO PROVIDE FOR ACQUISITION AND USE OF ALTERNATIVE INFORMATION TECHNOLOGIES BY EXECUTIVE AGENCIES.

Section 3504(a)(1)(B)(vi) of title 44, United States Code, is amended to read as follows:

''(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.''.

SEC. 303. PROCEDURES FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES BY EXECUTIVE AGENCIES.

(a) IN GENERAL.—In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, in consultation with the National Telecommunications and Information Administration and not later than 18 months after the date of enactment of this Act, develop procedures for the use and acceptance of electronic signatures by Executive agencies.

(b) REQUIREMENTS FOR PROCEDURES.—(1) The procedures developed under subsection (a)—

(A) shall be compatible with standards and technology for electronic signatures that are generally used in commerce and industry and by State governments;

(B) may not inappropriately favor one industry or technology;

(C) shall ensure that electronic signatures are as reliable as is appropriate for the purpose in question and keep intact the information submitted;

(D) shall provide for the electronic acknowledgment of electronic forms that are successfully submitted; and

(E) shall, to the extent feasible and appropriate, require an Executive agency that anticipates receipt by electronic means of 50,000 or more submittals of a particular form to take all steps necessary to ensure that multiple methods of electronic signatures are available for the submittal of such form.

(2) The Director shall ensure the compatibility of the procedures under paragraph (1)(A) in consultation with appropriate private bodies and State government entities that set standards for the use and acceptance of electronic signatures.

SEC. 304. DEADLINE FOR IMPLEMENTATION BY EXECUTIVE AGENCIES OF PROCEDURES FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES.

In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall ensure that, commencing not later than five years after the date of enactment of this Act, Executive agencies provide—

(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and

(2) for the use and acceptance of electronic signatures, when practicable.

SEC. 305. ELECTRONIC STORAGE AND FILING OF EMPLOYMENT FORMS.

In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, not later than 18 months after the date of enactment of this Act, develop procedures to permit private employers to store and file electronically with Executive agencies forms containing information pertaining to the employees of such employers.

SEC. 306. STUDY ON USE OF ELECTRONIC SIGNATURES.

(a) ONGOING STUDY REQUIRED.—In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, in cooperation with the National Telecommunications and Information Administration, conduct an ongoing study of the use of electronic signatures under this title on—

(1) paperwork reduction and electronic commerce;

(2) individual privacy; and

(3) the security and authenticity of transactions.

(b) REPORTS.—The Director shall submit to Congress on a periodic basis a report describing the results of the study carried out under subsection (a).

SEC. 307. ENFORCEABILITY AND LEGAL EFFECT OF ELECTRONIC RECORDS.

Electronic records submitted or maintained in accordance with procedures developed under this title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.

SEC. 308. DISCLOSURE OF INFORMATION.

Except as provided by law, information collected in the provision of electronic signature services for communications with an executive agency, as provided by this title, shall only be used or disclosed by persons who obtain, collect, or maintain such information as a business or government practice, for the purpose of facilitating such communications, or with the prior affirmative consent of the person about whom the information pertains.

SEC. 309. APPLICATION WITH INTERNAL REVENUE LAWS.

No provision of this title shall apply to the Department of the Treasury or the Internal Revenue Service to the extent that such provision—

(1) involves the administration of the internal revenue laws; or

(2) conflicts with any provision of the Internal Revenue Service Restructuring and Reform Act of 1998 or the Internal Revenue Code of 1986.

SEC. 310. DEFINITIONS.

For purposes of this title:

(1) ELECTRONIC SIGNATURE.—The term ''electronic signature'' means a method of signing an electronic message that—

(A) identifies and authenticates a particular person as the source of the electronic message; and

(B) indicates such person's approval of the information contained in the electronic message.

(2) EXECUTIVE AGENCY.—The term ''Executive agency'' has the meaning given that term in section 105 of title 5, United States Code.

TITLE IV—CHILDREN'S ONLINE PRIVACY PROTECTION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Children's Online Privacy Protection Act of 1998''.

SEC. 402. DEFINITIONS.

In this title:

(1) CHILD.—The term ''child'' means an individual under the age of 13.

(2) OPERATOR.—The term ''operator''—

(A) means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce—

(i) among the several States or with 1 or more foreign nations;

(ii) in any territory of the United States or in the District of Columbia, or between any such territory and—

(I) another such territory; or

(II) any State or foreign nation; or

(iii) between the District of Columbia and any State, territory, or foreign nation; but

(B) does not include any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(4) DISCLOSURE.—The term ''disclosure'' means, with respect to personal information—

(A) the release of personal information collected from a child in identifiable form by an operator for any purpose, except where such information is provided to a person other than the operator who provides support for the internal operations of the website and does not disclose or use that information for any other purpose; and

(B) making personal information collected from a child by a website or online service directed to children or with actual knowledge that such information was collected from a child, publicly available in identifiable form, by any means including by a public posting, through the Internet, or through—

(i) a home page of a website;

(ii) a pen pal service;

(iii) an electronic mail service;

(iv) a message board; or

(v) a chat room.

(5) FEDERAL AGENCY.—The term ''Federal agency'' means an agency, as that term is defined in section 551(1) of title 5, United States Code.

(6) INTERNET.—The term ''Internet'' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(7) PARENT.—The term ''parent'' includes a legal guardian.

(8) PERSONAL INFORMATION.—The term ''personal information'' means individually identifiable information about an individual collected online, including—

(A) a first and last name;

(B) a home or other physical address including street name and name of a city or town;

(C) an e-mail address;

(D) a telephone number;

(E) a Social Security number;

(F) any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or

(G) information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.

(9) VERIFIABLE PARENTAL CONSENT.—The term ''verifiable parental consent'' means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.

(10) WEBSITE OR ONLINE SERVICE DIRECTED TO CHILDREN.—

(A) IN GENERAL.—The term ''website or online service directed to children'' means—

(i) a commercial website or online service that is targeted to children; or

(ii) that portion of a commercial website or online service that is targeted to children.

(B) LIMITATION.—A commercial website or online service, or a portion of a commercial website or online service, shall not be deemed directed to children solely for referring or linking to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(11) PERSON.—The term ''person'' means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(12) ONLINE CONTACT INFORMATION.—The term ''online contact information'' means an e-mail address or another substantially similar identifier that permits direct contact with a person online.

SEC. 403. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE COLLECTION AND USE OF PERSONAL INFORMATION FROM AND ABOUT CHILDREN ON THE INTERNET.

(a) ACTS PROHIBITED.—

(1) IN GENERAL.—It is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b).

(2) DISCLOSURE TO PARENT PROTECTED.—Notwithstanding paragraph (1), neither an operator of such a website or online service nor the operator's agent shall be held to be liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under subsection (b)(1)(B)(iii) to the parent of a child.

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate under section 553 of title 5, United States Code, regulations that—

(A) require the operator of any website or online service directed to children that collects personal information from children or the operator of a website or online service that has actual knowledge that it is collecting personal information from a child—

(i) to provide notice on the website of what information is collected from children by the operator, how the operator uses such information, and the operator's disclosure practices for such information; and

(ii) to obtain verifiable parental consent for the collection, use, or disclosure of personal information from children;

(B) require the operator to provide, upon request of a parent under this subparagraph whose child has provided personal information to that website or online service, upon proper identification of that parent, to such parent—

(i) a description of the specific types of personal information collected from the child by that operator;

(ii) the opportunity at any time to refuse to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child; and

(iii) notwithstanding any other provision of law, a means that is reasonable under the circumstances for the parent to obtain any personal information collected from that child;

(C) prohibit conditioning a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity; and

(D) require the operator of such a website or online service to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

(2) WHEN CONSENT NOT REQUIRED.—The regulations shall provide that verifiable parental consent under paragraph (1)(A)(ii) is not required in the case of—

(A) online contact information collected from a child that is used only to respond directly on a one-time basis to a specific request from the child and is not used to recontact the child and is not maintained in retrievable form by the operator;

(B) a request for the name or online contact information of a parent or child that is used for the sole purpose of obtaining parental consent or providing notice under this section and where such information is not maintained in retrievable form by the operator if parental consent is not obtained after a reasonable time;

(C) online contact information collected from a child that is used only to respond more than once directly to a specific request from the child and is not used to recontact the child beyond the scope of that request—

(i) if, before any additional response after the initial response to the child, the operator uses reasonable efforts to provide a parent notice of the online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(ii) without notice to the parent in such circumstances as the Commission may determine are appropriate, taking into consideration the benefits to the child of access to information and services, and risks to the security and privacy of the child, in regulations promulgated under this subsection;

(D) the name of the child and online contact information (to the extent reasonably necessary to protect the safety of a child participant on the site)—

(i) used only for the purpose of protecting such safety;

(ii) not used to recontact the child or for any other purpose; and

(iii) not disclosed on the site,

if the operator uses reasonable efforts to provide a parent notice of the name and online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(E) the collection, use, or dissemination of such information by the operator of such a website or online service necessary—

(i) to protect the security or integrity of its website;

(ii) to take precautions against liability;

(iii) to respond to judicial process; or

(iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

(3) TERMINATION OF SERVICE.—The regulations shall permit the operator of a website or an online service to terminate service provided to a child whose parent has refused, under the regulations prescribed under paragraph (1)(B)(ii), to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child.

(c) ENFORCEMENT.—Subject to sections 404 and 406, a violation of a regulation prescribed under subsection (a) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(d) INCONSISTENT STATE LAW.—No State or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this title that is inconsistent with the treatment of those activities or actions under this section.

SEC. 404. SAFE HARBORS.

(a) GUIDELINES.—An operator may satisfy the requirements of regulations issued under section 403(b) by following a set of self-regulatory guidelines, issued by representatives of the marketing or online industries, or by other persons, approved under subsection (b).

(b) INCENTIVES.—

(1) SELF-REGULATORY INCENTIVES.—In prescribing regulations under section 403, the Commission shall provide incentives for self-regulation by operators to implement the protections afforded children under the regulatory requirements described in subsection (b) of that section.

(2) DEEMED COMPLIANCE.—Such incentives shall include provisions for ensuring that a person will be deemed to be in compliance with the requirements of the regulations under section 403 if that person complies with guidelines that, after notice and comment, are approved by the Commission upon making a determination that the guidelines meet the requirements of the regulations issued under section 403.

(3) EXPEDITED RESPONSE TO REQUESTS.—The Commission shall act upon requests for safe harbor treatment within 180 days of the filing of the request, and shall set forth in writing its conclusions with regard to such requests.

(c) APPEALS.—Final action by the Commission on a request for approval of guidelines, or the failure to act within 180 days on a request for approval of guidelines, submitted under subsection (b) may be appealed to a district court of the United States of appropriate jurisdiction as provided for in section 706 of title 5, United States Code.

SEC. 405. ACTIONS BY STATES.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 403(b), the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with the regulation;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(3) AMICUS CURIAE.—Upon application to the court, a person whose self-regulatory guidelines have been approved by the Commission and are relied upon as a defense by any defendant to a proceeding under this section may file amicus curiae in that proceeding.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for violation of any regulation prescribed under section 403, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that regulation.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

SEC. 406. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) IN GENERAL.—Except as otherwise provided, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) PROVISIONS.—Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et. seq.), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et. seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 403 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any entity that violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this title.

(e) EFFECT ON OTHER LAWS.—Nothing contained in the Act shall be construed to limit the authority of the Commission under any other provisions of law.

SEC. 407. REVIEW.

Not later than 5 years after the effective date of the regulations initially issued under section 403, the Commission shall—

(1) review the implementation of this title, including the effect of the implementation of this title on practices relating to the collection and disclosure of information relating to children, children's ability to obtain access to information of their choice online, and on the availability of websites directed to children; and

(2) prepare and submit to Congress a report on the results of the review under paragraph (1).

SEC. 408. EFFECTIVE DATE.

Sections 403(a), 405, and 406 of this title take effect on the later of—

(1) the date that is 18 months after the date of enactment of this Act; or

(2) the date on which the Commission rules on the first application filed for safe harbor treatment under section 404 if the Commission does not rule on the first such application within one year after the date of enactment of this Act, but in no case later than the date that is 30 months after the date of enactment of this Act.

TITLE V—OREGON INSTITUTE OF PUBLIC SERVICE AND CONSTITUTIONAL STUDIES

SEC. 501. DEFINITIONS.

In this title:

(1) ENDOWMENT FUND.—The term ''endowment fund'' means a fund established by Portland State University for the purpose of generating income for the support of the Institute.

(2) INSTITUTE.—The term ''Institute'' means the Oregon Institute of Public Service and Constitutional Studies established under this title.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

SEC. 502. OREGON INSTITUTE OF PUBLIC SERVICE AND CONSTITUTIONAL STUDIES.

From the funds appropriated under section 506, the Secretary is authorized to award a grant to Portland State University at Portland, Oregon, for the establishment of an endowment fund to support the Oregon Institute of Public Service and Constitutional Studies at the Mark O. Hatfield School of Government at Portland State University.

SEC. 503. DUTIES.

In order to receive a grant under this title the Portland State University shall establish the Institute. The Institute shall have the following duties:

(1) To generate resources, improve teaching, enhance curriculum development, and further the knowledge and understanding of students of all ages about public service, the United States Government, and the Constitution of the United States of America.

(2) To increase the awareness of the importance of public service, to foster among the youth of the United States greater recognition of the role of public service in the development of the United States, and to promote public service as a career choice.

(3) To establish a Mark O. Hatfield Fellows program for students of government, public policy, public health, education, or law who have demonstrated a commitment to public service through volunteer activities, research projects, or employment.

(4) To create library and research facilities for the collection and compilation of research materials for use in carrying out programs of the Institute.

(5) To support the professional development of elected officials at all levels of government.

SEC. 504. ADMINISTRATION.

(a) LEADERSHIP COUNCIL.—

(1) IN GENERAL.—In order to receive a grant under this title Portland State University shall ensure that the Institute operates under the direction of a Leadership Council (in this title referred to as the ''Leadership Council'') that—

''(A) consists of 15 individuals appointed by the President of Portland State University; and

''(B) is established in accordance with this section.

(2) APPOINTMENTS.—Of the individuals appointed under paragraph (1)(A)—

(A) Portland State University, Willamette University, the Constitution Project, George Fox University, Warner Pacific University, and Oregon Health Sciences University shall each have a representative;

(B) at least 1 shall represent Mark O. Hatfield, his family, or a designee thereof;

(C) at least 1 shall have expertise in elementary and secondary school social sciences or governmental studies;

(D) at least 2 shall be representative of business or government and reside outside of Oregon;

(E) at least 1 shall be an elected official; and

(F) at least 3 shall be leaders in the private sector.

(3) EX-OFFICIO MEMBER.—The Director of the Mark O. Hatfield School of Government at Portland State University shall serve as an ex officio member of the Leadership Council.

(b) CHAIRPERSON.—

(1) IN GENERAL.—The President of Portland State University shall designate 1 of the individuals first appointed to the Leadership Council under subsection (a) as the Chairperson of the Leadership Council. The individual so designated shall serve as Chairperson for 1 year.

(2) REQUIREMENT.—Upon the expiration of the term of the Chairperson of the individual designated as Chairperson under paragraph (1), or the term of the Chairperson elected under this paragraph, the members of the Leadership Council shall elect a Chairperson of the Leadership Council from among the members of the Leadership Council.

SEC. 505. ENDOWMENT FUND.

(a) MANAGEMENT.—The endowment fund shall be managed in accordance with the standard endowment policies established by the Oregon University System.

(b) USE OF INTEREST AND INVESTMENT INCOME.—Interest and other investment income earned (on or after the date of enactment of this subsection) from the endowment fund may be used to carry out the duties of the Institute under section 503.

(c) DISTRIBUTION OF INTEREST AND INVESTMENT INCOME.—Funds realized from interest and other investment income earned (on or after the date of enactment of this subsection) shall be spent by Portland State University in collaboration with Willamette University, George Fox University, the Constitution Project, Warner Pacific University, Oregon Health Sciences University, and other appropriate educational institutions or community-based organizations. In expending such funds, the Leadership Council shall encourage programs to establish partnerships, to leverage private funds, and to match expenditures from the endowment fund.

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $3,000,000 for fiscal year 1999.

TITLE VI—PAUL SIMON PUBLIC POLICY INSTITUTE

SEC. 601. DEFINITIONS.

In this title:

(1) ENDOWMENT FUND.—The term ''endowment fund'' means a fund established by the University for the purpose of generating income for the support of the Institute.

(2) ENDOWMENT FUND CORPUS.—The term ''endowment fund corpus'' means an amount equal to the grant or grants awarded under this title plus an amount equal to the matching funds required under section 602(d).

(3) ENDOWMENT FUND INCOME.—The term ''endowment fund income'' means an amount equal to the total value of the endowment fund minus the endowment fund corpus.

(4) INSTITUTE.—The term ''Institute'' means the Paul Simon Public Policy Institute described in section 602.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(6) UNIVERSITY.—The term ''University'' means Southern Illinois University at Carbondale, Illinois.

SEC. 602. PROGRAM AUTHORIZED.

(a) GRANTS.—From the funds appropriated under section 606, the Secretary is authorized to award a grant to Southern Illinois University for the establishment of an endowment fund to support the Paul Simon Public Policy Institute. The Secretary may enter into agreements with the University and include in any agreement made pursuant to this title such provisions as are determined necessary by the Secretary to carry out this title.

(b) DUTIES.—In order to receive a grant under this title, the University shall establish the Institute. The Institute, in addition to recognizing more than 40 years of public service to Illinois, to the Nation, and to the world, shall engage in research, analysis, debate, and policy recommendations affecting world hunger, mass media, foreign policy, education, and employment.

(c) DEPOSIT INTO ENDOWMENT FUND.—The University shall deposit the proceeds of any

grant received under this section into the endowment fund.

(d) MATCHING FUNDS REQUIREMENT.—The University may receive a grant under this section only if the University has deposited in the endowment fund established under this title an amount equal to one-third of such grant and has provided adequate assurances to the Secretary that the University will administer the endowment fund in accordance with the requirements of this title. The source of the funds for the University match shall be derived from State, private foundation, corporate, or individual gifts or bequests, but may not include Federal funds or funds derived from any other federally supported fund.

(e) DURATION; CORPUS RULE.—The period of any grant awarded under this section shall not exceed 20 years, and during such period the University shall not withdraw or expend any of the endowment fund corpus. Upon expiration of the grant period, the University may use the endowment fund corpus, plus any endowment fund income for any educational purpose of the University.

SEC. 603. INVESTMENTS.

(a) IN GENERAL.—The University shall invest the endowment fund corpus and endowment fund income in those low-risk instruments and securities in which a regulated insurance company may invest under the laws of the State of Illinois, such as federally insured bank savings accounts or comparable interest bearing accounts, certificates of deposit, money market funds, or obligations of the United States.

(b) JUDGMENT AND CARE.—The University, in investing the endowment fund corpus and endowment fund income, shall exercise the judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of the person's own business affairs.

SEC. 604. WITHDRAWALS AND EXPENDITURES.

(a) IN GENERAL.—The University may withdraw and expend the endowment fund income to defray any expenses necessary to the operation of the Institute, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research. No endowment fund income or endowment fund corpus may be used for any type of support of the executive officers of the University or for any commercial enterprise or endeavor. Except as provided in subsection (b), the University shall not, in the aggregate, withdraw or expend more than 50 percent of the total aggregate endowment fund income earned prior to the time of withdrawal or expenditure.

(b) SPECIAL RULE.—The Secretary is authorized to permit the University to withdraw or expend more than 50 percent of the total aggregate endowment fund income whenever the University demonstrates such withdrawal or expenditure is necessary because of—

(1) a financial emergency, such as a pending insolvency or temporary liquidity problem;

(2) a life-threatening situation occasioned by a natural disaster or arson; or

(3) another unusual occurrence or exigent circumstance.

(c) REPAYMENT.—

(1) INCOME.—If the University withdraws or expends more than the endowment fund income authorized by this section, the University shall repay the Secretary an amount equal to one-third of the amount improperly expended (representing the Federal share thereof).

(2) CORPUS.—Except as provided in section 602(e)—

(A) the University shall not withdraw or expend any endowment fund corpus; and

(B) if the University withdraws or expends any endowment fund corpus, the University shall repay the Secretary an amount equal to one-third of the amount withdrawn or expended (representing the Federal share thereof) plus any endowment fund income earned thereon.

SEC. 605. ENFORCEMENT.

(a) IN GENERAL.—After notice and an opportunity for a hearing, the Secretary is authorized to terminate a grant and recover any grant funds awarded under this section if the University—

(1) withdraws or expends any endowment fund corpus, or any endowment fund income in excess of the amount authorized by section 604, except as provided in section 602(e);

(2) fails to invest the endowment fund corpus or endowment fund income in accordance with the investment requirements described in section 603; or

(3) fails to account properly to the Secretary, or the General Accounting Office if properly designated by the Secretary to conduct an audit of funds made available under this title, pursuant to such rules and regulations as may be proscribed by the Comptroller General of the United States, concerning investments and expenditures of the endowment fund corpus or endowment fund income.

(b) TERMINATION.—If the Secretary terminates a grant under subsection (a), the University shall return to the Treasury of the United States an amount equal to the sum of the original grant or grants under this title, plus any endowment fund income earned thereon. The Secretary may direct the University to take such other appropriate measures to remedy any violation of this title and to protect the financial interest of the United States.

SEC. 606. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $3,000,000 for fiscal year 1999. Funds appropriated under this section shall remain available until expended.

TITLE VII—HOWARD BAKER SCHOOL OF GOVERNMENT

SEC. 701. DEFINITIONS.

In this title:

(1) BOARD.—The term ''Board'' means the Board of Advisors established under section 704.

(2) ENDOWMENT FUND.—The term ''endowment fund'' means a fund established by the University of Tennessee in Knoxville, Tennessee, for the purpose of generating income for the support of the School.

(3) SCHOOL.—The term ''School'' means the Howard Baker School of Government established under this title.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(5) UNIVERSITY.—The term ''University'' means the University of Tennessee in Knoxville, Tennessee.

SEC. 702. HOWARD BAKER SCHOOL OF GOVERNMENT.

From the funds authorized to be appropriated under section 706, the Secretary is authorized to award a grant to the University for the establishment of an endowment fund to support the Howard Baker School of Government at the University of Tennessee in Knoxville, Tennessee.

SEC. 703. DUTIES.

In order to receive a grant under this title, the University shall establish the School. The School shall have the following duties:

(1) To establish a professorship to improve teaching and research related to, enhance the curriculum of, and further the knowledge and understanding of, the study of democratic institutions, including aspects of regional planning, public administration, and public policy.

(2) To establish a lecture series to increase the knowledge and awareness of the major public issues of the day in order to enhance informed citizen participation in public affairs.

(3) To establish a fellowship program for students of government, planning, public administration, or public policy who have demonstrated a commitment and an interest in pursuing a career in public affairs.

(4) To provide appropriate library materials and appropriate research and instructional equipment for use in carrying out academic and public service programs, and to enhance the existing United States Presidential and public official manuscript collections.

(5) To support the professional development of elected officials at all levels of government.

SEC. 704. ADMINISTRATION.

(a) BOARD OF ADVISORS.—

(1) IN GENERAL.—The School shall operate with the advice and guidance of a Board of Advisors consisting of 13 individuals appointed by the Vice Chancellor for Academic Affairs of the University.

(2) APPOINTMENTS.—Of the individuals appointed under paragraph (1)—

(A) 5 shall represent the University;

(B) 2 shall represent Howard Baker, his family, or a designee thereof;

(C) 5 shall be representative of business or government; and

(D) 1 shall be the Governor of Tennessee, or the Governor's designee.

(3) EX OFFICIO MEMBERS.—The Vice Chancellor for Academic Affairs and the Dean of the College of Arts and Sciences at the University shall serve as an ex officio member of the Board.

(b) CHAIRPERSON.—

(1) IN GENERAL.—The Chancellor, with the concurrence of the Vice Chancellor for Academic Affairs, of the University shall designate 1 of the individuals first appointed to the Board under subsection (a) as the Chairperson of the Board. The individual so designated shall serve as Chairperson for 1 year.

(2) REQUIREMENTS.—Upon the expiration of the term of the Chairperson of the individual designated as Chairperson under paragraph (1) or the term of the Chairperson elected under this paragraph, the members of the Board shall elect a Chairperson of the Board from among the members of the Board.

SEC. 705. ENDOWMENT FUND.

(a) MANAGEMENT.—The endowment fund shall be managed in accordance with the standard endowment policies established by the University of Tennessee System.

(b) USE OF INTEREST AND INVESTMENT INCOME.—Interest and other investment income earned (on or after the date of enactment of this subsection) from the endowment fund may be used to carry out the duties of the School under section 703.

(c) DISTRIBUTION OF INTEREST AND INVESTMENT INCOME.—Funds realized from interest and other investment income earned (on or after the date of enactment of this subsection) shall be available for expenditure by the University for purposes consistent with section 703, as recommended by the Board. The Board shall encourage programs to establish partnerships, to leverage private funds, and to match expenditures from the endowment fund.

SEC. 706. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $10,000,000 for fiscal year 2000.

TITLE VIII—JOHN GLENN INSTITUTE FOR PUBLIC SERVICE AND PUBLIC POLICY

SEC. 801. DEFINITIONS.

In this title:

(1) ENDOWMENT FUND.—The term ''endowment fund'' means a fund established by the University for the purpose of generating income for the support of the Institute.

(2) ENDOWMENT FUND CORPUS.—The term ''endowment fund corpus'' means an amount equal to the grant or grants awarded under this title plus an amount equal to the matching funds required under section 802(d).

(3) ENDOWMENT FUND INCOME.—The term ''endowment fund income'' means an amount equal to the total value of the endowment fund minus the endowment fund corpus.

(4) INSTITUTE.—The term ''Institute'' means the John Glenn Institute for Public Service and Public Policy described in section 802.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(6) UNIVERSITY.—The term ''University'' means the Ohio State University at Columbus, Ohio.

SEC. 802. PROGRAM AUTHORIZED.

(a) GRANTS.—From the funds appropriated under section 806, the Secretary is authorized to award a grant to the Ohio State University for the establishment of an endowment fund to support the John Glenn Institute for Public Service and Public Policy. The Secretary may enter into agreements with the University and include in any agreement made pursuant to this title such provisions as are determined necessary by the Secretary to carry out this title.

(b) PURPOSES.—The Institute shall have the following purposes:

(1) To sponsor classes, internships, community service activities, and research projects to stimulate student participation in public service, in order to foster America's next generation of leaders.

(2) To conduct scholarly research in conjunction with public officials on significant issues facing society and to share the results of such research with decisionmakers and legislators as the decisionmakers and legislators address such issues.

(3) To offer opportunities to attend seminars on such topics as budgeting and finance, ethics, personnel management, policy evaluations, and regulatory issues that are designed to assist public officials in learning more about the political process and to expand the organizational skills and policymaking abilities of such officials.

(4) To educate the general public by sponsoring national conferences, seminars, publications, and forums on important public issues.

(5) To provide access to Senator John Glenn's extensive collection of papers, policy decisions, and memorabilia, enabling scholars at all levels to study the Senator's work.

(c) DEPOSIT INTO ENDOWMENT FUND.—The University shall deposit the proceeds of any grant received under this section into the endowment fund.

(d) MATCHING FUNDS REQUIREMENT.—The University may receive a grant under this section only if the University has deposited in the endowment fund established under this title an amount equal to one-third of such grant and has provided adequate assurances to the Secretary that the University will administer the endowment fund in accordance with the requirements of this title. The source of the funds for the University match shall be derived from State, private foundation, corporate, or individual gifts or bequests, but may not include Federal funds or funds derived from any other federally supported fund.

(e) DURATION; CORPUS RULE.—The period of any grant awarded under this section shall not exceed 20 years, and during such period the University shall not withdraw or expend any of the endowment fund corpus. Upon expiration of the grant period, the University may use the endowment fund corpus, plus any endowment fund income for any educational purpose of the University.

SEC. 803. INVESTMENTS.

(a) IN GENERAL.—The University shall invest the endowment fund corpus and endowment fund income in accordance with the University's investment policy approved by the Ohio State University Board of Trustees.

(b) JUDGMENT AND CARE.—The University, in investing the endowment fund corpus and endowment fund income, shall exercise the judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of the person's own business affairs.

SEC. 804. WITHDRAWALS AND EXPENDITURES.

(a) IN GENERAL.—The University may withdraw and expend the endowment fund income to defray any expenses necessary to the operation of the Institute, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research. No endowment fund income or endowment fund corpus may be used for any type of support of the executive officers of the University or for any commercial enterprise or endeavor. Except as provided in subsection (b), the University shall not, in the aggregate, withdraw or expend more than 50 percent of the total aggregate endowment fund income earned prior to the time of withdrawal or expenditure.

(b) SPECIAL RULE.—The Secretary is authorized to permit the University to withdraw or expend more than 50 percent of the total aggregate endowment fund income whenever the University demonstrates such withdrawal or expenditure is necessary because of—

(1) a financial emergency, such as a pending insolvency or temporary liquidity problem;

(2) a life-threatening situation occasioned by a natural disaster or arson; or

(3) another unusual occurrence or exigent circumstance.

(c) REPAYMENT.—

(1) INCOME.—If the University withdraws or expends more than the endowment fund income authorized by this section, the University shall repay the Secretary an amount equal to one-third of the amount improperly expended (representing the Federal share thereof).

(2) CORPUS.—Except as provided in section 802(e)—

(A) the University shall not withdraw or expend any endowment fund corpus; and

(B) if the University withdraws or expends any endowment fund corpus, the University shall repay the Secretary an amount equal to one-third of the amount withdrawn or expended (representing the Federal share thereof) plus any endowment fund income earned thereon.

SEC. 805. ENFORCEMENT.

(a) IN GENERAL.—After notice and an opportunity for a hearing, the Secretary is authorized to terminate a grant and recover any grant funds awarded under this section if the University—

(1) withdraws or expends any endowment fund corpus, or any endowment fund income in excess of the amount authorized by section 804, except as provided in section 802(e);

(2) fails to invest the endowment fund corpus or endowment fund income in accordance with the investment requirements described in section 803; or

(3) fails to account properly to the Secretary, or the General Accounting Office if properly designated by the Secretary to conduct an audit of funds made available under this title, pursuant to such rules and regulations as may be prescribed by the Comptroller General of the United States, concerning investments and expenditures of the endowment fund corpus or endowment fund income.

(b) TERMINATION.—If the Secretary terminates a grant under subsection (a), the University shall return to the Treasury of the United States an amount equal to the sum of the original grant or grants under this title, plus any endowment fund income earned thereon. The Secretary may direct the University to take such other appropriate measures to remedy any violation of this title and to protect the financial interest of the United States.

SEC. 806. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $6,000,000 for fiscal year 2000. Funds appropriated under this section shall remain available until expended.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, pursuant to agreement of October 7, I ask the Senate proceed to the consideration of the conference report to accompany S. 2206, the human services reauthorization bill.

I further ask that immediately following adoption of the conference report, the Senate proceed to executive session, and pursuant to the consent agreement of October 6, that the nomination of William A. Fletcher of California to be United States Circuit Judge for the Ninth Circuit, be considered.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. For the information of all Senators, there will be about 25 minutes or so on the human services reauthorization bill—without a recorded vote. It will be a voice vote. Then we will go to the Fletcher nomination.

Therefore, the next recorded vote would be at approximately 2:30.

I yield the floor.

COATS HUMAN SERVICES REAUTHORIZATION ACT OF 1998—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the conference report to accompany S. 2206, which the clerk will report.

The legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2206), have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

(The conference report is printed in the House proceedings of the RECORD of October 6, 1998.)

Mr. JEFFORDS. Mr. President, the conference report on the Coats Human Services Reauthorization Act of 1998 includes the Head Start program, the

Community Services Block Grant, and the Low Income Home Energy Assistance Program. Through this reauthorization, these programs can continue to provide vital assistance to the neediest of Americans. The Assets for Independence Act, also included in this bill, is a new way of helping low-income individuals and families to achieve economic self-sufficiency.

For three decades, Head Start, CSBG, and LIHEAP have effectively helped many low-income families and individuals throughout America. In this legislation, we have used the lessons learned over the past thirty years to reaffirm what is working well, make improvements where necessary to better meet today's challenges, and eliminate what no longer achieves our goals.

This bill leaves present law largely intact, but it does make some important changes to improve program accountability, expand services to meet the changing needs of today's families, and to increase the capacity of these programs to reach each of the program's purposes.

The reauthorization of Head Start expands the Early Head Start program for our youngest children, in a manner which balances the desire to make this program available to more children and families and the need to ensure that every Head Start program meets the high standards of quality that we have demanded.

The new evaluation and research provisions will provide much-needed information about how the program operates, help identify the ''best practices,'' and will guide the grantees, the Department of Health and Human Services, and Congress to continue the improvements in Head Start which began four years ago.

This legislation expands the Head Start competitive grant process to include for-profit service providers. All Head Start grantees must meet the same high level of performance standards and outcome measures. Tax status does not guarantee the quality of a program—-good or bad,. The most important issue is selecting the best possible provider, non-profit or for-profit, public or private, to deliver Head Start services. That is what this legislation does.

The second major program authorized under this legislation is the Community Services Block Grant, or CSBG. This program provides funding to States for work in local communities to alleviate the causes of poverty. That's an easily defined goal, but getting there takes lots of work, and diverse communities across the nation are taking equally as diverse approaches to meeting it.

Local Community Action Agencies, working with other groups and individuals in their communities, are helping people find and keep a job. They are helping them go back to school or get their GED. Provisions in this legislation will help States and local communities to continue this important work.

For almost two decades, the Low Income Home Energy Assistance Program (LIHEAP) has provided a lifeline to countless Americans who cannot pay their fuel bills. The program works very well. It is widely regarded as a model block grant program that gives states the flexibility to meet the needs of their low-income residents while ensuring an appropriate level of accountability for federal dollars.

The reauthorization of LIHEAP will help about four million low-income, disabled, and elderly households pay their fuel bills so they won't have to struggle to keep warm in the winter or to avoid heatstroke in the summer. They won't be forced to choose between heating and eating. Although some four million households received LIHEAP benefits this year, if we had the resources, some 30 million households would be eligible for LIHEAP assistance. This legislation establishes an authorization level that will permit Congress to increase funding for LIHEAP, a goal towards which I will continue to work.

I know some of our colleagues in Congress wonder whether we still need a LIHEAP program. Today I think we send a strong message that the program is more important than ever, especially in light of welfare reform efforts. Low- and fixed-income households still spend at least 18 percent of their income on energy bills, a proportion virtually unchanged since LIHEAP was created.

The Assets for Independence Act represents an important new approach to helping low-income families and individuals. Through Individual Development Accounts, the saving, investment, and accumulation of assets is encouraged as a way to increase economic self-sufficiency and build a future. Senator COATS crafted this portion of the legislation. His work in the development of asset-based policies to help low-income individuals and families has helped us approach an old problem from a new angle.

Senator COATS took the lead in shepherding this bill through the legislative process, from the first draft to the conference report. When the Committee on Labor and Human Resources marked-up the bill, they unanimously voted to change the name of the legislation to the Coats Act as a tribute to Senator COATS' dedication to issues affecting children and their families.

In both his personal and professional life, Senator COATS has been a longstanding activist on behalf of American families. He was a Big Brother in Indiana long before his political career began, and was recently elected President of the Board of Directors for Big Brothers/Big Sisters of America. Early in his congressional career, Senator COATS served as the Republican leader for the House Select Committee on Children, Youth And Families.

Upon arriving in the Senate in 1989, he became the ranking member of the Subcommittee on Children and Families of the Senate Committee on Labor and Human Resources. Serving as the subcommittee's Chairman since 1995, Senator COATS has been a voice of reason and a tireless advocate for children and families.

His compassion and caring is evident in every piece of legislation that has come out of that subcommittee since Senator COATS became a member. When he leaves the Senate, I will miss his leadership and most of all, his friendship.

The Coats Human Services Reauthorization Act will serve to remind us all of his contributions to the Labor Committee and the Senate.

This legislation is the result of months of hard work, negotiation, and compromise. It has been a truly bi-partisan, bicameral effort that has resulted in good public policy.

The legislation reinforces what works in these programs, and discards what does not, which is the whole purpose of a reauthorization.

It continues the mission that we began many years ago of empowering communities to help their most vulnerable populations, and it does this in a responsible manner. This bi-partisan effort would not have been possible without the hard work of many outstanding staff members.

With this legislation, Stephanie Monroe, the Staff Director for the Subcommittee on Children and Families, has added one more piece of effective public policy to her already impressive portfolio. Her work in researching, drafting, and negotiating this bill has been invaluable. Stephanie has been working in the Senate for fourteen years and I hope she will seriously consider continuing on here, after Senator COATS retires.

I want to thank Stephanie Robinson and Amy Lockhart, of Senator KENNEDY's staff and Suzanne Day and Jim Fenton of Senator DODD's staff for their contributions and their commitment to keeping this legislation a bipartisan effort.

Conferencing a bill always involves long hours, hard work, and much patience. I appreciate the efforts of Denzel McGuire, Mary Gardner Clagett, and Sally Lovejoy on the staff of the House Committee on Education and Workforce.

I also want to thank Jackie Cooney of Senator GREGG's staff, Alex Nock and Marcy Phillips with Representative MARTINEZ, Melanie Marola with Representative CASTLE, Amy Adair and Randy Brant with Representative SOUDER for their work on this legislation.

Brian Jones recently left my staff on the Committee on Labor and Human Resources, but before he left, he contributed enormously to the crafting of this legislation. I wish him well in his new venture, and appreciate his contributions to this and other legislation while on my staff. Geoff Brown, who is on my personal staff was instrumental in crafting and negotiating the

LIHEAP portion of the bill. Working with Cameron Taylor, Legislative Director of the Northeast-Midwest Senate Coaltion, Geoff made sure that this critical program will continue to meet the needs of millions of low-income families.

Kimberly Barnes-O'Connor provided valuable and tireless counsel throughout this process, proving once again her capacity to put the interests of children and families first. I commend her for her exemplary service to me, the committee, the Congress, and the constituents we serve through these critical human services programs.

Mark Powden, the Staff Director for the Committee on Labor and Human Resources, as always, helped to clear the obstacles and push this legislation forward. Thank you, Mark.

I yield the remainder of my time to Senator COATS, who is worthy of all the praise possible with respect to this legislation and his total service to this Nation.

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

Mr. COATS. Mr. President, allow me to thank my colleagues for their kind words and also for their assistance.

At a time when our two parties are often divided over issues, major issues, this is truly a bipartisan effort. This is something that could not have been achieved without the cooperation, support, help and assistance of people on both sides of the aisle. I thank the chairman and Senator KENNEDY for their work with us on this. I thank my counterpart on the Children and Families Subcommittee, Senator DODD; Senator GREGG has been a supporter of this effort, and others on the committee who have worked hard and worked diligently with us to bring us to this particular point.

Each of the four programs that are encompassed in this bill represent an all too rare occurrence—a forging of public and private partnership to combat the effects of poverty and unleashing the vast resources of one of our most important assets, the local community.

The first component of this bill is the reauthorization of Head Start, a program that has proven to be significant in providing an opportunity for children to realize their full potential. It was more than a decade ago that Congressman GEORGE MILLER and I, as chairman and ranking member, respectively, of the Children, Youth and Family Subcommittee in the House of Representatives, asked the General Accounting Office to do an analysis of all of the programs that affected children, youth and families under the title and the theme of what works, what doesn't and why. It was a 2-year exhaustive study, and it came back listing eight Federal programs that provided real tangible benefits and a real return on the investment of the taxpayer's dollar and encouraged support for those programs.

At the head of the list, No. 1 on the list was Head Start. It said that for the taxpayer's investment in providing low-income, disadvantaged children with opportunities to prepare to enter the educational system, he or she was saving an enormous amount of money that would have had to be spent on remedial education and would have been potentially lost because those children were not prepared to enter the educational system. Since that time, I have been an ardent supporter of Head Start, in trying to provide funds for Head Start and also to make sure the program is effective. It is a program that clearly has provided many millions of children opportunities that they would not have otherwise had.

However, having said that, there have been questions about the quality of the program. We have experienced varying degrees of quality, from excellent in some cases to very poor in other cases. With the 1994 reauthorization, Congress and the administration made a commitment to enhance the focus on quality improvement. Since the last reauthorization, the Head Start bureau has offered technical assistance, resources and support to Head Start programs that are committed to pursuing excellence—again, something that is all too rare. We have also terminated, actually terminated grants to those programs that were experiencing deficiencies to the extent that they could not be remedied.

Close to 100 Head Start grantees have been terminated or have relinquished their grants since 1994—the first time in history that deficient programs were actually recompeted. These are essential. Too often here we authorize a new program with glowing words and the best of direction that we can provide, only to find later that those programs did not match up to the promise, and yet they are continued, they are perpetuated, they continue to receive funding, we continue to support mediocrity or even worse.

We have, through the actions in 1994 and subsequent, infused into the Head Start Program not only the technical assistance and resources and support necessary, but also the oversight and the investigation and the determination that we are either going to make some of these programs that are deficient, better, or we are going to recompete them—and, as I said, more than 100 have been recompeted.

The reauthorization bill that we are dealing with today builds on that commitment by requiring that 60 percent of the Head Start funds in the first years go toward enhancing program quality. It is important that we expand Head Start. We obviously want to get as many children in the program as possible, but it does no good to expand the program, to enroll more children, if the existing programs are not providing the health and the benefit and the quality that the children need to give them that edge that they need. So the emphasis on quality early and expansion later, I think, is the proper emphasis.

We also take steps to make sure Head Start students obtain the goal of school readiness by requiring the establishment of educational performance standards to ensure that the children develop a minimum level of literacy awareness and understanding coupled with very specific measures to help us assess whether or not this program is actually working. Under this scenario, poor programs, poorly administered programs, will be identified, they will be offered technical assistance, and if they fail to correct the deficiencies, they will be terminated and the grant recompeted.

We have responded to the concerns of Head Start programs to be able to more fully address the emerging needs of working families for full-day, full-year services, by significantly enhancing the Collaboration Grant Program in current law by requiring active collaboration between Head Start and other early care in education programs within the State, and we have included the President's request for an expansion of early Head Start programs from the current 7.5 percent in fiscal year 1999 to 10 percent in fiscal year 2003.

Finally, in response to concerns raised about the lack of reliable research on Head Start, which can be used as a basis for determining its effectiveness, we have authorized the National Impact Study of Head Start. These studies will yield very valuable information about how this program is working and whether Head Start is, in fact, making a difference.

Mr. President, the whole emphasis here, as you can tell, is on sufficient oversight, sufficient involvement in the program, to determine how it is working and to establish and identify where it is not working, and to help make where it is not working better and, if not, if necessary, recompeting the whole process and turning it over to someone else.

There are three other components of this particular bill before us. One is the Low Income Home Energy Assistance Program. I will allow other Members, including the chairman, to address that. That is an issue they have been involved in more directly than I have.

Another is the Community Services Block Grant, an excellent example of what can happen when Washington allows local communities to design their own responses to local problems. The ''Washington knows best,'' the ''Washington has one model formula that fits all sizes,'' is pretty much a discounted and discarded theory. We are working now, and need to work, with local communities to identify local problems and allow them to help us and work with us in fashioning a local solution.

Mr. President, 90 percent of the funds provided under this act, the Community Services Block Grant, must be passed through by the State to local eligible entities, which include a variety of public and nonprofit organizations,

community action agencies, and faith-based neighborhood organizations.

We made some important improvements in this act, requiring each State to participate in a performance measurement system, again to determine effectiveness of programs and make sure they are meeting their program goals and priorities.

We have reauthorized a number of subcomponents of this—the Community Economic Development Program, the Rural Economic Development Program, National Youth Sports, the Community Food and Nutrition Program—and created a new program called the Neighborhood Innovation Projects, so that grants to private, neighborhood-based nonprofits can test or assist in the development of new approaches and developments in dealing with these community problems. These grants may be used for a variety of purposes, including gang interventions, addressing school violence, or any other purposes identified by the community as a problem resulting from poverty and consistent with the purposes of this CSBG.

Finally, let me address a program that has been near and dear to my heart, something that has been part of the Project for American Renewal that I authored some time ago. This is a 5-year demonstration program entitled ''Assets for Independence.'' It is designed to encourage low-income individuals to develop strong habits for saving money. It is an IRA for low-income people. The current IRA program really is only available to those who have assets readily available or accessible to put into this saving program. The Assets for Independence Act allows sponsoring organizations to provide participating individuals and families intensive financial counseling and assistance in developing investment plans for education, home ownership, and entrepreneurship.

I am excited about this new program. As I said, it is part of the Project for American Renewal legislation I first introduced in 1995. It is estimated that our 5-year investment of $100 million in asset building through these individual accounts will generate 7,000-plus new businesses, 70,000 new jobs, $730 million in additional earnings, 12,000 new or rehabilitated homes, 6,600 families removed from welfare rolls, and 20,000 adults obtaining high school, vocational, and college degrees.

Each of the programs we are authorizing today represents an effort to give people a hand up, not simply a handout. They are an acknowledgment that when one family suffers, we all suffer as Americans; when communities break down, we all pay a price, and therefore we all have a stake in helping people achieve the American dream.

The legislation recognizes the limits of government and the fact that many of our worst social problems will never be solved by government alone. We are beginning to recognize that there are people and institutions, families, churches, synagogues, parishes, community volunteer organizations, faith-based charities, that are able to communicate societal ideals and restore individual hope, and we need to allow those organizations to compete to provide services, and we have done so in each of the programs I have described.

Community activist Robert Woodson makes the point that every social problem, no matter how severe, is currently being defeated somewhere by some volunteer community group, faith-based organization, or others. This is now one of America's great untold stories. No alternative approach to our cultural crisis holds such promise, because these institutions have resources denied to government at every level, resources of love, spiritual vitality, and true compassion.

Mr. President, I have been proud to be associated with one organization entitled Big Brothers/Big Sisters of America. I have been with them now for 26 years as a Big Brother as a local board member, board president, now as the president of the national board. This, along with organizations like Boys Clubs, Girls Clubs, Boy Scouts, Girl Scouts, and others, provides just one example of how local volunteer organizations can provide volunteers who can provide help to children to give them the kind of mentoring and support they need in difficult years, growing up often in one-parent families or families with poverty.

There are examples of this all across the board. The Gospel Rescue Ministry's efforts across the country have reached out to drug-addicted homeless individuals and provided astounding support. Whether the problem is teen pregnancy, school dropouts, school violence, children without fathers—whatever—there are organizations that we need to tap into, support, and enhance their involvement, providing support for young people and addressing social problems in this country.

Mr. President, I see my time is expiring. I did not mean to go on as long as I have. I hope I have not used up all the time. I know Senator KENNEDY and others are on the floor to talk about this. These programs, I believe, the ones we are reauthorizing, represent the true measure of our compassion as a nation.

I want to end by giving credit to Stephanie Johnson, who has poured her heart and soul into this reauthorization. She has given more than any one person can ask, making this a reality. This would not have happened without her involvement. Good staff makes good Senators, and she is the epitome of good staff. I thank her personally and publicly for her work in making this, and many of the things that have happened within our committee, a reality.

With that, I appreciate the extra time and yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 11½ minutes.

Mr. KENNEDY. Mr. President, as the Nation is focusing on a number of matters today, I want to say what a really important achievement the Senate will accomplish in a few moments when we pass this very extensive authorization legislation, about $35 billion over the next 5 years.

The legislation has been described by our colleagues and friends, but I join in echoing the sentiments that have been expressed this morning in paying tribute to our friend and colleague from Indiana, Senator COATS, the staff who have worked with him, others on the committee, and our chairman, Senator JEFFORDS, in moving this legislation forward.

I remember back to 1994—maybe the Senator from Indiana remembers—when we were working at that time on the reauthorization of the Head Start Program. Many of us had been long-time supporters of that program. It is fair to say, at that time, that legislation, or the legislation that we are considering here, would not have been reauthorized unless it had the active involvement and leadership of the Senator from Indiana. That was a time of great crisis in the Head Start Program. I think the accolades that have been given about the Senator are well-deserved.

I thank him, in particular, for saving the program back in 1994, but also for the continued commitment that he has had, along with my colleague, Senator DODD, for these past years. As Senator COATS has pointed out, he was working as a cochair of the children's caucus in the House of Representatives. Our colleague and friend Senator DODD is cochair of the children's caucus in the Senate. Both of these Senators have probably spent more time focusing on the needs of children in our country than any others and have worked in a very important bipartisan way.

I join with those who pay tribute to the Senator from Indiana, and naming this legislation after him is really well-deserved. I welcome the opportunity to stand with those who say he has made an indispensable contribution to the needs of poor children in our society. I say that with great sincerity and appreciation, because he has made a very, very important difference, not just in shaping these programs, but basically in helping our country respond to these particular needs.

There have been times when we have had differences on various policy issues. But we are friends, and the Senate is at its best when we have differences on some matters, but we are able to work them out and, most of all, to respect the individual integrity which Members bring to these issues. The legislation before us today—and I urge our fellow Members to support it—is really the product of our best efforts. I think it will make an important difference in the lives of children.

I join with those in congratulating the Senator and in appreciating his leadership.

Mr. President, at a time when we have extraordinary prosperity, it is important that we look primarily at the needs of children, particularly the poor children. This bill invests in America's future by providing urgently needed assistance to low-income families and children.

This bill reauthorizes the Head Start program, the comprehensive early childhood development program for low-income children.

For more than thirty years, Head Start has been providing educational, nutritional, medical, and social services to help young children and their families reach their full potential. The advances made by this bill will ensure even greater success for the program in meeting the needs of today's families.

In preparing this bill, we've made significant efforts to improve program quality. That was particularly a matter that the Senator from Indiana was strongly committed to. We've established new education performance standards, to ensure that Head Start children enter school ready to learn. We've strengthened teacher qualifications, so that children will receive the very best care.

We've also worked to encourage closer cooperation by Head Start with other agencies so that full-day, full-year services will be more readily available to working families who need this kind of extended care.

More than 830,000 children currently receive the benefits of Head Start and they will continue to do so. Just as important, this bill makes it possible over the next five years to reach out more effectively to the 60% of eligible children who are not now receiving these services.

Head Start has demonstrated its success in lifting families out of poverty. With the program's support, many families obtain the boost they need to achieve economic self-sufficiency.

A letter I received from Monica Marafuga, a Head Start teacher in Massachusetts, makes this point well:

> I believe that Head start is sometimes the only hope for some families. As a teacher, I see the many families and children who need someone to guide them and point them in the right direction for a better life.

The Early Head Start program is also greatly enhanced by this bill. This program was established four years ago to provide high quality comprehensive services to very young children, from birth to age 3, and their families. There is nothing that can replace a parent and a home that is supportive and loving. But as we have seen, many of the children in our society are missing the support which can help them develop at a very critical and important time of their development.

We know that the first three years of life are a critical period in every child's development. We are mindful of the excellent studies that have been done by the Carnegie Commission about the importance of the development of a child's brain in the first months and years of life. The Early Head Start Program helps in developing those cognitive, emotional, and social skills that can help children seize future opportunities and fulfill their highest potential. This is something we want to encourage.

I welcome the fact that we are able to see an important enhancement of the Early Start Program. I'm especially pleased that this bill includes provisions to establish a new training and technical assistance fund, which will reinforce the program's commitment to provide quality services through on-going professional support for program staff.

The Early Start Program is having an important impact, and in this bill we continue a gradual expansion of the program so that more young children can be served. Currently, less than 2% of those eligible are receiving its benefit. This bill will expand the program over the next five years to cover an additional 40,000 babies and toddlers. This is a modest expansion, but one which I think, with its success, can be built on over future years.

In addition, the bill also renews our commitment to reducing poverty by reauthorizing the Community Services Block Grant. This program helps communities by providing assistance to address the specific needs of localities, marshaling other existing resources in the community, and encouraging the involvement of those directly affected.

Funds may be used for a variety of services, including employment, transportation, education, housing, nutrition, and child care.

I remember when Senator Robert Kennedy sponsored the initial Community Development Corporation more than 30 years ago, which was the precursor to the Community Services Block Grant. This program has a proven record of fostering innovative methods for eliminating the causes of poverty. The need today is as great as it has ever been. Poverty continues to be a significant problem across the nation.

We know that 37 million of our fellow citizens live in poverty. Children are particularly vulnerable, representing 40% of those living in poverty despite the fact that they make up only 25% of the overall population. These figures are particularly disturbing because studies show that children living in poverty tend to suffer disproportionately from stunted growth and lower test scores. The Community Services Block Grant can help alleviate these conditions and benefit these children.

The legislation also reauthorizes the Low-Income Home Energy Assistance Program for the next five years. The funding levels provided for this important program will ensure that LIHEAP continues to help low-income households with their home energy costs, particularly in extreme weather.

I am especially pleased that this legislation includes a provision to clarify the criteria for the President to release emergency LIHEAP funds. This assistance will enable many families hurt by hot or cold weather, ice storms, floods, earthquakes, and other natural disasters to get through the season.

In addition, it will enable the release of emergency LIHEAP funds if there is a significant increase in unemployment, home energy disconnections, or participation in a public benefit program.

There is clearly a continuing need for a strong LIHEAP program. 95% of the five million households receiving LIHEAP assistance have annual incomes below $18,000. They spend an extremely burdensome 18% of their income on energy, compared to the average middle-class family, which spends only 4%.

Without a strong LIHEAP program, families will be forced to spend less money on food and more money on their utility bills—the so-called ''heat or eat effect.'' The result is increased malnutrition among children.

Without a strong LIHEAP program, children will fall behind in school because they will be unable to study in their frigid households.

Without a strong LIHEAP program, low income elderly will be at an even greater risk of hypothermia. In fact, older Americans accounted for more than half of all hypothermia deaths in 1991.

LIHEAP is clearly a lifeline for the most vulnerable citizens in society, and I commend the House and Senate for strengthening this vital program.

This bill also establishes a new and innovative approach to helping low-income individuals achieve financial independence, and again, I commend Senator COATS for his leadership on this new program. Individual Development Accounts are designed to promote economic self-sufficiency by providing matching funds for deposits made into qualifying savings accounts. Funds can be used to purchase a first home, open a small business, or pay for college education.

This program shows great promise for improving the lives of many individuals and families in communities across the country.

Mr. President, I want to just use the last minute in sharing my commendation for the wonderful staff, Republican and Democrat, who worked very closely together. This bipartisan effort is really the most effective way to develop the best possible legislation.

I want to also recognize Stephanie Monroe, who will be leaving the Senate and has been really a stalwart. Everyone has enormous respect for her. She has worked with Senator COATS, but I think all of us have had enormous confidence in her leadership. She has done really an outstanding job. I also thank Suzanne Day and Kimberly Barnes O'Connor, and Amy Lockhart, a Congressional Fellow in my office, and

Stephanie Robinson of my staff who is an enormously gifted, talented and committed individual.

The Clinton Administration worked effectively with us in the development of this legislation, and they also deserve great credit. I want to particularly recognize Helen Taylor who is the Associate Commissioner of the Head Start Bureau at the Department of Health and Human Services. Ms. Taylor has dedicated her professional career to improving the lives of young children and has had over 30 years of distinguished service in the field of early childhood development. Her knowledge and experience proved invaluable in this process, and I thank her for her true commitment to the children of Head Start.

This bill ensures the continuation of these important programs into the 21st century. Again, I thank the chairman of our committee, Senator JEFFORDS, and Senator DODD, and Senator COATS who really have done an extraordinary job in bringing this legislation to where it is today.

Mr. JEFFORDS. I want to take just a couple seconds to join in the accolades which Senator KENNEDY has made for the various staff members, and also to recognize all the tremendous work that Senator KENNEDY himself has done not only today but throughout the years on these very valuable programs.

Mr. President, I yield the floor.

Mr. DODD. Mr. President, I am delighted to stand here and thank the chairman and the ranking member, the Senator from Massachusetts, as we are about to adopt the Coats Human Services Reauthorization Act, which includes Head Start, LIHEAP and the community services block grants.

People are going to wonder. This is the second day in a row that I find myself on the floor extolling the tremendous contribution of my colleague from Indiana.

We were involved in a piece of legislation yesterday. But I think all of us, as I said yesterday, are going to miss our friend, who is going to be here only a few more days and will move on to another chapter in his life.

But it is highly appropriate, given his tremendous work over his career in the Senate on behalf of children and families that this piece of legislation is going to be named in honor of his service to our country.

I am very pleased to join in that effort, and to commend him for his spectacular work over the years of service in the Senate.

Senator COATS and I have worked intensively with Senator JEFFORDS, Senator KENNEDY, other members of our committee, and the House committee to complete this important reauthorization. The strong bipartisan support for this bill is a clear statement of how we all view the crucial programs included in this bill. And it is also a testament to the leadership of Senator COATS on this legislation. While we have not necessarily agreed on every issue, I have always admired Senator COATS dedication to working to help working families, and in particular, to helping children. His presence on the Labor Committee will surely be missed, and I am pleased that the full committee chose to name this important bill after Senator COATS, as a show of respect and admiration for his service in the Senate.

This bill is fundamentally about expanding opportunity in America for all of our citizens. Under the umbrella of the Human Services Act, low income communities, their families and children receive more than $5 billion of assistance each year. These dollars support the basic building blocks of stronger communities—care and education for young children in Head Start, food, job and economic development through the Community Services Block grant, and home heating assistance through LIHEAP.

Head Start is the nation's leading child development program, because it focuses on the needs of the whole child. Inherently, we know that a child cannot be successful if he or she has unidentified health needs, if his or her parents are not involved in their education, and if he or she is not well-nourished or well-rested. Head Start is the embodiment of those concerns and works each day to meet children's critical needs. This year, Head Start will serve over 830,000 children and their families this year, and nearly 6,000 in my home state of Connecticut.

The bill before us today further strengthens the Head Start program: We continue the expansion of the Early Head Start program, increasing the set aside for this program to 10 percent in FY 2002. Anyone who has picked up a magazine or newspaper within the last year knows how vital the first three years of child's life are to their development. This program, which we established in 1994, extends comprehensive, high-quality services to these young children and their parents, to make sure the most is made of this window of opportunity.

We have added new provisions to encourage collaboration within states and local communities as well as within individual Head Start programs to expand the services they offer to families to full-day and full-year services, where appropriate, and to leverage other child care dollars to improve quality and better meet family needs.

We emphasize the importance of school readiness and literacy preparation in Head Start. While I think this has always been a critical part of Head Start, this bill ensures that gains will continue to be made in this area.

Mr. President, this bill puts Head Start on strong footing as we approach the 21st Century. It is a framework within which Head Start can continue to grow to meet the needs of more children and their families. What is unfortunate is that we cannot guarantee more funding for Head Start—I think it is shameful that there are waiting lists for Head Start and that only 40 percent of eligible children are served by this program. And Early Head Start, which is admittedly a new program, serves just a tiny fraction of the infants and toddlers in need of these services.

The President has set a laudable goal to reach 1 million children by 2002. But I say we need to do more. We need a plan to serve 2 million children—all those eligible and in need of services—as soon as possible.

Some argue that meeting the goal of fully funding Head Start will be too costly. Yes, it will cost a great deal to get there. But my question is how much more will it cost not to get there?

Studies show us that children in quality early childhood development programs, such as Head Start, start school more ready to learn than their non-Head Start counterparts. They are more likely to keep up with their classmates, avoid placement in special education, and graduate from high school. They are also less likely to become teenage mothers and fathers, go on welfare, or become involved in violence or the criminal justice system.

How much does it cost when we don't see these benefits?

I know this is an issue for another place and another venue. But I am hopeful as we strengthen Head Start we can also strengthen our resolve to expand this successful program to reach more children and their families.

Mr. President, the bill before us also makes important changes to the Community Services Block Grant program. CSBG makes funds available to states and local communities to assist low-income individuals and help alleviate the causes of poverty. One thousand local service providers—mainly Community Action Agencies—use these federal funds to address the root causes of poverty within their communities. CSBG dollars are particularly powerful because local communities have substantial flexibility in determining where these dollars are best spent to meet their local circumstances.

I have had the pleasure of visiting Community Action Agencies in Connecticut many times. They are exciting, vibrant places at the very center of their communities—filled with adults taking literacy and job training courses, children at Head Start centers, seniors with housing or other concerns, and youths participating in programs or volunteering their time.

To see clearly how critical the CSBG program is to the nation's low income families, one only needs to look at the statistics. The CSBG program in 1995 served more than 11.5 million people, or one in three Americans living in poverty. Three-quarters of CSBG clients have incomes that fall below the federal poverty guideline.

This bill recognizes the fundamental strength of this program and makes modest changes to encourage broader participation by neighborhood groups. In addition, it improves the accountability of local programs.

This bill also reauthorizes the vitally important Low Income Heating and Energy Assistance Program, or LIHEAP. Nearly 4.2 million low-income households received LIHEAP assistance during FY1996, more than 70,000 households in Connecticut. One quarter of those assisted by LIHEAP funds are elderly. Another 25 percent are individuals with disabilities. I cannot overvalue the importance of this assistance—it is nearly as necessary as food and water to a low-income senior citizen or family with children seeking help to stay warm in the winter—or as we saw a few months ago in the Southwest—to stay cool during the summer.

This bill makes no fundamental changes to the LIHEAP program. I am very pleased we increase the authorization of the program to $2 billion, which recognizes the great need for this help. We also put into place a system to more accurately and quickly designate natural disasters. Early disaster designation will allow for the more efficient distribution of the critically important emergency LIHEAP funds, aiding States devastated by a natural disaster.

This bill contains one new, important program—the Individual Development Accounts, based on a bill offered by Senator COATS and Senator HARKIN. Individual Development Accounts, or IDA's, are dedicated savings accounts for very low income families, similar in structure to IRA's, that can be used to pay for post-secondary education, buy a first home, or capitalize a business. This program is a welcome addition to the Human Services Act family. The Assets for Independence title will provide low-income individuals and families with new opportunities to move their families out of poverty through savings.

This is a strong bill and it is a good bill. I hope my colleagues will support this conference report, and again I want to thank Senator COATS for his committed leadership on this effort.

For all of those reasons, Mr. President, I commend the chairman of the committee and again the ranking member. Suzanne Day of my office and Jim Fenton did a tremendous job; Stephanie Monroe from Senator COATS' office, Stephanie Robinson from Senator KENNEDY's office and Kimberly Barnes O'Connor of Senator JEFFORDS' office did a tremendous job in pulling this together. We thank all of them for their efforts.

Again, I thank the Senator from Vermont for his graciousness.

Mr. ASHCROFT. Mr. President, I would like to take this opportunity to congratulate the members of the conference committee on S. 2206 for their hard work on this legislation which reauthorizes the Head Start program, the Low-Income Home Energy Assistance program, and the Community Services Block Grant (CSBG) program. I am particularly grateful to the conferees for including in this legislation language that will expand the opportunities for charitable and religious organizations to serve their communities with Community Services Block Grant funds. This language, which is based upon my Charitable Choice provision in the 1996 welfare reform law, will encourage successful charitable and faith-based organizations to expand their services to the poor while assuring them that they will not have to extinguish their religious character as a result of receiving government funds.

This provision makes clear that states may use CSBG funds to contract with charitable, religious and private organizations to run programs intended to fight poverty and alleviate its effects on people and their communities. When states do choose to partner with the private sector, the charitable choice concept ensures that religious organizations are considered on an equal basis with all other private organizations.

For years, America's charities and churches have been transforming shattered lives by addressing the deeper needs of people—by instilling hope and values which help change behavior and attitudes. By contrast, government social programs have often failed miserably in moving recipients from dependency and despair to responsibility and independence. We in Congress need to find ways to allow successful faith-based organizations to succeed where government has failed, and to unleash the cultural remedy that our society so desperately needs.

Unfortunately, in the past, many faith-based organizations have been afraid—often rightfully so—of accepting governmental funds in order to help the poor and downtrodden. They fear that participation in government programs would not only require them to alter their buildings, internal governance, and employment practices, but also make them compromise the very religious character which motivates them to reach out to people in the first place.

My charitable choice measure is intended to allay such fears and to prevent government officials from misconstruing constitutional law by banning faith-based organizations from the mix of private providers for fear of violating the Establishment Clause. Even when religious organizations are permitted to participate, government officials have often gone overboard by requiring such organizations to sterilize buildings or property of religious character and to remove any sectarian connections from their programs. This discrimination can destroy the character of many faith-based programs and diminish their effectiveness in helping people climb from despair and dependence to dignity and independence.

Charitable choice embodies existing U.S. Supreme Court case precedents in an effort to clarify to government officials and charitable organizations alike what is constitutionally permissible when involving religiously-affiliated institutions. Based upon these precedents, the legislation provides specific protections for religious organizations when they provide services with government funds. For example, the government cannot discriminate against an organization on the basis of its religious character. A participating faith-based organization also retains its religious character and its control over the definition, development, practice, and expression of its religious beliefs.

Additionally, the government cannot require a religious organization to alter its form of internal governance or remove religious art, icons, or symbols to be eligible to participate. Finally, religious organizations may consider religious beliefs and practices in their employment decisions. I have been told by numerous faith-based entities and attorneys representing them that autonomy in employment decisions is crucial in maintaining an organization's mission and character.

Charitable choice also states that funds going directly to religious organizations cannot be used for sectarian worship, instruction, or proselytization.

In recent years, Congress has begun to recognize more and more that government alone will never cure our societal ills. We must find ways to enlist America's faith-based charities and nongovernmental organizations to help fight poverty and lift the downtrodden. The legislation before us today provides us with such an opportunity.

Again, I want to express my appreciation to the conferees and their staff that worked on this legislation: Senators JEFFORDS, COATS, GREGG, KENNEDY and DODD, and Congressmen GOODLING, CASTLE, SOUDER, CLAY, and MARTINEZ. I especially want to commend Senator DAN COATS, the Chairman of the Labor Committee's Subcommittee on Children and Families, for his desire to include my charitable choice language in the Community Services Block Grant Reauthorization. Senator COATS worked very hard in the conference committee to garner bipartisan support for this provision. Thanks to his efforts, and the efforts of this Congress, we will soon expand the opportunities for charitable and faith-based organizations to make a positive impact in their neighborhoods and communities through the Community Services Block Grant program.

Mr. SESSIONS. Mr. President, I wish to express my sincere appreciation and admiration for the distinguished Senator from Indiana. The Senator from Indiana has set a standard and an example in this body of what it means to be a Senator, what it means to be a decent Christian gentleman, the likes of which I do not think have been surpassed in my experience here. I have had the honor of calling him friend. I have had the opportunity to serve or participate with him in a prayer breakfast that he leads. He sets the kind of example of good public service that all of us ought to seek to emulate. And I

am delighted that he has played an important role in this piece of legislation, as he has in so many others. And it will be, I am sure, successfully pursued.

The PRESIDING OFFICER. Under the previous order, the conference report is agreed to, and the motion to reconsider the vote is laid upon the table.

The conference report was agreed to.

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to consider the nomination of William A. Fletcher to be a United States Circuit Judge.

NOMINATION OF WILLIAM A. FLETCHER, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The PRESIDING OFFICER. The clerk will report Executive Calendar No. 619, on which there will be 90 minutes of debate equally divided in the usual form.

The assistant legislative clerk read the nomination of William A. Fletcher, of California, to be United States Circuit Judge for the Ninth Circuit.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, the role of the Senate is to advise and consent in nominations by the President for judicial vacancies. That is understood in the Constitution. Every nominee of the President comes before the Judiciary Committee and then they come before this body for a vote. We are at this point analyzing the nomination of William Fletcher, Willie Fletcher from California, to the Ninth Circuit. I regretfully must say I have concluded that I have to oppose that nomination. And I would like to discuss the reasons why.

Most of the nominations that have come forward from the President have received favorable review by the Judiciary Committee. In fact, we cleared nine today. A number of them are on the docket today and will probably pass out today. So we are making some substantial progress.

Nearly half of the vacancies that exist now in Federal courts are because there are no nominees for those vacancies—almost half of them. But on occasion we need to stand up as a Senate and affirm certain facts about our courts and our Nation. One of the facts that we need to affirm is that courts must carry out the rule of law, that they are not there to make law. The courts are there to enforce law as written by the Congress and as written by the people through their Constitution that we adopted over 200 years ago. Also, that is, I think, where we are basically today.

With regard to this nomination, it is to the Ninth Circuit Court of Appeals in California. Without any doubt, the Ninth Circuit is considered the most liberal circuit in the United States. It is also the largest circuit. There are 11 circuit courts of appeals. And in the United States we have the U.S. district judges. These are the trial judges. The next level—the only intermediate level—is the courts of appeals. And they are one step below the U.S. Supreme Court. It is the courts of appeals that superintend, day after day, the activities of the district judges who practice under them.

There are more district judges in the circuit than there are circuit judges. And every appeal from a district judge's ruling, almost virtually every one, would go to the courts of appeals in California and Arizona and the States in the West that are part of the Ninth Circuit. Those appeals go to the Ninth Circuit, not directly to the U.S. Supreme Court. As they rule on those matters, they set certain policy within the circuit.

We have—I think Senator BIDEN made a speech on it once—we have 1 Constitution in this country, not 11. The circuit courts of appeals are required to show fidelity to the Supreme Court and to the Constitution. The Supreme Court is the ultimate definer of the Constitution. And the courts of appeals must take the rulings of the Supreme Court and interpret them and apply them directly to their judges who work under them or in their circuit and in fact set the standards of the law.

We do not have 11 different circuits setting 11 different policies—at least we should not. But it is a known fact that the Ninth Circuit for many years has been out of step. Last year, 28 cases from the Ninth Circuit made it to the U.S. Supreme Court. The Supreme Court does not hear every case. This is why the circuits are so important.

Probably 95 percent of the cases decided by the circuits never are appealed to the Supreme Court. The Supreme Court will not hear them. But they agreed to hear 28 cases from the Ninth Circuit. And of those 28 cases, they reversed 27 of them. They reversed an unprecedented number. They reversed the Ninth Circuit 27 out of the 28 times they reviewed a case from that circuit. And this is not a matter of recent phenomena.

I was a Federal prosecutor for almost 15 years, and during that time I was involved in many criminal cases. And you study the law, and you seek out cases where you can find them. Well, it was quite obvious—and Federal prosecutors all over the country used to joke about the fact that the criminal defense lawyers, whenever they could not find any law from anywhere else, they could always find a Ninth Circuit case that was favorable to the defendant. And they were constantly, even in those days, being reversed by the U.S. Supreme Court, because the U.S. Supreme Court's idea and demand is that we have one Constitution, that the law be applied uniformly.

So I just say this. The New York Times, not too many months ago, wrote an article about the Ninth Circuit and said these words: ''A majority of the U.S. Supreme Court considers the Ninth Circuit a rogue circuit, out of control. It needs to be brought back into control. They have been working on it for years but have not been able to do so.''

All of that is sort of the background that we are dealing with today.

When we get a nominee to this circuit, I believe this Senate ought to utilize its advise and consent authority, constitutional duty, to ensure that the nominees to it bring that circuit from being a rogue circuit back into the mainstream of American law, so we do not have litigants time and again having adverse rulings, that they have to go to the Supreme Court—however many thousands and hundreds of thousands of dollars—to get reversed.

This is serious business. Some say, ''They just reversed them. Big deal.'' It costs somebody a lot of money, and a lot of cases that were wrong in that circuit were never accepted by the Supreme Court and were never reversed. The Supreme Court can't hear every case that comes out of every circuit. So we are dealing with a very serious matter.

The Senator from Ohio who I suspect will comment today on the nominee, Senator DeWine, articulated it well. When we evaluate nominees, we have to ask ourselves what will be the impact of that nomination on the court and the overall situation. We want to support the President. We support the President time and again. I have seen some Presidential nominees that are good nominees. I am proud to support them. There are two here today who I know personally that I think would be good Federal judges. But I can't say that about this one.

We need to send the President of the United States a message, that those Members of this body who participate in helping select nominees cannot, in good conscience, continue to accept nominations to this circuit who are not going to make it better and bring it back into the mainstream of American law.

With regard to Mr. Fletcher, he has never practiced law. The only real experience he has had outside of being a professor, was as a law clerk. His clerkship was for Justice William Brennan of the U.S. Supreme Court. That is significant and it is an honor to be selected to be a law clerk for the Supreme Court. But the truth is, Justice Brennan has always been recognized as the point man, the leading spokesman in American juris prudence for an activist judiciary. I am not saying he is a bad man, but that is his position.

Justice Brennan used to dissent on every death penalty case, saying he adhered to the view that the death penalty was cruel and unusual punishment, and within that very Constitution he said he was interpreting, there are at least four to six references to the death penalty and capital crimes.

The Founding Fathers who wrote that Constitution never dreamed that anyone would say that a prohibition of cruel and unusual punishment would prohibit the death penalty, because the death penalty was in every State and colony in the United States at the time the Constitution was adopted. It never crossed their minds.

This is an example of judicial activism when Justice Brennan would conclude that he could reinterpret the Constitution and what the people contracted with their Government when they ratified it. It says, ''We, the people, ordain and establish this Constitution. . ..'' So they adopt it; it is reinterpreted. That is a classic definition of judicial activism.

We know Mr. Fletcher was his law clerk and has written a law review article referring to Justice Brennan as a national treasure. It is obvious he considers him an outstanding judge and a man he would tend to emulate.

Of course, judicial activism is part of his family. One of the problems, and the Presiding Officer has attempted to deal with it through legislation, and was successful. Just today, I believe, we have passed legislation dealing with nepotism, two family members serving on the same court.

The truth is, Mr. Fletcher's mother is a judge on the Ninth Circuit already. Of the judges in the United States, I am sure she would be viewed as one of the most activist—in the Ninth Circuit, it is common knowledge she is one of the most activist nominee members of that court. It doesn't mean he will be, but he is connected to Justice Brennan, and his mother is a very liberal, an activist, and will remain on the court as a senior judge and will have the opportunity to participate in a substantial number of the opinions that are rendered by the Ninth Circuit, because they have three-judge panels who assign these cases out of the judges there and they often put these judges on a panel. If she takes senior status, which I understand she has agreed to do, she would not resign from the bench but take senior status and still be able to handle a substantial caseload. That is a troubling fact to me.

To me, a judge is a very important position at any level of the courts. This is not an absolute disqualifying factor to me, but it is a very important factor to me, and that is that Mr. Fletcher lacks any private practice experience. Mr. Fletcher has never practiced law. Mr. Fletcher has never tried a lawsuit. He has been a law clerk for William Brennan and a professor at the University of California Law School. He has never been in the courtroom as a litigant. He has never had the opportunity to have that knot in your stomach when a judge is about to rule on a motion, to understand the difficulties in dealing with human nature. He has not had that experience.

Having had 15 years of full-time litigation experience in Federal court trying cases, you learn things intuitively. Supreme Court justices and appellate court justices will be better judges if they have had that experience. It is an odd thing, and not a healthy thing, normally; it takes extraordinary and exceptional circumstances, in my opinion, to conclude that someone who has been nothing but a law professor all their life is now qualified to take a lifetime appointment to review the decisions of perhaps 100 or more trial judges in their district who are working long and hard, for whom he has never had the opportunity to practice before and see what it is like. That is not a good thing in itself. That is another reason I have serious reservations about this nominee.

Certainly Mr. Fletcher has a right to speak out, but in 1994, not too many years ago, he made a speech in which he criticized the ''three strikes'' law legislation, the criminal law changes that have swept the country, calling it ''perfectly dreadful legislation.'' He has never been a prosecutor. He has never been a judge. He has never been a lawyer. Here he is saying this about this legislation, which I believe is widely supported throughout the country. In my opinion, it has helped reduce the rise in crime, because ''three strikes and you are out'' focuses on repeat, habitual offenders.

Make no mistake, somebody will say, ''You will have everybody in jail, Jeff.'' Not so; everybody is not a repeat, three-time felony offender. If you focus on the repeat offender, those are the ones committing a disproportionate percentage of crime. We have done a better job on that in the last 10 or 15 years. We have tough Federal laws dealing with repeat offenders. States have implemented ''three strike'' laws and it has helped draw down the rise in crime. As a matter of fact, crime has been dropping after going up for many years because we got tough and identified the repeat offenders and prosecuted them successfully and States have stepped up to the plate and done so.

He criticized that. That gives me a real insight into his view about criminal law, and here he will be presiding over reviewing cases of trials involving murderers and other criminals in the Ninth Circuit and he has never had any experience.

The only thing we know about him is that he considers good, tough law legislation dreadful.

(Mr. ASHCROFT assumed the Chair.)

Mr. SESSIONS. Mr. President, I want to share some thoughts with you about judicial activism. In 1982, Mr. Fletcher wrote an article entitled ''The Discretionary Constitution.'' He was a professor then. It has been interpreted by many as a blatant approval of judicial activism. He discusses institutional suits. I was attorney general of the State of Alabama and I had to deal with Federal judges who have major court orders dominating the prison system. Most States have prison systems under court order, having Federal judges ruling those, and mental health systems and school funding issues are decided by Federal judges. So he wrote about that and other issues. In that article, this is what he said, and it really troubles me:

> The only legitimate basis for a Federal judge to take over the political function in devising or choosing a remedy in an institutional suit is a demonstrated unwillingness or incapacity of the political body.

I want you to think about that. That is a revealing quote, that, well, the only way you can do it is if the institution demonstrates an unwillingness or incapacity to act. That is the rationale of the liberal activist. What they say is, well, the State of Alabama didn't provide enough gruel for the criminals, so we are going to issue an order and tell them what they have to feed them three times a day. Or we are going to have a law library for every prison, and they have to have so many square feet. Or you have to spend so much money on education; you have to change your whole way of funding education in your State. Why? Because the State would not act.

Now, we live in a democracy. In a democracy, the people rule; they decide what they want to do. I know the distinguished Senator in the Chair, Mr. ASHCROFT, shares this view. I have heard him express it. I think these are his exact words: ''When the legislature does not act, that is a decision.'' When they go into session, they decide to act on matters or not act on them, and not acting is an action, a decision not to act. The people have influence with that because they elect their representatives and, if they are not happy, they can remove them from office.

But you can't remove a Federal judge because he has a lifetime appointment. He cannot be removed, except for the most serious personal abuses of office. Normally, making bad decisions is not one of those. I will just say this. We have a circuit that is in trouble. It is considered by a majority of the Supreme Court to be a rogue circuit. We need to put nominees on this circuit and move it back into the mainstream and not continue it out on the left wing. We have a responsibility to assure that the judges we confirm are going to improve the courts, and I think we need to vote ''no'' on this nomination because I don't believe it will take us back in the direction we need to go. I think it will take us in the wrong direction.

Mr. President, I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I yield myself such time as I need.

Mr. President, I rise to speak on the nomination of Professor William Fletcher, nominee to the Ninth Circuit Court of Appeals. I am pleased that the U.S. Senate is finally fully considering this nominee.

Mr. Fletcher was first nominated during the 104th Congress on December

21, 1995. I do regret the fact that his nomination has languished for as long as it has, but I would like to comment on some of the obstacles that have hindered this nomination.

First, all nominees to the Ninth Circuit Court of Appeals got bound up within the difficulties we were having with deciding whether or not to divide the Ninth Circuit. Once we established a commission to look into this matter, we have been able to process nominees to that court.

Second, some had concerns—legitimate concerns—that Professor Fletcher's mother, Betty Fletcher, currently serves as a judge on the Ninth Circuit. There is a statute that appears to prevent two people, closely related by blood or marriage, from serving on the same court. Now, the Justice Department said that only applies to people less than the judiciary, but that was pure bunk as far as I was concerned. The statute is pretty clear. Yes, it is an old statute, but it is clear and it is a matter of great concern to me. To ensure compliance with that law—or to the best of my ability to make sure that this law is complied with, Judge Betty Fletcher has agreed to take senior status upon her son's confirmation, and Senator KYL has introduced legislation, which passed the Senate last night, which I support, that will clarify the applicability of the so-called antinepotism statute.

Just to say a little bit on that statute, it seems to me that it is very logical that we should not place persons of such close consanguinity on the same court that overviews 50 million people. Surely we can find people other than sons of mothers on the court. So Senator KYL has made a splendid effort to try to resolve this matter. He indicated in our Judiciary Committee this morning that, as a matter of principle, he would have to vote against Professor Fletcher because he feels that the statute does apply. I tried to resolve it by chatting with Judge Betty Fletcher who has agreed to take senior status upon her son's confirmation.

Now that these obstacles have been removed, I am pleased that we are voting on Mr. Fletcher and would like to express my considered view that he should be confirmed.

I am the first to say that I may not agree with all of Professor Fletcher's views on Federal courts and procedure, the separation of powers, or constitutional interpretation. But the question is not whether I agree with all of his views, or whether a Republican President would or would not nominate such a candidate. The President is entitled to have his nominees confirmed, provided that the nominee is well qualified and will abide by the appropriate limitations on Federal judges.

I recognize that this is especially important for nominees to the Ninth Circuit and concur wholeheartedly with those of my colleagues who believe that the Ninth Circuit has literally gone out of control. I agree with the distinguished Senator from Alabama that that circuit is out of line and out of control. It is often reversed. It has a 75 percent reversal rate over the last number of decades because of these activist judges on that bench. But Professor Fletcher has personally assured me that he would follow precedent, that he would interpret and enforce the law, not make laws from the bench.

I believe Professor Fletcher is a man of honor and integrity and that he will live up to his word and, in fact, I hope Professor Fletcher, who is an expert on civil procedure, can actually help rein in some of the more radical forces on the Ninth Circuit Court of Appeals.

Professor Fletcher clearly is highly qualified. He is a graduate of the Yale Law School, he clerked for a Supreme Court Justice, and is considered an eminent legal scholar. That consideration is justified. Although some of his writings may push the envelope of established legal thinking, as often happens in the case of professors of law, we should recognize that this is the role of academics. I made that point during the Bork nomination when my colleagues on the other side were finding fault with many of the positions that Judge Bork had taken in some of his writings, many of which he repudiated later, but all of which were provocative and intended to create debate on the respective subjects.

In short, I believe Professor Fletcher is within the mainstream of American legal thought just as several Republican nominees such as Antonin Scalia, Frank Easterbrook, Richard Posner, and Ralph Winter were when they were nominated, and this body should confirm him today.

I hope my colleagues will confirm Professor Fletcher.

Today the Judiciary Committee voted out 15 judicial nominees and 4 U.S. attorneys. This year we have held hearings for 111 out of 127 nominees.

If all of the judges who are now pending on the Senate floor are confirmed, as I expect they will be, we will end this Congress having confirmed 106 judges, resulting in a vacancy rate of 5.4 percent. This will be the lowest vacancy rate since the judiciary was expanded in 1990.

Also, over 50 percent of the judges confirmed this year, to date, by this Republican Senate have been women and/or minorities.

Given the fact that over the last five Congresses the average number of article III judges confirmed is 96, I think this Republican majority has done very well to this point, and will continue to do so. Can we do better? Always. I am sure we can. And we will certainly try to do better during this coming year, and I intend to do better during the coming year.

At this particular point, we are concerned about Professor William Fletcher, who I believe is highly qualified for this job. Even though I don't agree with him on everything that he believes, or everything that he has taught, the fact of the matter is he is qualified, he is a decent man, and he should be confirmed here today.

Although Professor Fletcher's nomination has taken quite a while to be brought up for a vote, I do not think anyone can fairly criticize the work the Judiciary Committee has done this year, especially during the last few weeks of this session. On Tuesday of this week, Senator SPECTER chaired a hearing for 11 nominees. Nine of those 11 nominees were received by the Committee only within the last month. I am told that, according to the Department of Justice, the hearing Senator SPECTER chaired broke a record for the most nominees on a single hearing.

To date, the Republican Senate has already confirmed 80 judges. And today, that number will rise to 84, if Professor Fletcher and the other judges that will be brought up for a vote are confirmed—as I wholly expect they will. As I stated earlier, if all of the nominees now pending on the Senate floor are confirmed, the Senate will adjourn having confirmed 106 Article III judges.

Again, this will leave a judicial vacancy rate of only 5.6 percent. Keep in mind that the Clinton administration is on record as having stated that a vacancy rate of just over 7 percent is considered virtual full employment of the Federal judiciary.

I do not think anyone can legitimately argue that the Judiciary Committee has not done its job well. Yes, there have been some controversial Clinton nominees that have moved slowly or not at all, but sometimes nominees come to the Committee with problems that prevent their nominations from going forth. I am pleased to say that although some thought the problems relating to Professor Fletcher's nomination could not be worked out, they ultimately have been. I fully expect that Professor Fletcher will be confirmed today and I will vote for him.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. How much time does the distinguished Senator from Washington desire? I yield 5 minutes or such time as he needs to the distinguished Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I share the background of the Senator from Alabama as attorney general of my State. I agree with much of the philosophic underpinning of his remarks directed at the judicial philosophy of Mr. Fletcher. I disagree, however, as to the conclusion, and intend to vote for his confirmation.

The Constitution of the United States says that the President shall nominate and by and with the advice of the Senate shall appoint judges to positions like the one we are debating here today.

In my view—I have some differences even with my good friend from Utah on

this subject—I believe that does permit a Senator to vote against a judicial nominee on the grounds that the Senator disagrees with the fundamental legal philosophy of that nominee. I also believe, however, that when the President has sought the advice as well as the consent of the Senate, and when that advice has been heated, at least to the extent of being given significant weight, it is then appropriate to vote for the confirmation of a judicial nominee, even though one, as an individual Senator, might well not have nominated that individual had he, the Senator, been President of the United States.

That is the situation in which I find myself here. I have met with and talked about Mr. Fletcher's ambitions on two or three occasions at some length. I have found him to be a thoughtful, intelligent, hard-working individual dedicated to the law as he sees it, and, perhaps even more importantly than that, as the Constitution and the statutes of the United States lay it out.

He would certainly not have been my first choice had I been the nominating authority in this case. But, I am not. I am an individual Senator. At the same time, the President of the United States and his officers have, in fact, sought my advice as well as my consent on judicial nominees, both to the district courts in the State of Washington, and to the Ninth Circuit Court of Appeals when those nominees come from the State of Washington.

While again I have not necessarily gotten my first choices for those positions, I believe that in a constitutional sense my advice has been sought and my advice has been given considerable weight by the President of the United States.

As a consequence, the combination of the punctual adherence to constitutional requirements with my own belief that Mr. Fletcher will fill the position of a judge on the Ninth Circuit honorably, and in accordance with the Constitution and laws of the United States, causes me to feel that he is a qualified nominee and that he should be confirmed by the Members of the Senate to the office to which the President has nominated him.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, I yield to the distinguished Senator from California. She requires how much time?

Mrs. FEINSTEIN. I thank the distinguished manager. May I have 10 minutes?

Mr. LEAHY. I yield 10 minutes to the distinguished Senator from California.

Mrs. FEINSTEIN. I thank the Senator from Vermont.

Mr. President, I rise to voice my strong support for the nomination of Professor William Alan Fletcher to the Ninth Circuit Court. I very much appreciate the views of the chairman of the committee, the distinguished Senator from Utah, on this, and his considered judgment that Mr. Fletcher deserves approval by this body. And I hope, indeed, that will be the case.

Mr. Fletcher has been before this body for over 3 years now. He has had two Judiciary Committee hearings. I had the pleasure of attending both and listening to him. His responses at these hearings were crisp, to the point, direct, and showed a depth and breadth of knowledge of the law that I think is among the top one percent of those nominees who came before the committee.

His credentials are impeccable. As the chairman pointed out, they include: magna cum laude graduate of Harvard; Rhodes scholar; law degree from Yale; service in the Navy; law clerk for U.S. Supreme Court Justice William Brennan; and a clerkship for District Court Judge Stanley Weigel.

Since 1977, he has been a distinguished professor at the Boalt Hall School of Law at the University of California, where he won the 1993 Distinguished Teacher Award and has come to be regarded as one of the most foremost experts on the Federal court and the Constitution.

Mr. President, since the distinguished Senator from Alabama raised some concerns about this nominee, I would like to respond to some of those concerns. We asked Mr. Fletcher to respond, and, in fact, he provided us with a response on a number of items that have been raised by Mr. Thomas Jipping, of the Judicial Selection Monitoring Project, and subsequently repeated.

The first allegation is what was called the ''discretionary Constitution.'' Mr. Jipping attributes to Professor Fletcher the conclusion:

> When judges think that the political branches are not doing what they should, judges have the discretionary power to do it for them.

And he states:

> Mr. Fletcher writes that this virtually unlimited judicial discretion is a ''legitimate substitute for political discretion'' when the political branches are ''in default.''

I would like to give you directly the statement from Mr. Fletcher.

The article says quite the opposite of what Mr. Jipping wrote. I do not believe in a ''discretionary Constitution.'' As the article makes plain, I view judicial discretion as a problem rather than a solution. Further, I did not write that judicial discretion is legitimate when political branches are ''in default.'' Rather, I wrote that the exercise of judicial discretion in curing constitutional violations in institutional suits is ''presumptively illegitimate'' unless the political bodies that should cure those violations are in ''serious and chronic default.''

I would like to put all of this in the RECORD.

On the second point that has been raised critically, on standing, Mr. Fletcher writes:

> Contrary to what Mr. Jipping wrote, I do not believe Congress can write statutes that allow anyone or anything to sue. Indeed, in some cases I take a narrower view of standing than the Supreme Court. For example, I argued that the Court should not have granted standing in Buckley v. Valeo. My position on standing would not drastically expand caseloads. Further, rather than inviting judges to legislate from the bench, I am particularly anxious that the Federal courts not perform as a ''super-legislature.''

The third point that he has been criticized for is the unconstitutionality of statutes. The critic writes:

> Mr. Fletcher believes that judges can declare unconstitutional legislation they believe was inadequately considered by Congress. He argues that a statute effectively terminating lawsuits against defense contractors by substituting the United States as the defendant was passed without hearings and based on what he believes are misrepresentations about its operation. That alone would be sufficient to strike down the statute.

Now, this is Mr. Fletcher's response:

> I believe no such thing. I argued that the presumption of constitutionality normally accorded to a statute should not be accorded to the Warner Amendment, based on the following factors: (1) The only body in Congress that considered the amendment was a subcommittee of the House Judiciary Committee, which held hearings and concluded that it was unconstitutional; (2) When the amendment was later attached as a rider to an unrelated defense appropriations bill, it was consistently described as doing the opposite of what it actually did.

And so, if I might, to clear these things up, Mr. Fletcher has submitted to us a draft response, and I ask unanimous consent to have printed in the RECORD both the allegations and the responses.

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

DEAR SENATOR FEINSTEIN: I write to correct some mischaracterizations of my writing that have been put forward by Mr. Thomas Jipping.

The most extensive misrepresentations are contained in Mr. Jipping's May 10, 1996, op-ed piece in The Washington Times. I will take them in order.

(1) JUDICIAL DISCRETION

Mr. Jipping wrote: ''First, Mr. Fletcher believes in what he has called a ''discretionary Constitution.'' In fact, that was the title of his first law review article. When judges think the political branches are not doing what they should, judges have the discretionary power to do it for them. Mr. Fletcher writes that this virtually unlimited judicial discretion is a ''legitimate substitute for political discretion'' when the political branches are ''in default.'' Not surprisingly, judges get to determine when the political process has defaulted. Today courts are running prison systems, school districts and even mental institutions in the name of such discretion.'' The article Mr. Jipping refers to is ''The Discretionary Constitution: Institutional Remedies and Judicial Legitimacy,'' 91 Yale L.J. 635 (1982).

Brief statement: The article says quite the opposite of what Mr. Jipping wrote. I do not believe in a ''discretionary Constitution.'' As the article makes plain, *I view judicial discretion as a problem rather than a solution*. Further, I did not write that judicial discretion is legitimate when political branches are ''in default.'' Rather, I wrote that the exercise of judicial discretion in curing constitutional

violations in institutional suits is ''presumptively *illegitimate*'' unless the political bodies that should cure those violations are in ''*serious and chronic default*.'' at pp. 637, 695 (emph. added).

Extended analysis: The article analyzed institutional injunctions where there has already been a finding of unconstitutionality in the operation of a prison or mental hospital, in the apportionment of a legislature, or in the racial segregation of public schools. After there has been a finding of a constitutional violation, the question arises: Who should decide how that violation should be cured? Even where there has been a constitutional violation, I argue that the role of the federal courts should be severely circumscribed, and that judicially formulated injunctions should be regarded as presumptively illegitimate.

Constitutional violations in institutional cases can be cured in many ways. For example, in a prison case where conditions of confinement violate the Eighth Amendment, a prison administrator can do a number of different things to bring the prison into compliance with the Constitution. Or in a reapportionment case a state legislature can draw district lines in a number of different ways to bring the districts into compliance with the Fourteenth Amendment. Choices among the possible remedies inescapably involved the exercise of discretion, and should be regarded as presumptively illegitimate if made by a judge rather than a political entity. I wrote: ''Trial court remedial discretion [in institutional suits] can to some degree be controlled in the manner of its exercise; in some cases it may even be eliminated without sacrificing unduly the constitutional or other values at stake. But there comes a point where certain governmental tasks, whether undertaken by the political branches or the judiciary, simply cannot be performed effectively without a substantial mount of discretion. * * * The practical inevitability of remedial discretion in performing those tasks defines the legitimate role of the federal courts. * * * *[S]ince trial court remedial discretion in institutional suits is inevitably political in nature, it must be regarded as presumptively illegitimate.*'' at pp. 636–37 (emph. added).

In *Swann* v. *Mecklenberg Board of Education*, 402 U.S. 1, 16 (1971), Chief Justice Burger wrote for the Court that the district court has the power to fashion an institutional injunction only ''*[i]n default by the school authorities* of their obligation to proffer acceptable remedies'' (emph. added). I argued that ''default'' by the political authorities—which in the view of the Supreme Court justified a judicially fashioned injunction—should be found only as a last resort. I wrote. ''Political bodies and courts respond to different institutional imperatives. * * * As a matter of fundamental structure, even where a constitutional violation has been found, a court cannot legitimately resolve such a problem *unless the political bodies that ordinarily should do so are in such serious and chronic default that here is realistically no other choice.*'' at p. 695 (emph. added).

My argument is neither liberal not activist. Indeed, my formulation is more conservative and restrained than Chief Justice Burger's in Charlotte-Mecklenberg, where he required that school authorities simply be ''in default.'' I recommended increasing the threshold for judicial action by requiring that the political body be in ''such serious and chronic default that there is realistically no other choice.''

Throughout the article, I emphasized the danger in judicial overreaching: ''[A] federal court is not, and should not permit itself the illusion that it can be, anything more than a temporarily legitimate substitute for a political body that has failed to serve its function. '' at 969.

(2) STANDING

Mr. Jipping wrote: ''Second, the Constitution limits court jurisdiction to 'cases' and 'controversies.' One way to assure this jurisdiction is to demand that plaintiffs concretely trace their injury to the defendant's action, preventing judges from reaching out to decide issues and make law in the abstract. In a 1988 article, Mr. Fletcher argues that standing is merely a way of looking at the merits of a case rather than assuring a court's jurisdiction. As such, he believes that Congress can write statues that allow anyone or anything to sue, regardless of whether plaintiffs have suffered any harm at all. This view would drastically expand federal court caseloads and give judges innumerable opportunities to legislate from the bench.'' The article Mr. Jipping refers to is ''The Structure of Standing,'' 98 Yale L.J. 221 (1988).

Brief statement: Contrary to what Mr. Jipping wrote, I do not believe Congress can write statutes that allow anyone or anything to sue. Indeed, in some cases I take a narrower view of standing than the Supreme Court. For example, I argued that the Court should not have granted standing in *Buckley* v. *Valeo*, 424 U.S. 1 (1976). My position on standing would not drastically expand caseloads. Further, rather than inviting judges to legislate from the bench, I am particularly anxious that the federal courts not perform as a ''super-legislature.''

Extended analysis: The article sought to bring some intellectual order to an area of doctrine long criticized as incoherent. I agreed with Justice Harlan that standing as presently articulated is ''a word game played by secret rules.'' *Flast* v. *Cohen*, 392 U.S. 83, 129 (1968) (Harlan, J., dissenting) at 221. My concern was not to argue for different results in standing cases, but rather to provide a coherent intellectual structure that would support those results. As I wrote, *''[W]e mistake the nature of the problem if we condemn the results in standing cases.*'' at 223 (emph added).

In my view, Justice Douglas' opinion in *Association of Data Processing Service Org.* v. *Camp*, 397 U.S. 150 (1970), is the source of much of the analytical difficulty. I stated, ''More damage to the intellectual structure of the law of standing can be traced to Data Processing than to any other single decision.'' at 229. In essence, I argued that standing doctrine should return to what it had been at the beginning of this century, when a plaintiff in federal court has to state a cause of action, and the focus was on the particular statutory or constitutional provision invoked by plaintiff. Under this earlier approach, a plaintiff has to show that he was entitled to relief ''on the merits,'' in the sense not only that defendant violated a legal duty but also that plaintiff had a legal right to judicial enforcement of that duty.

In a few cases, I disagreed with results reached by the Supreme Court. In those few cases, I generally viewed standing more narrowly than the Court and would have denied standing. The most important such case is *Buckley* v. *Valeo*, 424 U.S. 1 (1976). I did not criticize the substance of the Court's decision, but I did criticize its grant of standing.

In *Buckley*, the Court sustained a statutory grant of standing to any person eligible to vote for President to challenge on any constitutional ground the Federal Election Campaign Act of 1971. Plaintiffs included Senator Buckley who had introduced the standing provision in the Senate. They challenged the Act under the statutory grant of standing; the District Court certified twenty-two constitutional questions to the Supreme Court; and the Court answered all of them. I wrote: ''[I]f the twenty-two certified questions answered in *Buckley* had been sent to the Court in a letter from the Senate floor, as the twenty-nine questions in *Correspondence of the Justices* were sent to the Court in a letter from Secretary of State Jefferson[, i]t is unthinkable that the Court would have answered them. Yet when Congress cast the questions in the form of a lawsuit granting standing to one of its members, the Court in *Buckley* willingly provided the answers, *performing*, in Judge Leventhal's words, *in a ''role resembling that of a super-legislature.''* The lessons of *Buckley* are sobering. Not only will the Court answer questions that have proven particularly difficult for Congress. It will also answer them in the highly abstract form traditionally thought particularly ill-suited for judicial resolution.'' at 286 (emph. added). My approach to standing could hardly be clearer: I argued that the Court should not have granted standing and should not have acted as a ''super-legislature.''

(3) UNCONSTITUTIONALITY OF STATUTES

Mr. Jipping wrote: ''Third, Mr. Fletcher believes that judges can declare unconstitutional legislation they believe was inadequately considered by Congress. He argues that a statute effectively terminating lawsuits against defense contractors by substituting the United States as the defendant was passed without hearings and based on what he believes are misrepresentations about its operation. That alone would be sufficient to strike down the statute.'' The article Mr. Jipping refers to is ''Atomic Bomb Testing and the Warner Amendment: A Violation of the Separation of Powers,'' 65 Wash. L. Rev. 285 (1990).

Brief statement: I believe no such thing. I argued that the presumption of constitutionality normally accorded to a statute should not be accorded to the Warner Amendment, based on the following factors: (1) The only body in Congress that considered the Amendment was a subcommittee of the House Judiciary Committee, which held hearings and concluded that it was unconstitutional; (2) when the Amendment was later attached as a rider to an unrelated defense appropriations bill, it was consistently described as doing the opposite of what it actually did.

Elimination of the presumption does not mean that a statute is unconstitutional. A statute is unconstitutional only if it independently violates some provision of the Constitution. I did not argue—and do not believe—that inadequate consideration by Congress ''alone would be sufficient to strike down a statute.''

Extended analysis: At the outset, I note that I wrote the article as an advocate for the American military veterans and civilian downwinders. My involvement as advocate is indicated at the beginning of the article at 285, *fn.

Between 1946 and 1963, the United States conducted a little over 300 atmospheric tests of atomic bomb, about 200 of them in Nevada. Over 200,000 soldiers and an undetermined number of civilians were exposed to significant amounts of radiation during the tests. Atmospheric tests were discontinued in 1963 after the United States signed a test ban treaty. In the 1980s, a number of suits were filed against the private contractors who had assisted the government in the tests. Seeking to short-circuit the suits, the contractors sought a statute that would protect them. Joined by the executive branch, they sought a statute that would substitute the United States as a defendant in their place, and would then permit the United States to obtain a dismissal on grounds of sovereign immunity.

In 1983, a subcommittee of the House Judiciary Committee held hearings on the proposed statute and issued a written report concluding that it would be unconstitutional. The following year, Senator Warner attached the proposed statute as a rider to a defense appropriation bill. The conference committee report said that the amendment ''would provide remedy against the United States,'' even though it was clear that the intent, and ultimate effect, would be to deprive the plaintiffs of any remedy at all. After the passage of the Amendment, the District Court substituted the United States as a defendant and dismissed the suits. *In re Consolidated United States Atmospheric Testing Litigation,* 616 F.Supp. 759 (N.D. Calif. 1985), aff'd sub nom. *Konizeski* v. *Livermore Labs,* 820 F.2d 982 (9th Cir. 1987), cert. den., 485 U.S. 905 (1988).

I argued that the Warner Amendment violated separation of powers by interfering with the judicial function in violation of *United States* v. *Klein,* 80 U.S. 128 (1872). I contended the Warner Amendment should not enjoy the normal presumption of constitutionality: ''[C]ourts ordinarily accord a strong presumption of constitutionality to any legislation that is enacted in accordance with the formally required process. *We should be very reluctant to abandon the presumption when a statute has fulfilled the formal prerequisites,* but in certain circumstances such an abandonment may be justified. . . . [In the case of the Warner Amendment] we have . . . affirmative evidence that *the one body in Congress that seriously considered the amendment found it unconstitutional.* Moreover, we know that the bill was passed thereafter only by avoiding hearings and misrepresenting the bill's character. Under such circumstances, the Warner Amendment can hardly lay claim to the traditional presumption in favor of a statute's constitutionality.'' at 320 (emph. added).

(4) SEPARATION OF POWERS

Mr. Jipping wrote: ''Finally, Mr. Fletcher rejects perhaps the most important limitation on government power established by the Constitution's framers, the separation of powers. The Supreme Court has said what the Framers said, namely, that each branch has relatively defined and exclusive areas of authority and power. In a 1987 article, Mr. Fletcher condemned these decisions as 'fundamentally misguided'. Why? The Court 'read the Constitution in a literalistic way to upset what the other two branches had decided, under the political circumstances, was the most workable arrangement.' In other words, political circumstances can trump constitutional principles.'' The article Mr. Jipping refers to is a review of Chief Justice Rehnquists's book, The Supreme Court: How It Was, How It Is, 75 Calif.L.Rev. 1891 (1987).

Brief statement: I do not reject separation of powers. Indeed, I relied on separation of powers to argue the unconstitutionality of the Warner Amendment, calling it a ''vital check against tyranny.'' 65 Wash.L.Rev. at 310. In the review I criticized two separation of powers decisions by the Supreme Court, *Immigration and Naturalization Service* v. *Chadha,* 462 U.S. 919 (1983), and *Bowsher* v. *Synar,* 478 U.S. 385 (1986), in which the Court found unconstitutional two Acts of Congress. Believing in judicial restraint, Justice White dissented because he found no clear constitutional text invalidating what Congress had done. I agreed with Justice White.

Extended analysis: In *Immigration and Naturalization Service* v. *Chadha,* the Supreme Court struck down the use of the one-house veto by Congress. In *Bowsher* v. *Synar,* the Court struck down the Gramm-Rudman-Hollings Act providing for federal deficit reduction. I wrote: ''I think both decisions fundamentally misguided, for essentially the reasons given by Justice White in his dissenting opinions. . . . Justice White pointed out that [*Chadha*] invalidated, at one stroke, almost 200 statutes on the basis of a highly debatable reading of the Constitution. Invoking Justice Jackson's emphasis on a 'workable government' in his concurrence in the *Steel Seizure Case,* Justice White reminded the Court that the 'wisdom of the Framers was to anticipate that . . . new problems of governance would require different solutions.' . . . Justice White, [dissenting in *Bowsher*], again invoked Justice Jackson's view of the Constitution as a charter for a 'workable government,' and objected to what he saw as the Court's 'distressingly formalistic view' in attaching dispositive significance to what should be regarded as a triviality.'' at 1894.

Justices White and Jackson firmly believed in a non-activist judiciary. As a matter of interpretive principle, they deferred to the judgment of the political branches unless the clear text of the Constitution commanded otherwise. I agree with them.

I thank you for the opportunity to correct these mischaracterizations.

Very truly yours,

WILLIAM A. FLETCHER.

Mrs. FEINSTEIN. Mr. President, University of California law professor Charles Alan Wright, one of the Nation's leading conservative constitutional scholars, had this to say about Dr. Fletcher:

Too many scholars approach a new issue with preconceptions of how it should come out and they force the data that their research uncovers to support the conclusion that they had formed before they did the research. I think that is reprehensible for a scholar and it is dangerous for a judge.

I am completely confident that when Fletcher finishes his service on the ninth circuit we will say not that he has been a liberal judge or a conservative judge but that he has been an excellent judge, one who has brought a brilliant mind, greater powers of analysis, and total objectivity to the cases that came before him.

I believe that the nomination of William Fletcher will add strength to the ninth circuit and I hope very much that he is confirmed.

I would like to also quote Stephen Burbank of the University of Pennsylvania Law School:

His work is both analytically acute and painstaking in its regard for history. Indeed, love of and respect for history shine through all his work, as the history itself illuminates the various corners of the law he enters.

Interestingly enough, the New Republic wrote in an editorial in 1995:

Fletcher is the most impressive scholar of Federal jurisdiction in the country. His path-breaking articles on sovereign immunity and Federal common law have transformed the debates in these fields; and his work is marked by the kind of careful historical and textual analysis that should serve as a model for liberals and conservatives alike. If confirmed, Fletcher will join his mother—

And as we know now his mother is going to take senior status —

but his judicial philosophy is more constrained than hers. We hope he is confirmed as swiftly as possible.

That was back in 1995 when he was nominated. It is now almost the end of 1998, and as this man has gone through the scrutiny of 3 years of delay, I must say I very much hope that this body will confirm him this afternoon. I believe, as another has said, that he will, in fact, be an excellent, thoughtful and commonsense judge.

I thank the Chair. I yield the floor.

Mrs. BOXER. Mr. President, I am very happy to finally have the opportunity to come to the floor today and vote on the nomination of Professor William Fletcher to the U.S. Court of Appeals in the Ninth Circuit. I urge my colleagues in the Senate to vote for Professor Fletcher, who is eminently qualified to serve on the federal appeals court. Professor Fletcher was first nominated on April 26, 1995. He had a hearing and was reported out in May of 1996, and has been patiently waiting for a debate and vote on his nomination ever since.

Some members of the Senate oppose this nomination because his mother sits on this court. However, his mother, the Honorable Betty Fletcher, has already agreed to take senior status and not sit on panels with her son if he is confirmed. So, again, I am very happy to once again exercise my duties as a U.S. Senator and cast a vote on the nomination of a federal judge.

To give a little history, the 104th Congress never acted on Professor Fletcher's nomination the first time, so he had to be renominated on January 7, 1997. He waited more than a year for a second hearing, and has continued to wait for a confirmation vote, until today. One look at his record, and I am sure my colleagues will see that Professor Fletcher is eminently qualified to sit on the federal bench, and deserves swift Senate confirmation.

In 1968, Professor William Fletcher received his undergraduate degree, magna cum laude, from Harvard College. He spent the next two years at Oxford University on a Rhodes Scholarship, receiving another B.A. in 1970. After Oxford, he spent the following two years on active duty military service in the United States Navy. He was honorably discharged as a Lieutenant in 1972. Professor Fletcher then attended Yale Law School, graduating in 1975. While at Yale, he was a member of the Yale Law Journal.

After graduating from law school, Professor Fletcher clerked for a year for U.S. District Judge Stanely A. Weigel in the Northern District of California, and another year for U.S. Supreme Court Justice William J. Brennan, Jr. He began teaching at the University of California, Berkeley, School of Law, also known as Boalt Hall, in the fall of 1977, immediately after his second clerkship. While at Boalt Hall, Professor Fletcher has been teaching a broad range of courses, including Property, Administrative Law, Conflicts, Remedies, and Constitutional Law.

Professor Fletcher is widely praised by his students and his fellow academics for his fair-minded and balanced approach to legal problems. He promises to bring the same careful fair-mindedness to the federal bench.

I believe professor Fletcher will make an exceptional addition to the federal bench. I believe his intelligence, broad experience, and professional service qualify him to sit on the federal bench with great distinction. I am sure my Senate colleagues will be equally impressed, and I urge my colleagues to vote for his confirmation.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. I yield up to 10 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I rise this afternoon to oppose the nomination of William Fletcher to be a U.S. Circuit Court judge for the Ninth Circuit. On May 21, 1998, the Senate Judiciary Committee favorably reported out this nominee by a vote of 12 to 6.

I voted against the nominee. I would like to take a moment this afternoon to explain to my colleagues in the Senate why I voted no on that date and why I intend to vote no today. I intend to vote no today, Mr. President, and I base my opposition on the fact that Mr. Fletcher's writings and statements simply do not convince me that he will help to move the Ninth Circuit closer to the mainstream of judicial thought. And that is the criteria that I applied and will continue to apply in regard to the Ninth Circuit.

Although some Senators oppose this nominee because of their reading of the antinepotism statute and their concerns in that area, the fact that Mr. Fletcher's mother also serves on the Ninth Circuit, who, as my colleague pointed out, will take senior status, does not trouble me. As I said in the Judiciary Committee, I am not in favor of legislation that, based on family relationships, restricts the power of the President or the power of the Senate to either nominate or confirm judges.

Having said that, Mr. President, let me restate what does concern me about this nomination. All of us—all of us—should be concerned about what has been going on in the Ninth Circuit over the last few years. Based on the alarming reversal rate of the Ninth Circuit, I have said before and I will say it again for the RECORD today, I feel compelled to apply a higher standard of scrutiny for Ninth Circuit nominees than I do for nominations to any other circuit.

Mr. President, I will only support nominees to the Ninth Circuit who possess the qualifications and whose background shows that they have the ability and the inclination to move the circuit back towards the mainstream of judicial thought in this country. Before we consider future Ninth Circuit nominees, I urge my colleagues to take a close look at the evidence, evidence that shows that we have a judicial circuit today that each year continues to move away from the mainstream.

I believe the President of the United States has very broad discretion to nominate to the Federal bench whomever he chooses, and the Senate should give him due deference when he nominates someone for a Federal judgeship. However, having said that, the Senate does have a constitutional duty to offer its advice and consent on judicial nominations. Each Senator, of course, has his or her own criteria for offering this advice and consent. However, given that these nominations are lifetime appointments, all of us take our advice and consent responsibility very seriously.

We should keep in mind that the Supreme Court of our country has time to review only a small number of decisions from any circuit. That certainly is true with the Ninth Circuit as well. This means that each circuit, the Ninth Circuit in this case, in reality is the court of last resort. In the case of the Ninth Circuit, they are the court of last resort for the 45 million Americans who reside within that circuit. To preserve the integrity of the judicial system for so many people, I believe we need to take a more careful look at who we are sending to a circuit that increasingly—increasingly—chooses to disregard precedent and ultimately just plain gets it wrong so much of the time.

Consistent with our constitutional duties, the Senate has to take responsibility for correcting this disturbing reversal rate of the Ninth Circuit. I think we have an affirmative obligation to do that. And that is why I will only support those nominees to the Ninth Circuit who possess the qualifications and who have clearly demonstrated the inclination to move the circuit back towards the mainstream.

Mr. President, I will want to apply a higher standard of scrutiny to future Ninth Circuit nominees to help ensure that the 45 million people in that circuit receive justice, and justice that is consistent with the rest of the Nation, justice that is predictable and not arbitrary nor dependent on the few times the Supreme Court reviews and ultimately reverses an erroneous Ninth Circuit decision.

I yield the floor.

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

Mr. LEAHY. Mr. President, I reserve our time on this side. I know on the other side the Senator from Missouri, I assume, will speak on their time. I will withhold my statement. I am kind of stuck here anyway. I yield to the Senator from Missouri, on their time.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, with the permission of the Senator from Alabama, I yield myself as much time as I might consume in opposition to the nomination.

The PRESIDING OFFICER. The Senator is recognized.

Mr. ASHCROFT. Mr. President, the Ninth Circuit Court of Appeals is in serious need of improvement. The court is the epicenter of judicial activism in this country. The Ninth Circuit's unique blend of distortion of text, novel innovation, and disregard for precedent caused it to be reversed by the U.S. Supreme Court 27 out of 28 cases in the term before last. That is something very, very serious. When this court's cases were considered by the U.S. Supreme Court in the term before last, 27 out of 28 decisions were considered to be wrong.

If the people of this country found out that 27 out of 28 decisions of the Senate were considered to be wrong, Senators would not last very long. No tolerance would be provided for virtually any institution that was wrong that much of the time. The Ninth Circuit Court's record improved last year, but barely. According to the National Law Journal, the court was reversed in whole or in part in 14 out of 17 cases last year. Over the last 2 years, that amounts to a reversal rate of 90 percent. In the last 2 terms, 9 out of 10 times the Ninth Circuit has been wrong.

The Ninth Circuit's disastrous record before the Supreme Court has not been lost on the Justices of the Supreme Court. In a letter sent last month supporting a breakup of the Ninth Circuit, Justice Scalia cited the circuit's ''notoriously poor record on appeal.'' Justice Scalia explained, ''A disproportionate number of cases from the Ninth Circuit are regularly taken by this court for review, and a disproportionate number reversed.''

The Ninth Circuit's abysmal record cannot be dismissed or minimized because the Supreme Court is there to correct the Ninth Circuit's mistakes. In a typical year, the Ninth Circuit disposes of over 8,500 cases. In about 10 percent of those cases, over 850 cases, the losing party seeks to have a review in the Supreme Court. Although appeals from the Ninth Circuit occupy a disproportionate share of the docket, the Supreme Court grants only between 20 and 30 petitions from the Ninth Circuit in a given year. If they are reversed 90 percent of the time because they are wrong in those cases that have been accepted, I do not know what the error rate would be in the other 8,500 cases that they litigate or consider on appeal, or what would be the error rate in the 850 cases that are sent, begging the Supreme Court to review the cases. But it is very likely, in my judgment, if their error rate is 90 percent in those cases that are accepted by the Supreme Court, that there are a lot of other individuals simply denied justice because of the extremely poor quality of the Ninth Circuit Court of Appeals.

This really places upon those of us in the U.S. Senate a very serious responsibility, a responsibility of seeking to improve the quality of justice that people who live in the Ninth Circuit receive. Accordingly, of the 8,500 cases decided by the Ninth Circuit in a year, only 20 or 30, or about three-tenths of 1 percent, are reviewed by the Supreme

Court. So, if there are errors in the other cases, they are just going to remain there.

Only three-tenths of 1 percent of the cases decided by the court are reviewed by the Supreme Court. So if we say it is OK for that circuit to be full of error, it is OK for that circuit to be absent the quality and the kind of correctness that is appropriate in the law, if we predicate our approval on the basis that there can be an appeal, the truth of the matter is, the Supreme Court takes only about three-tenths of 1 percent of the cases for appeal.

The Supreme Court, moreover, selects cases for review predominantly to resolve splits among the circuits, not to correct the most egregious errors. So some of the cases the Supreme Court does not even take may be more blatant injustices than the ones that the Supreme Court does take, because the Supreme Court is trying to resolve differences between the Ninth Circuit and the Second Circuit, or the Eighth Circuit and the Ninth Circuit, or something like that. So we have a real shortfall of justice that exists as a potential whenever we have a court that is so error ridden, and its error-ridden nature is demonstrated because of the correction responsibility that has to be exercised by the U.S. Supreme Court.

The truth of the matter is, for virtually all litigants within the Ninth Circuit, the decisions of the Ninth Circuit are the final word. How would you like knowing that you were going to court and that the appellate court which would oversee your day in court was reversed 90 percent of the time when it was considered by the Supreme Court, but you only had a three-tenths of 1 percent chance of getting an injustice in your case reversed because the Supreme Court only takes three-tenths of 1 percent of the cases? I think America deserves to have more confidence in its judicial system than that.

The Ninth Circuit is an activist court in desperate need of therapy and help. After a thorough review of its record, it is my judgment that Professor Fletcher would do more harm than good in the Ninth Circuit, would move that court further outside the judicial mainstream.

There has been a great deal of discussion about the applicability of Federal antinepotism statutes to this nominee. I commend individuals for raising this issue. It is critical to the respect for law.

I have heard some people say they do not really care whether this is against the law or not. Frankly, I think we ought to care. I think a disregard for the law, especially as it relates to the appointment of judges, is a very, very serious matter. It is critical to the respect for law in a society as a whole that we in the Senate respect the laws that apply to us.

However, one of the principles of judicial restraint identified by Justice Brandeis many years ago is that a court should not decide a difficult constitutional or statutory question if there is another straightforward basis for resolving the case. Applying that principle to this nomination, I have concluded that whether or not the statute precludes confirmation of Professor Fletcher, there is ample basis in the record to suggest that Professor Fletcher would exacerbate the Ninth Circuit's activism and I plan to oppose his nomination on that basis.

A number of Professor Fletcher's writings suggest a troubling tendency toward judicial activism. For example, Professor Fletcher has written in praise of Justice Brennan's mode of constitutional interpretation. He also has criticized the Supreme Court for reading the Constitution in a literalistic way. This is troubling, to say the least. Justice Brennan, as even his admirers would admit, is the godfather of the evolving Constitution and the primary critic of the literal reading of the constitutional text.

You know, there are those who believe the Constitution can be stretched, and grows, and amends itself to mean what someone wants it to mean at the time a crisis arises. I reject that. I reject Brennan's approach. Professor Fletcher embraces it. Those who believe that the Constitution can be an evolutionary document really are those who would be able to put their stamp of meaning anywhere they want anytime they choose.

The debate over whether evolving standards of decency or the text should guide judicial decisions is at the heart—the very heart—of my concern over judicial activism. Nowhere in the country is the Constitution ''evolving'' more rapidly than in the Ninth Circuit. We cannot afford to send another activist to this court.

Although a number of Professor Fletcher's writings focus on relatively esoteric subjects, they display a disturbing tendency toward activism on the issues addressed.

He has criticized the current limitations on standing and has advocated an approach that would focus more on the legislative intent—an inherently dubious guide—and would afford standing to plaintiffs excluded by the current doctrine.

Likewise, he has written that the procedural history of an amendment's enactment can lessen the presumption of constitutionality that would otherwise attach to the enactment. Frankly, we ought to be evaluating the constitutionality on the basis of the Constitution, not the procedural history. This is particularly disturbing in light of the Ninth Circuit's apparent tendency to apply a presumption of unconstitutionality to popular initiatives and other legislation the judges dislike on policy grounds.

In an opinion piece written in the midst of Justice Thomas' confirmation process, Professor Fletcher wrote that ''the Senate must insist nominees articulate their constitutional views as a condition of their confirmation.''

Professor Fletcher's articles and answers to written questions ''articulate'' his view of the Constitution. Let's look at them. It is a view with which I disagree and which, in my judgment, will only exacerbate the problems of the Ninth Circuit.

Finally, I want to acknowledge that I realize we do not appear to have the votes to defeat this nomination. Nonetheless, I believe it is important to come to the floor and debate this nomination, rather than approve it in a midnight session.

Those of us on the Judiciary Committee have had the opportunity to reflect on the problems of the Ninth Circuit—the shortfall and the injustice for people who live in the Ninth Circuit, the likelihood that they get bad decisions and only three-tenths of 1 percent of them will ever be considered by the U.S. Supreme Court. This nominee would only make that problem worse. I urge my colleagues to oppose the nomination on that basis.

I yield the floor and reserve the remainder of the time for those opposing the nomination.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER. Mr. President, I ask unanimous consent that I may speak for up to 5 minutes on the serious question of steel imports and introduce a piece of legislation.

Mr. LEAHY. Mr. President, does the Senator ask for that time outside the time of the Fletcher matter?

Mr. SPECTER. Mr. President, I do.

The PRESIDING OFFICER (Mr. ASHCROFT). Without objection, it is so ordered. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 2580 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senate will now resume debate of the nomination of Judge Fletcher.

Mr. LEAHY. Mr. President, I ask the Chair, how much time is available to this side, the proponents of the Fletcher nomination?

The PRESIDING OFFICER (Mr. SMITH of Oregon). Twenty-three minutes 16 seconds.

Mr. LEAHY. I yield myself such time as I may need.

We heard discussion about the Ninth Circuit. There was a suggestion that it is reversed all the time.

In the year ending March 31, 1997, they decided 8,701 matters; the year ending March 31, 1996, 7,813 matters; in 1995, 7,955 matters. Well, 99.7 percent of those matters were not overturned.

I ask unanimous consent that an article by Judge Jerome Farris of the U.S. Court of Appeals for the Ninth Circuit be printed in the RECORD.

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

THE NINTH CIRCUIT—MOST MALIGNED CIRCUIT IN THE COUNTRY—FACT OR FICTION?

(By Hon. Jerome Farris*)

*Footnotes at end of article.

The Honorable Jerome Farris argues that the reason the Supreme Court overturns such a high percentage of Ninth Circuit cases accepted for review is not because the Circuit is ''too liberal.'' Rather, Judge Farris emphasizes the high volume of cases heard by the Ninth Circuit and its willingness to take on controversial issues. He suggests that any objective observer would conclude that the Ninth Circuit is functioning well and that the system is working precisely as the Framers of the United States Constitution intended.

The shell game has survived over the centuries because there are always those who are not merely willing, but delighted, to be deceived. If the game is played often enough and mindlessly enough, one can come very close to fooling ''all of the people all of the time.''

The Ninth Circuit—most maligned circuit in the country—fact or fiction? It is absolutely true that the United States Supreme Court accepted twenty-nine cases from the Ninth Circuit for review in 1997 and reversed twenty-eight of those decisions, affirming only one. The prior year, the Supreme Court reviewed twelve Ninth Circuit cases and reversed ten. In 1995, the Supreme Court reviewed fourteen Ninth Circuit decisions and reversed ten. During that period, no other circuit had so many decisions reversed or so high a percentage of reversals of cases accepted for review.[1]

According to these statistics, the Supreme Court reversed ninety-six percent of the Ninth Circuit cases it reviewed in 1997, an all time high.[2]

In the year ending March 31, 1997, the Ninth Circuit decided 8701 matters. In the same period ending in 1996, the Ninth Circuit decided 7813 matters. In 1995, the Ninth Circuit decided 7955 matters. If one considers the number of Ninth Circuit decisions reversed by the Supreme Court against the total number of cases decided by the Ninth Circuit, an entirely different picture emerges. Under this analysis, the Supreme Court let stand as final 99.7 percent of the Ninth Circuit's 1996 cases. No circuit in history has decided so many cases, and no circuit in history has had so low a percentage of cases reversed.

The point is not that one statistic is right and that the other statistic is wrong, but that statistics can be deceiving and can be used to paint almost any picture one wants. Courts issue ''opinions''; they do not decide right and wrong in an absolute sense. Courts cannot determine right and wrong in an absolute sense because the law is not absolute. Deciding a legal rule is not like figuring out an immutable law of physics—a court always strives for ''the right answer,'' but because the law has a life of its own, time determines what is correct. Courts on occasion reverse themselves for just that reason.

Any Ninth Circuit judge worthy of the title would want to revisit the decisions that were taken for review to determine whether in any single instance Supreme Court precedent was ignored. One cannot expect newspaper reporters to make that kind of review. News articles report the facts and others analyze the facts. It is my view that no responsible ''expert'' would comment before making such a review. What the review would reveal is no mystery because all decisions are in the domain of the public.

In 1997, the Supreme Court unanimously reversed twenty-one cases (eight of those decisions were per curiam). In the one Ninth Circuit case that the Supreme Court affirmed (the vote was eight to one), the majority held that the opinion properly followed Supreme Court precedent.[3] In one case that the Supreme Court unanimously reversed, the Ninth Circuit followed a Tenth Circuit decision. The Eighth Circuit, however, decided the issue a different way and the Supreme Court resolved the split.[4]

In *Saratoga Fishing Co.* v. *J.M. Martinac & Co.*,[5] a six to three reversal, Justice Scalia, joined by Justice Thomas, noted in dissent that ''an impressive line of lower court decisions applying both federal and state law''[6] has, like the Ninth Circuit, precluded liability in analogous situations.[7]

In eight of the reversed Ninth Circuit cases, the Supreme Court resolved conflicts between the circuits: *Old Chief v. United States*;[8] *California Division of Labor Standards Enforcement v. Dillingham Construction*;[9] *United States v. Brockamp*;[10] *Regents of the University of California v. Doe*;[11] *Inter-Modal Rail Employees Ass'n v. Atchison, Topeka, & Santa Fe Railway*;[12] *United States v. Hyde*;[13] *Glickman v. Wileman Bros. & Elliott*;[14] *Quality King Distributors, Inc. v. L'anza Research International, Inc.*[15] Thus, in many of the cases that were reversed, the Ninth Circuit was not alone in concluding a different result than the result the Supreme Court reached. Make no mistake, however, the Supreme Court *did* critcize the Ninth Circuit in some of its reversals. In one reversal, the Supreme Court stated that the Ninth Circuit failed to follow Supreme Court precedent.[16]

Courts are bound to follow Supreme Court precedent. However, what we write are opinions. The sin is not being wrong, but being wrong when the guidance was clear and when there was a deliberate failure to follow the guidance.

Two cases illustrate the dilemma of circuit courts: *Washington v. Glucksberg*,[17] regarding physician-assisted suicide, and *Printz v. United States*,[18] regarding the Brady Handgun Violence Prevention Act.[19] The Supreme Court reversed both of these Ninth Circuit decisions.

The Brady Act was widely discussed publicly and received much political interest. At issue in *Printz v. United States* was whether the Brady Handgun Act violated Article I, §8 and the Tenth Amendment of the United States Constitution by commanding chief law enforcement officers to conduct background checks of handgun purchasers. In a two to one decision, the Ninth Circuit found no constitutional violation. The Supreme Court, by a vote of five to four, reversed. Justice Scalia delivered the opinion of the Court in which Rehnquist, O'Connor, Kennedy, and Thomas joined; O'Connor filed a concurring opinion; Thomas filed a concurring opinion; Stevens filed a dissenting opinion, in which Souter, Ginsburg, and Breyer joined; Souter filed a separate dissenting opinion; and Breyer filed a dissenting opinion, in which Stevens joined. One might reasonably conclude that the solution was less than obvious.

Physician-assisted suicide has also been soundly debated in both public and political arenas. The question for decision in *Glucksberg* was whether a Washington statue that imposes a criminal penalty on anyone who ''aids another person to attempt suicide'' denies the Fourteenth Amendment's Due Process Clause liberty interest of mentally competent, terminally ill adults to choose their time and manner of death. The Ninth Circuit, in an eight to three en banc panel decision, found a liberty interest in the right to die and then weighed the individual's compelling liberty interest against the state's interest. The Ninth Circuit found the statute unconstitutional. The Supreme Court unanimously reversed the Ninth Circuit decision with five separate concurring opinions.

Was the Ninth Circuit ''wrong'' in either of these cases? The Circuit would have been, in my opinion, if it had not resolved each of the complex issues and given them full, careful, and decisive consideration. The Supreme Court reversed these decisions, but who would say that the system is not functioning as it was intended to function? Everyone is entitled to their own views, but the conclusion, in my view, is that the system envisioned by the Framers of the Constitution continues to function properly.

The decisions of the Supreme Court become the law of the land because our system of government requires settled law. It is therefore necessary that one court make a final decision, and, right or wrong, that decision governs our society.

That the Supreme Court can be ''wrong'' is evident to any student of American law, history, politics, or society. This county's jurisprudential history is filled with famous cases, affecting our entire society, in which the Supreme Court decided that it had previously reached an erroneous result: *Brown v. Board of Education of Topeka*;[20] *Bunting v. Oregon*;[21] *Garcia v. San Antonio Metropolitan Transit Authority*;[22] and twice reversing itself on death penalty cases in the 1970s, to name a few.

The Supreme Court also reverses itself in many less well-known cases. This term it reversed a decision regarding public school teachers in parochial schools.[23] The term before that it reversed itself in *Seminole Tribe of Florida v. Florida*,[24] and the year before that in *Hubbard v. United States*.[25] Justice Brandeis's dissent in the 1932 case, *Burnet v. Coronado Oil & Gas Co.*,[26] argued that the Supreme Court should overrule an earlier decision[27] and cites thirty-five cases in which the Supreme Court overruled or qualified its earlier decisions.

This list of Supreme Court reversals—in no way meant to be comprehensive—actually constitutes a high reversal rate considering that the Supreme Court currently averages about eighty to ninety decisions a year, or one percent of the number of cases that the Ninth Circuit hears. This comparison suggests that the Supreme Court would have to reverse one hundred Ninth Circuit cases a year in order to reverse the Ninth Circuit at as high a rate as the Supreme Court reverses itself (which it does about once a year).

In other instances, Congress has decided that the Supreme Court had the wrong answer and enacted legislation to effectively overrule the decision, such as the Religious Freedom Restoration Act of 1993 (RFRA)[28] and the 1982 Voting Rights Act Amendments.[29] The Supreme Court upheld the constitutionality of the 1982 Voting Rights Act Amendments[30] and it found RFRA unconstitutional.[31]

Do these results prove that Congress was right and that the Supreme Court was wrong? Or do these results prove that the Supreme Court was right and that Congress was wrong? Of course not. Rather, the results provide examples of the checks and balances designed in the Constitution to make our government run properly. Similarly, when the Supreme Court reverses an appellate court decision, it does not mean that the decision was wrong in an absolute sense, and more importantly, it does not mean that the appellate court was not functioning properly in its role in the judiciary and in the United States government.

Part of the cause of the misperception about right and wrong is created in the training of lawyers at law school. Most law schools begin teaching law in a formalistic manner: the student learns the law, and there is only one correct law. This formalism gets carried on as law students enter the legal profession. Lawyers often argue before

me that there is only one possible result (''The law dictates this result!''). This is rarely true, and is never true in complicated cases. There are always some arguments for each side, otherwise the case would be frivolous. The bottom line is that reasonable minds can differ and can each still be reasonable.

The Ninth Circuit deals with more cases than any other circuit. It is not surprising, then, that the Ninth Circuit would deal with more complicated and important issues than any other circuit. Both of these factors contribute to the Supreme Court's review and reversal of more Ninth Circuit cases than cases from other circuits.

Some observers contend that the Ninth Circuit is reversed so often because it is the most liberal circuit in the country and because the Supreme Court is currently conservative. This hypothesis also provides ammunition to those now arguing that the Ninth Circuit should be split (a topic for another article).[32] However, these observers have failed to review the facts. Of the opinions signed by Ninth Circuit judges that were reversed this year by the Supreme Court, eleven were authored by Democratic presidential appointees, and nine were authored by Republican presidential appointees. Apparently the Supreme Court is an equal opportunity reverser.

To function properly, each court must do its duty to the best of its ability. Parties must be able to rely on the full resolution of cutting edge issues in each court to which the issues are submitted. There is always the risk of reversal, but that risk should not—cannot—drive the system. The Supreme Court was better able to treat the question of physician-assisted suicide and the issue of the Brady Act because it had decisive opinions to review. One could assume that these issues are closed, and they certainly may be for the immediate future. History reminds us, though, that serious controversial issues are revisited from time to time. This comment is written by a circuit judge whose life would certainly have been different had the *Dred Scott*[33] decision not been revisited.

I make no prediction for the future of any of the Ninth Circuit reversals, but one commentator was not so cautious. Writing while *Glucksberg*[34] was pending before the Supreme Court, Roger S. Magnusson[35] in the *Pacific Rim Law and Policy Journal*, predicted:

Although an adverse Supreme Court opinion could potentially retard the process of pro-euthanasia law reform, this would be a temporary delay only which could not survive generational change. In the United States and beyond, the development of a legal right to die with medical assistance, appears inevitable.[36]

What is important to remember is that opinions, unlike arithmetic solutions, may vary. Our system under the Constitution is designed to put an end to variations because the Supreme Court makes the final decision. The danger is not that an appellate court gets reversed, but that a court might let possible reversal deter decisive, full, and reasoned consideration of important issues. An even greater danger is that the high regard in which all courts must be held if our system is to be a rule of law, not of judges, is threatened if those who are personally ambitious can dismiss a reasoned decision of any court with the throwaway phrase—''Oh well, that decision is just the irresponsible act of a coterie of liberal judges.'' All tyrants first seek to malign the rule of law.

FOOTNOTES

*Judge, United States Court of Appeals for the Ninth Circuit.

[1] The Supreme Court decided a total of ninety-one cases in the 1996 term, reversing sixty-five, affirming twenty-three, and otherwise disposing of three. *See* Thomas C. Goldstein, *Statistics for the Supreme Court's October Term 1996*, 66 U.S.L.W. 3068 (U.S. July 15, 1997).

[2] All other circuits outside of the Ninth Circuit suffered a combined reversal rate of sixty-one percent. *See* Bill Kusliak, *Reversal Rate Keeps Getting Uglier*, San Francisco Recorder, July 2, 1997, at 1.

[3] *See* Babbitt v. Youpee, 117 S. Ct. 727, 732 (1997). In *Babbitt*, the Supreme Court affirmed the Ninth Circuit's holding that a provision of the Indian Land Consolidation Act worked an unconstitutional taking by requiring escheat to the tribe of certain fractional interests in allotment upon the owner's death. *See id.*

[4] *See* California Div. of Labor Standards Enforcement v. Dillingham Constr., 117 S. Ct. 832 (1997). The Ninth Circuit held that a California prevailing wage law governing wages of apprentices was preempted by ERISA. *See* Dillingham Constr. v. County of Sonoma, 57 F.3d 712, 722 (9th Cir. 1995). In reversing, the Supreme Court found that the law at issue neither referred to nor was connected with ERISA. *See Dillingham Constr.*, 117 S. Ct. at 834. Thus, the Court held that the law did not ''relate to'' an ERISA plan for purposes of preemption. *See id.*

[5] 117 S. Ct. 1783 (1997).

[6] *Saratoga Fishing*, 117 S. Ct. at 1791.

[7] The Ninth Circuit decision employed the *East River* doctrine, *see* East River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 870 (1986), to preclude liability for property damage sustained on a vessel. *See* Saratoga Fishing Co. v. Marco Seattle, Inc., 69 F.3d 1432, 1446 (9th Cir. 1995). The Ninth Circuit found that equipment added to a vessel after purchase was part of the ''product itself.'' *See id.* In reversing, the Supreme Court concluded that the after-acquired equipment constituted ''other property,'' and was not a part of the ''product itself.'' *See Saratoga Fishing*, 117 S. Ct. at 1784.

[8] 117 S. Ct. 644 (1997). In *United States* v. *Old Chief*, the Ninth Circuit found that, despite a defendant's offer to stipulate, the government was entitled to present evidence of a prior felony to prove the current charge of felon in possession of a firearm. *See* No. 94–30277, 1995 WL 325745 (9th Cir. Apr. 14, 1995) (basing the decision on 18 U.S.C. §922(g)(1)). The Supreme Court disagreed, finding that the rejection of a defendant's offer to stipulate to a felony conviction constituted an abuse of discretion where the name or nature of the underlying conviction raised the risk of tainting the jury's verdict. *See Old Chief*, 117 S. Ct. at 645.

[9] 117 S. Ct. 832 (1997). *See supra* note 4 and accompanying text.

[10] 117 S. Ct. 849 (1997). In *Brockamp*, the Supreme Court reversed the Ninth Circuit holding which allowed equitable tolling of the statutory limitations period for tax refund claims. The Supreme Court concluded that the strong language of the statute precluded the Ninth Circuit's application of the presumption favoring equitable tolling. *See id.* at 851.

[11] 117 S. Ct. 900 (1997). In *Doe v. Lawrence Livermore National Laboratory*, 65 F.3d 771, 776 (9th Cir. 1995), the Ninth Circuit held that the University of California's right to indemnification from the federal government divested the university of Eleventh Amendment immunity. The Supreme Court reversed, holding that a state entity's potential legal liability, rather than financial responsibility for judgments, triggered the application of the Eleventh Amendment. *See Regents of the Univ. of Cal.*, 117 S. Ct. at 904.

[12] 117 S. Ct. 1513 (1997). In this action, the Supreme Court held that an ERISA provision prohibiting interference with protected rights applied to welfare plans. *See id.* at 1515. The Ninth Circuit found that the provision applied only to interference with the attainment of rights capable of vesting. *See* Inter-Modal Rail Employees Ass'n v. Atchison, Topeka, & Santa Fe Ry. Co., 80 F 3d 348, 351 (9th Cir. 1996).

[13] 117 S. Ct. 1630 (1997). In *Hyde*, a criminal defendant attempted to withdraw his guilty plea after the plea was accepted, but prior to acceptance of the plea agreement. The Ninth Circuit reversed the district court's refusal to allow withdrawal without a showing by defendant of a ''fair and just reason.'' *See* Hyde v. United States, 92 F.3d 779, 781 (9th Cir. 1996). The Supreme Court held that a showing of ''fair and just reason'' by defendant was necessary. *See Hyde*, 117 S. Ct. at 1631.

[14] 117 S. Ct. 2130 (1997). In *Clickman*, the Court reversed the Ninth Circuit determination that mandatory assessments on growers, handlers, and processors of California tree fruits to pay for generic advertising violated the First Amendment. *See id.* at 2142. The Supreme Court rejected the use of a heightened First Amendment scrutiny and the Ninth Circuit's finding that the law compelled financial support of others' speech, SEE ID. at 2138-39.

[15] 117 S. Ct. 2406 (1997) (mem.).

[16] *See* Suitum v. Tahoe Reg'l Planning Agency, 117 S. Ct. 1659, 1665 (1997).

[17] 117 S. Ct. 2258 (1997).

[18] 117 S. Ct. 2365 (1997).

[19] 18 U.S.C. §922 (1994).

[20] 347 U.S. 483 (19954) (overruling Plessy v. Ferguson, 163 U.S. 537 (1896)).

[21] 243 U.S. 426 (1917) (overruling Lochner v. New York, 198 U.S. 45 (1995)).

[22] 469 U.S. (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)).

[23] *See* Agostini v. Felton, 117 S. Ct. 1997 (1997) (overruling Aguilar v. Felton, 473 U.S. 402 (1985), and School Dist. of Grand Rapids v. Ball, 473 U.S. 373 (1985) (overruled as to the portion addressing the ''Shared Time'' Program).

[24] 4116 S. Ct. 114 (1996) (overruling Pennsylvania v. Union Gas Co., 491 U.S. 1 (1989)).

[25] 514 U.S. 695 (1995) (overruling United States v. Branblett, 348 U.S. 503 (1995)).

[26] 285 U.S.C. 393 (1932), *overruled by* Helving v. Mountain Producers Corp., 303 U.S. 376 (1938).

[27] *See* Gillespie v. Okla, 257 U.S. 501 (1922) *overruled by Helvering, 303 U.S. at 376.*

[28] 42 U.S.C. §2000bb (1994).

[29] 42 U.S.C. §1973b (1994).

[30] *See* Reno v. Bossier Parish School Bd. 117 S. Ct. 1491 (1997).

[31] *See* Boerne v. Flores, 117 S. Ct. (1997).

[32] This argument, like most of the arguments for splitting the circuit, has never made sense to me. Accepting *arguendo*, the hypothesis that the Ninth Circuit is reversed often because it is to ''too'' liberal or ''too'' often wrong, a split will still leave at least one, and perhaps two, circuits that are too liberal or too often wrong.

[33] Dred Scott v. Sandford, 60 U.S. 393 (1856) (superseded by the adoption of the 13th and 14th Amendments of the U.S. Constitution after the Civil War).

[34] 117 S. Ct. 2258 (1997).

[35] Lecturer, University of Sydney School of Law; B.A. LL. B. (Hons) (A.N.U.) (1988), Ph.D. (Melb), (1994).

[36] Roger S. Magnusson, *The Sanctity of Life and the Right to Die: Social and Jurisprudential Aspects of the Euthanasia Debate in Australia and the United States*, 6 Pac. RIM & POL'Y J. 1, 5 (1997).

Mr. LEAHY. Mr. President, it has been suggested that if a court is overturned by the Supreme Court, that people ought to start asking whether those judges should be thrown out. And one Senator said, ''Suppose we were overturned like that, how long would we last here in the Senate?'' Well, it seems to me that the U.S. Senate voted very strongly—84 Senators voted for the so-called Communications Decency Act even though it was obviously unconstitutional. That went to the Supreme Court and was overturned.

A majority of the U.S. Senators voted for the line-item veto—again, blatantly unconstitutional but popular back home. That was overturned by the U.S. Supreme Court.

Eighty-five percent of the people, according to a poll, said they wanted some form of the Brady bill. This Senate voted for that overwhelmingly, knowing that it was probably unconstitutional. That was overturned by the Supreme Court.

I can think, since I have been here, of a number of times when this body went pell-mell forward on a number of bills because it was so popular to vote for them. Many times I found myself as a lone dissenter on matters that went to the U.S. Supreme Court and were then overturned as unconstitutional.

The same Senators who criticize judges who from time to time have an opinion reversed by a higher court ought to be careful with respect to what they advocate. If that standard were applied to Senators should all Senators who voted for a bill that gets

overturned as unconstitutional have to resign? Maybe not the first time they vote for something declared unconstitutional; maybe they shouldn't have to leave the first time, because everybody is allowed a mistake. If they did it a second time, do they have to go then? I come from a tolerant State. I belong to a religion that believes in redemption and forgiveness. So we will let them get away with two.

We are in the baseball season. Suppose they voted for three unconstitutional bills because they were popular but they get overturned as unconstitutional. Well, we are now considering perspectives beyond religion and politics, we are going to baseball. Three times, three strikes—are you out? Let's be a little careful when we use some of these analogies about who should or should not serve on a court depending on how many times they get reversed.

Senators may not want to go back and ask how many times they voted for something, how many times they gave wonderful speeches in favor of something, how many times they sent out press releases, sent feeds back to their TV station, maybe used them in their reelection ads, and then, guess what? The U.S. Supreme Court overturned that legislation as unconstitutional.

Especially, I say to some of my friends on the other side, when the majority of those voting to declare those laws unconstitutional were Republican members of the U.S. Supreme Court, reported by Republican Presidents, and extolled as great conservatives. In each one of the cases I have referenced, I agreed with them. They were the true conservatives. What they wanted to conserve was the Constitution of the United States.

Sometimes when we want to stand up here and tell how conservative we are, we ought to say: Are we conservative with regard to the Constitution of the United States? Are we prepared to conserve the U.S. Constitution?

I recall one day on a court-stripping bill on this floor years ago an effort was made to pass a court-stripping bill, a bill to withdraw jurisdiction from the courts over certain matters of constitutional remedies, because the polls showed how popular it would be. One Friday afternoon, three Senators stood on this floor and talked that bill into the ground.

I was proud to be one of those three Senators. As I walked out with the other two—one, the Senator from Connecticut, then an independent, Senator Lowell Weicker; the third Senator who had joined with us to talk down that court-stripping bill, my good friend, now deceased, Senator Barry Goldwater of Arizona. Senator Goldwater put his arms around the shoulders of both of us, and we were both a little bit taller than he, and said, ''I think we are the only three conservatives in the place.''

I can't speak for Senator Weicker, how he might have felt about that; I took it as a heck of a compliment—not because I go back and claim to be a conservative in my politics back home. I only claim to be a Vermonter, doing the best I can for my State. When I stand up for the U.S. Constitution, as I have so many times for the first amendment, I do it because I try to conserve what is best in our country.

Professor William Fletcher is a fine nominee. He is a decent man. He was first nominated to the U.S. Court of Appeals for the Ninth Circuit, May 7, 1995, over 3 years ago. I don't know of any judicial nominee who has had to endure the delay and show the patience of this nominee. He was nominated May 7, 1995. We are only a few months away from 1999.

I have spoken on many occasions about how the Republican Senate is rewriting the record books in terms of delaying action on judicial nominees, but Professor Fletcher's 41 months exceeds the 33-month delay in the consideration of the nomination of Judge Richard Paez and Anabelle Rodriguez; or the 26 months it took to confirm Ann Aiken; or the 24 months it took to confirm Margaret McKeown; or the 21-month delay before confirmation of Margaret Morrow and Hilda Tagle who found, unfortunately, in this Senate, that if you are either a woman or a minority, you seem to take a lot longer to get through the Senate confirmation process.

In the annual report on the judiciary, the Chief Justice of the Supreme Court observed:

> Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. The Senate confirmed only 17 judges in 1996 and 36 in 1997, well under the 101 judges it confirmed in 1994.

He went on to note:

> The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.

Mr. President, 3½ years is a long time to examine a nomination and to leave a judgeship vacant. Even at the pace of the U.S. Senate, 3½ years is long enough for us to make up our mind.

Around Mother's Day in 1996, the Judiciary Committee did report the nomination of Professor Fletcher to the Senate, but that year the majority, Republican majority, decided not to vote on any nominees to courts of appeals, so the nomination was not considered by the Senate. The committee vote, though, in 1996 was more than 2–1 in favor, including Senator HATCH, Senator SPECTER, Senator DEWINE, and Senator SIMPSON. This year, the vote was delayed until past Mother's Day. The vote was taken May 21, 1998. The committee's second consideration of the nominee resulted in a vote of 2–1.

I know some do not like Judge Betty Binn Fletcher. They do not agree with her decisions. In our Federal judicial system, there are mechanisms for holding judges accountable. There are panels of judges at the courts of appeals. There are en banc considerations. There is ultimately the controlling authority of the U.S. Supreme Court. Judge Fletcher's decisions are subject to review and reversal, just like every other judge.

No one should turn their anger with Judge Betty Fletcher into a reason to delay or oppose the appointment of Professor William A. Fletcher. No one should try to get back at Judge Betty B. Fletcher through delay of the confirmation of her son.

Senate Republicans have continued their attacks against an independent Federal judiciary and delayed in filling longstanding vacancies with qualified persons being nominated by the President. Professor Fletcher's nomination has been a casualty of their efforts. Forty-one months—41 months—and two confirmation hearings have been enough time for examination to bring the Fletcher nomination to a vote. Professor Fletcher is a fine person and an outstanding nominee who has had to endure years of delay and demagoguery as some chose to play politics with our independent judiciary.

Professor Fletcher has the support of both Senators from California. The ABA gave him the highest rating. He is supported by many judges and lawyers and scholars from around the State, the Ninth Circuit, and the country. I commend the distinguished chairman of the Senate Judiciary Committee, the senior Senator from Utah, Senator HATCH, and many other Republican Senators who have continued to support this fair-minded nominee.

I look forward to Senate action this afternoon and I look forward to the fact that he will be confirmed.

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

I yield the floor.

Mr. THURMOND. Mr. President, I rise today in opposition to the nomination of William Fletcher for the Ninth Circuit Court of Appeals.

When this nomination was first considered in the Judiciary Committee in 1996, I opposed it because I believed that the anti-nepotism statute, 28 U.S.C. 458, prohibited him from serving on the Ninth Circuit based on the fact that his mother, Betty Fletcher, is a judge on the same court. There has been some dispute about whether this statute applies to judges rather than only inferior court employees, and the Senate yesterday passed legislation by Senator Kyl to clarify that the statute does apply to judges. However, the revision is prospective in nature and does not apply to Professor Fletcher. In my view, Professor Fletcher's nomination violates the statute as it existed before the Senate's clarification. Thus, I must oppose this nomination because I believe it violates the anti-nepotism laws.

Moreover, I have serious reservations about Professor Fletcher's judicial philosophy. I believe we have a duty to oppose nominees who do not have a proper respect for the limited role of a judge in our system of government.

One of the strongest and most influential advocates for an activist Federal judiciary in this century was Supreme Court Justice William Brennan. He believed that the Constitution was a living document and that judges should interpret the Constitution as though its words change and adapt over time. I have always believed that this view of the Constitution is not only wrong but dangerous to our system of government. The words of the Constitution do not change. They have an established meaning that should not change based on the views of a judge. They should change only through an amendment to the Constitution. It is through the amendment process that the people can determine for themselves what the Constitution says, rather than unaccountable, unelected judges making the decisions for them.

Professor Fletcher has written in strong support of Justice Brennan and his activist judicial philosophy. In a 1991 law review article, he praised Justice Brennan for his, quote, ''sense that the Constitution has meaning beyond the bare words of the text.'' He stated that some parts of the Constitution are, quote, ''almost constitutional truths in search of a text.'' He even approvingly quoted Justice Brennan's famous statement regarding Constitutional interpretation that, quote, ''the ultimate question must be what do the words of the text mean in our time.''

I firmly believe that the role of the judge is to interpret the law as the legislature intended, not to interpret the law consistent with the judge's public policy objectives. A judge does not make the law and is not a public policy maker. Professor Fletcher has been critical of the modern Supreme Court for its lack of political and governmental experience. In a 1987 law review article, he criticized recent landmark Supreme Court decisions on the separation of powers, saying the Court, quote, ''read the Constitution in a literalistic way to upset what the other two branches had decided, under the political circumstances, was the most workable arrangement.'' What is convenient in a political sense is irrelevant to a proper interpretation of the Constitution.

Moreover, Professor Fletcher has been nominated to the Ninth Circuit, and the Supreme Court routinely finds it necessary to reverse the Ninth Circuit. Indeed, in recent years, the Ninth Circuit has been reversed far more often than any other circuit. This trend will be corrected only if we confirm sound, mainstream judges to this critical circuit. I do not see that problem abating with nominees such as the one here, who even characterizes himself as being in his words, quote, ''fairly close to the mainstream.''

If Professor Fletcher is confirmed, I sincerely hope that he turns out to be a sound, mainstream judge and not a judicial activist from the left. I hope he helps to improve the dismal reversal rate of the Ninth Circuit.

However, we must evaluate judges based on the record we have before us. As I read Professor Fletcher's record, it does not convince me that he is an appropriate addition to the Court of Appeals. Therefore, because of my interpretation of the anti-nepotism statute and my concerns about judicial activism, I cannot support this nominee.

Mr. BAUCUS. Mr. President, I rise today to express my strong support for the nomination of William A. Fletcher to the U.S. Court of Appeals for the Ninth Circuit. Mr. Fletcher has proven himself superbly qualified for this position. A man of deep personal integrity, of sound judgement and a well respected legal scholar, Mr. Fletcher's nomination is certainly deserved and given that five judgeships remain vacant on the Ninth Circuit, his confirmation is well past due.

Mr. Fletcher's qualifications for this position are truly remarkable, Mr. President. He is a graduate of Harvard University and a Rhodes Scholar. William Fletcher earned his law degree from Yale, clerked at the United States Supreme Court, and has dedicated himself to a career of exploring legal theories as a professor and as an esteemed author.

Fletcher has been a professor at Boalt Hall since 1977 where he was awarded the Distinguished Teaching Award in 1993, an honor bestowed annually upon the five finest faculty members on the Berkley campus. Fletcher has also served as a visiting professor at the University of Michigan, Stanford Law School, Hastings College of Law, and the University of Cologne, and he has served as an instructor at the Salzburg Seminars.

Professor Fletcher's scholarly works include influential law review articles that have been immensely useful to both academics and practitioners. His works include published articles relating to the topics of civil procedure and federal courts, such as standing and the Eleventh Amendment, sovereign immunity and federal common law. In exploring the law and authoring these esteemed articles, Fletcher demonstrates his uncanny powers of analysis and steadfast objectivity.

In addition to my support Mr. President, William Fletcher's nomination enjoys broad support across political and ideological spectrums. He has been endorsed not only by an extensive array of his peers throughout the country, but also by a number of non-partisan observers and the American Bar Association, all of whom comment on the centrist, pragmatic approach he brings to the law. I am completely confident that Mr. Fletcher is the best possible candidate to the U.S. Court of Appeals for the Ninth Circuit.

So again Mr. President I would like to express my unequivocal support for William A. Fletcher as a highly qualified nominee to the U.S. Court of Appeals for the Ninth Circuit. I will conclude by quoting one of Mr. Fletcher's colleagues in saying ''If Willy Fletcher presents a problem [for the Judiciary Committee], there is no academic in America who should get a court appointment.''

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

The PRESIDING OFFICER. The Senator from Alabama has 6 minutes 40 seconds.

Mr. SESSIONS. Mr. President, there have been several speakers, including the Senator from Ohio and the Senator from Missouri, who have talked about the unique circumstances that are at foot here in dealing with the Ninth Circuit, and that we have a responsibility and a duty to make sure that we use our advise and consent authority wisely to improve the courts in America, and the Ninth Circuit is in need of, severe need of reform. It has been reversed in nearly 90 percent of its cases in the last 2 years—an unprecedented record that no circuit, to my knowledge, has even been suggested to have approached. The New York Times has referred to the Ninth Circuit Court of Appeals—which includes California and most of the west coast—and they said that a majority of the Supreme Court considers the Ninth Circuit a rogue circuit.

Now, some Senators suggest this is politics. Mr. President, I was elected by the people of my State to come here, and one of my duties is to evaluate Federal judges. I have affirmed and voted for the overwhelming majority of the Clinton nominees. I am willing to vote on this one. I have agreed to this nomination to come up and be voted on. But I want to have my say. I am concerned about this. I don't think that is politics.

As a matter of fact, let me quote to you from an article that Mr. Fletcher, the nominee, wrote a few years ago referring to the confirmation process involving Justice Clarence Thomas. What he said about the role of the Senate was this:

> Does the Senate have the political will—

That is us, me—

> to come down here and do the unpleasant duty of standing up and—

And talk about a gentleman who is charming, I am sure, and a nice fellow—

> talking about the unpleasant fact that he may not be the right nominee for the court?

He said:

> Does the Senate have the political will to insist that its constitutional advise and consent role become a working reality?

Mr. President, I have been here 2 years. One nominee withdrew before a vote, and we hadn't voted on any nominees. So we are not abusing our advise and consent power. As a matter of fact, I don't think we have been aggressive enough in utilizing it to ensure that the nominees to the Federal bench are mainstream nominees.

That is what we are talking about. He said, ''The Senate must be prepared to persuade. . . .'' This is Mr. Fletcher, who wrote this article. He is an academic, a professor, so he can sit around and find time to write these articles. We are not dealing with a proven practitioner, a person who served as a State or Federal judge, as we normally have. We are dealing with a nominee who has never practiced law in his life, has never tried a lawsuit, has never been in court and had to answer to a judge. Yet, he is going to be superintending the largest Federal circuit in the country. This is what he wrote:

The Senate must be prepared to persuade the public that an insistence on full participation in choosing judges is not a usurpation of power.

That is all we are doing. We are telling the President of the United States—and it is going to get more serious with additional nominees to this circuit—that we have to have some mainstream nominees. We have to do something about the Ninth Circuit, where 27 out of 28 cases were reversed in the term before last, and 13 out of 17 were reversed in the last term. That has been going on for 15 or 20 years. It is not even a secret problem anymore. It is an open, acknowledged problem in American jurisprudence. The U.S. Supreme Court is trying to maintain uniformity of the law.

For example, this summer, the Ninth Circuit was the only circuit to rule that the Prison Litigation Reform Act—passed here to improve some of the horrendous problems we were having with litigation by prisoners—was unconstitutional. Every other circuit that addressed the issue upheld the constitutionality of this act, including the First, Fourth, Sixth, Eighth, and Eleventh Circuit have affirmed the constitutionality of the Prison Litigation Reform Act. But not the Ninth Circuit. It is out there again.

As a matter of fact, I have learned that they utilize an extraordinary amount of funds of the taxpayers on defense of criminal cases. In fact, they have approved one-half of the fees for court-appointed counsel in the entire United States. There are 11 circuits in America. This one is the biggest, but certainly not more than 20, 25 percent of the country—probably less than that. They did half of the court-appointed attorney's fees because they are turning criminal cases into prolonged processes where there is no finality in the judgment—a problem that America is coming to grips with, the Supreme Court is coming to grips with, and the people of this country are coming to grips with. That is just an example of what it means to have a problem there.

Mr. President, I will just say this: This nominee was a law clerk, in addition to never having practiced, and he clerked for Justice Brennan, who was widely recognized as the epitome of judicial activism. His mother is on this court today, the Ninth Circuit, and she is recognized as the most liberal member of the court. Perhaps one other is more liberal. It is a problem we have to deal with.

I would like to mention this. In talking about the confirmation process, he made some unkind and unwise comments about Justice Thomas in a 1991 article. He questioned, I think fundamentally, the integrity of Justice Thomas. What kind of standard do we need to apply here? He believed a very high standard. This is what he said:

Judge Clarence Thomas did have a record, although not distinguished enough to merit President Bush's accolades. But Thomas backed away from that record, pretending he meant none of what he had written, and said that he never talked about Roe v. Wade with anyone and, of course, he didn't talk dirty to Anita Hill either.

The PRESIDING OFFICER. All of the Senator's time has expired.

Mr. SESSIONS. Mr. President, I think that was an unkind comment. I don't believe he is the right person for this circuit, and I object to his nomination.

I yield the floor.

Mr. LEAHY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 11 minutes 4 seconds.

Mr. LEAHY. Mr. President, Mr. Fletcher has waited a long, long time—nearly 3½ years—for this moment. He has been voted out of the Senate Judiciary Committee by an overwhelming margin twice. He is strongly supported by both Republicans and Democrats in this body. He has waited long enough.

I yield back the remainder of my time so we can go to a vote on Professor Fletcher.

The PRESIDING OFFICER. The question is on agreeing to the nomination. Are the yeas and nays requested?

Mr. LEAHY. Mr. President, I think the other side has forgotten to ask for the yeas and nays.

To protect them, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of William A. Fletcher, of California, to be a United States Circuit Judge for the Ninth Circuit? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 309 Ex.]

YEAS—57

Akaka	Bingaman	Bumpers
Baucus	Boxer	Byrd
Bennett	Breaux	Chafee
Biden	Bryan	Cleland
Collins	Inouye	Moseley-Braun
Conrad	Jeffords	Moynihan
D'Amato	Johnson	Murray
Daschle	Kennedy	Reed
Dodd	Kerrey	Reid
Domenici	Kerry	Robb
Dorgan	Kohl	Rockefeller
Durbin	Landrieu	Roth
Feingold	Lautenberg	Sarbanes
Feinstein	Leahy	Smith (OR)
Ford	Levin	Specter
Gorton	Lieberman	Stevens
Graham	Lugar	Torricelli
Harkin	Mack	Wellstone
Hatch	Mikulski	Wyden

NAYS—41

Abraham	Frist	McConnell
Allard	Gramm	Murkowski
Ashcroft	Grams	Nickles
Bond	Grassley	Roberts
Brownback	Gregg	Santorum
Burns	Hagel	Sessions
Campbell	Helms	Shelby
Coats	Hutchinson	Smith (NH)
Cochran	Hutchison	Snowe
Coverdell	Inhofe	Thomas
Craig	Kempthorne	Thompson
DeWine	Kyl	Thurmond
Enzi	Lott	Warner
Faircloth	McCain	

NOT VOTING—2

Glenn	Hollings

The nomination was confirmed.

Mr. WARNER addressed the Chair.

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

If the Senator will withhold for one moment.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate now confirms Executive Calendar Nos. 803, 804, 808, en bloc.

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

H. Dean Buttram, Jr., of Alabama, to be United States District Judge for the Northern District of Alabama.

Inge Prytz Johnson, of Alabama, to be United States District Judge for the Northern District of Alabama.

Robert Bruce King, of West Virginia, to be United States Circuit Judge for the Fourth Circuit.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I would like to address the Senate.

The PRESIDING OFFICER. The Senator from Virginia cannot be heard. Please come to order.

The Senator from Virginia.

Mr. WARNER. Mr. President, I see our distinguished colleague from West Virginia has risen.

May I retain the floor?

Mr. BYRD. Absolutely. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, has the motion been made to reconsider the vote by which the nominees were confirmed?

The PRESIDING OFFICER. By the agreement, that has been laid on the table and the President is to be immediately notified of the Senate's action.

Mr. BYRD. Very well, has the Senate returned to legislative session?

The PRESIDING OFFICER. It has not.

Mr. WARNER. Mr. President, I wish to address the Senate.

Mr. BYRD. Mr. President, somebody should ask the Senate return to legislative session.

Mr. WARNER. Mr. President, I wish to accommodate the Senate. I understand that there is a need to move to something very quickly to the House of Representatives. Am I correct? If so, I would be happy to yield the floor, with the understanding at the conclusion of that I could regain recognition.

Mr. BYRD. Is this a legislative matter or an executive matter?

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask the Senate return to legislative session.

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

The Senator from Utah.

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR FRIDAY, OCTOBER 9, 1998

Mr. JEFFORDS. I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. on Friday, October 9. I further ask that the time for the two leaders be reserved. I further ask there be 15 minutes to be equally divided between Senators NICKLES and LIEBERMAN prior to the vote in relation to H.R. 2431.

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

PROGRAM

Mr. JEFFORDS. For the information of all Senators, when the Senate reconvenes on Friday, a rollcall vote will occur at 9:45 on passage of H.R. 2431, the religious freedom bill. Following that vote, the Senate may consider any available appropriations conference reports and any other items cleared for action. Therefore, votes can be expected to occur throughout the day and into the evening on Friday in an effort to consider the continuing resolution and any other legislative or Executive Calendar items.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. JEFFORDS. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 9:20 p.m., recessed until Friday, October 9, 1998, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 8, 1998:

FEDERAL MARITIME COMMISSION

JOHN A. MORAN, OF VIRGINIA, TO BE A FEDERAL MARITIME COMMISSIONER FOR THE TERM EXPIRING JUNE 30, 2000, VICE JOE SCROGGINS, JR., TERM EXPIRED.

DEPARTMENT OF LABOR

KENNETH M. BRESNAHAN, OF VIRGINIA, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF LABOR, VICE EDMUNDO A. GONZALES, RESIGNED.

DEPARTMENT OF THE TREASURY

TIMOTHY F. GEITHNER, OF NEW YORK, TO BE AN UNDER SECRETARY OF THE TREASURY, VICE DAVID A. LIPTON.

GARY GENSLER, OF MARYLAND, TO BE AN UNDER SECRETARY OF THE TREASURY, VICE JOHN D. HAWKE, JR.

EDWIN M. TRUMAN, OF MARYLAND, TO BE A DEPUTY UNDER SECRETARY OF THE TREASURY, VICE TIMOTHY F. GEITHNER.

ENVIRONMENTAL PROTECTION AGENCY

TIMOTHY FIELDS, JR., OF VIRGINIA, TO BE ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE, ENVIRONMENTAL PROTECTION AGENCY, VICE ELLIOTT PEARSON LAWS, RESIGNED.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 8, 1998:

THE JUDICIARY

WILLIAM A. FLETCHER, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT.

H. DEAN BUTTRAM, JR., OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA.

INGE PRYTZ JOHNSON, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA.

ROBERT BRUCE KING, OF WEST VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT.

WITHDRAWAL

Executive message transmitted by the President to the Senate on October 8, 1998, withdrawing from further Senate consideration the following nomination:

FEDERAL MARITIME COMMISSION

JOHN A. MORAN, OF VIRGINIA, TO BE A FEDERAL MARITIME COMMISSIONER FOR THE TERM EXPIRING JUNE 30, 2001, VICE MING HSU, TERM EXPIRED, WHICH WAS SENT TO THE SENATE ON OCTOBER 5, 1998.

EXTENSIONS OF REMARKS

A TRIBUTE TO SERGEANT ARTHUR EUGENE HIBBETTS

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. LEWIS of California. Mr. Speaker, I would like to bring to your attention today the outstanding and dedicated career of Sergeant Arthur Eugene Hibbetts of Barstow, CA. Sergeant Hibbetts is retiring from the Barstow Police Department after a long and distinguished career with the City of Barstow.

Arthur Hibbetts has served the Barstow Police Department for 32 years. He was hired on October 31, 1966 and will retire officially on October 31, 1998. He served as a police patrol officer from 1969 to 1974 and focused on undercover and general investigation work as well as traffic accident investigation. In 1974 he served as a detective and focused on all major crimes including homicide, robbery, burglary, narcotics, theft and fraud. Later that same year, he became the patrol sergeant and served as the watch commander and supervisor of patrol officers. In 1986, Sergeant Hibbetts was promoted to detective sergeant and served as the supervisor of detective and the clerical staff of the investigation division. In 1989, he became patrol traffic sergeant and has served since then as the watch commander and supervisor of the uniform patrol and traffic program.

Sergeant Hibbetts received his education at Barstow Community College, the San Bernardino County Sheriff's Academy, and the FBI National Academy. Over the years, Sergeant Hibbetts has received extensive police training from numerous law enforcement organizations and has received professional certification from the FBI and the California Commission on Peace Officer Standards and Training.

Mr. Speaker, please join me and our colleagues in recognizing the incredible contributions and achievements of this remarkable man. Sergeant Hibbetts has served the City of Barstow for 30 years with distinction and honor. I know that the entire City of Barstow is proud of his fine work and many achievements. It is only fitting that the House of Representatives pay tribute to him today.

HOMETOWN HERO: COACH BILLY BOB EVANS

HON. PETE SESSIONS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. SESSIONS. Mr. Speaker, in a year of world-breaking home runs, it is easy to lose sight of record setters in our own hometowns. Therefore, I rise in recognition of a Texas hometown hero, Coach Billy Bob Evans, who has been setting records of his own for more than four decades. He is a role model with a unique coaching style and strong leadership for others to follow.

Coined the Millennium Man, Coach Evans has just won his 1000th girls volleyball game at Leon High School, defeating North Zulch 15–0, 15–1. Mr. Evans is the first coach in the entire state of Texas to reach that milestone and only the second in the Nation. His career win/loss record is 1001 to 174.

As coach of Leon's Lady Cougars, Mr. Evans has spent 43 years coaching three generations of Leon athletes. Following his first coaching job for boys and girls basketball at Fair Oaks High School, Mr. Evans returned home to Jewett. In 1954, Mr. Evans became the coach of boys and girls' athletics at Jewett-Marquez Consolidated, now Leon High School.

As Leon's only girls volleyball and basketball coach, Mr. Evans has guided his Lady Cougars through 18 state volleyball tournament appearances, 8 state championships, with his most recent title in 1991. He has won district in volleyball for the past 25 consecutive years.

Billy Bob Evans is part of Texas history. Mr. Evans says there is no special formula for his success and believes it takes more than talent to build a good athletic program. In his own words, Coach Evans says it takes determination, focus, and technique to form a winning team.

I applaud Billy Bob Evans for his commitment to students and their ability to succeed. I want him to know that this Congressman and the people of the Fifth District of Texas are honored to be part of his legendary career and we wish him much success in his years ahead.

SUPPORT FOR INTERNATIONAL CENTERS FOR ENVIRONMENTAL SAFETY

HON. MICHAEL D. CRAPO

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. CRAPO. Mr. Speaker, I rise to express my strong support for the establishment of International Centers for Environmental Safety (ICES). The United States Department of Energy (DOE) and the Russian Ministry of Atomic Energy are currently responsible for overseeing components of the world's largest stockpiles of nuclear weapons, materials, and infrastructures. It is within the responsibilities of these two agencies to address the environmental impacts of nuclear activities resulting from the cold war. It is my understanding that these two agencies have recognized their responsibilities and are discussing the formation of ICES to address these important areas of responsibility.

The establishment of ICES enjoys strong support among DOE officials and representatives in the field. The primary mission of ICES would be to resolve environmental issues associated with the production and management of nuclear weapons materials, decontamination and decommissioning of nuclear facilities, and restoration of associated sites. ICES would be particularly helpful in assisting Russia decontaminate and decommission its obsolete nuclear submarine fleet, especially its spent nuclear fuel. The centers will draw upon the wealth of knowledge, expertise and technologies within the existing scientific infrastructures to accomplish these objectives.

In March of 1998, Russian Minister Adamov proposed to former Secretary of Energy Pena that ICES be established in the United States and Russia. Minister Adamov proposed that these centers be modeled after the International Nuclear Safety Centers that were established under former Secretary O'Leary and former Minister Mikhailov in January, 1996. Minister Adamov suggested that the Idaho National Engineering and Environmental Laboratory (INEEL) and the Russian Research and Development Institute of Power and Engineering serve as the host sites for the centers. Subsequent discussions have been held between Minister Adamov and Secretary Richardson. I agree that the INEEL is the optimal site for this new mission because of its facilities and technical expertise working with spent nuclear fuel and other radioactive materials.

Mr. Speaker, I urge Congress to support DOE's efforts to deal with the important environmental impacts associated with the cold war and to support the creation of ICES.

TRIBUTE TO THE HONORABLE JOSEPH M. McDADE, MEMBER OF CONGRESS

SPEECH OF

HON. JOE SKEEN

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 1, 1998

Mr. SKEEN. Mr. Speaker, I rise today to pay special recognition to the gentleman from Pennsylvania (Mr. McDADE) who announced retirement from Congress at the end of the 105th Congressional session earlier this year.

I am pleased to have served with Chairman McDADE throughout my career in the House of Representatives. Working together, we have served as members of the minority and majority party in Congress and have always held principle over politics.

We're going to miss Mr. McDADE next session. Throughout his distinguished 36-year career in the House of Representatives, he served his constituents from Central Pennsylvania and the United States with honor and distinction.

I was especially grateful to serve with Mr. McDADE on the House Appropriations Committee, in particular, the House Interior Appropriations Subcommittee and the National Security Appropriations Subcommittee. I've always appreciated his easy-going style and his

willingness to roll up his sleeves and get to work resolving many of the nation's problems that face lawmakers. He is a man of his word and his character defines the meaning of integrity.

As the senior Republican member of the House Appropriations Committee, JOE MCDADE led the fight for a strong national defense. As the ranking republican of the Defense Subcommittee since 1985, Mr. MCDADE has been a key architect of the annual defense and national security legislation during much of the strengthening of the military during the 1980s. He played a key role in crafting compromises which preserved weapons programs and gave the United States leverage in negotiating arms control treaties like the START treaty with the Soviet Union and the 1989 United Nations Agreement to totally eliminate chemical weapons by the year 2000. He has supported military programs which emphasize a high-quality force, with emphasis on training and readiness for combat.

He also served the House of Representatives with distinction as the Chairman of the House Appropriations Subcommittee on Energy and Water Development, which has jurisdiction over most programs of the Department of Energy, Army Corps of Engineers Civil Works programs, the Bureau of Reclamation, the Nuclear Regulatory Commission, the Defense Nuclear Facilities Safety Board, and several other agencies.

On the Interior Appropriations panel, I was proud to work with Congressman MCDADE in helping our nation address national energy problems. Because of his work promoting parks and recreation, he has been honored by the National Parks and Recreation Association.

Mr. MCDADE served from 1978 to 1991 as the top-ranking Republican on the Small Business Committee. On the Small Business Committee, Congressman MCDADE focused on measures to stimulate the nations small businesses and industries, and to create new opportunities for small businesses to compete in the international marketplace. Over 98 percent of New Mexico's businesses are classified as small businesses, and many of these owners are extremely grateful for the Congressman's positive work on their behalf.

I wish Mr. MCDADE and his family all the best and look forward to his continuing dialogue and conversations with members of Congress who need advice from time to time in addressing and resolving the challenges that face our nation.

THREAT OF NUCLEAR MISSILE ATTACK

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. BEREUTER. Mr. Speaker, this Member would ask his colleagues to consider carefully the following editorial from the October 6, 1998, edition of the Norfolk Daily News, entitled ''Defense System is Needed in U.S.''

[From Norfolk Daily News, Oct. 6, 1998]

DEFENSE SYSTEM IS NEEDED IN U.S.

1972 TREATY DOESN'T BAR UNITED STATES FROM DEVELOPING ANTI-MISSILE WEAPONS

A bipartisan commission headed by Donald Rumsfeld, a former U.S. Secretary of Defense, recently concluded that nuclear missiles from rogue nations would strike American cities with ''little or no warning'' in just a matter of a few years.

At the same time, U.S. intelligence agencies are saying that the United States has nothing to worry about from such missile attacks.

What is one to believe?

The Heritage Foundation, a Washington-based public policy research institute, thinks Americans would be wise to heed the findings of the Rumsfield commission and take the steps necessary to ensure the United States has an effective missile defense system. We agree.

The Soviet Union may be no more, but the threat of a missile attack on the United States is as real as ever. China is a bona fide nuclear power with missiles already aimed at the United States, and India and Pakistan have detonated nuclear devices as well. In addition, North Korea and Iran have been developing missiles that soon may be able to reach the United States. And a number of countries already possess missiles capable of striking U.S. allies and troops stationed abroad.

All of this prompts Edwin Feulner, president of Heritage Foundation, to make two points:

1. Those who argue that the 1972 ABM Treaty bars the United States from having a military defense system are mistaken. The treaty, which the United States signed with the Soviet Union, was designed to prevent the deployment of missile defenses. But the Soviet Union no longer exists. That makes the treaty null and void.

2. A missile defense system doesn't need to spur flashbacks of Star Wars and President Reagan's Strategic Defense Initiative that was proposed in 1983. Since then, defense experts have been able to devise an effective missile defense system that could be operational simply by upgrading the U.S. Navy's existing fleet of guided-missile cruisers.

Those two points should help further the cause of establishing a missile defense system. For if even one nuclear missile reached the United States, millions could die within minutes. As Mr. Feulner has said, building such a defense system is not just a defense consideration, it's a moral imperative.

TRIBUTE TO SISTER IRENE KRAUS

HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. LEVIN. Mr. Speaker, I rise today to consecrate the memory of a woman whose life was spent treating the sick in my state of Michigan and throughout the nation, Sister Irene Kraus, a Daughter of Charity of St. Vincent de Paul.

Sister Irene was a pioneer in the health care industry. She was the first woman to chair the American Hospital Association, she also chaired the Catholic Health Association and was inducted into the Healthcare Hall of Fame of the American Hospital Association. The number of honors bestowed upon this extraordinary woman are too great to list in full. Sister Irene's many accolades include: the American College of Healthcare Executives Gold Medal Award for Excellence in Hospital Administration, the B'nai B'rith International National Health Care Award, and the American Hospital Association Distinguished Service Medal.

I became personally acquainted with Sister Irene while serving on the Lay Advisory Board at Providence Hospital in Southfield, Michigan. As President and Chief Executive Officer of Providence Hospital, Sister Irene provided the ladership and vision necessary to implement a health care policy and value system based on respect, advocacy for the poor, quality care, simplicity and inventiveness. It was this literally divine combination that made Southfield's Providence Hospital, and the many other institutions guided by her hand, so valuable to their respective communities.

Underlying her many professional accomplishments, however, was her ability to look beyond organizational structures, to recognize every individual's need for medical and mental health care, and find practical avenues toward prevention and treatment. She did not hesitate to seek answers beyond the conventional wisdom of the day. Her combination of functional command, common sense and diplomacy often persuaded her colleagues to support her ground-breaking approach to policy.

Her rare combination of compassion, clear thinking and spirited leadership will be sorely missed by all those whose lives she has touched. Our family will miss her as a person whom we had the privilege of knowing and working with; like with so many others, she left an indelible imprint on our lives.

On Friday, October 9, a Memorial Service will be held to honor Sister Irene at Providence Hospital, Southfield, Michigan. Only the session in Congress will prevent my joining in this observance. I will be there fully in spirit.

INTRODUCTION OF THE AUTISM STATISTICS, SURVEILLANCE, RESEARCH, AND EPIDEMIOLOGY ACT OF 1998 (ASSURE)

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. SMITH of New Jersey. Mr. Speaker, today I am introducing legislation to improve the quality of research on pervasive developmental disorders like autism. My legislation—The Autism Statistics, Surveillance, Research, and Epidemiology Act of 1998 (ASSURE)—will provide critical support for the Centers of Disease Control and Prevention's (CDC) ongoing efforts to better quantify the incidence and prevalence rates of autism and its related developmental disorders.

This legislation was crafted in close cooperation with the National Alliance for Autism Research (NAAR), the developmental disabilities experts at CDC, as well as with service providers from my district. It is an important health care and medical research bill which I urge all members to support.

According the Centers for Disease Control and Prevention, ''autism is a serious life-long developmental disability characterized by impaired social interactions, an inability to communicate with others, and repetitive or restrictive behaviors.'' It is estimated that autism affects one out of every 500 children, although precise rates are unknown. There is also a general consensus that autism rates seem to be increasing, although it is not known whether these increases represent a better understanding the developmental disability (i.e., better diagnosis), or an actual increase in developed cases of autism.

The story behind the creation of this legislation is in many ways illustrative of why we need to pass and enact the ASSURE act when Congress reconvenes next year. For it was only after I had a meeting with a pair of courageous parents of autistic children in Brick Township that I realized the pressing need for better autism research. Mr. and Mrs. William and Bobby Gallagher, the parents of two beautiful children with autism, met with me in the summer of last year to share their concerns that Brick Township seemed to have an abnormally high number of children diagnosed with autism. After presenting me with preliminary data suggesting that as many as 27 children may have been diagnosed with autism in Brick over the last decade, I relayed their concerns personally to Len Fishman, Commissioner of New Jersey's Department of Health and Senior Services. I asked him to initiate a preliminary inquiry to determine if an autism ''cluster'' investigation was warranted.

Commissioner Fishman was very receptive to the concerns of the Brick parents, particularly since the New Jersey Department of Health and Senior Services (NJDHSS) and the Ocean County Department of Health, in conjunction wit the federal Agency for Toxic Substances and disease Registry (ATSDR), have been conducting a very comprehensive investigation of a cancer cluster in Toms River, New Jersey.

However, after a few weeks of preliminary research by state officials, it became apparent that the current level of scientific knowledge in the United States about autism was inadequate and no one knew for certain what the national rate of autism was. Although there were rough estimates of autism rates from studies in foreign countries, CDC and the NJDHSS did not have enough information that an epidemiologist could use to determine if the alleged autism ''cluster'' in Brick was a real public health problem or an illusion of chance.

As a result, an intensive effort by CDC and ATSDR is underway to try to derive national autism rates and try to determine if an autism ''cluster'' exists in Brick. The study is one of the first of its kind ever undertaken in the United States, and the results of the investigation will prove invaluable for other communities that may be affected by similarly high numbers of autism cases.

That is where the ASSURE act comes in. Under my ASSURE legislation, CDC will uncover and monitor the prevalence of autism as a national level by establishing between three and five ''Centers for Research in Autism Epidemiology'' across the country. These Centers would conduct population-based surveillance and epidemiologic studies of autism. Periodic screenings of the population (5 to 7-year old children) would be undertaken to examine prenatal, perinatal, and postnatal factors that contribute to autism development.

These Centers would combine data from multiple sites to gain a better understanding of how autism differs from other, related, developmental disabilities and disorder. Because autism is suspected to be caused by a combination of both genetic and environmental factors, the ASSURE legislation would help CDC track the trends of autism and determine which factors are responsible for the apparent rise in autism cases nationwide.

More importantly, the collaborative efforts by CDC and State health departments will help public health officials to possibly prevent autism once scientists better understand which environmental exposures are most likely to cause children to develop autism in the womb. The idea is that each Center established under this legislation would develop a certain niche of autism expertise. Such areas could include: specific genetic markers, early prenatal maternal drug and other exposures; and investigating other autism spectrum disorders.

Mr. Speaker, CDC has already established a pilot program—an autism epidemiology center—near Atlanta, Georgia. The limited but promising results from this initiative points to the fact that current understanding of autism is woefully inadequate and that better surveillance and monitoring of developmental disabilities like autism are critical to providing answers and hope to the parents of nearly 500,000 autistic persons in America.

A TRIBUTE TO THE HONORABLE JERRY SOLOMON

SPEECH OF

HON. JOE SKEEN

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 6, 1998

Mr. SKEEN. Mr. Speaker, I rise today to pay special recognition to the gentleman from New York (Mr. SOLOMON) who announced retirement from Congress at the end of the 105th Congressional session earlier this year.

I am pleased to have served with Chairman SOLOMON throughout most of his career in the House of Representatives. Working together, we have served as members of the minority and majority party in Congress and have always held principle over politics.

We're going to miss Mr. SOLOMON next year. Under his tenure as Chairman of the Rules Committee since 1995, he has conducted himself and his panel with the utmost of duty and respect for all colleagues in the House of Representatives. Prior to being selected to serve as Chairman of the House Rules Committee in 1995, he served with distinction as a member of the House Foreign Affairs Committee and the House Veterans Affairs panel.

I would also like to commend Mr. SOLOMON for his steadfast support and active leadership for a strong national defense throughout his entire membership in the House of Representatives. We're all proud of his service with the United States Marines during the Korean War.

Prior to coming to Congress, Mr. SOLOMON served five years as supervisor of the Town of Queensbury and five years as a Warren County legislator in the New York State Legislature, before being elected to Congress in 1978.

As an active member of the House Task Force on National Defense Policy, Mr. SOLOMON is the former chairman and is still a member of the Prisoners of War/Missing in Action Task Force. Since 1982, Congressman SOLOMON has served as a congressional delegate to the North Atlantic Assembly, the political arm of the NATO Alliance. Presently, he serves as Vice President of that Assembly.

I send my heartfelt thanks for your leadership in the House of Representatives and best wishes to you and your family during your days of retirement.

TRIBUTE TO THE HONORABLE SIDNEY R. YATES

SPEECH OF

HON. JOHN JOSEPH MOAKLEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 1, 1998

Mr. MOAKLEY. Mr. Speaker, I rise today to pay tribute to my colleague, a truly great Member of Congress, SID YATES, who will be leaving this House after forty-eight years of distinguished service.

SID began serving his country like I did, the Navy in World War II. He was then elected as the Assistant Attorney General and as the commerce commissioner of the State of Illinois.

First elected to Congress in 1948, before many of us had even started our political careers, SIDNEY served proudly through the 87th Congress until former president John Kennedy appointed him as ambassador to the United Nations. SIDNEY resigned his U.N. position shortly afterwards to regain the title he truly loved, and will hold until next January, Congressman from the ninth congressional district of Illinois.

SID is an exemplary Member of the House Appropriations Committee and a great cardinal. As the Chairman and later the Ranking Member of the Subcommittee for the Department of the Interior and related agencies, he has single-handed done more to protect the National Endowment for the Arts than just about any member of this House. He kept the NEA going during the late eighties and early ninties and it is thanks to him that arts in America is what it is today.

As a member on the Subcommittee for the Department of Interior and related agencies, SID has gotten funding for dozens of national parks, seashores, and wildernesses.

All of us here in Congress will miss SID as our champion for the arts and for the protection of the environment. His successor will have a hard time living up to the legend of SID YATES. His calm, reasoned thinking and stalwart defense of the environment will be long remembered after his retirement.

Mr. Speaker, it has been a pleasure and an honor to serve with SIDNEY YATES and I wish him a long and happy retirement.

PERSONAL EXPLANATION

HON. LUCILLE ROYBAL-ALLARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Ms. ROYBAL-ALLARD. Mr. Speaker, in order to attend the funeral services for former Los Angeles Mayor Tom Bradley, I was not present for roll call votes 480, 481, and 482. Had I been present, I would have voted nay on roll call 480, and yea on roll call votes 481 and 482.

PRIVATE RELIEF FOR ROBERT ANTHONY BROLEY

HON. BILL McCOLLUM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. MCCOLLUM. Mr. Speaker, today I am introducing a bill for the relief of Robert Anthony Broley. After enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Immigration Judges lost most discretion in granting suspension of deportation of certain criminal aliens. Any relief must be sought from Congress. The case of Robert Anthony Broley is, in my opinion, sufficiently compelling to have Congress grant him relief from pending deportation.

Robert is the son of Robert M. Broley and Barbara Broley. Mrs. Broley was born in Canada but is a U.S. citizen, having been naturalized in 1962. Mr. Broley is also a naturalized U.S. citizen. The son, Robert Anthony Broley, was born in Canada in 1966 and remains a Canadian citizen.

Robert Anthony Broley entered the United States with his parents at the age of 2 in November 1968. He lived with his parents in the United States until they accepted employment in Canada when he was nine. Robert Anthony Broley was admitted again in October, 1978 and, for the most part, he has remained here since. He has an American citizen son, Matthew.

Robert Anthony Broley had personal problems beginning with his senior year in high school. He stole checks from his parents in 1990. In 1992 he was convicted of Driving Under the Influence. He stole furniture from his family in 1993 in order to sell it for cash. His parents felt the need to turn him in to the authorities in order to help Robert in the long run. He served 5 months in prison and was released in October, 1993 and given probation, which he violated by returning to Canada.

His father finally convinced Robert Anthony Broley to return to the United States in order to accept the consequences of his actions. While attempting to enter the United States to turn himself in for violating his probation, he was apprehended and is currently serving a term for parole violation with a release date of March 20, 1999. Once released, he is deportable under Section 212(a) and 237(a) of the Immigration and Naturalization Act (as amended by IIRIRA).

While serving time in prison, Robert was involved in a very serious accident that has left his face permanently disfigured. His family feels that their son has completed changed and has suffered for his crimes and that his deportation will hurt Matthew, Robert's American citizen son.

In view of Robert Anthony Broley's situation, insofar that he was arrested because his family felt it would be for his own good, I feel great sympathy for his family's struggles. They never intended for him to be deported. Therefore, I am introducing a private relief bill on behalf of Robert Anthony Broley. I urge my colleagues to support this bill.

TIM LEE CARTER POST OFFICE BUILDING

SPEECH OF

HON. ED WHITFIELD

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, October 5, 1998

Mr. WHITFIELD. Mr. Speaker, I would like to thank my colleagues for their support of H.R. 3864, designating the Tim Lee Carter Post Office Building in Tompkinsville, Kentucky. My bill passed the House on a voice vote on October 5, 1998.

Former Congressman Tim Lee Carter was born in Tompkinsville, Kentucky, on September 2, 1910. He attended public schools and graduated from Western Kentucky State College in 1934 and from the University of Tennessee in 1937. He volunteered for military service during the Second World War and served forty-two months as a combat medic and a captain in the 38th Infantry Division. Following the war, Carter practiced medicine in Tompkinsville until 1964.

Tim Lee Carter served with distinction in the House of Representatives for 16 years representing the old 5th District of Kentucky. While in Congress, Carter was a tireless advocate for improvements to the schools, water systems, libraries, airports, roads, and recreation areas of his District. His proudest achievement was the passage of a law to provide for preventive medical care for poor children. In 1966, he gained national attention as the first Republican Congressman to seek a U.S. withdrawal from Vietnam, but he never wavered in his support for those soldiers and voted against cutting off funding for the troops.

Upon retirement, Tim Lee Carter returned to his farm on the Cumberland River with his wife Kathleen Bradshaw Carter and continued to practice medicine until his death in 1987 at the age of 76.

Tim Lee Carter is an outstanding example of the selfless public servant and I hope that the Senate moves expeditiously to pass this legislation before the end of the 105th Congress.

INTRODUCTION OF LEGISLATION TO CONSERVE, ENHANCE AND PROTECT AMERICA'S LANDS AND WILDLIFE FOR FUTURE GENERATIONS

HON. CHRISTOPHER JOHN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. JOHN. Mr. Speaker, I rise today to announce the introduction of a landmark piece of legislation that has been crafted by a bipartisan group of members wishing to see a more equitable and prudent use of revenues generated from federal outer continental shelf activities. The bill, entitled ''The Conservation and Reinvestment Act of 1998,'' (CARA) is the product of several months of discussions between Members of Congress, the States and the conservation community regarding a dependable source of funding for our nation's environmental needs. The proposal we introduce today reflects the wisdom of these discussions and is intended to serve as a starting point to launch a public debate on the merits of the idea underlying this legislation: that a portion of revenues derived from one of our nation's non-renewable resources should be reinvested back into our nation through conservation and recreation programs that will yield benefits today and in the future.

Generally speaking, the bill would dedicate sixty percent of the bonuses, rents and royalties from federal offshore oil and gas leases for conservation of wildlife and their habitats, for parks and recreation in urban and rural areas, and for impact aid for coastal states to mitigate the environmental and public service impacts of offshore oil and gas development. These monies would be classified as mandatory spending, thus ensuring a constant and dependable source of revenue for the conservation and community investments made possible by the legislation. While no budget offsets are contained in this bill, my colleagues and I are committed to working with members of the Budget and Appropriations Committees during the next several months to find acceptable offsets for what we believe to be a sound public policy initiative.

The benefits that would result from adoption of CARA are rivaled only by the dire need for such legislation. In Louisiana, we are experiencing a dramatic loss of over 35 miles per year of our coastline due to erosion and wetlands degradation. Meanwhile, as we watch our coastline erode, billions of dollars are extracted in federal mineral resources off our shores. Currently, fifty percent of the revenues derived from federal oil and gas activities onshore are shared with the host state. However, revenues paid from federal OCS production (beyond 8(g) activities) are not shared with adjacent states. The ''Conservation and Reinvestment Act of 1998'' will remedy this inequity by sharing an equitable portion of royalties derived from federal OCS production with all coastal states to meet the environmental challenges facing their coastlines.

To my constituents in Southwestern Louisiana, this proposal is all about fairness. Since the 1950's, Louisiana has served as the hub of the offshore oil and gas industry. To put this in perspective, in FY97, $3.2 billion of the roughly $4 billion of OCS revenues received by the federal government was generated off the coast of my home state. However, the development of these resources is unavoidably accompanied by environmental and public service impacts in the states that host the development of the OCS. By creating a coastal impact assistance fund, as envisioned in CARA, we can ensure that coastal estuaries and marshes nationwide remain ecologically and economically productive for many years to come. This is accomplished without creating an incentive for new oil and gas development and will have no impact on current OCS leasing moratoria or the President's Executive Order concerning outer continental shelf leasing.

Mr. Speaker, this bill benefits more than just our coastal states by guaranteeing a stable funding source for the Land and Water Conservation Fund (LWCF) at it's authorized level of $900 million. This dedicated funding would provide for both state and federal programs included in LWCF, and include important revenues for recreation projects through the Urban Parks and Recreation Recovery Program (UPARR). The benefits of these programs are enjoyed in all fifty states currently, but budgetary constraints have left them seriously

under funded in recent years as appropriators have tried to balance our federal budget. Our proposal breathes new life into these programs by ensuring that a constant source of funds will be available to our towns and states to meet their conservation and recreation needs.

Finally, to assist states in meeting the increased demand for funding programs used for non-game species of wildlife, our bill would reinvest ten percent of the revenues gained from OCS development into a new wildlife and education program. The funds would be distributed through the Federal Aid in Wildlife Restoration Fund, also known as Pittman-Robertson, which has been a model framework for wildlife conservation and recreation projects since its inception in 1939. However, unlike similar proposals that have been suggested to meet non-game wildlife needs, our proposal does not include a new excise tax on sporting goods to fund the program.

Mr. Speaker, the ''Conservation and Reinvestment Act of 1998'' creates a responsible framework for meeting current and future conservation needs that will yield environmental, recreational and economic benefits for all Americans. I realize that we have very little time remaining in this Congress, but I urge all of my colleagues to take a close look at this proposal and work with the cosponsors of this bill to improve upon it so that we can reintroduce, consider, and enact legislation during the 106th Congress.

CONGRESS UPHOLDING COMMITMENT TO VETERANS

HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. DREIER. Mr. Speaker, I believe that there is no better advocate for our nation's veterans than Vice Admiral James B. Stockdale. Throughout his military career and in his private life, Admiral Stockdale has tirelessly worked on behalf of those who served our country in the Armed Forces. While a prisoner of war in North Vietnam, Stockdale injured himself so that his fellow prisoners could escape torture and punishment. For his service to our country, Admiral Stockdale has been awarded two Purple Hearts, two Distinguished Flying Crosses, three Distinguished Service Medals, four Silver Stars and the Congressional Medal of Honor. In fact, he is the only three or four star officer in the history of the U.S. Navy to wear both aviator wings and the Congressional Medal of Honor.

In a recent speech on the steps of the U.S. Capitol, which I submit for the record, Admiral Stockdale urged Congress to uphold the nation's commitment to our veterans. Mr. Speaker, I believe that we have indeed heeded that advice. Last month, the House approved the Defense Authorization conference report which allows military retirees to join the Federal Employees Health Benefit Plan. Furthermore, yesterday the House approved the fiscal year 1999 VA/HUD Appropriations conference report, which provides $19 billion for veterans programs, $439 million more than was requested by President Clinton. In short, I believe that Congress is following Admiral Stockdale's leadership by approving legislation that honors those who valiantly served our country.

SPEECH DELIVERED BY VICE ADMIRAL JAMES B. STOCKDALE

THE CAPITOL STEPS, WASHINGTON, DC, SEPTEMBER 22, 1998

Thank you very much for that warm introduction and for the opportunity to join you here today.

Over the years, I have come to Washington many times for many reasons—but on this visit, we come together to focus the nation's attention on our responsibilities to the men and women who have nobly worn the uniform of their Country—the valiant Soldiers, Sailors, Marines, and Air Force personnel who have answered their Country's call to service.

In the history of this wonderful republic, we have celebrated those who have been willing to put their lives on the line—to pay the ultimate sacrifice to protect the ideals that made America great. To protect the basic freedoms that characterize the majesty of the American experiment in defining the relationship between citizens and their government.

As a nation, as a people, we have never hesitated to ask our fellow citizens to don the uniform of their country to fight for—to protect against forces detrimental to the interests of the United States. We have asked our sons and daughters to endure the horrors of war and to serve as agents of peace. We have, for 200 years, always asked, and they have always answered. Any alternative would be unthinkable. But an integral part of this bargain has been a fundamental understanding—a MORAL CONTRACT—that we will not turn away, we will not abrogate our obligations to them after they have done their part for us. For our ideals, and for the preservation of our great nation.

Now, we stand here together with the recognition that this sacred compact has been shattered. With a heavy heart, I have come to this place, to our nation's Capitol, to ask the Congress of the United States to honor America's traditional commitment—a hithertofore unquestioned commitment—to its military veterans.

For generations Presidents have approved the promise of free, lifetime medical care for military veterans. Legislative and administrative authority made these promises law. As far back as 1799, the U.S. Government offered free medical and hospital care to Seamen and Marines. In 1995 this all changed.

Now the government says that Veterans over the age of 65—we're talking about World War II and Korean Vets—are no longer eligible for treatment at military hospitals. Rather than fulfilling its historical contract with its fighting men and women, the Government now demands that these retirees must personally supplement Medicare benefits to obtain basic health care.

I am here today to carry this message for everyone who has worn the great uniform of the United States. To urge the Government to do the right thing for all of its retired military service personnel. Many of them are old. Many are sick, and many simply cannot afford to pay the costs of supplemental health care on military retirement pay.

A great American once said, ''Old soldiers never die—they merely fade away.'' I am confident that General Douglas MacArthur would agree with me that they should surely be allowed to ''fade away with dignity!''

Today, there are a million and a half retired military men and women, each with a dependent, 3 million all together, who simply cannot afford supplemental health insurance and are not receiving the benefit of the bargain—the bargain the United States Government made with them when they signed up to serve their Country. There are all too many heartbreaking examples of retired GI's who have had to sell their homes, liquidate their savings, or suffer the indignities of inadequate medical care because of the Government's current position. This is shameful. This is un-American. And this is totally unacceptable. I come to Washington to join you in asking our Congressional leaders—Senators Lott and Daschle, and Speaker Gingrich and Minority Leader Gephardt to right this wrong.

To enact legislation to provide lifetime retirement medical care for those Americans—and their dependents—who were willing to put their lives on the line for their Country. Over the last 200 years, America has asked and received so very much from its fighting men and women—now they are asking us for so little in return. For the opportunity to see a doctor. For medical treatment. For medicine.

As the richest, most powerful nation on Earth, I believe the United States of America can and should do the right thing for the very people who have suffered enormous sacrifice and burden to ensure the existence of a society we so enjoy—and a Country we so love.

I hope together, we can right this terrible wrong!

God Bless the United States of America, and God bless and protect the men and women of the United States military services. Thank you very much.

HONORING RICHARD EDLER

HON. JERRY WELLER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. WELLER. Mr. Speaker, I rise today to honor the work and dedication of Mr. Richard Edler, who retired after 35 yeas and 6 months of service from the U.S. Treasury Department—Internal Revenue Service Collection Division on August 28, 1998.

Mr. E., as he is lovingly called by his counterparts at the I.R.S., has made large contributions to the Internal Revenue Service. Over the 35 years, Richard has been a Revenue Officer, a Compliance Officer, and has held various volunteer assignments including being the employee coordinator for the flu shots at the Olympia field office.

Mr. E. has also done a lot to help out his coworkers during his time at the Internal Revenue Service. Richard was the only person who arrived at the office prior to 6 a.m. every morning. He was always there to make sure to inform the employees if the parking lot conditions was clear of snow or flooding during inclement weather.

Richard Edler's commitment and impact on the Internal Revenue Service, and his service to his coworkers is not only deserving of congressional recognition, but should serve as a model for other government employees to follow.

I urge this body to identify and recognize others in their congressional districts whose actions have so greatly benefited and elightened America's communities.

TRIBUTE TO IFAD'S TWO DECADES OF OPERATIONS: SMALL, EFFECTIVE INTERNATIONAL FINANCIAL INSTITUTION TURNS TWENTY

HON. TONY P. HALL

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. HALL of Ohio. Mr. Speaker, this year an extraordinary organization, the International Fund for Agricultural Development (IFAD), celebrates twenty years of successful work to help the rural poor. I was pleased to recently participate in a workshop marking this milestone, in which IFAD gathered public and private sector representatives to find new ways to work together and advance in fight against rural poverty. I would like to share the recommendations made by the workshop participants, and to recognize IFAD for its many achievements in helping the impoverished citizens of the world.

For twenty years, IFAD has effectively pursued its mission of combating rural poverty and hunger in developing countries. Since 1977, IFAD has financed innovative projects that provide poor farmers with the technical assistance, training, equipment and supplies they need to increase food production and income. Throughout its work, IFAD emphasizes community-based approaches that enable the poor themselves to identify local solutions to local problems. With over 489 projects in 111 countries, IFAD has already touched the lives of over 200 million poor rural people around the world.

IFAD viewed its Twentieth Anniversary as an opportunity to take stock and prepare for challenges that lie ahead. The nature of poverty is becoming more and more complex. As it does, the need to engage an ever widening array of groups in the fight against poverty grows. Recognizing these trends, IFAD hosted an anniversary workshop in which representatives of civil society, the business community, government agencies and academia came together and explored new ways to tackle poverty through partnership.

Those who participated in IFAD's workshop examined opportunities for partnerships in microfinance—the valuable development tool through which poor people gain access to the small loans and savings facilities they need to lift their families out of poverty. They explored ways to combat desertification—the degradation of drylands that is a fundamental threat to the ability of subsistence farmers to feed their families. Finally, the workshop also took a close look at one innovative and successful alliance of public and private actors, the Popular Coalition to Eradicate Poverty and Hunger. Their recommendations in these three areas were thoughtful and valuable, and I would like to share them with my colleagues by submitting them for the RECORD.

RECOMMENDATIONS OF THE MICROFINANCE WORKING GROUP

1. IFAD should identify its implementing partners early, and create alignments with such partners on objectives and policies while not losing its grassroots approach.

2. IFAD should continue to reinforce linkages to non-governmental organizations (NGOs).

3. Because of its grassroots perspective, IFAD has a comparative advantage in identifying barriers to the development of microfinance institutions (MFIs). IFAD should capitalize on that perspective to inform and improve the policy environment for microfinance, especially in dialogues with UN agencies and other multilateral institutions.

4. IFAD should consider organizing working groups to encourage private sector engagement in the microfinance sector. Possible activities include selling products, providing training, and facilitating private sector investment in MFIs. IFAD could also consider providing grants to match private sector grants for purposes of developing MFIs.

5. IFAD should promote among governments and other policy making entities the use of alternative regulations specific to the microfinance industry, for the regulatory environment presently overseeing large, well-capitalized financial institutions may not reflect the unique nature and purpose of MFIs.

6. IFAD could develop a training agenda to promote ''best practices'' among MFIs, especially for those MFIs (e.g. local and indigenous NGOs) that do not have access to international best practice literature and curricula. IFAD's NGO Advisory Group could have a role in this effort.

7. IFAD should create microcredit workshops in regions around the world.

8. IFAD's NGO Advisory Group should work to create a ''lateral'' dialogue among other NGO Working Groups linked to multilateral organizations such as the (World Bank's).

9. IFAD should convene NGO working groups on MFIs in post-conflict countries and ''reconstructing'' economies.

10. IFAD should continue to explore new instruments and innovations for mobilizing and facilitating savings of the rural poor.

11. IFAD should engage in applied research on what is working in the field of microfinance (e.g., engaging in a dialogue with Ms. Marguerite Robinson of the Harvard Institute for International Development, an expert who has advised governments worldwide on MFIs).

12. IFAD should continue to explore linkages between microfinance, land tenure and desertification.

RECOMMENDATIONS OF THE POPULAR COALITION TO ERADICATE HUNGER AND POVERTY WORKING GROUP

1. How can the Popular Coalition broaden the leadership and input to the Coalition from NGO's, governments, multilateral institutions, faith communities, and the private sector?

Action: IFAD should convene the General Assembly from which a broad based steering committee would be chosen. Care should be taken to ensure that representatives from all faith communities (Muslim, Buddhist, Christian, Jewish, Hindu, and others) are chosen, as well as representatives from private sector industry.

2. Beyond having overarching input from the new Steering Committee noted above, there is a need to develop more specific strategies for greater involvement of the private sector and the faith communities. How can this be achieved?

Action: In conjunction with the new Steering Committee, the Secretariat of the Popular Coalition will develop multiple strategies to increase participation of all actors, with a ''menu of options'' for involvement to offer them.

3. How can the Popular Coalition develop a greater awareness and recognition of its successes and needs? How can it educate and inform its current and future constituents?

Action: The Secretariat of the Popular Coalition in conjunction with the regional nodes of the Popular Coalition will refine the mission and develop a ''niche slogan'' in a ''building-block architecture'' that can convey the many activities and goals of the Popular Coalition. The mission and slogan will not be overly complex, so as not to create confusion, but will not be overly simplistic either.

4. How can the Popular Coalition members in the South link with already exiting coalitions in the North?

Action: The Secretariat should task a committee comprised of members from the regional nodes to do the following:

a. conduct an inventory of existing coalitions in the North via sectoral activities (technical assistance for agricultural development, legal and negotiating expertise for land reform, etc.) to understand what the possible assets are; and,

b. develop specific requests from Popular Coalition members that could be developed into a list of concrete assistance needs to be presented to northern coalitions.

5. How can the Popular Coalition target their success stories and their needs to northern NGO's, governments, multilateral institutions, and the private sector? What kind of information moves people to action and involvement on the issues the Popular Coalition addresses?

Action: The Secretariat will engage an outside evaluator to conduct market research into how the success stories of the Knowledge Networks can be communicated to potential partners in the north with the end goal in mind of strengthening the Coalition members and leveraging resources to build their capacity.

RECOMMENDATIONS OF THE DESERTIFICATION WORKING GROUP

1. Discussants should support, as a group, U.S. ratification of the Convention to Combat Desertification before the end of the 105th Session. Reasons:

It provides the leadership the world expects from the United States on such issues, and will provide the U.S. an opportunity to influence decisions at the Second Conference of Parties to the Convention;

It is good for U.S. business and for the U.S. university/academic community where desertification expertise resides;

The humanitarian need is urgent;

The practical need is also urgent: biodiversity is declining, food sources are dwindling;

National security could be threatened by environmental flash points in fires and other natural disasters where desertification is a factor, and in conflicts over water and other scarce natural resources;

Migration within nations and across borders is prompted by spreading deserts, causing conflict within and among nations;

Desertification is linked to global climate change, and amelioration could help slow global warming;

The treaty's provisions interlink with U.S. obligations under existing treaties, such as national environmental action plans, measures to promote women's rights and sustainable development, and so on;

The treaty would enable the use of revolutionary strategies and methods to combat the spread of deserts; and

It would improve coordinated work with U.S. partners in other areas including foreign aid programs, and global cooperation is an avowed U.S. policy goal.

2. Raise awareness and understanding among the media and the U.S. private sector to generate support for the CCD. The treaty is not about ''deserts,'' for example, as media reports have said, but about preservation of drylands in their current useful state for agriculture.

3. Mobilize scientific analysis of the relationship between desertification and other

phenomena such as fires, climate change, damage to the ozone layer, etcetera.

4. Change U.S. trade policies to discourage actions abroad that contribute to desertification.

5. Support coordination between scientists, government agencies, NGOs and localities to develop useful technologies and methodologies to prevent and combat desertification.

HONORING THE CONTRIBUTIONS OF JESSE HOLMAN JONES

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. BENTSEN. Mr. Speaker, I rise to honor the efforts of Houston Endowment Inc. to highlight the life of Jesse Holman Jones, who during his lifetime was widely known as one of the most powerful leaders in the nation, and because of his vast contributions to the growth of the City of Houston, became known as ''Mr. Houston.''

On November 10, 1998, Houston Endowment Inc. will host a Centennial Celebration of the remarkable contributions of Jesse Holman Jones, beginning with a champagne reception followed by the world premiere of the documentary, ''Brother, Can You Spare a Billion? The Story of Jesse H. Jones.''

Jesse H. Jones was born in Tennessee but moved to Texas at the age of seventeen, first working in a lumberyard for his uncle, then later establishing his own 60 lumberyards across the Southwest. As an extension of the lumberyards, he began building small houses south of downtown Houston, which he financed for working class families by offering 20-year mortgages, a new concept at the time. He eventually progressed to commercial structures, and in 1907 he announced that he would build the city's three tallest buildings. The nine-story Bristol Hotel, Houston's first ''skyscraper'', elevated Houston's stature; the 10-story Houston Chronicle Building brought Mr. Jones half interest in a thriving newspaper; and the 10-story Texas Company Building helped make Texaco and the petroleum industry a permanent part of the city's business community. Within 25 years, he had transformed Houston's Main Street and downtown into the region's most prominent business district, filled with office buildings, movie theaters, hotels, apartment buildings, department stores, and parking garages.

Mr. Jones' role in developing Houston's economy was as important as his role in building its skyline. He invested in local banks and became Chairman of the National Bank of Commerce, later to become Texas Commerce Bank and today's Chase Bank of Texas. His portrait still hangs in the majestic lobby of the bank's flagship office. Through his banking interests, Mr. Jones helped industrialize and internationalize Houston. He supported other growing industries, such as the radio and television industry, while convincing the federal government to enter into a public-private partnership to build the Houston Ship Channel, which today includes the Port of Houston, the nation's second busiest port. Such public-private partnerships were unheard of at the time.

Mr. Jones attracted the attention of President Woodrow Wilson and accepted the position of Director General of Military Relief for the American Red Cross. After the war, Mr. Jones helped reorganize the Red Cross from a loose-knit group of local societies into the permanent international relief agency it is today. In addition, in 1928 as Finance Chairman of the Democratic National Committee, he brought the party's national convention to Houston, the first major political convention to be held in the South since before the Civil War.

When the stock market crashed and the nation plunged into the Great Depression, Mr. Jones called the city's business leaders together and worked out a plan that prevented any bank failures in Houston during the Great Depression. Mr. Jones' business and financial insight were called upon when President Herbert Hoover asked him to serve on the board of the newly created Reconstruction Finance Corporation (RFC); President Franklin Roosevelt expanded the RFC's powers and made Mr. Jones its chairman. The Federal Housing Administration (FHA), the Federal National Mortgage Association (Fannie Mae), and the Export-Import Bank are only a few of the many enduring agencies created by Mr. Jones and the RFC.

Mr. Jones would go on to be Secretary of Commerce during the ''New Deal'' and today scholars give Jesse Jones credit for saving the American capitalist economy, for mobilizing industry in time to fight and win World War II, and for radically changing the relationship between government, business and citizens.

After 14 years of public service in Washington, DC, Jesse Jones had won the respect of Democrats and Republicans alike, as he exercised his authority with diplomacy, patience, and equity. He and his wife, Mary Gibbs Jones, returned to Houston in 1946 and began to focus on philanthropy. By the time Jesse Holman Jones passed away on June 1, 1956, Houston Endowment Inc., the foundation he created in partnership with his wife, Mary, had helped more than 4,000 students through scholarship programs in 57 colleges and universities. Just months before he passed away, the town of 40,000 he came to in 1898 had obtained its one millionth citizen.

Mr. Speaker, I commend Houston Endowment Inc. for reminding Houstonians of the life of Jesse H. Jones, one of our most prominent citizens.

CONFERENCE REPORT ON H.R. 4101, AGRICULTURE, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

SPEECH OF

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 2, 1998

Mr. PACKARD. Mr. Speaker, I would like to express my extreme disappointment in the President's threats to veto the FY 99 Agriculture Appropriations bill. This is legislation which will provide much needed aid for cashed-strapped farmers this fall.

American farmers are by far the most productive in the world. These hard working men and women epitomize every value that makes America great. They run their business on a dream and hard work with a constant concern over the weather conditions, hoping for a good crop. During a bad season, some pray daily to be able to put food on the table for their families. Now, after a season of low commodity prices and bad weather, the Democrats are looking to eliminate the emergency aid to those who grow our nation's food supply by urging the President to veto the FY 99 Agriculture Appropriations Act. This is unacceptable.

The fact is, the House more than doubled the only request received from the President, from $1.8 billion to $4.2 billion for emergency aid to help farmers. It is irresponsible for the President to play partisan politics with people's lives.

Mr. Speaker this is no time to play politics. I urge the President to rise above the temptation to exploit this issue for his political advantage and sign the FY 99 Agriculture Appropriations Act into law.

TRIBUTE TO THE HONORABLE JERRY SOLOMON

SPEECH OF

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 6, 1998

Mr. STUMP. Mr. Speaker, I've been pleased to call JERRY SOLOMON of New York my friend for 20 years.

JERRY SOLOMON was the guy you always wanted on your side in a legislative battle. You always knew where he stood. You always knew his word was his bond.

It was as if he never left the Marine Corps, and in his mind he probably never did. JERRY SOLOMON wore an American flag pin on his lapel and his love of country on his sleeve. Few members could match his tenacity and his sense of loyalty. Never were those qualities more on display than when the House acted on national defense and veterans matters.

More recently we've seen another side of JERRY SOLOMON. It was his sense of fair play. His chairmanship of the Rules Committee made him the legislative traffic cop in the House. He took his role seriously, and his integrity earned him the respect of majority and minority alike.

His idol was Ronald Reagan, whose determination to rebuild our military found its staunchest House advocate in JERRY SOLOMAN. Our sons and daughters in the military have always been very special to him. He wanted nothing but the best for them both during and after their service.

Veterans have no greater friend than JERRY SOLOMON. He enjoyed a close relationship with that other giant of veterans' legislation, our former colleague and committee chairman Sonny Montgomery of Mississippi. Their collaboration was a golden period for America's veterans and an inspiration for those of us who followed them.

JERRY SOLOMON's proudest moment was that brisk October day at Fort McNair in 1988 when President Reagan signed into law his bill elevating the Veterans Administration to a full, cabinet-level department. That will be his lasting legacy and monument.

We will miss his passion, his perseverance, and his patriotism. ''Semper Fi'' was never just

a slogan for JERRY SOLOMON. It was his attitude towards his fellow Marines, his fellow veterans, his family, his friends, his district, his country, and this House.

We are coming to the end of an era, and this House just won't be the same without him.

Well done, JERRY. There's life after Congress. May yours be full and rewarding.

POW/MIA RECOGNITION DAY

HON. JIM GIBBONS

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. GIBBONS. Mr. Speaker, I insert for the RECORD a proclamation designating September 18, 1998 as POW/MIA Recognition Day in the State of Nevada. The full accounting of all of our servicemen and women abroad must remain of paramount importance to the Nation.

Whereas, today there are 2,118 Americans still missing and unaccounted for from Southeast Asia, including 3 from the State of Nevada, and their families, friends and fellow veterans still endure uncertainty concerning their fate; and

Whereas, we as Americans believe that freedom is precious because it has been won and preserved for all at a very great cost; and

Whereas, few Americans can more fully appreciate the value of liberty and self-government than those Americans who were interned in enemy prison camps as POWs and those who remain missing in action; and

Whereas, the courage, commitment and devotion to duty demonstrated by those servicemen and women who risked their lives for our sake has moved the hearts of all Nevadans; and

Whereas, their dignity, faith and valor reminds us of the allegiance we owe to our nation and its defenders as well as the compassion we owe to those families of the MIAs who daily demonstrate heroic courage and fortitude in the face of uncertainty: now, therefore, I, Bob Miller, Governor of the State of Nevada, do hereby proclaim September 19, 1997, as POW/MIA Recognition Day.

RECOGNIZING THE 75TH BIRTHDAY OF MR. SANFORD GILBERT KAHN

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. PORTER. Mr. Speaker, I rise today to honor a special man and one of my constituents on his 75th birthday: Sanford Gilbert Kahn. Mr. Kahn is a veteran of World War II and is truly one of the unsung heroes of that conflict. A 20th Air Force bombardier and weatherman, Mr. Kahn flew thirteen successful missions and was awarded with two medals. Those sorties played an important role in bringing the war to an end. At a time when the movie ''Saving Private Ryan'' reminds us of the sacrifices of WWII veterans, it is most appropriate to recognize the real-life bravery of men like Sanford Kahn.

I would like to join Sanford Kahn's family and friends in celebrating his 75th birthday and in sending my best wishes for his continuing health and happiness.

PITTSTON KNIGHTS HAILED

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. KANJORSKI. Mr. Speaker, I rise today to pay tribute to the President John F. Kennedy Council 372 of the Knights of Columbus in Pittston, Pennsylvania on the momentous occasion of their 100th anniversary. I am pleased and proud to have been asked to participate in this historic event.

The early years of the Council are not well documented, but it is known that the Council made its home for many years on William Street in Pittston. Activities of the Council were curtailed during World War II due to the low membership as the members went off to war. Around 1947, the Council became more active under the leadership of the newly-elected Grand Knight, John Moran. The Home Association and Fourth Degree Assembly became active in 1948 and membership in the Council expanded to 400. When membership reached 600 in 1955, the members purchased a building, giving the Council its first real home.

The Council's 65th anniversary was noted with a parade; the following year, the Council's name was changed to honor the recently-assassinated John F. Kennedy. An oil portrait of Council's new namesake still hangs on the main floor of the Council's building.

The Knights of Columbus in Pittston have been integral in the social and civic life in the area through the years. It maintains a choir and honor guard and sponsors a Little League baseball team and many other youth-oriented activities. By 1988, official membership in the Council reached 844.

Mr. Speaker, I send my very best wishes to the dedicated community members who donate their time and energy to the Knights of Columbus activities in the Pittston area. Northeastern Pennsylvania is blessed with a commitment to community service and the long history of the Knights of Columbus. Council 372 is a great example of that proud tradition and heritage.

TRIBUTE TO THE HONORABLE JOSEPH M. MCDADE, MEMBER OF CONGRESS

SPEECH OF

HON. JOHN JOSEPH MOAKLEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 1, 1998

Mr. MOAKLEY. Mr. Speaker, I rise today to pay tribute to my colleague, JOE MCDADE.

JOE MCDADE arrived here 10 years before I did. As he retires this year, the entire country will be the worse for the loss of his service.

In their wisdom, the people of the 10th district of Pennsylvania first elected JOE MCDADE to Congress in 1963 and every other year thereafter. After 35 years, JOE will be leaving the 10th district with a proud legacy of accomplishment and service for which he, and his staff, should be very proud.

JOE MCDADE is currently the longest serving Republican on the Appropriations Committee and among the longest serving Representatives in Pennsylvania's history. Since 1965, he has been on the House Appropriations Committee. But, JOE's service merits distinction for its quality as well as its longevity.

When JOE served on the Appropriations Subcommittee for Housing and Urban Development, he created the Rural Housing Guaranteed Loan Program to help people in rural areas buy homes. It was passed into law in 1990 and has grown to become one of the most important ways our government helps rural Americans buy homes. It was passed into law in 1990 and has grown to become one of the most important ways our government helps rural Americans buy homes. This year, JOE MCDADE's law will help more than 50,000 low and moderate income Americans buy homes.

When JOE was the ranking member of the Small Business Committee from 1978 to 1991, he created a small business development center and an applied technology center at the University of Scranton to provide training and technical assistance to small business owners.

JOE has been a distinguished, hard working, kind member of the Appropriations Committee and a Member deserving of the title Cardinal. He has been easy to approach and willing to listen to just about any requests for funding. During his 35 years in Congress, JOE certainly left his mark.

Whoever is elected in his seat will have a very hard time filling his shoes. The 10th congressional district of Pennsylvania is lucky to have had him as its representative and we are lucky to have had him as our colleague.

Mr. Speaker, it has been a great honor serving with JOE MCDADE and I join the entire Congress in wishing him well in his retirement.

INTRODUCTION OF RESOLUTION IN RECOGNITION OF THE NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

HON. ANNE M. NORTHUP

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mrs. NORTHUP. Mr. Speaker, I am pleased to submit a House Concurrent Resolution recognizing and honoring the 50th anniversary of the National Institute of Allergy and Infectious Diseases. An identical resolution is being introduced in the Senate by my distinguished colleague, Senator MACK.

As a member of the House Appropriations Subcommittee with jurisdiction over the National Institutes of Health, I have a great interest in biomedical research and efforts to improve the quality of our public health. In this century, much has been accomplished, including the eradication of smallpox and the near-eradication of polio, the control of other infectious diseases such as whooping cough and diphtheria, and improved treatments for diseases of the immune system. We continue to benefit from the development of new diagnostic tools, medicines, and vaccines that have improved the health of citizens in this country and abroad.

The National Institute of Allergy and Infectious Diseases has been responsible for many of our most important advances. NIAID began as the National Microbiological Institute, formed through the union of the Rocky Mountain Laboratory, the Biologics Control Laboratory, the Division of Infectious Diseases, and

the Division of Tropical Diseases of the NIH. In 1955, Congress renamed the Institute as the National Institute of Allergy and Infectious Diseases, recognizing the need for a coordinated scientific research program on infectious, allergic, and immunologic diseases.

Research supported by the Institute has resulted in numerous important advances, including the development of vaccines that have prevented the death of millions of Americans, new treatments to fight the human immunodeficiency virus (HIV), and novel interventions that have reduced the burden of childhood asthma.

Much remains to be done, however. Infectious diseases remain the world's leading cause of death, and the third leading cause of death in the United States, and immune-mediated diseases such as asthma are a leading cause of disability and lost productivity. NIAID continues to lead the way in developing new ways to reduce the toll of these diseases.

I am introducing this resolution today to demonstrate the support of the United States House of Representatives for the NIAID, the NIH, and all of the dedicated professionals who have devoted their lives to improving the quality of the Nation's health.

REMARKS ON THE ATLANTA BRAVES

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. GINGRICH. Mr. Speaker, I gladly accept the challenge of my distinguished colleague, DUKE CUNNINGHAM.

While I respect his personal faith about the San Diego Padres, I also know that sometimes faith is not enough. And this year that saying will have to comfort the gentleman from California as he watches the Atlanta Braves win the National League Championship.

My dear Colleague from San Diego offered three reasons for his faith in the San Diego Padres.

I would like to offer my reasons for knowing the Atlanta Braves will win:

(1) Cy Young award winner John Smoltz is 17 and 3 with a 2.90 era

(2) Cy Young award winner Tom Glavine is 20 and 6 with a 4.47 era

(3) Four time Cy Young award winner Greg Maddux is 18 and 9 with a 2.22 era

(4) Danny Neagle is 16 and 11 with a 3.55 era, and

(5) Rookie Kevin Millwood is 17 and 8 with a 4.08 era

The Padres may have Greg Vaughn, but the Atlanta Braves have Andres Galarraga with 44 home runs, Javier Lopez and Chipper Jones with 34, and Andruw Jones with 31—not to forget three other players with over 100 home runs.

The Braves' team batting average against the Padres was .259 vs. .209 for the Padres. The Braves outscored San Diego 34 to 29, had 17 more hits, five more home Runs, 3 more stolen bases, and 8 more strikeouts.

And while Tony Gwynn is indeed impressive, he only batted .321 this year, while the Braves starters include Chipper Jones (.313), Andres Galarraga (.305), and Gerald Williams (.305). The Braves also out hit the Padres at almost every position, including pitcher.

Atlanta, the beautiful ''capital'' of the South, is blessed with many benefits, but having the Braves as their home team is one of the best. It is hard to beat Southern culture and great baseball.

In light of this, I not only accept the distinguished gentleman's challenge, I raise him: If the San Diego Padres win, I will give 100 pounds of fabulous southern BBQ to a homeless shelter in the gentleman's district.

And of course, if the Braves win, I will ensure that the gentleman from California's seat on the Appropriations Committee is secure despite this direct challenge. Now if the Padres win. . . .

U.S. NEEDS FAST TRACT AUTHORITY TO REMAIN GLOBAL LEADER

HON. JIM RAMSTAD

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. RAMSTAD. Mr. Speaker, two weeks ago I spoke before this House in favor of renewing fast track trade authority for the President. I called for my colleagues to choose statesmanship over politics and vote for this important legislation simply because it is the right thing to do and they know it.

I was deeply saddened that we did not have the support of the White House and many key Democrats in that fight—Democrats who typically understand the importance of fast track for opening new markets for U.S. farmers and exporters. I was saddened they were too concerned about the timing of passing the legislation and not the fact that their constituents need it, America's farmers need it, small businesses need it and consumers need it.

Mr. Speaker, I am more than saddened today. I am completely perplexed and frustrated. Yesterday, President Clinton spoke before International Monetary Fund and World Bank officials and called for expanded trade for next year and strategies to spur economic growth. I am very glad to hear him say these things, but his speech is a bit hypocritical.

It moves me to ask why the President will promote fast track authority renewal in January and wouldn't just two weeks ago? How is it the President can say it is ''inexcusable and reckless to hold up [IMF] money based on other issues at a time when the world needs U.S. leadership?

President Clinton's failure to be engaged in the recent fast track debate directly contributed to its demise at a time when U.S. exporters needed his leadership—and the international economy needs U.S. leadership. I want my constituents to know that I have concerns about IMF funding because of, in the words of my colleague from Florida, Rep. STEARNS, ''the countless evidence of the malfeasance and mismanagement of IMF.''

Mr. Speaker, my concerns have nothing to do with what time of the year it is or because certain advocacy groups have threatened political ramifications. My concerns have to do with pure policy issues and a true desire to see U.S. taxpayer dollars used appropriately.

And on the issue of taxes, I don't think I could say it better than Senator ROTH: ''Why should we expect Japan to push through a KEMP-ROTH style tax reduction . . . when the White House opposes any domestic tax rate cut that would spur growth?''

Mr. Speaker, I am disappointed that politics have replaced real leadership at the other end of Pennsylvania Avenue. America needs to be a strong leader out in the global market place. We need to set the parameters of debates and make sure we are included in market access agreements that would benefit our farmers and businessmen and women. America needs fast track trade authority and a President who truly wants it.

TRIBUTE TO RICHARD K. BOYD, JR.

HON. ED WHITFIELD

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. WHITFIELD. Mr. Speaker, I rise to pay tribute to a friend and distinguished former Kentuckian, Mr. Richard K. Boyd, Jr., who is retiring this month after 32 years of dedicated service with Westvaco Corporation.

As Manager of Government Relations and various executive capacities during his career at Westvaco, Mr. Boyd diligently exercised his professional stake in civic affairs. As a private citizen of Kentucky for 24 years, he faithfully demonstrated his deep sense of personal responsibility for civic involvement.

For much of his career, Dick Boyd lived and worked in Wickliffe, Kentucky, where he and his wife Malinda raised their three daughters—Anne, Gretchen and Rebecca. His arrival in Wickliffe pre-dates the Westvaco Fine Papers mill, a major employer and contributor to the economic development of western Kentucky. The growth of the mill and the company's good relationship with the community and the Commonwealth of Kentucky are a part of the legacy of Dick Boyd's career and his life in our state.

In 1988, Dick served in Kentucky State Government as Deputy Secretary of the Cabinet for Economic Development, His dedication to family, friends and neighbors is worthy of recognition.

Dick Boyd has performed his duties representing Westvaco and its operations in the First Congressional District of Kentucky with honest and integrity. He is a valued friend and a good citizen whose national corporate responsibilities have never diminished his concern for and dedication to the economic and civic progress of the people of western Kentucky. On their behalf, I take this opportunity to congratulate Richard K. Boyd, Jr. on his successful and distinguished career and extend best wishes for his retirement.

TRIBUTE TO DR. MARY P. SMITH, AN ARDENT LEMONADE MAKER

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. PAYNE. Mr. Speaker, if we are lucky we have come in contact with a person who instinctively makes lemonade out of the lemons of life. There is such a woman in my district who is being honored on Thursday, October 8. She is Dr. Mary Smith. Thirty years ago Dr. Smith saw a need for day care programs in

Newark, New Jersey. She used her vision, commitment and steadfastness to establish Babyland Nursery, Inc. Babyland Nursery, Inc., now known as Babyland Family Services, Inc. has evolved into a model for urban day care throughout the nation.

In 1968, Dr. Smith started with 26 children in a seven-room basement apartment in central city Newark to establish one of the first day care programs in the United States and the first non-profit interracial day care center in New Jersey to provide day care for children from 2½ months to five years old. If we go back to 1968, we will remember it was a time that women while moving into the workforce had very limited resources for child care. This sometimes meant that these families had to depend on public assistance for survival rather than become self-sufficient. Today, we see the benefit of providing safe, clean, and educatable day care services. The lack of day care was a lemon to Dr. Smith. She took her knowledge, skills and foresight to make some lemonade that has quenched the thirst of day care need for countless families and children.

Babyland Family Services, Inc. has evolved to comprise 11 different facilities offering 20 separate programs that benefit over 1,500 children, women and families each year. It has a staff of over 200, volunteer support of almost 700 and a reputation that extends to the international arena.

Mr. Speaker, I am sure my colleagues will want to join me in thanking Dr. Mary Smith and Babyland as they are recognized for their hard work and dedication to the health, well-being and education of children from urban areas. I would also like to encourage all citizens to become interested in helping the future, our children, thus ensuring a brighter future for them and the generations to come.

STOP STALLING ON PATIENT PROTECTIONS

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. STARK. Mr. Speaker, I rise today to share the words of A.G. Newmyer III with my colleagues. Mr. Newmyer is the Chairman of the Fair Care Foundation, a consumer advocacy organization working to protect people's access to affordable, quality health care, and a national board member of the Epilepsy Foundation.

This week he participated in an event with Senators KENNEDY, DURBIN and TORRICELLI to urge that the Senate quit stalling on the issue on patients' rights. His words bear repeating and so I have attached his statement from that event.

I agree with Mr. Newmyer. Passage of federal consumer protection standards for managed care is past due. The leadership's tactics to thwart passage meaningful reform this year are unconscionable. This is not an issue that is going away and I look forward to continuing to work with Mr. Newmyer and other consumer advocates to achieve federal patient protections.

STATEMENT OF A.G. NEWMYER III

Good morning. My name is Newmyer and I'm here on behalf of the 2.5 million Americans who have seizure disorders, and their families. Some of these folks are well known to you—former Congressman Tony Coelho, Representative Neil Abercrombie, Congressman Hoyer's late wife. Others are total strangers—like me. And a couple hundred people on the Hill either have epilepsy or someone in their family does, but you don't know about it because stigma and fear keep these folks in the closet.

The Epilepsy Foundation urges passage of strong patients' rights legislation. Today's health insurance system is a mean-spirited, predatory mess. But it's far worse for people with special medical needs.

Those of you who cover this debate may recall that Tracy Buccholz from MN was the first public witness before the President's commission on health care. Tracy has epilepsy and led a rather normal life until her health plan started playing games with her life. She explained to the commission, when she came to Washington to testify, that she had been waiting eight months for permission to see her neurologist, despite the literature and promises of her plan.

I'd like to make three brief points this morning.

First, the member satisfaction statistics are pure nonsense. If I asked each of you how you like your life insurance, you'd think I was nuts. You'd tell me that you think it's fine—you never had to use it. The same thing's true for the 80% of Americans who have no significant medical need in any one year. I urge the press to focus on satisfaction among plan participants who have faced a serious medical need.

Second, to those members who say they don't want to interfere in the insurance market, let's be serious. The user isn't the customer. Most patients get insurance at work and have very little choice. When the person making the purchase decision isn't the user of the service, it's not a market. It's an anomaly. And it needs to be fixed. Now.

Finally, I know of no other segment of our society where some people elect to engaged in predatory behavior knowing that the victims can't go to court. No patients want more lawsuits. Patients want health plans to stop horsing around. Patients want to fix a system where some people prosper by denying care. The key is ERISA reform, which is why its being fought so hard by for-profit managed care plans.

I leave you with this thought. Steve Wiggins, CEO of Oxford, made $29 million the year before he was fired. Last year, with his company ½ way down the toilet, he left with $9 million in severance. The CEO of Aetna-United took home $17,693,000 during the past three years.

Do you really think those plans can't afford for people with seizures to have easy access to decent care?

INTERNATIONAL CAPITAL FLOW AND IMF POLICY

HON. MICHAEL G. OXLEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. OXLEY. Mr. Speaker, I would like to bring to the attention of my colleagues a column published today by James K. Glassman of the American Enterprise Institute. As the International Monetary Fund and the World Bank hold their annual meetings this week, his thoughts are especially timely.

As the international financial community continues to struggle to find a solution to the growing Asian contagion, some commentators are beginning to call for international capital controls. The underlying argument behind this position is that the free flow of capital has contributed to our current problems and that barriers must be erected to prevent this flow in the future.

However, as Mr. Glassman makes clear, ''capital does not flee sound economies.'' Rather, investors move their resources in response to changes in the market conditions of a given economy—they move money out of investments in economies as risk rises and into investments where the risk level is more acceptable. Thus, capital is efficiently allocated. Efforts to limit this movement, then, are inherently heavy-handed and counterproductive.

Again, Mr. Speaker, I commend the following column by Mr. Glassman to my colleagues.

[From the Washington Post, October 6, 1998]

COOL IT

(James K. Glassman)

Judging from the panicky pronouncements of politicians, journalists and financiers, you would think we were on the brink of another Great Depression. On Friday, President Clinton declared that the world was on a ''financial precipice.'' The cover of Newsweek trumpets ''The Crash of '99.'' And the folks whose limousines are now clogging Washington for the 53rd annual meeting of the International Monetary Fund and the World Bank—Super Bowl Week for the global credit set—are rushing to erect a new, complex architecture, backed by new money, to keep the world from crashing down around them.

But not so fast. Before we make the errors of haste, let's recall that never in history have businesses been better run. Never have markets been freer and wealth more abundant. Never has technology for communicating, producing and healing been so widely available. Rarely has inflation been less threatening. Rarely have the raw materials of industrial growth—from copper to wheat to oil—been so cheap. Rarely has the world been so peaceful.

The truth is, the international economy was neither as terrific as practically everyone said it was in the spring, nor is it as terrible as practically everyone says it is in the fall. So, let's cool it before we do something irrevocably stupid.

While countries such as Brazil have undeniable short-term troubles, the solutions are not mysterious. They need sounder currencies, linked to the dollar, less public spending, lower taxes and less regulatory red tape, borders that are more open to trade and capital, and governments that are more candid, less corrupt and less apt to meddle in the private sector.

None of these improvements requires the ministrations of the IMF. Markets enforce a more efficient discipline: A country that complies with conditions hospitable to capital will get that capital, which is continually scouring the globe, seeking the best returns. Talk of ''contagion'' is nonsense: capital does not flee sound economies, as monetary historian Anna Schwartz shows clearly.

Still, the financial bureaucrats gliding down Washington's streets in their limos this week think differently. They believe that, since the world is on the brink, smart people—i.e., like them—need to do something to save it.

That's the danger. British Prime Minister Tony Blair wants a ''new Bretton Woods,'' birthplace of the IMF and World Bank. The problem with another Bretton Woods is that it assumes that these institutions can actually have a beneficial effect today on economies in trouble. The opposite seems the case.

The IMF bears responsibility for Asia's troubles. With the U.S. Treasury in 1995, it delivered unprecedented sums to bail out banks and investors who made reckless loans to Mexico. That rescue then encouraged investors to make riskier extensions of credit to Asia, Russia and Latin America. That led to overcapacity—too many factories unprofitably producing computer chips, cars and clothes, often under government direction—and to the current crisis.

Instead, incredibly, ''the free market and the unfettered flow of capital across borders are being vilified as causes of this disaster,'' writes economist John Makin of the American Enterprise Institute. The French and the British actually want to give the IMF more power, and plans to restrict capital flows abound.

Still, someone has kept his head. Treasury Secretary Robert Rubin has advanced a sensible proposal: Make credit available to sound countries that may be suffering liquidity problems (that is, need cash) but that haven't fallen into deep crisis.

I'd like to expand this idea and obviate the need for an IMF altogether. Set up a streamlined international lending institution that would have constantly available funds, under these four conditions:

(1) Loans would be made only at ''penalty rates''—certainly higher than the 4.5 percent that Korea recently paid.

(2) Nations borrowing money must put up their best collateral, such as U.S. Treasury bills or gold.

(3) Borrowers must allow foreign banks to operate within their borders and be able to purchase their domestic banks. The best way to reform a rotten financial system is to admit good, free-market bankers.

(4) Borrowers must subscribe to a new bankruptcy convention that would adopt laws similar to those in the United States and Europe. Lenders have to know that they can seize assets in a default.

At the same time, the world's financial moguls need to: (a) pressure Japan, another villain in the tale of Asia's collapse, to fix its banking sector immediately and reflate the yen; (b) reaffirm the importance of free trade and reject restrictions on the flow of capital; and (c) use the World Bank to alleviate the suffering of innocents in countries such as Indonesia, victims of economic crimes committed by others, including the IMF.

As for the extra money that the IMF wants and Congress has failed to approve: for credit under these new arrangements, as long as Japan reorganizes its banking sector, yes; otherwise, no. Right now, withholding cash is the best leverage for reform that we've got.

REPUBLIC OF CHINA'S NATIONAL DAY

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. BILIRAKIS. Mr. Speaker, I would like to call attention to the National Day of Republic of China on Taiwan. This day commemorates the Wuchang Uprising on October 10, 1911, which led to the establishment of the ROC on January 1, 1912.

The United States' relationship with Taiwan dates back to the end of World War II. In the 1950s and 1960s, U.S. forces used Taiwan as a forward base against Sino-Soviet communism in Asia. Over the years, we have developed strong economic, political and social ties with both the government and people of Taiwan.

Today, Taiwan is one of our most significant trading partners. With one of the largest economies in the world, the nation has done remarkably well during the current economic turmoil that has been engulfing other Asian countries. Taiwan's sound fiscal policies have enabled it to remain strong and provide economic assistance to its neighbors during this difficult time.

Over the past decade, the Republic of China has moved rapidly toward becoming a democratic society. Free and fair elections are routinely held at the local and national levels, and approximately 70 percent of engine voters participate in ROC elections. Taiwan is a shining example of freedom and democracy in a part of the world in need to role models.

America must stand by its long-standing commitment to the people and government of Taiwan. I hope that we will be able to continue our partnership and friendship with the ROC well into the next millennia.

I want to extend my best wishes to the people of Taiwan on the occasion of the Republic of China's National Day.

A TRIBUTE TO DR. MOUSTAPHA ABOU-SAMRA

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. GALLEGLY. Mr. Speaker, I rise to pay tribute to Dr. Moustapha Abou-Samra, this year's recipient of the Physician of the Year Award from the Ventura County Medical Resource Foundation.

Dr. Abou-Samra, a neurosurgeon who practices at Community Memorial Hospital, Ventura County Medical Center and St. John's Hospital, has made valuable contributions to Ventura's medical community for nearly 20 years.

He is president of the Community Memorial Hospital Foundation, serves on its Board of Trustees and is a member of the Benefactor's Committee. At Ventura County Medical Center, Dr. Abou-Smara served as president of the medical staff, was Chief of Surgery, and served as Chairman of the Quality Assurance Committee and of the Ethics Committee.

Dr. Abou-Samra also taught classes on ''Understanding Cancer.'' He served as the president of the board for the American Cancer Society and was presented the prestigious Golden Sword Award by the organization. Dr. Abou-Samra introduced and coordinated the ''Think First Program,'' a head and spinal prevention program that has become recognized nationwide.

Dr. Abou-Samra also has served on numerous other boards, including the Easter Seals Board of Medical Directors, the Ventura County Symphony and St. Paul's Parish Day School. He is currently on the board of the Ojai Festival.

Dr. Abou-Samra is obviously deserving of this award.

Mr. Speaker, I know my colleagues will join me in recognizing Dr. Abou-Samra for his many years of promoting a healthy America and wish him many more years of service to the medical community.

COMMENDING THE MEMBERS OF THE MARINE SECURITY GUARD

HON. MARTIN FROST

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. FROST. Mr. Speaker, I rise today to bring to the attention of the House the bravery and heroics of the members of the Marine Security Guard at our embassies in Nairobi, Kenya and Dar Es Salaam, Tanzania following the horrific and tragic bombing there on August 8. I have the honor of submitting for the CONGRESSIONAL RECORD a report filed by Lt. Colonel Dennis Sabal which details the devotion to duty and courage under fire exhibited by the Marines who were charged with the responsibility of guarding those two embassies. It is a credit to our Nation that our Marines have and will continue to guard, in the words of Lt. Col. Sabal, ''Americans and America's interests abroad, as marines have done for over 222 years.''

COLONEL BURGESS: It has been almost 96 hours since the devastating blasts ripped through the American Embassies in Nairobi, Kenya and Dar Es Salaam, Tanzania. With the situation at both embassies now somewhat stabilized, I want to take a few moments and attempt to paint a picture of the events leading up to the blasts as well as provide you with a commander's perspective of the actions of our Marines subsequent to the explosions.

On Friday morning, 8 August 1998 at 10:30 am local Kenyan time (03:30 EST), Corporal Samuel Gonite was standing Post One in the American Embassy in Nairobi, Kenya. At approximately 10:35, Marine Sergeant Jesse ''Nathan'' Aliganga walked into the embassy to cash a check. Corporal Gonite watched Sergeant Aliganga walk past Post One, get onto the elevator, and ascend to the bank.

At the same time and unbeknownst to anyone in the embassy, two men pulled up to the rear guard shack of the embassy, which was manned by the local Kenyan security force. This parking lot, which was sandwiched in between a 60 story bank building and a smaller bank building, was also the entrance into the underground garage for the embassy. Reportedly, a man approached the local guard and demanded he open the gate (leading into the embassy's underground garage) to which the local guard refused. At this time, the man hurled what was believed to be a grenade in the direction of the guard.

Inside the embassy, people heard the explosion and reportedly got up to look out of their windows when at 10:40 am, a truck filled with explosives crashed into the rear wall of the embassy adjacent to the underground garage, and exploded. Corporal Gonite was immediately knocked to the ground by the concussion of the blast. The glass surrounding Post One was shattered but remained in tact. The detachment commander, Gunnery Sergeant Cross, upon hearing the first blast, immediately went for the ladder well and was shielded from the main blast. The Chancery was in shambles.

When the truck exploded, the small bank building behind the embassy collapsed onto the chancery's emergency generator, spilling thousands of gallons of diesel fuel into the basement of the embassy. The diesel fuel ignited and smoke and fire were billowing throughout the embassy. As injured and confused people were running out of the chancery screaming and choking, the Marines were running into the building looking for survivors.

With no thought for their own lives, having no idea what else may happen, or whether or not the shattered structure would cave in on them, the Marines immediately reacted and began a sweep of the building.

Sergeant Briehl, who was waiting outside the embassy in the car, immediately darted into the building looking for Sergeant Aliganga. He ran to the elevator shafts behind post one, which were completely destroyed, and fell two floors down into the shaft, breaking three ribs and sustaining multiple lacerations and bruises. Sergeant Briehl managed to climb out of the elevator shaft and continued his search for Sergeant Aliganga. Sergeant Outt, who was in Nairobi from Bujumbura for a dental appointment, as well as Sergeant Harper, who was on COT leave in Nairobi from Accra, immediately reached with the Marines and manned posts around the embassy.

At this time, we had Gunnery Sergeant Cross, Sergeants Russel, Jiminez, Briehl, Outt, Harper, and Corporal Gonite on board. These Marines immediately made their way through the rubble, fire and smoke looking for survivors, fended off local looters who swarmed the embassy moments after the blast, secured classified material, and most importantly to them, began the search for their brother, Sergeant Aliganga.

To provide a bit of situational awareness, the embassy in Nairobi is a seven floor concrete structure with five above ground and two below ground levels. It was situated on two major avenues of approach with minimal stand off distance between the road and the structure. When the bomb exploded, the force of the blast was so devastating that it blew out almost every closed window and frame on the building. 12 inch thick concrete walls on all floors of the embassy were shattered like thin plates of glass. Solid wooden doors mounted on steel frames were sent airborne landing throughout the structure. Windows on office buildings over a quarter of a mile away were shattered. There was not an office space that survived inside of the embassy. Bodies were spread all over, most of which were buried under up to eight feet of rubble.

At the same time, the Regional Security Officer for the American Embassy in Dar Es Salaam, Tanzania, John DiCarlo, a former Marine Security Guard, had taken post one from Corporal Johnson in order for him to make a head call.

At approximately 10:40 am, a truck bomb exploded outside the security gate, ripping through the embassy. Corporal Johnson was knocked to the deck. He stood up, and immediately ran to Post One where he found it intact, but inoperable. Corporal Johnson immediately reacted the Marines, which were all at the Marine BEQ during the explosion, and informed all mission personnel to evacuate the building. Corporal Johnson donned his react gear and took control of the Command Center.

The detachment commander, Gunnery Sergeant Kimble, arrived at the Embassy approximately 4–5 minutes after the blast and began checking offices throughout the chancery to insure all personnel were safely out of the building. One of the casualties of the explosion was Gunnery Sergeant Kimble's wife Cynthia, who sustained bruises and eye injuries from flying glass. While Cynthia was flown to London to receive eye surgery. Gunnery Sergeant Kimble never lost focus on the mission at hand. Within eight minutes of the blast, Sergeant Sivason, and first post's Corporals Bohn, Hatfield, Johnson, and McCabe began working through the chancery clearing all rooms of personnel. No direction was required as each Marine knew exactly what had to be done.

Due to the enormous amount of smoke and fire, the decision was made to evacuate Post One and the Marines fell back to their secondary positions.

Corporal Johnson took security for the mission personnel at the rear of the Embassy, and all other Marines took up perimeter security around the building. The force of the blast blew out every window in the chancery, and all doors except post one. The hardline doors, which are located on the opposite side of the embassy, were forced open by the blast. Emergency fire exits on the opposite side of the building in which the blast occurred were blown off the hinges. Concrete walls within the Embassy were knocked down and safes were moved and in some cases knocked over. During the search of the building the Marines had to bust through walls in order to get to areas unattainable during their sweep. Within four hours of the truck bomb, which damaged diplomatic properties and houses up to 1000 meters away, the embassy was secure with MSGs maintaining 24 hour security on the building until the arrival of the FAST team.

In Nairobi, Marines continued to work throughout the day cleaning the embassy, providing local security (as the local constabulary proved worthless), moving the injured and the dead from the rubble to safety. The condition of many of the dead was horrific, making the task of search and rescue that much more difficult for all concerned. By 03.00, I arrived on the scene with my XO, 1stSgt, and admin chief, all of whom had been stationed in the Nairobi embassy for over a year and knew the ground, and two MSGs from the Pretoria det, who quickly took up posts around the embassy.

By 04:00, a number of Army special forces NCOs had volunteered to stand post to give the Marines a much needed break. 1stSgt Quzman took the post from the det commander and I ordered the Marines home to shower and sleep. At first light, all of the Marines were back to continue their Mission while looking for Sergeant Alganga. After hours of digging by hand through tons of rubble, behind Post One and in the elevator shafts, we moved to the area of the bank. This was one of the hardest hit areas as it was one floor up and only about 50 feet from the blast site. Twelve inch slabs of reinforced concrete were piled up to the ceiling, while desks, computers, and file cabinets were reduced to scrap. The Marines and Army S/F personnel, along with DOS personnel worked frantically against the clock. By this time, over thirty bodies had been recovered from the rubble, including ten Americans.

Finally, at exactly 14:30 local time, after 27 hours and fifty minutes of relentless digging with their bare hands, the body of Sergeant Aliganga was recovered from the rubble. Once positively identified, the Marines then gently wrapped Sergeant Aliganga in the American flag, and very purposefully marched him through the rubble and out of the embassy to the waiting vehicle. Although there were no cameras present, nor was there any music playing, the crowds seemed to still, and people stood erect, with tears running down their faces, as the body of another United States Marine, who gave his life in defense of his country, was ushered away.

By nightfall, the FAST team arrived and quickly took up the perimeter security of the embassy, freeing the MSGs to return to the still ongoing task of recovering classified material and equipment from the rubble.

Sir, I apologize that my words are insufficient to more accurately describe the true essence of this horrific tragedy. What must not be missed is the incredible bravery and heroism displayed by our Marine Security Guards. Without any regard for their own lives or safety, they maintained incredible presence of mind in the face of tremendous devastation. Each marine continued to serve our country and our Department of State with distinction. Even through the chaos and the fog, our Marines never lost focus of their mission. They were models of strength to be emulated by all.

As you finish reading this synopsis, the Marines from Nairobi and Dar Es Salaam, augmented by Sergeant Harper from Accra, Sergeant Lawlor from Bonn, Sergeant Outt from Bujumbura, Sergeant Boudah from Dublin, Corporal Graff and Sergeant Wolf from Frankfurt, Sergeant Salizar from the Hague, Sergeant Alberto and Corporal Durden from London, Sergeant Jackson from Paris, Sergeant Smith and Corporal Cornell from Pretoria, and Sergeant Reynolds from Rome, are manning makeshift embassies as our MSGs continue to support our Department of State. They have not missed a beat and will continue guarding Americans and America's interests abroad, as marines have done for over 222 years.

Semper Fidelis and Very Respectfully,

DENNIS SABAL,

Lieutenant Colonel, U.S. Marine Corps.

HONORING POLICE CHIEF JOHN AMBROGIO FOR EXCELLENCE IN SERVICE

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Ms. DELAURO. Mr. Speaker, I rise today in honor of a dedicated and highly respected member of the Hamden Police Department whose decision to retire ended a career in law enforcement which spanned more than forty years. Chief John Ambrogio leaves a legacy of dedication, integrity, and excellence spanning over four decades, and he will not be forgotten by his fellow officers or by the citizens of Hamden.

Chief Ambrogio dedicated nearly a third of his life to leading the Department of Police Services with dignity and virtue, and his work has had a profound effect on the quality of life in Hamden. Eighteen departmental commendations as well as various other professional accolades reflect the commitment and devotion John has given to Hamden and its residents. John's good work is reflected in dramatic reductions in crime rates, the inauguration of the annual Halloween party, and the development of a progressive and highly effective police department—just a few examples of the contributions he has made to the Hamden community.

As a professional law enforcement officer, the various ways John has influenced the community are innumerable. Hamden residents credit John's work as Chief of Police as the most important factor in keeping Hamden a safe community, which is relatively free of criminal activity and drug trafficking. John Ambrogio has become an indispensable figure in Hamden and replacing him will be a tremendously difficult task.

It is with great pleasure that I join with his wife, Maureen, his children, and grandchildren, as we honor my dear friend Police Chief John Ambrogio for more than forty years of dedication and commitment to the Town of Hamden. I wish him many happy years in his retirement.

FARLEY UNITED METHODIST CHURCH WILL CELEBRATE ITS 150TH ANNIVERSARY

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Ms. KAPTUR. Mr. Speaker, I rise today to give special recognition to the Farley United Methodist Church in Richfield Township in Northwest Ohio. On October 18, 1998, the church will celebrate its 150th anniversary.

The Farley Society was founded in 1848. Later named the Farley Methodist Church, and then the Farley United Methodist Church, the church is a small rural congregation in the town of Berkey, Ohio. Strongly supported by its members, succeeding generations of the original founding families still attend the church. To quote one of its members, ''Although the church remains today as a small, country church, it has been part of the fabric and an influence in the Richfield Township community for generations.''

I am pleased to commemorate the church's 150th anniversary. This milestone is a testament to faith, to the strength of community, and to the values of family, tradition, and coming together. A church is only as strong as its members, and the 150 year long journey of the Farley United Methodist Church has only come about through the faith and perseverance of its congregants. Their lives have certainly been made richer through their faith, but our community has also been made richer by the church's presence. The simple white structure at the town crossroads has housed generations of souls uplifted by the strength of prayer and each other as God's Word was celebrated each Sunday for 150 years.

As those years are celebrated, I know that the spirit of the church's ancestors will be felt, and they will join today's membership in the commemoration. May all present find the day to be one of inspiration, reflection on the past, and vision for the future.

NATIONAL MISSILE DEFENSE SYSTEM

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. BOB SCHAFFER of Colorado. Mr. Speaker, few Americans are aware that we have no reliable national missile defense system. If a foreign terroristic antagonist, one Saddam Hussein for example, were to launch a single ballistic missile at the North American continent, we would be defenseless to stop it, and it is wholly unlikely that we could accomplish the task.

The President of the United States seems unconcerned about the matter, even though the technology currently exists to begin programs promising to effectively render nuclear missiles obsolete.

To defend the President's irresponsible policies and actions, he has deployed the cover of the Chairman of the Joint Chiefs of Staff, General Henry H. Shelton. General Shelton has compromised national security to carry out his role as chief apologist for an incompetent Commander-in-Chief—President Clinton.

Recently, General Shelton issued a communication to this Congress about the global threat of ballistic missile attack.

Mr. Speaker, the Shelton letter was alarming, not only because it describes a very real threat, but because it is replete with inconsistencies, inaccuracies, contradictions and admissions all pointing to the obvious conclusion that Americans are today in danger.

Today, I responded rather harshly to General Shelton's August 24 letter to Congress. In composing this response, I consulted many colleagues. They share my concern, and my conclusions and have asked that the final draft be distributed to all Members.

Therefore, Mr. Speaker, I hereby submit for the RECORD, the full text of the letter I have today posted to General Shelton. Furthermore, I am eager to join any Member who shares my outrage in this matter, in actively working to provide a reliable national missile defense system.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES.
October 7, 1998

General HENRY H. SHELTON,
Joint Chiefs of Staff, The Pentagon, Washington, DC.

DEAR GENERAL SHELTON: Your letter to Congress of August 24 said you ''believed that North Korea continues moving closer to initiation of a Taepo Dong 1 Medium Range Ballistic Missile (MRBM) testing program.''

One week later, on August 31, attempting to launch a satellite, North Korea tested its Taepo Dong 1 Long Range Ballistic Missile, a three-stage ballistic missile with an estimated range of 3,000 to over 6,000 miles, or unlimited range if used as a fractional orbital bombardment system.

But the Intelligence Community failed to provide even a day's notice of North Korea's Taepo Dong 1 ICBM test, or an analysis of its purpose. The Intelligence Community certainly can not provide a three-year warning of its ballistic missile threat.

The yardstick of adequate warning for missile tests is not, and should not, be met in simply describing preparations for missile tests as they unfold over the span of a few months, weeks, or even days. Still, as premised in the obviously flawed 3+3 policy, adequate strategic warning to implement this policy entails predicting the appearance of new missile systems years in advance. In order to prevent these new emerging threats from becoming reality, the United States must secure advantage of the greatest amount of time possible to deploy missile defenses. Any delay threatens freedom.

The Taepo Dong 1, furthermore, is a Long Range Ballistic Missile, an ICBM, not a Medium Range Ballistic Missile as you claim. North Korea's Taepo Dong 1 can threaten the United States today.

Your 3+3 ballistic missile defense program is unconscionably leaving the American people vulnerable to ballistic missile attack. We need a defense today against long range ballistic missiles.

Intelligence Community—The Intelligence Community failed to accurately predict the capabilities of North Korea's August 31 test of its Taepo Dong 1 long range ballistic missile. The Intelligence Community failed to correctly analyze North Korea's ballistic missile test.

The Intelligence Community failed to anticipate and provide timely and adequately warning of Pakistan's acquisition and test of its Ghuari intermediate range ballistic missile. The Intelligence Community failed to predict the resulting nuclear tests and arms race between India and Pakistan.

The Intelligence Community failed to provide adequate warning of Iran's test of its Sahab-3 intermediate range ballistic missile.

You are relying for our defense on an Intelligence Community that has repeatedly failed to predict and warn of critical ballistic missile and nuclear arm developments.

You are recklessly compromising the lives and safety of tens of millions of Americans.

Rumsfeld Commission—The unanimous conclusion of the Rumsfeld Commission argues strongly and conclusively against relying on the Intelligence Community for advance warning on ballistic missile threats. You deny the conclusions of the Rumsfeld Commission. But world events in 1998 have validated the conclusions of the Rumsfeld Commission, and repudiate your findings and perspective.

The Rumsfeld Commission points out unconventional, high-risk development programs and foreign assistance can enable rogue nations to acquire an ICBM capability in a short time, and the Intelligence Community may not be able to detect those efforts. You and the Joint Chiefs of Staff view that as an unlikely development. But North Korea has already developed and ICBM capability, disproving your view.

The Proliferation Primer, A Majority Report of the Subcommittee on International Security, Proliferation, and Federal Services, Committee on Governmental Affairs, U.S. Senate, January 1998, describes at great lengths the foreign assistance being given to rogue nations by Russia, China, North Korea, and the United States for the development of long range ballistic missiles.

Your views on the threats we face from long range ballistic missiles and rogue nations are without basis.

Program—You suggest the 3+3 program is an unprecedented effort to address the likely emergence of a rogue ICBM threat, claiming it compresses what is normally a 6–12 year development program into 3 years, with additional development concurrent with 3 year development.

But we built the atomic bomb in 3 years. We put Polaris to sea in 3.2 years. We built four ballistic missile systems. Thor, Atlas, Titan, and Minuteman, concurrently in under eight years.

We can successfully build advanced technology weapons in crash programs. Your 3+3 program under President Clinton, rather than seeking to build a ballistic missile defense to meet the threats which confront us, is needlessly compromising the security of millions of American lives.

Technology—You claim you have ''a prudent commitment to provide absolutely the best technology when a threat warrants development.'' Yet China threatened to attack the United States by ballistic missile in 1996. North Korea can attack us today. Russia can swiftly launch hundreds of long range ballistic missiles against us. Where is our defense your prudence dictates?

You claim you want to provide the best technology for ballistic missile defense, yet President Clinton canceled the Brilliant Pebbles program in 1993, which would have deployed advanced ballistic missile defenses today. President Clinton cut the Space Based Laser technology program in 1993, an advanced technology program which the Air Force now advocates. President Clinton also cut programs for the research and development of technology for ballistic missile defense. Your claim is utterly false and preposterous.

President Clinton dumbed down the Navy Theater Wide ballistic missile defense program (Navy Upper Tier) to restrict its use of target and cuing information, restrict the speed of its interceptor, and restrict the capability of its Kinetic Kill Vehicle. President Clinton is pursuing ineffective and dumbed-down ballistic missile defense technology. President Clinton is clearly not seeking ''absolutely the best technology.''

You are using the statement of ''absolutely the best technology'' to delay the deployment of a strong and effective ballistic missile defense. You are needlessly placing the lives of tens of millions of Americans at risk of destruction by long-range ballistic missiles. You are attempting to deceive Congress.

Additional Funding—You claim that additional funding of ballistic missile defense programs will not buy back any time in its already ''fast-paced schedule.'' You contradict the Navy's report on its Theater Wide ballistic missile defense program, which points out how additional funding can bring development by 2002 rather than 2006. You contradict the experience of the Space Based Laser program, where lack of funding, especially under President Clinton, has restrained progress. Your views are invalid.

President Clinton is starving the funding of the Space Based Lasers, precluding their deployment. President Clinton canceled Brilliant Pebbles. Yet funding can revive those programs. Still you deny the American people a defense against long range ballistic missiles.

ABM Treaty—You and the Chiefs of Staff believe adherence to the ABM Treaty is consistent with our national security interests. But the ABM Treaty invited the massive buildup of the Soviet nuclear missiles, and the Soviet Union flagrantly violated its provisions. You have been silent about these violations of ''arms control'' agreements.

Furthermore, in April 1991, Dr. Henry Kissinger, author of the 1972 ABM Treaty, repudiated the treaty for being inconsistent with our national security interests, writing, ''Limitations on strategic defense will have to be reconsidered in the light of the Gulf War experience. No responsible leader can henceforth leave his civilian population vulnerable.''

You are irresponsible with American lives, leaving tens of millions of Americans vulnerable to swift, massive destruction by long-range ballistic missiles.

Position of the Joint Chiefs of Staff—The Joint Chiefs of Staff recommends the deployment of a ballistic missile defense at 25 U.S. cities to save the lives of 30 to 50 million U.S. citizens. The Joint Chiefs of Staff believes it is worthwhile deploying a ballistic missile defense to save the lives of tens of millions of Americans.

The Joint Chiefs of Staff believes that the deployment of a ballistic missile defense will limit the ability of a ballistic missile attack to damage our population, industry, and military.

The Joint Chiefs of Staff believes that the deployment of a ballistic missile defense will provide the U.S. a strategic advantage that will enable us to peacefully settle crises around the world.

These views of the Joint Chiefs of Staff for the deployment of a ballistic missile defense, confident in our technological ability to build an effective ballistic missile defense, provide timely advice for Congress although made in 1966.

In spite of the increasing dangers we face, and in spite of the advances in ballistic missile defense technology we have had in 32 years, you find the advice of the Joint Chiefs of Staff to be without merit.

Summary—There is no substitute for a strong defense against long-range ballistic missiles. Your actions and policy of leaving the American people undefended from long range ballistic missiles is indefensible.

Your letter presents Congress with more than a credibility gap. Your leadership, the leadership of President Clinton and his Administration, and the defense of the American people are incompatible.

You, the Joint Chiefs of Staff, and President Clinton are needlessly risking the lives of tens of millions of Americans. You are inviting a nuclear Pearl Harbor. But the defense of the American people from the threat of long-range ballistic missiles will not admit delay.

It is inconceivable, sir, to arrive at any other conclusion but that you are culpable of dereliction of duty, leaving the lives of tens of millions of Americans undefended from long-range ballistic missile attack.

Your Commander-in-Chief President William Jefferson Clinton and his assistant Vice-President Al Gore are also derelict in their duty to defend American lives.

Very truly yours,

BOB SCHAFFER,
Member of Congress.

TRIBUTE TO THE HONORABLE SIDNEY R. YATES

SPEECH OF

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 1, 1998

Mrs. LOWEY. Mr. Speaker, I rise to pay tribute to my good friend and colleague, SID YATES.

Since first joining this Congress a remarkable fifty years ago, SID has been a paragon of conscience and decency, shaping this great Nation for the better through quiet perseverance and boundless idealism.

I have had the pleasure of serving with SID on the Appropriations Committee and have watched in admiration as he successfully funded scores of worthwhile projects, many of enormous benefit to our environment. Years from now, when our children and grandchildren enjoy scenic vistas and waterways, when they walk along gleaming lake fronts and thrill to the diversity of our Nation's wildlife, they will have SID YATES to thank. He has always understood our powerful moral obligations to be custodians of the great outdoors.

Just as important has been SID's championship of the arts. In the midst of controversy and contention, SID has always been a staunch and eloquent defender of the NEA. To those who would inflame public passions about the controversial margins of the artistic world, SID responded with a calm affirmation of the arts' central role in our national life. How many orchestras and exhibitions, how many performances and plays, owe their very existence to SID's faithful leadership? Indeed, the NEA itself might have been overwhelmed by its critics had not SID YATES been a member of this Congress.

For me, it has also been a great honor to sit with SID YATES on Appropriations' Foreign Operations Subcommittee. There, he has been an articulate spokesperson for American leadership around the world and a fierce defender of Israel's interests. It is entirely fitting that SID's first election to Congress should occur in the very year of Israel's declaration of statehood. And that, from this high vantage, SID should be able to watch Israel's development from a threatened outpost between the desert and the sea, to a modern, thriving nation, bursting with technology, artistry, and innovation. SID YATES played no small role in Israel's inspiring progress.

Mr. Speaker, SID YATES leaves this House diminished by his departure, yet wiser for his service. I know that SID YATES' integrity and courage will remain a model to countless public servants for many years to come.

HU KOMPLIMENTA I PLANUN HAGÅTÑA

SPEECH OF

HON. ROBERT A. UNDERWOOD

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. UNDERWOOD. Mr. Speaker, today I wish to commend the efforts of the many citizens on Guam who organized and actively took part in ''Project Hagåtña.'' This island-wide initiative has connected generations on Guam with our Chamorro heritage and has instilled in us our common values as a people longing to strengthen our identity and culture as native pacific-islanders. Project Hagåtña Project Hagåtña incorporated a multi-faceted approach by sponsoring scores of events that built upon our cultural backgrounds and renewed our energy to learn our history. The events were planned in confluence with the Centennial of the Spanish American War.

As my colleagues may know, the Guam legislature recently changed the name of our capital city from ''Agana'' to ''Hagåtña '' (Guam Public Law 24–162) in hopes of restoring and promoting our ancestral village names while at the same time trying us to our cultural roots.

I would like to commend the following individuals for their remarkable efforts in coordinating Project Hagåtña: Lourdes C.N. Ada, Benigno-Joseph Umagat, John San Nicolas, Annabelle Perez, Jeffrey Edubalad, Teresita N. Taitano, Robert J. Umagat, John Garica, Donna Paulino, Lelani Farrales, Lourdes Alonso, Kennedy Jim, Mayleen San Nicolas, Josusa M. Hayes, Clotlde R. Peredo, Patrick S. Leddy, and Peter Alexis Ada.

My congratulations to the people of Guam on the success of Project Hagåtña, may its work continue to remind us of our unique cultural place in the world and strengthen our heritage.

H.R. 4717: DRAFT OF THE CONSERVATION AND REINVESTMENT ACT OF 1999

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. YOUNG of Alaska. Mr. Speaker, since July 17, 1998, Congressman JOHN DINGELL, W.J. ''BILLY'' TAUZIN, RICHARD BAKER, CHRIS JOHN, and I have been circulating a discussion draft and asking for comments to help further this legislative proposal. Our proposal is based on the idea that funds derived from outer continental shelf or OCS activities should be shared with coastal states impacted by the development, as well as reinvested into conservation. Today, we, along with several of our colleagues, will be introducing H.R. 4717.

To set the stage we must digress to the topic of oil and gas revenues paid to the Federal Treasury by companies involved in producing the federal mineral estate. Currently, would-be oil and gas operators on our public lands, and in federal waters, must bid for a

lease at auction, pay rent on this tract if successful with their bid, and pay a royalty on each cubic foot of natural gas and barrel of oil produced. The receipts from oil and gas development onshore, in states like New Mexico and Wyoming, are shared with the state which hosts the federal lease. Generally, half of the revenues the federal government receives from mineral development is shared with these public and land states.

However, oil and gas produced in the federal waters of the OCS is not shared in this manner with adjacent states. There have been numerous attempts to address this inequity. Most have failed at the hands of large states like California and Florida with the help of the environmental community opposed to OCS revenue-sharing because they perceived it as incentive for new oil and gas production. One of the first negotiations took place between Louisiana Governor Earl Long and President Truman. Governor Long has a long history of quotable and embellished stories, but this one is told as follows: Governor Long approached President Truman regarding the issue of revenue from offshore drilling with his state of Louisiana. President Truman, sympathetic, came back with an offer of 50% of the revenues to be shared with impacted adjacent states, such as Louisiana. Governor Long, in typical Earl Long style replied that if Louisiana could not get its due of 100%, it wanted nothing at all. And since that day Louisiana and the other coastal states received just that.

Which brings us to where we are today. With more than 90% of the offshore federal production occurring off the coast of Louisiana, no state is more energized when this issue of revenue sharing is brought up. Past proposals had formulas which favored producing coastal states such as Louisiana and Texas, which have been supportive of responsible development of OCS oil and gas resources. Some previous proposals even penalized states like Florida and California who annually seek a moratorium on OCS leasing. Not so, this time. We all realize the necessity of keeping our large states supportive of in order to have major legislation passed into law.

It seems appropriate to thank those individuals and groups involved with this bill introduction. The proposal has been a process-driven, seeking input from a diverse array of individuals and groups. Countless meetings and information exchanges occurred throughout the summer and into the fall. Any success realized today, with this bill introduction, came from the diversity of the participants and our determination to stay true to an open process and dialogue. Today, you find Congressman that run the spectrum of ideology and geography together supporting this bill. You see the same with the groups who have come out to support this endeavor and I look forward to continuing this collaboration.

Since July, when Congressman DINGELL, TAUZIN, BAKER and JOHN and I began circulating a discussion draft, posted it to the House Resources Committee website, we have been affirmatively seeking comments on the specifics of this idea. I can't stress enough our desire for critical input. Most of our discussion draft ideas were based upon existing reports or programs. Your input has been critical to making this proposal realize it's legislative potential. Today, we are moving into the next step in our process by introducing this bill. Yes, the 105th Congress is nearly finished, but we felt it worthwhile to formally introduce a legislation for thorough scrutiny until the 106th Congress meets. And the citizens of Alaska so willing, I intent to come back and re-introduce the Conservation and Reinvestment Act of 1999 early next year. Please understand, today's introduction does not signal the end our dialogue. I am committed to working with all interested individuals and groups to improve this bill next Congress, should compelling arguments for further amendments. I am dedicating myself to continue the dialogue begun four months ago into the 106th Congress, and working together, we can build a coalition sufficient to enact the ''Conservation and Reinvestment Act of 1999'' into law.***HD***Title I

The first title of the Conservation and Reinvestment Act will redistribute 27% of the total OCS receipts in a given year and is based on a Minerals Management Service's advisory committee's report. This report was prepared by the Administration and local government officials, and oil and gas industry representative, and conservation-community interests. The panel took a pragmatic approach, by suggesting only revenues from new oil and gas development be considered. While this reduces Budget Enforcement Act-induced concerns, it was troublesome to the environmental community because of the implementation that such revenue-sharing would be a strong incentive for new development. Hence, our bull utilizes all revenue, from both existing production and new leases. With this change not only will the funding levels increase to benefits the programs included in our bill, but we wanted to address the environmental community concerns from the outset.

Let's be candid about the perception that this bill includes incentives for oil and gas production. The only true incentive for a company to produce oil and gas, onshore or offshore, is the price of a barrel of oil or cubic foot of gas. A company examines the economics when making its development decisions. Companies will not decree to place a billion-dollar rig offshore based on a state or local government official's desire to increase their share of the fund our legislation would establish. They invest in the OCS if, and only if, they have reasonable expectations of making a profit. Obviously, even in today's oil & gas price environment, many companies have decided to compete in our OSC—especially in the Gulf of Mexico, but also in the Beaufort Sea, and even on existing leases off California.

Would they like to know their royalties are put to noble purposes for the good of taxpayers throughout the Nation? Well, of course, The Land and Water Conservation Fund primarily fueled by OCS receipts does just that, and has since 1965. But, no one believes LWCF has been an incentive for oil and gas drilling, rather its just been a good idea to reinvest some of our oil and gas dollars in the acquisition of lands and conservation of our renewable resources by both state and federal entities.

In addition, we have asked the Minerals Management Service to prepare data to show the amount of new production which would be necessary to increase a state's allocable share by 10%. Preliminary data shows that if all existing leases were to begin producing offshore California, there would be an increase in California's allocable share of only 1 percent, or about $1 million annually. I strongly doubt the people of California would abide new development off their coast simply to gain this revenue for coastal impact assistance.

I argue that this issue of incentives is a ''red herring.'' When a rational person examines the funding distribution, released today, they will see states like Florida and California as some of the largest recipients of impact assistance, despite the current and likely future leasing moratoria. Nevertheless we wish to address the perception of incentives. We are and have always been committed to keeping this bill free of drilling incentives as this is revenue-sharing legislation, pure and simple. To date, we have not received one comment which provides an adequate alternative to funding distribution to areas impacted by OCS development. But, we will work with individuals and groups in finding alternative which accomplishes the goal of providing funds to areas impacted by development which factors in the amount of development adjacent to a given state.***HD***Title II

The second title of the Conservation and Reinvestment Act reinvests 23% of the OCS funds into land-based conservation efforts, with a focus on the Land and Water Conservation Fund (LWCF). More than 30 years ago, the LWCF Act created a unique partnership between Federal, State and local governments by authorizing matching grants for the acquisition and development of recreation and conservation resources. Similarly, the Urban Park and Recreation Recovery Program (UPARR), created in 1978, provided Federal funds to distressed urban areas to rehabilitate and construct recreation areas. Together, these programs strived to develop a national system of parks that would, day-in and day-out, meet the recreation and open-space demands of the American public. Our proposal recognizes the noble potential within these programs and provides the stable funding they have been lacking.

LWCF monies have helped fund over 37,500 State and local projects including campgrounds, trails, playgrounds, and parks throughout the country. UPARR grants have been used to rehabilitate and develop nearly 1,500 urban recreation and park projects in more than 400 local jurisdictions. Yet, with the ever increasing demands of Americans for accessible recreation facilities, State and local governments have identified nearly $3 billion in capital investment needs nationally over the next five years for land acquisition and new construction. Nonetheless, despite the successes of the state-side LWCF matching grant and UPARR programs and the continuing demand for recreation and conservation resources, neither program has been funded over the past three years.

Title two of our bill would revitalize the LWCF and UPARR programs by providing matching grants to federal, state, local, and urban governments for the acquisition and development of conservation and recreation resources. Our bill provides annual funding which in many years provides funding at full $900 million levels. This bill will recommit Congress to the vision that revenues earned from the depletion of a nonrenewable resource should be invested in permanent assets that will serve the conservation and recreation needs of all Americans.

The 23% for land-based conservation would be distributed as follows:

42% to be utilized for Federal LWCF;

42% to State and local conservation and recreation projects; and

16% to fund UPARR programs.

It is important to point out that the funds allocated for State and local conservation and recreation projects only could fund one-half of the projects' costs and all expenditures would have to be consistent with the States' comprehensive outdoor recreation plans. Also the stated, territories, the District of Columbia, Indian tribes, and Alaska Native Village Corporations would all be eligible to receive matching grant funds.***HD***Title III

For over six years, some segments of the conservation community have advocated the creation of an excise tax to provide funding for non-game wildlife projects and conservation education. Included in this bill is funding for wildlife conservation and education. Conservation education is critical to ensuring that people understand the interdependence between man and the environment. We are losing the idea that people and the environment that surrounds them not only can coexist, but must coexist. As the urban sprawl envelops more of the public geography and ideology, we must work to educate with the principles of sustainable use. Hiking, biking, bird-watching, canoeing, mountain climbing, and hunting are all sustainable and acceptable uses of our lands and resources. Education by using sound scientific principles is the only way to ensure that our use of our resources will be sustainable for future generations.

Another void this legislation helps to fill, is the issue of game vs. non-game funding. This issue divides the sporting community who need unity to accomplish our common goals. The excise tax initiative, while well intentioned, was divisive as it created segmented funding for a particular species of wildlife. Our bill provides funding for both species of wildlife, game and non-game through the existing mechanism of Pittman-Robertson.

Pittman-Robertson currently allows for the flexibility to address the needs of non-game species, as well as game species. We all realize that Pittman-Robertson is currently focused on funding game species. However, our bill will create a new subaccount, named the ''Wildlife Conservation and Restoration'' subaccount. The conservation and Reinvestment Act of 1998 will provide funding at higher levels than any other federal source for wildlife. Above levels proposed by the excise tax initiative. This will provide wildlife funding to help move the conservation community beyond the debate of game versus non-game funding and provide for conservation education. This funding is provided with the knowledge that many states will utilize them for non-game and watchable species and these functions can take place with the bill as drafted. However, we allow the flexibility for individual states to maximize their digression.

I am very active in the Congressional Sportsmen's Caucus and am currently the chairman of the Executive Council. The Sportsmen's Caucus is the largest Caucus in the Congress and sportsmen's champion. Far too often, our sportsmen and women are criticized for their outdoor recreation. The mass public does not understand our role in the economy or appreciate our heritage. The sporting community, represented by those who enjoy and utilize the outdoors are a huge segment to our Nation's economy. Members of the Caucus leadership, like SAXBY CHAMBLISS often incorporate our significance in their speeches. We should take a moment to realize how much our sportsmen contribute to the economy and environment.

If hunting and fishing were a corporation, it would rank 10th on the Fortune 500 list. This is ahead of giant corporations like AT&T.

Sportsmen activities support more than twice the number of workers employed by Wal-Mart. Wal-Mart, incidently, Wal-Mart is the largest Fortune 500 employer.

Sportsmen's assets equal, $60 billion in retail sales, 1.9 million jobs supported, and $8.7 billion in state and federal tax revenues. Economists estimate that these factors create a $169 billion ripple effect in our country's economy.

Some additional facts related to the taxes the sporting community pays are also interesting:

Tax revenues generated by sportsmen are greater than the box office total of all United States movie theaters. Also, exceed the combined box office earnings of the all-time top ten grossing films.

Federal tax revenues generated by sportsmen could pay for the combined budgets of the U.S. Fish and Wildlife Service, Endangered Species appropriation, Bureau of Land Management, National Biological Service, and National Park Service. For two years!

Federal tax revenues from New York sportsmen alone could pay for the entire U.S. Forest Service fish and wildlife budget. Pennsylvania sportsmen could pick-up the same tab.

Sportsmen's sales tax revenues generated in North Dakota, South Dakota, Vermont, and West Virginia could pay for their state's entire parks and recreation budgets.

All of you are well aware that the sporting community, especially those who engage in hunting and fishing, have been supporting the larger community of outdoor recreation for decades. Their generous contributions through the sportsmen trust accounts of Dingell-Johnson and Pittman-Robertson have immeasurably benefitted wildlife and their habitat. With that success in mind, I look forward to working with all individuals and groups to see this new subaccount passed into Law.

TRIBUTE TO PETER C. EAGLER

HON. BILL PASCRELL, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. PASCRELL. Mr. Speaker, I would like to call to your attention the Honorable Peter C. Eagler of Clifton, New Jersey. Peter is being honored this evening by the Clifton Democratic Club for his many years of invaluable service to the community.

Peter Eagler is a lifelong resident of the City of Clifton. In 1972, he graduated from Paul VI High School whereupon he entered Fairleigh Dickinson University as an undergraduate. He graduated from Fairleigh in 1976 with a Bachelor of Arts degree in Political Science and Russian Area Studies.

Peter has been employed by the New Jersey Highway Authority in Woodbridge since 1977 and is also a Coordinator for the PNC Bank Art Center, formerly the Garden State Art Center. He previously worked as an Assistant Coordinator for the Art Center and as a Coordinator of Heritage Festivals.

Peter's career in politics began back in 1974 when he was first elected to serve on the Clifton Democratic County Committee. He then became an active participant in several campaigns in North Jersey including being County Coordinator for Jimmy Carter's Presidential campaign, County Coordinator for Jim Florio's 1977 bid for Governor, member of the Steering Committee for Gloria Kolodziej's campaign for City Council, and County Coordinator for both Gary Hart's Presidential Primary bid and the Freeholder campaign in 1984. Peter also served Jim Florio's campaign again in 1989, as an advisor to the campaign's Ethnic Coordinator.

In 1990, Peter ran for a seat on the Clifton City Council and was elected. In 1994 and, again in 1998, he was re-elected to serve on the Council. As a member of the Council, he has served, and continues to serve, as liaison to the Planning Board and the Environmental Advisory Board, Chair of the Certificate of Occupancy Committee, and a member of both the Recreational Task Force and Real Estate Committees.

In 1995, Peter ran unsuccessfully for Freeholder but ran again and was elected to the Board of Chosen Freeholders in 1996. As Freeholder, Peter served as Chairman of the Community Services, Education, and Recreation Committee. In November 1997, the Democratic Party gained a majority on the Freeholder Board and in January of 1998, Peter was chosen as the new Director of the Freeholder Board.

Outside of his political involvements, Peter is also an active member of the community. He has been President of St. John Kanty's Parish Council (1975–1977), Administrator of Hamilton House (1981–1987), member of Passaic County's Sesquicentennial Commission (1985–1987), the Governor's Ethnic Inaugural Committee, the Clifton Historical Commission (1975–1990), and the Lakeview Civic Association. In December 1993, he was ordained a Subdeacon in Holy Apostles Church. Currently, Peter serves as a Trustee of Holy Archangel Broadcasting and is a Coordinator of the St. Nicholas Program at the Hamilton House Museum.

Mr. Speaker, I ask that you join me, our colleagues, and Peter's family and friends in paying tribute to one of North Jersey's most dedicated servants of the community, the Honorable Peter C. Eagler.

HOME HEALTH CARE PAYMENTS

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. STARK. Mr. Speaker, on behalf of myself, Mr. DINGELL, Mr. MATSUI, Mr. BROWN of Ohio, Mr. COYNE, Mr. LEVIN, Mr. CARDIN, Mr. MCDERMOTT, and Mr. MCGOVERN of Massachusetts, I am today introducing a bill to help ameliorate the impact of the home health agency interim payment system and to delay the scheduled 15% cut in home health agency payments scheduled for next fall.

Our bill is revenue neutral.

It is different from the bill being developed by some of the Republicans on the Ways and

Means and Commerce Committees. It does not create huge new tax breaks which will cost far more in out-years than they raise in the near term. It concentrates its relief on those who have been careful, cost-conscious providers and does not throw out money at the agencies which have been abusing Medicare by providing excessive and often questionable visits.

Our bill is identical (except for the pay-for) to the bipartisan bill which has been developed by the Senate Finance Committee, and which may pass the Senate at any moment. Our pay-for simply changes the limits on the Medicare Medical Savings Account demonstration project, lowering the number of participants in the early start-up years and raising them in the out-years and extending the life of the demo. Very few people are likely to participate in this program in the early years, yet CBO charges us for the cost of a full-blown program. By starting more realistically, we will not hurt the program, but can be scored for budget savings.

Attached is a description of the formula changes our bill makes.

This is a small, do-able bill in the last hours of the 105th Congress. It does not waste money on the agencies who have created so much of the fraud, waste, and abuse problem in the home health sector. It is a reponsible pay-for. It is a bill that can quickly and easily be conferenced with the Senate.

We urge other Members to join us in supporting this approach.

SUMMARY OF FORMULA CHANGES

Reduces state and regional differences for ''old'' agency payments; brings down the per beneficiary limits for the highest cost ''old'' agencies; raises the per beneficiary limits for the lower cost ''old'' agencies and eliminates current 2% discount on per beneficiary limits applicable to new agencies. Raises the separate average cost per visit limits for all agencies.

CBO: budget neutral (through FY 2008).

Per Beneficiary Limits

1. ''Old'' agencies: payment is 50% BBA policy +50% (50% national mean +50% regional mean);

2. ''New'' agencies: payments are increased by 2% to equal 100% of the national median (about $3,450), (which continues to be regionally adjusted for wages); and

Per Visit Limits

3. Increase the per visit limits from 105% to 110%.

4. Delays for 1 year the 15% across-the-board cuts currently scheduled to go into effect on October 1, 1999.

CBO: Cost is $1 billion over 5 years.

HONORING RICHARD L. OTTINGER

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mrs. LOWEY. Mr. Speaker, I rise to pay tribute to an outstanding leader, good friend, and beloved former member of this House, Dick Ottinger.

Dick represented Westchester County in the United States House of Representatives from 1965 to 1971, and again from 1975 to 1985. Throughout his service in the Congress, Dick was a model of integrity and energy. He fought for the interests of working families and consumers, for the underprivileged and for seniors—always guided by a powerful sense of justice and idealism.

But Dick's greatest passion has always been the environment. He came to Congress at a time when few in Washington devoted sufficient attention to the cleanliness of our air and water, to the depletion of fossil fuels, or to the long-term relationship between economic growth and sound environmental stewardship. He left Washington with these priorities enjoying wide acceptance among lawmakers and the public alike. Without a doubt, Dick's contribution to the environmental cause was wide and deep—and today his legacy is as great as the American outdoors.

Mr. Speaker, Dick's accomplishments are not limited to the arena of elected office. Public service is at the very heart of Dick Ottinger's character, an instinct revealed in every season of his life. He was one of the founding members of the Peace Corps, a distinguished attorney, an author of numerous books and articles, and today the Dean of the Pace University School of Law as well as the Co-Director of Pace's prestigious Center for Environmental legal Studies.

For his extraordinary body of work, Dick Ottinger has been honored many times over. But perhaps the greatest tribute is the lasting affection and admiration of the men and women whom Dick so ably represented and about whom he continues to care so deeply.

I am pleased to recognize Dick Ottinger, together with his wife June, and to express my thanks to an outstanding role model and wonderful human being.

COMMENDING THE INCORPORATION OF THE SUABE NA TASI FOUNDATION ON GUAM

HON. ROBERT A. UNDERWOOD

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. UNDERWOOD. Mr. Speaker, I would like to bring to the attention of my colleagues the recent formation of a particular non-profit corporation known as the Suabe Na Tasi Foundation. On August 20, 1998, this foundation was officially incorporated on Guam to increase public awareness about the waters surrounding our beautiful island and to raise the necessary funding to study and implement measures to sustain our vibrant economy while protecting our precious ocean resources.

As many of my colleagues know, Guam's coral reefs as home to the most diverse fish populations in the world. Recent increased development have heightened the demand placed on our near-shore waters and, as a result, our reefs and ocean waters have not only been threatened but are becoming adversely impacted. Tumon Bay in particular, Guam's most developed shoreline, has produced signs of environmental stress and human activity is the leading apparent cause. Recent studies also point to an increase in algae growth and beach sands are turning from a pure white to an abused gray that gives way to erosion as each day passes.

In response to these growing signs of rapid development, various local governments as well as GovGuam have attempted to take constructive action to restore our environment and free it from intrusive and negative impact in the future. However, there is a single impediment standing in the way of needed progress and that is a tremendous lack of funds. The Suabe Na Tasi Foundation has stepped up to act as the engine to fund important local initiatives to save our environment and help Tumon Bay.

The people of Guam are especially grateful to Telo Taitague, a local and talented vocalist who has committed to release a compact disc to facilitate a public awareness campaign and offered all the proceeds in support of the Foundation's efforts. Telo, is a true civic leader on Guam as she has devoted her singing talent to aid not only the Suabe Na Tasi Foundation but in the past helped with the Toys for Tots campaign, Rest Homes in North Carolina, the Hawaiian Save the Waters campaign, Special Olympics, and Miss Guam Universe. The Foundation has also completed plans to hod a benefit concert with Telo and other Guam artists and musicians to release money for the restoration of Tumon Bay.

Mr. Speaker, it is also worthwhile to commend the work of several individuals, who with their determination and energy, worked to incorporate the Suabe Na Tasi Foundation. Mr. Paul Packbier, an advocate for protecting the environment who has over twelve years of experience in environmental consulting and chairman of the Foundation, is to be praised for his efforts in organizing the foundation as well as Mr. Sinforoso M. Tolentino, a hgihly respected lawyer and friend of the business community on Guam. Mrs. Beth S. Lizama, currently the Vice President of Marinas Credit Bureau and a Business Development officer for Mari-Net, also deserves recognition and are gratitude for her commitment to the Suabe Na Tasi Foundation. Without these three individuals, the Suabe Na Tasi Foundation would not have been incorporated and Tumon Bay would still be in dire need of our attention and care.

The Suabe Na Tasi Foundation is the first organization of its kind, and we on Guam eagerly await its benefits and look forward to proudly preserving our environmental resources. Let us continue as an island community to share our talents and energy for the betterment of Guam. Si Yu'os Ma'ase to the contributors and founders of the Suabe Na Tasi Foundation. May your organization and dedication to protecting our environment serve as a model for other communities across the United States to emulate.

HONORING THE RETIREMENT OF COMMANDER JAMES E. BURD

HON. ROBERT A. BORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. BORSKI. Mr. Speaker, I would like to extend my deepest congratulations to Commander James E. Burd, the Commanding Officer of the Naval Air Technical Services Facility, on his retirement.

Commander Burd was born in Harrisburg and raised in Pittsburgh, Pennsylvania. In 1975 he graduated from the United States Naval Academy and he obtained of his pilot wings a year later.

He was initially assigned to a Helicopter Combat Squadron and flew an H–46D helicopter aboard the USS *White Plains* (AFS–4), USS *Midway* (CV–41), and USS *Niagara Falls* (AFS–3) in the Pacific and Indian Oceans. In 1980, Commander Burd received his Masters Degree in Aeronautical Engineering from the Naval Postgraduate School. He also attended the Defense Systems Management College where he issued over 2,200 individual engineering safety clearances for almost every aircraft and aviation weapon system in the Navy and Marine Corps inventory, in addition to the prototype and classified systems successfully employed during Desert Storm. While aboard the USS *Shasta* (AE–33), he demonstrated true heroism by helping to save an aircraft from a ditching situation. By 1984, he was appointed as an Aeronautical Engineering Duty Officer, yet he still found the time to volunteer as a Detachment Officer in Charge of a helicopter deployment aboard USS *Flint* (AE–32).

Commander Burd continued to advance his career in the Navy when he was promoted to the position of Project Officer for the Presidential Helicopter Program and qualified as Aircraft Commander in the CH–53A. Eventually, he became the Vertical Flight Program Director for the Naval Air Development Center in Warminster, Pennsylvania.

After returning to San Diego in 1994, he became the Helicopter Class Desk Officer for COMNAVAIRPAC. Commander Burd now had the enormous responsibility of being in charge of more than 700 Navy and Marine Helicopters stationed throughout the Pacific Fleet. He continued to excel in his career and by 1994 he was designated as the first 3.3 Technical Data Department Head of the Naval Aviation Systems TEAM.

Incredibly, Commander Burd's personal awards are as impressive as his career's track record. He has been honored with the Meritorious Service Medal along with two Navy and Marine Corps Commendation Medals. He also received four separate citations for various at sea rescues and emergency recoveries while piloting both H–46 and H–53 helicopters.

I am more than honored to join Commander Burd's wife, Nancy and his son, Andy, in congratulating him for a job well done. He is an American hero who was dedicated his life to his family and community, as well as preserving the safety of our nation. I wish him the best of luck in the endeavors that follow his retirement.

WORLD POPULATION AWARENESS WEEK

HON. MARTIN OLAV SABO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. SABO. Mr. Speaker, I rise today to call World Population Awareness Week 1998 to the attention of my colleagues.

October 25–31, 1998 marks the 13th annual celebration of World Population Awareness Week. More than 300 family planning, environmental educational, community and service organizations in 61 countries are co-sponsoring the week in an effort to raise awareness of the need or universal voluntary family planning.

I commend to the attention of my colleagues the following proclamation, made by the Governor of Minnesota, the Honorable Arne H. Carlson:

WORLD POPULATION AWARENESS WEEK PROCLAMATION–1998

Whereas world population stands today at more than 5.9 billion and increases by more than 80 million per year, with virtually all of this growth in the least developed countries;

Whereas the consequences of rapid population growth are not limited to the developing world, but extend to all nations and to all people, including every citizen of the State of Minnesota concerned for human dignity, freedom and democracy, as well as for the impact on the global economy;

Whereas 1.3 billion people—more than the combined population of Europe and North Africa—live in absolute poverty on the equivalent of one U.S. dollar or less a day;

Whereas 1.5 billion people—nearly one-quarter of the world population—lack an adequate supply of clean drinking water or sanitation;

Whereas more than 840 million people—one-fifth of the entire population of the developing world—are hungry or malnourished;

Whereas demographic studies and surveys indicate that at least 120 million married women in the developing world—and a large but undefined number of unmarried women—want more control over their fertility but lack access to family planning;

Whereas this unmet demand for family planning is projected to result in 1.2 billion unintended births; and

Whereas the 1994 International Conference on Population and Development determined that political commitment and appropriate programs aimed at providing universal access to voluntary family planning information, education and services can ensure world population stabilization at 8 billion or less rather than 12 billion or more.

Now, therefore, I, Arne H. Carlson, Governor of the State of Minnesota, do hereby proclaim the week of October 25–31, 1998 as World Population Awareness Week, and urge citizens of the State to take cognizance of this event and to participate appropriately in its observance.

A JOB WELL DONE

HON. LANE EVANS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. EVANS. Mr. Speaker, in a matter of days, Adam Sachs, an outstanding member of my Committee staff will return to Kansas City, Missouri. As Adam begins this new chapter in his life, I wish Adam, his wife, Julana Harper-Sachs, and their two daughters, Haleigh and Maggie Harper, happiness and success in the coming years.

Adam began his government service in 1987, when he joined the staff of my congressional office. While a member of my personal staff, Adam served as my legislative assistant for national defense issues and other key issues until 1989. Adam then returned to school and received his law degree from Washington University, St. Louis, Missouri, in 1992.

Last year, after he had established a successful law career in Kansas City, I was fortunate to prevail upon Adam to return to Washington to join the Democratic staff of the House Committee on Veterans' Affairs. As a member of my Committee staff, Adam has served as the Chief Counsel and Staff Director of the Subcommittee on Oversight and Investigations. While Adam's tenure with the Committee has been short, his accomplishment have been significant.

Among his achievements, Adam was instrumental in the establishment of a new process by which the Department of Veterans Affairs responds to allegations of employment discrimination, including sexual harassment in the VA workplace. When inaccurate allegations were made that burials in Arlington National Cemetery were being sold in exchange for political contributions, Adam determined the facts which refuted the improprieties which had been so eagerly alleged. To ensure Arlington National Cemetery continued to be our Nation's most honored final resting place, Adam worked in a bipartisan fashion to develop legislation to maintain the integrity of burials at Arlington National Cemetery. As an indication of Adam's legislative abilities, this legislation was overwhelmingly approved by the House of Representatives.

Adam is blessed with many outstanding attributes. He has a passion for fairness and justice, an unfailing sense of good humor and a willingness to always take on one more task. Adam, those of us who have come to know you and work with you, will miss you. We wish you all the best and look forward to seeing you again in the future.

HONORING SUNNY YEDDIS GOLDBERG

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mrs. LOWEY. Mr. Speaker, I rise to pay tribute to a remarkable individual and good friend, Sunny Yeddis Goldberg.

There are few people as well named as Sunny. Active in an extraordinary number of causes, ranging from education to neighborhood beautification, from promotion of the arts to prevention of illness, Sunny brings to each challenge her unique blend of bright optimism and boundless energy.

Professionally, Sunny has devoted her life to children, earning degrees in education and acquiring an expertise in overcoming learning disabilities. As a private therapist and as an expert with the Board of Cooperative Services, Sunny has helped countless young people overcome obstacles to achieve their potential.

In Mamaroneck, New York, where Sunny lives, she is regarded as a community treasure. Indeed, one of Sunny's passions has been Larchmont-Mamaroneck Community Television, an exceptionally well-regarded local station with a rich array of programming a central place in the life of the villages it serves. Sunny has been a Board Member at LMC–TV for twelve years, including nine during which she served as President.

This month, LMC–TV will not only recognize Sunny's exceptional contribution, but will name its annual award after her. There can be no more deserving recipient of the ''Sunny'' than Sunny herself.

Mr. Speaker, Sunny Yeddis Goldberg is one of those individuals around whom burdens seem lighter and joys even more sweet. We are enriched by her work and inspired by her example.

CONGRATULATIONS TO FATHER DUENAS MEMORIAL HIGH SCHOOL AND THE ACADEMY OF OUR LADY OF GUAM ON THEIR 50TH ANNIVERSARY

HON. ROBERT A. UNDERWOOD

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. UNDERWOOD. Mr. Speaker, fifty years ago, Bishop Apollinaris William Baumgartner' dream came to fruition. Firmly believing that the growth of Guam's Catholic Church depended on the establishment of the local clergy, he worked to ensure that young men on Guam had the opportunity to receive religious vocation training and to pursue university level education. Upon contacting the Stigmatine Fathers at Waltham, Massachusetts, work commenced on a minor seminary accommodating young Guam men aspiring to the priesthood.

It was an uphill battle. At the time, the church in Guam was in the earliest stages of self-reliance. It was a challenge to survive with meager funds and at the same time support the goal of an institution that will foster Guamanian clergies, bishops and priests. Money was not the sole problem. Time and energy also went into clearing the land upon which the school was to be built. Fortunately, efforts from dedicated followers make the building construction possible.

In the summer of 1948, five Stigmatine Fathers, considered pioneers and Founding Fathers, arrived on Guam. The Father Superior, Rev. Joseph Morgan, C.P.S., was accompanied by the Revs. Charles Egan, C.P.S., Geral O. Goggin, C.P.S., Leo James Garachi, C.P.S., and Elisworth Fortman, C.P.S. to form the nucleus of the teaching staff. A total of 17 Stigmatine Fathers instructed at the school until 1959 when local clergy were able to administer and staff the school. Capuchin Franciscan Friars, who were pastors of most of the parishes in the Marianas in those days, took over the school's administration.

Father Duenas Memorial School (FDMS) was named after a local priest martyred by Japanese Imperial troops during World War II for sympathizing with the Americans. FDMS opened its doors on October 1, 1948. To usher in the school's first year, a solemn high mass was celebrated in the presence of Bishop Baumgartner and attended by the parents, relatives and friends of students. Among those who filled the chapel to maximum capacity were representatives of the Guam Department of Education, Mr. Norbert Tabery and Mr. Simon Sanchez. The presence bears testimony to the good relations which have always existed between Catholic Schools, FDMS being the first, and the Government of Guam.

To attract more students, Bishop Baumgartner decided to admit non-seminarians, classified then as ''day-students,'' to FDMS. Considered as a college preparatory High School, day students attended classes during the daytime while seminarians boarded at the school. A total enrollment of less than fifty students doubled in 1949 and has since steadily increased.

Around the same time of Father Duenas Memorial's inception, Bishop Baumgartner laid the foundation of yet another of Guam's premier educational institutions. Named after Mary, the Mother of Jesus, the Academy of Our Lady of Guam (AOLG) is a female-only Catholic educational institution delivering Catholic educational service based on the Gospel values of love.

With the assistance of my aunt, Sister Mary Inez Underwood, the Academy opened its doors to 36 freshmen on September 8, 1949. First housed in a section of the Agana Cathedral Activities Hall, the students learned about developed skills in the sciences, mathematics, language and fine arts as well as the life and example of Christ.

Under the guidance of the future Archbishop of Guam, Monsignor Felixberto Camacho Flores spearheaded the construction of a permanent structure for the Academy in 1960. In 1974, the school received its first accreditation from the Western Association of Schools and Colleges. It has undergone the accreditarian process successfully four times after this, the last being in March of 1996.

From an initial enrollment of 36 students in 1949, the student body now consists of over 400 young women. Under the direction of Sister Mary Inez Underwood, Sister Mary Roberta Taitano, Sister Marie Pierre Martinez, Sister Evelyn Muna, Sister Mary Mark Martinez, Sister Mary Francis Jerome Cruz, Sister Mary Helene Torres, and Sister Mary Angela Perez, the Academy has distinguished itself as one of the finest college and career-bound preparatory schools on Guam. Sister Mary Francis Jerome and Mrs. Daphne Castillo continue this tradition of excellence today.

While AOLG students are recognized islandwide for their outstanding scholastic achievement, participation in Academic Challenge Bowls, Mock Trials, and the Debate forums, AOLG is also recognized locally and regionally for its strong interscholastic sports program, such as previous Far East Volleyball Tournament championships, tennis and golf tournaments, as well as an array of other youth athletic activities.

October 14, 1998 marks the 50th anniversary of the establishment of Father Duenas Memorial High School and the Academy of Our Lady of Guam. I commend and congratulate the founders, administrators, faculty, staff, students, alumni and alumnae of these two fine Catholic schools.

For fifty years, the schools have generated men and women who have made great contributions toward the transformation of Guam from an island ravaged by war in the forties to its present state as a political and economic center in the Western Pacific.

I wish FDMS and AOLG continued success. I am confident that these fine institutions of faith and learning will continue their commitment to excellence by providing a valuable educational opportunity to the sons and daughters of Guam.

HONORING HAZEL HAINSWORTH YOUNG AND THE ALPHA KAPPA OMEGA CHAPTER

HON. SHEILA JACKSON-LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of honoring the Alpha Kappa Omega Chapter and Mrs. Hazel Hainsworth Young. This Resolution first recognizes the Alpha Kappa Omega Chapter on the celebration of their 70th birthday. It also recognizes the dedication and commitment of Mrs. Hazel Hainsworth to the sorority and to her community.

Throughout its storied history, the Alpha Kappa Omega Chapter has been an instrument of leadership in many civic, cultural, and charitable projects. This chapter has consistently made an effort to enhance the quality of life for all Houston residents. In the early 1930's, it was this chapter which distributed milk to the underprivileged children of Houston. This tradition continues in the 1990's with its devotion to improving academic achievement among African-American students. Whatever the need, this chapter has answered the call with commitment and leadership.

Mrs. Hazel Hainsworth Young serves as a vivid reminder of our sorority's commitment to wholesome sisterly friendships and of our endeavors to serve our community. She has exemplified the true meaning of being a sister in the Alpha Kappa Alpha Sorority. She continues to be a source of inspiration, not only for me and for you, but to our future members. Who better to look up to for direction and leadership, than to one of our founding sisters.

This birthday celebration allows us to reflect on our past and to look to our future. The past is filled with many Alpha Kappa Alpha sisters, who like Mrs. Hazel Hainsworth Young, dedicated themselves to the improvement of their community. These sisters have set an example which future members of this chapter can emulate.

On this occasion of your 70th year of existence, I want to commend the sisters of the Alpha Kappa Omega Chapter for their dedication to sisterhood and for their efforts to improve the Houston community. I also want to thank Mrs. Hazel Hainsworth Young for her leadership and service.

A TRIBUTE TO THE STREET-LEVEL YOUTH MEDIA PROGRAM

HON. LUIS V. GUTIERREZ

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. GUTIERREZ. Mr. Speaker, I rise today to congratulate the Street-Level Youth Media program for their designation as a recipient of the ''Coming Up Taller'' Award. The Annual ''Coming Up Taller'' Awards are sponsored by the National Endowment for the Arts and the President's Committee on the Arts and the Humanities to showcase cultural excellence and enhance the availability of out-of-school arts and humanities programs to children, especially those with limited resources.

Street-Level provides a concrete example of how after-school, weekend and summer arts programs are effectively used by communities in prevention strategies for children and youth.

Street-Level began in 1993 as a vision of a small group of artists who wanted to create a hands-on program that would provide free access to emerging technologies. Children and young adults, with the help of computers, cameras, video, radio and other mediums of media art and technology, were given a forum for self-expression, communication and social change.

Today, that vision has become a reality. Through their collaboration with National Public Radio, The Field Museum of Chicago, Gallery 37 and Public Broadcasting Service, among others, Street-Level is able to serve more than 1,000 children and young adults in Chicago. Thanks to their association with these well-known entities, we have been graced with historical documentaries, innovative animation and multicultural education resources.

Programs like Street-Level Youth Media deserve our recognition. Programs such as these are proactive, promote a child's creative interests and develop critical thinking skills. As we embark into the Twenty-First Century, our challenge should be to replicate exemplary programs like Street-Level so that we may have an able Twenty-First Century citizenry.

I applaud the work that you do and I am hopeful that your creative energy will follow your lives and make our world richer. Congratulations.

PERSONAL EXPLANATION

HON. JAMES H. MALONEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. MALONEY of Connecticut. Mr. Speaker, I was unavoidably detained for a recorded vote earlier today. If I had been present for the rollcall vote No. 487, I would have voted ''yea''.

DO THE WRITE THING CHALLENGE PROGRAM

HON. FRANK RIGGS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. RIGGS. Mr. Speaker, not long ago, I served as host for a reception in the Cannon Caucus Room to honor the finalists in the Do the Write Thing Challenge Program. As Chairman of the Subcommittee on Early Childhood, Youth and Families of the House Education and the Workforce Committee, I want to call this initiative to the attention of my colleagues.

Do the Write is a project of the National Campaign to Stop Violence. Students in urban middle schools are encouraged to write about problems of violence and drug abuse in their communities. Through these writings, 7th and 8th graders are motivated to make a commitment to stay in school and do something about drug abuse and violence. They also increase adult awareness and involvement in programs to address these problems.

At the beginning of each school year, school superintendents in targeted cities notify middle school principals about the Do the Write Thing Challenge Program. Students are then asked to write papers relating to three questions: ''How has youth violence and drug abuse affected my life?'' ''What are the causes of youth violence and drug abuse?'' ''What can I do about the youth violence and drug abuse that I see or experience?''

A panel of volunteers reads student papers. They selected male and female finalists for each school. From among these students, the best entries from each city are named national finalists. There is a local recognition ceremony for the school finalists, and a series of recognition events in Washington, D.C. for the national finalists. Local committees also work with government, businesses, and community leaders to provide opportunities for the student participants such as job training internships, mentoring, and scholarships. These are designed to promote community service and build a new network of positive relationships for those who have accepted the Do the Write Thing challenge.

The Do the Write Thing Challenge Program is presently operating in Atlanta, Chicago, Detroit, Hartford, Houston, Las Vegas, Los Angeles, Miami, New Orleans, New York, Philadelphia, and Washington, D.C. Nationwide, over 15,000 students have submitted writings as part of the program.

Mr. Speaker, those who merit recognition are too numerous to mention, but I want to particularly thank Daniel Q. Callister, the founder and Chair of the National Campaign to Stop Violence for his leadership in the Do the Write Thing Challenge Program . I also thank Marion W. Mattingly who is working tirelessly to expand the Do the Write Thing Challenge Program to additional cities. The Council of Great City Schools, the National Association of Secondary School Principals, the National Council of Juvenile and Family Court Judges, the Young Astronauts Counsel, and the Justice Department's Office of Juvenile Justice and Delinquency Prevention are all supporting the program. Finally, special commendation goes to the Kuwait-America Foundation, the primary sponsor of the Do the Write Thing Challenge Program.

HONORING ROBIN CHANDLER DUKE

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mrs. LOWEY. Mr. Speaker, I rise to pay tribute to a good friend and outstanding leader, Robin Chandler Duke.

Robin is one of those rare individuals who lends energy and dynamism to every cause with which she is involved. Through her service and advocacy, Robin has advanced compassionate public policy here and abroad, while touching countless lives.

I have had the great privilege of working at Robin's side in the critical struggle to protect a woman's right to choose. President Emeritus of the National Abortion Rights Action League, Robin has been a tireless champion of reproductive freedom—always inspiring those with whom she works and meeting even the most difficult challenge with grace, wit, and determination.

Robin is a giant among pro-choice leaders, yet this is but a small part of her varied activities. For seven years, Robin has been the National Co-Chairperson of Population Action International, which is dedicated to the promotion of voluntary family planning, effective population policies, and individual rights. In addition, Robin is actively involved in the U.S. Japan Foundation, The David and Lucile Packard Foundation, the Alan Guttmacher Institute, the United Nations Association, the Council on Foreign Relations, and the Friends of Art and Preservation in Embassies. She has represented our country in various international conferences and organizations, and remains today a shining light of principle and purpose.

Above all, Robin is a delightful human being. A paragon of elegance and poise, and yet utterly without pretension. Robin is always impressive, but never imposing. It is a joy to be her friend.

Mr. Speaker, this month Population Action International will honor Robin Chandler Duke for her service to that organization and for a lifetime of good works. Let the record reflect my enormous admiration and gratitude for this outstanding American.

GEOGRAPHY AWARENESS WEEK

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. STUMP. Mr. Speaker, during the week of November 15–21, the Arizona Geographic Alliance will be celebrating Arizona's Geography Awareness Week. The Alliance has worked closely with the Governor, local mayors and school superintendents to recognize the week in the public schools. The National Geographic Society, the State of Arizona, and Arizona State University supports Geography Awareness Week.

The purpose of the week of programs is to illustrate the importance of geography education. Studying geography is much more than just locating a city, state or country on a map. Students of geography learn about direction, climate, physical and social characteristics of a region, methods of travel, cultural differences, monetary systems, and environmental settings. A thorough understanding of geography offers an understanding needed for many of today's jobs. Geographic education also opens the mind to the world and experiences beyond our own boundaries.

I commend the members of the Arizona Geographic Alliance for their promotion of the importance of geography education. Hopefully, other states will join Arizona in creating a Geography Awareness Week to renew interest in our ever-changing global environment.

CELEBRATING THE 70TH BIRTHDAY OF JAMES FORMAN

HON. ELEANOR HOLMES NORTON

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Ms. NORTON. Mr. Speaker, I rise to celebrate James Forman, who should have been a celebrated leader years ago. Jim, as we always called him when he was the engine and the engineer of the Student Nonviolent Coordinating Committee (SNCC), has just celebrated his 70th birthday. Jim Forman is the least known of the major civil rights leaders of the 1960s. Our colleague, John Lewis, may be the best known of those of us who worked in SNCC, but John would be the first to say that it was Jim who ran SNCC.

Jim Forman was the Executive Director of the Student Nonviolent Coordinating Committee when it was at its best and at its height. This was the SNCC that pioneered the nonviolent techniques of the sit-ins at segregated lunch counters; that organized the Mississippi Freedom Democratic Party that broke segregated national convention delegations in both parties; and that originated the 1964 Mississippi civil rights summer that brought an integrated army of students into the South to break open the worst and most dangerous areas. These historic achievements required more than young people who were willing to sit in, go to jail, or risk their lives. Jim did those and more. Jim was the sturdy hand at the helm who brought order out of movement chaos, kept everybody focused, and headed off trouble. I remember Jim as the forceful man in charge who was good at the whole range of human interactions. He could cajole, he could persuade, he could entice, and, if necessary, he would order.

SNCC was an extraordinary, collegial, decentralized movement organization. Its loose structure, youthful participants, and free spirits demanded a special leader. How fortunate our band of the young and foolish were. At the moment when we needed a leader who could hold us all together until the segregated south succumbed to the rule of law, we found one—James Forman.

TRIBUTE TO THE HONORABLE GERALD SOLOMON

SPEECH OF

HON. HERBERT H. BATEMAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 6, 1998

Mr. BATEMAN. Mr. Speaker, regrettably, schedule conflicts on two occasions prevented me from joining in the tribute here on the House Floor to our departing colleague, JERRY SOLOMON. I would like to have contributed comments then. Since I could not, I ask these words be included at the appropriate point in the RECORD.

JERRY SOLOMON is a number of things to me. On a personal level, he is a friend, one of my best friends in the Congress. He is also a neighbor, as my wife and I live in the same complex as JERRY and his wife, Freida, when she is in the area.

From my earliest days as a member of the House, JERRY was friendly, open and willing to take his time to help a new member.

Amazingly, even after he became Chairman of the Rules Committee, JERRY SOLOMON remained the same Jerry as before. He was accessible, interested and willing to help whenever his help did not conflict with his deeply held policy positions.

JERRY is a highly skilled legislator. All Members of the Congress are patriots. They love their country. JERRY SOLOMON is an ardent patriot. He would be even if he was not a Marine Corp veteran, but being a Marine helps.

I have heard JERRY in the forum of the North Atlantic Assembly, where he has served so ably and effectively defended and advocated the security interest of the United States of America.

On this floor, and in the ways that the Chairman of the Rules Committee can make a difference, JERRY SOLOMON has been one of the strongest advocates for our military service, and on behalf of trying to keep us strong. He has been in the forefront of the efforts to preserve our much too threatened American Merchant Marine and American Merchant Mariners.

For all this, and for much more, I salute my friend and neighbor, JERRY SOLOMON. You will indeed be missed.

CONGRATULATING GUAM'S PARTICIPATION IN THE IV MICRONESIAN GAMES

HON. ROBERT A. UNDERWOOD

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. UNDERWOOD. Mr. Speaker, during the first ten days of August this year, the 1998 Micronesian Games were held in the Republic of Palau. Noted for its natural beauty, friendly people and world famous dive spots, the Republic played host to the IV Micronesian Games, the largest sports event ever to be held within this group of islands. Delegations of over two thousand athletes and coaches from as far away as Kiribati and Nauru made the trip to the archipelago. Team Guam, consisting of over 200 participants and officials, came to compete with our brothers and sisters from all over the Western Pacific and to defend the medals earned during the last Micronesian Games held four years ago on Guam.

Once again, the Guam delegation performed particularly well. I would like to commend and congratulate Team Guam for their superb performance, efforts and contributions toward the success of the Games. Participating in regional competitions such as the Micronesian Games strengthens our relations with our neighbors and prepares our athletes for higher levels of competition.

I am pleased to submit for the RECORD the names of Guam athletes who have distinguished themselves by winning medals during the IV Micronesian Games.

GOLD MEDAL WINNERS

TABLE TENNIS

Men's Single: Carlos Gumataotao.

BASKETBALL

Men's Team: Manuel Alegre, Vincent Bautista, Carmen Blas, Joey Almoguera, Joseph P. Cepeda, Daniel D. Cepeda, Richard Gutierrez, Michael Lee, Arnold Mesa, Jine Ho Han, Jesse Pinaula, Mike Swaney, Paul Shimizu, Melvin F. Peters.

LAWN TENNIS

Men's Team: Mark Arakawa, Alfred Feria, Lynn Nguyen, David L. Smith.

Men's Doubles: Lynn Nguyen, Mark Arakawa, Mixed Doubles: Lynn Nguyen, Linda Johnson.

Women's Individual: Linda Johnson.

VOLLEYBALL

Women's Team: Debra Bell, Francine Calvo, Lucia Calvo, Dolores Cruz, Mie Endo, Sharon Mendoza, Deborah D. Pangelinan, Leticia Pangelinan, Rebecca Salas, Sonda Yatar, Michelle Cruz-Taisipic, Lisa Muna.

SOFTBALL

Men's Team: Peter B. Aguon, Melan C. Borja, Frenando S. Diaz, John D. Hattig, Raymond Rojas, Edward T. Laguana, Richard B. Martinez, Vincent E.M. Meno, Peter P. Pangelinan, Frank P. Quintanilla, Albert L. Rdialul.

Women's Team: Jennifer M. Aguon, Josephine M.P. Blas, Arlene Cepeda, Margaret M. Cepeda, Kauleen Crisostomo, Maria B. Cruz, Carla V. Dulay, Vickie Fejeran, Darleen Rayburn, Vitolia Love, Susan Miner, Lillian Quintanilla, Luann Guzman, Marcelle Rivera, Arlinda Sablan, Tara Steffy, Monica Fernandez.

CANOEING

Women's Team (8 mile): Susan Hendricks, Venesia Luzanta, Irene Meritita, Melanie Mesa, Nicole Murphy, Julie Paxton, Agnes Suba, Jorgi Strand hagen, Junko Suzuki.

Men's Team (500 m): Anthony Blas, Marcelito Carlos, Randy Sager, Benjamin Del Rosario, Grafton L. Howard, David Torre, Magahet Mendiola, Andrew Painter, Uati Taua, Raymond Rojas.

WRESTLING

Greco-Roman (213 lbs): Joe Santos.
Greco-Roman (167 lbs): Karido Goodrich.
Greco-Roman (160 lbs.): Darryl Gose.
Greco-Roman (158 lbs): Melchor Manibusan.
Freestyle (213 lbs): Joe Santos.
Freestyle (167 lbs): Ben Hernandez.
Freestyle (158 lbs): Melchor Manibusan.

UNDERWATER FISHING

Team: Roberto Cabreza, Joseph Hobson, Kenneth Pier.

Individual Event: Joe Hobson.

SWIMMING

500m Butterfly: Musashi Flores.
500m Freestyle: Musashi Flores.

ATHLETICS

10,000m: Brent Butler.
5,000m: Brent Butler.
1,500m: Brent Butler.
800m: Neil Weare.
High Jump: Joseph Skeritt.
Discus: Rene Delmar.
4400m Relay: Jenae Skeritt, Sloan Seigrist, Jacqueline Baza, Aubrey Posadas.
3,000m: Jenae Skeritt.
1,500m: Sloan Seigrist.
800m: Jenae Skeritt.
400m: Jaqueline Baza.
High Jump: Jenae Skeritt.
Long Jump: Aubrey Posadas.

SILVER MEDAL WINNERS

CANOEING

Women's Team: 2500M; 500m.

TABLE TENNIS

Men's Team Overall: Chris Candaso, Carlos I. Gumataotao, Francisco Gumataotao, Frank G. Gumataotao.

Women's Team Overall: Natalie I. Gumataotao, Bina Lujan, Donna Santos.

Men's Doubles: Carlos Gumataotao, Frank Gumataotao, Jr.

LAWN TENNIS

Women's Team Overall: Anita P. Feria, Linda R. Johnson, Kuba Otomi.

Women's Doubles: Anita P. Feria, Linda R. Johnson.

SWIMMING

100m Butterfly: Musashi Flores.
4X100m Free Relay: Musashi Flores, Joshua Taitano.
5X50m Medley Relay: Musashi Flores.
400m Freestyle: Joshua Taitano.
100m Backstroke: Joshua Taitano.
4X50m Medley Relay: Peter Manglona, Alison Aglubat, Daniel Kang, Molly Boyd, Chirika Aguon, Lorianne Sablan, Joshua Taitano.
4X100m Freestyle Relay: Alison Aglubat, Daniel Kang, Molly Boyd, Chirika Aguon, Lorianne Sablan, Gilbert Mendiola.

ATHLETICS

1500m: Neil Weare.

4X100m Relay: Neil Weare, Ryan Claros, Paul Claros, Phil Am Garcia.
Shot Put: Rene Delmar.
1500m: Jenae Skerrit.
800m: Sloan Seigrist.
200m: Jacqueline Baza.

BASKETBALL

Women's Team: Joyce Q. Aflleje, Trinidad Borjka, Liezel M. Delin, Melissa Elwell, Kristina French, Tarsha Okiyama, Michele L. Presnell, Catherine P. Sison, Michelle P. Sison, Teresa P. Sison, Tara Taitano, Marina M. Vergara, Satrina Chargualaf, Tony Thompson.

VOLLEYBALL

Men's Team: Ryan T. Balajadia, Jason J. Camacho, Gerson T. Hoebing, Rayond J. Mantanona, Steven V. Pangelinan, Jesse G. Perez, Michael Rabago, Marvin Rojas, Richard M. Tumanda, Peter L. Valdez, Joel R. Valenzuela, Richard Y. Ybanez, Barbara Quinata, Daniel J. Hattig.

WRESTLING

118 lbs. Greco Roman: Tony Santos.
127 lbs. Freestyle: Darryl Gose.
188 lbs. Greco Roman: Mike Taijeron.

BRONZE MEDAL WINNERS

CANOEING

Men's Team: 8 mile.

WRESTLING

118 lbs. Freestyle: Tony Santos.

TABLE TENNIS

Women's Doubles: Donna Santos, Natalie Gumataotao.

WEIGHTLIFTING

169 lbs. Best of Snatch: Edgar Molinas.
169 lbs. Clean & Jerk: Edgar Molinas.
231 lbs. Best of Snatch: Jeff Ludwig.
231 lbs. Clean & Jerk: Jeff Ludwig.

ATHLETICS

400m: David Neilsen.
4X400m Relay: Neil Weare, Ryan Claros, Paul Claros, Phil Am Garcia.

BASEBALL

Men's Team: Steven Alcantara, Wilton Acta, Dale Alvarez, Joey J. Blas, Rico R. Castro, Brian Cruz, Dominio Cruz, Issac N. Cruz, Roman Duenas, Kin Fernandez, Vince Gumataotao, Larence Idelbong, Kevin Isezaki, Thomas A. Morrison, Barry Nauta, Shaun A. Pascua, Raymond Quintanilla, Jim S. Reyes, Mark Roberts, Joseph Tuquero, Anthony F. A. Yatar, Rosita Cruz, Ryan Flynn, Darly Haun.

SWIMMING

2 mile ocean swim: Travis Bryce.
400m Individual Medley: Josehua Taitano.
100m Breastroke: Peter Manglona.
50m Backstroke: Samuel Lee.
200m Breastroke: Alison Aglubat.
100m Breastroke: Alison Aglubat.
200m Breastroke: Daniel Kang.

LAWN TENNIS

Men's Individual: Lynn Nguyen.
Men's Doubles: Alfred Feria, Dave Smith.

RECOGNIZING THE AWARD WINNERS OF THE FAYETTE COUNTY 4–H

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. PAUL. Mr. Speaker, I would like to offer my congratulations to thirteen young men and women from Fayette County who will this weekend be honored by the Fayette County 4–H club in my district.

Being awarded the Gold Star will be Michelle Cernoch; Ashley Dittert, and Vickie Sanders.

Receiving the Silver Star, Bradley Klesel and Billie Jo Murphy.

The ''I Dare You'' award will go to Heather Woelfel and Shayne Markwardt.

The ''Outstanding Junior'' Award will be presented to Jenifer Klesel, Melanie Cernoch and Kelly Orsak.

And finally, the ''Outstanding Sub Junior'' award will be presented to Adam Mayer, Jodie Kristynick and Brandon Otto.

These fine young people should be commended for their dedication to the fine principles of 4–H. I know I speak for all the constituents of the 14th District when I offer them congratulations and best wishes for continued success.

PROTECTING DOCTORS AND PATIENTS IN MEDICARE+CHOICE: INTRODUCTION OF LEGISLATION FURTHER LIMITING PHYSICIAN INCENTIVE PLANS

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 7, 1998

Mr. STARK. Mr. Speaker, as more Medicare beneficiaries join managed care plans, public fears about the effects of financial incentives to physicians demand renewed attention. Under current regulations. Medicare+Choice plans cannot make more than 25% of physicians' total payment dependent on financial incentives to alter practice behavior. This regulation only catches those organizations at the high end of the spectrum since most incentive plans effect less than 25% of total compensation.

A recent editorial in the September 3, 1998 New England Journal of Medicine states that the intensity of incentives in a capitated compensation system clearly affects the extent of physicians' conflict of interest. Bonuses and withheld amounts paid out in lump sums when a specific target is attained can create especially intense conflicts of interest if the physician is close to qualifying for the extra money near the end of a contract period.

An article in the August, 1998 issue of the Journal of Health Politics, Policy and Law states that ''more than 60 percent of managed care plans withhold a portion of physicians' salaries to cover expenditures that exceed target projections for use of specialists or hospitals. Furthermore, most plans withhold more than 11 percent of physicians' salaries and some even withhold more than 30 percent''. The Journal advocates precautionary measures to protect and reassure the public trust, including limiting financial incentives.

Survey data of HMO managers suggests that physicians' decision making is influenced when financial incentives are between 5–10 percent of income. ''Half of the respondents believed that a bonus of 5–15% would affect ordering behavior,'' according to ''Data Watch: HMO Managers' Views on Financial Incentives and Quality'' by Hillman, Pauly, Kerman, and Martinek in the Winter 1991 issue of Health Affairs. Clearly there is a need to further reduce the allowable percentage of physicians financial incentives. If managed care programs continue to reward physicians who provide fewer services to patients, physicians will fail to be advocates of patients.

The bill I am introducing today will reduce provider incentives to limit patient services by diminishing financial rewards to physicians who provide minimal services. This bill seeks to eliminate the current ethical dilemma facing physicians by further reducing from a maximum of 25% to a maximum of 10% the percentage of physicians' salaries that are dependent on financial incentives. The rising number of Medicare HMO's make protecting patients by ensuring quality health care essential

Thursday, October 8, 1998

Daily Digest

HIGHLIGHTS

The House agreed to H. Res. 581, authorizing the Committee on the Judiciary to investigate whether sufficient grounds exist for the impeachment of the President of the United States.

Senate passed Internet Tax Freedom Act.

Senate agreed to VA/HUD Appropriations Conference Report, Intelligence Authorizations Conference Report, Carl D. Perkins Tech-Prep Education Act Conference Report.

Senate

Chamber Action

Routine Proceedings, pages S11831–S11885

Measures Introduced: Nineteen bills and four resolutions were introduced, as follows: S. 2577–2595, S. Res. 292 and 293, and S. Con. Res. 125 and 126.

(See next issue.)

Measures Reported: Reports were made as follows:

S. 109, to provide Federal housing assistance to Native Hawaiians, with an amendment in the nature of a substitute. (S. Rept. No. 105–380)

Report to accompany S. 777, to authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for planning and construction of the water supply system, passed by the Senate. (S. Rept. No. 105–381)

Special report entitled ''Further Revised Allocation to Subcommittees of Budget Totals for Fiscal Year 1999''. (S. Rept. No. 105–382)

S. Res. 260, expressing the sense of the Senate that October 11, 1998, should be designated as ''National Children's Day''.

S. Res. 271, designating October 16, 1998, as ''National Mammography Day''.

S. 2024, to increase the penalties for trafficking in methamphetamine in order to equalize those penalties with the penalties for trafficking in crack cocaine.

S. Con. Res. 83, remembering the life of George Washington and his contributions to the Nation.

(See next issue.)

Measures Passed:

Internet Tax Freedom Act: By 96 yeas to 2 nays (Vote No. 308), Senate passed S. 442, to establish a national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, after taking action on further amendments proposed thereto, as follows:

Pages S11847–65

Adopted:

McCain/Wyden Modified Amendment No. 3719, to make changes in the moratorium provision, as amended. **Page S11847**

McCain/Wyden Modified Amendment No. 3711, to define the term ''discriminatory tax''.

Pages S11847–53

Also, Amendment No. 3718, agreed to on October 7, 1998, was further modified. **Page S11853**

Aviator Continuation Pay: Senate passed S. 2584, to provide aviator continuation pay for military members killed in Operation Desert Shield.

(See next issue.)

Eney, Chestnut, Gibson Memorial Building: Committee on Rules and Administration was discharged from further consideration of S. Con. Res. 120, to redesignate the United States Capitol Police headquarters building located at 119 D Street, Northeast, Washington, D.C., as the ''Eney, Chestnut, Gibson Memorial Building'', and the resolution was then agreed to. **(See next issue.)**

Noncitizen Benefit Clarification: Senate passed H.R. 4558, to make technical amendments to clarify the provision of benefits for noncitizens, and to improve the provision of unemployment insurance, child support, and supplemental security income benefits, clearing the measure for the President.

(See next issue.)

Vietnam Veterans of America 20th Anniversary: Senate agreed to S. Res. 207, commemorating the 20th anniversary of the founding of the Vietnam Veterans of America. (See next issue.)

Torture Victims Relief Act: Senate passed H.R. 4309, to provide a comprehensive program of support for victims of torture, after agreeing to the following amendment proposed thereto: (See next issue.)

Jeffords (for Grams) Amendment No. 3792, to provide funds for assistance for domestic centers and programs for the treatment of victims of torture.

(See next issue.)

Persian Gulf War Veterans Act: Senate passed S. 2358, to provide for the establishment of a presumption of service-connection for illnesses associated with service in the Persian Gulf War, and to extend and enhance certain health care authorities relating to such service, after agreeing to committee amendments. (See next issue.)

Next Generation Internet Research Act: Committee on Commerce, Science, and Transportation was discharged from further consideration of H.R. 3332, to amend the High-Performance Computing Act of 1991 to authorize appropriations for fiscal years 1999 and 2000 for the Next Generation Internet program, to require the Advisory Committee on High-Performance Computing and Communications, Information Technology, and the Next Generation Internet to monitor and give advice concerning the development and implementation of the Next Generation Internet program and report to the President and the Congress on its activities, and the bill was then passed, clearing the measure for the President.

(See next issue.)

Federal Research Investment Act: Senate passed S. 2217, to provide for continuation of the Federal research investment in a fiscally sustainable way, after agreeing to a committee amendment in the nature of a substitute. (See next issue.)

Muhammad Ali Boxing Reform Act: Senate passed S. 2238, to reform unfair and anticompetitive practices in the professional boxing industry, after agreeing to a committee amendment in the nature of a substitute. (See next issue.)

Automated Entry-Exit Control System Extension: Senate passed H.R. 4658, to extend the date by which an automated entry-exit control system must be developed, clearing the measure for the President. (See next issue.)

Drug Free Borders Act: Senate passed H.R. 3809, to authorize appropriations for the United States Customs Service for fiscal years 2000 and 2001, after agreeing to a committee amendment in the nature of a substitute. (See next issue.)

Glacier Bay National Park Boundary Adjustment Act: Senate passed H.R. 3903, to provide for an exchange of lands located near Gustavus, Alaska, after taking action on the following amendment proposed thereto: (See next issue.)

Jeffords (for Murkowski) Amendment No. 3794, to make technical and clarifying changes.

(See next issue.)

Mahatma Gandhi Memorial: Committee on Energy and Natural Resources was discharged from further consideration of H.R. 4284, to authorize the Government of India to establish a memorial to honor Mahatma Gandhi in the District of Columbia, and the bill was then passed, clearing the measure for the President. (See next issue.)

National Observances: Senate passed S. 2524, to clarify without substantive change laws related to Patriotic and National Observances, Ceremonies, and Organizations and to improve the United States Code. (See next issue.)

Community-Designed Charter Schools: Committee on Labor and Human Resources was discharged from further consideration of H.R. 2616, to amend titles VI and X of the Elementary and Secondary Education Act of 1965 to improve and expand charter schools, and the bill was then passed, after agreeing to the following amendment proposed thereto:

(See next issue.)

Jeffords (for Coats) Amendment No. 3795, in the nature of a substitute. (See next issue.)

Neotropical Migratory Bird Conservation Act: Senate passed S. 1970, to require the Secretary of the Interior to establish a program to provide assistance in the conservation of neotropical migratory birds, after withdrawing the committee amendments, and agreeing to the following amendment proposed thereto: (See next issue.)

Jeffords (for Chafee) Amendment No. 3796, in the nature of a substitute. (See next issue.)

Black Patriots Foundation: Committee on Energy and Natural Resources was discharged from further consideration of S. 2427, to amend the Omnibus Parks and Public Lands Management Act of 1996 to extend the legislative authority for the Black Patriots Foundation to establish a commemorative work, and the bill was then passed.

(See next issue.)

Water Resources Development Act: Senate passed S. 2131, to provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, after agreeing to a committee amendment in the nature of a substitute, and the following amendments proposed thereto: **(See next issue.)**

Jeffords (for Chafee) Amendment No. 3798, to make certain technical corrections. **(See next issue.)**

Jeffords (for Chafee) Amendment No. 3799, to provide for further water resource programs. **(See next issue.)**

Rhinoceros and Tiger Conservation Act: Senate passed S. 361, to amend the Endangered Species Act of 1973 to prohibit the sale, import, and export of products labeled as containing endangered species, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto: **(See next issue.)**

Jeffords (for Chafee) Amendment No. 3797, of a technical nature. **(See next issue.)**

Ireland Cultural and Training Program: Senate passed H.R. 4293, to establish a cultural and training program for disadvantaged individuals from Northern Ireland and the Republic of Ireland, clearing the measure for the President. **(See next issue.)**

Passage Vitiated: Senate vitiated passage of the following bills:

Glacier Bay National Park Boundary Adjustment Act: H.R. 3903, to provide for an exchange of lands located near Gustavus, Alaska. (Passed October, 2, 1998) **(See next issue.)**

Lewis and Clark Rural Water System Act: S. 777, to authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for planning and construction of the water supply system. (Passed October 7, 1998.) **(See next issue.)**

Freedom From Religious Persecution Act: Senate began consideration of H.R. 2431, to establish an Office of Religious Persecution Monitoring, and to provide for the imposition of sanctions against countries engaged in a pattern of religious persecution, taking action on the following amendment proposed thereto: **(See next issue.)**

Adopted:

Nickles Amendment No. 3789, in the nature of a substitute. **(See next issue.)**

Prior to this action, the cloture motion was vitiated. **(See next issue.)**

A unanimous-consent agreement was reached providing further consideration of the bill on Friday, October 9, 1998, with a vote to occur thereon at 9:45 a.m. **Page S11885**

Financial Services Act: Senate resumed consideration of H.R. 10, to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, with a committee amendment in the nature of a substitute. **(See next issue.)**

VA/HUD Appropriations Conference Report: By 96 yeas to 1 nay (Vote No. 307), Senate agreed to the conference report on H.R. 4194, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1999, clearing the measure for the President. **Pages S11833–47**

Head Start/Low-Income Energy Assistance/Community Services Block Grant Authorizations—Conference Report: Senate agreed to the conference report on S. 2206, to amend the Head Start Act, the Low-Income Home Energy Assistance Act of 1981, and the Community Services Block Grant Act to reauthorize and make improvements to those Acts, and to establish demonstration projects that provide an opportunity for persons with limited means to accumulate assets. **Pages S11865–72**

WIPO Copyright Treaties Implementation Act-Conference Report: Senate agreed to the conference report on H.R. 2281, to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, clearing the measure for the President. **(See next issue.)**

Intelligence Authorizations Conference Report: Senate agreed to the conference report on H.R. 3694, to authorize appropriations for fiscal year 1999 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, clearing the measure for the President. **(See next issue.)**

Carl D. Perkins Tech-Prep Education Act Conference Report: Senate agreed to the conference report on H.R. 1853, to amend the Carl D. Perkins Vocational and Applied Technology Education Act. **(See next issue.)**

Crime Identification Technology Act: Senate concurred in the amendment of the House to S. 2022, to provide for the improvement of interstate criminal justice identification, information, communications, and forensics, clearing the measure for the President. **(See next issue.)**

Energy Conservation Reauthorization Act: Senate concurred in the amendments of the House to S. 417, to extend energy conservation programs under the Energy Policy and Conservation Act through September 30, 2002, with the following amendment: **(See next issue.)**

Jeffords (for Murkowski/Akaka) Amendment No. 3793, to extend certain programs under the Energy Policy and Conservation Act and the Energy Conservation and Production Act. **(See next issue.)**

Commercial Space Act: Senate concurred in the amendment of the House to the amendment of the Senate to H.R. 1702, to encourage the development of a commercial space industry in the United States, clearing the measure for the President.

(See next issue.)

Nominations Confirmed: Senate confirmed the following nominations:

By 57 yeas to 41 nays (Vote No. 309EX), William A. Fletcher, of California, to be United States Circuit Judge for the Ninth Circuit. **Pages S11872–85**

Robert Bruce King, of West Virginia, to be United States Circuit Judge for the Fourth Circuit.

H. Dean Buttram, Jr., of Alabama, to be United States District Judge for the Northern District of Alabama.

Inge Prytz Johnson, of Alabama, to be United States District Judge for the Northern District of Alabama. **Page S11884**

Nominations Received: Senate received the following nominations:

John A. Moran, of Virginia, to be a Federal Maritime Commissioner for the term expiring June 30, 2000.

Kenneth M. Bresnahan, of Virginia, to be Chief Financial Officer, Department of Labor.

Timothy F. Geithner, of New York, to be an Under Secretary of the Treasury.

Gary Gensler, of Maryland, to be an Under Secretary of the Treasury.

Edwin M. Truman, of Maryland, to be a Deputy Under Secretary of the Treasury.

Timothy Fields, Jr., of Virginia, to be Assistant Administrator, Office of Solid Waste, Environmental Protection Agency. **Page S11885**

Nominations Withdrawn:Senate received notification of the withdrawal of the following nomination:

John A. Moran, of Virginia, to be a Federal Maritime Commissioner, which was sent to the Senate on October 5, 1998. **Page S11885**

Messages From the House: **(See next issue.)**

Measures Referred: **(See next issue.)**

Communications: **(See next issue.)**

Petitions: **(See next issue.)**

Executive Reports of Committees: **(See next issue.)**

Statements on Introduced Bills: **(See next issue.)**

Additional Cosponsors: **(See next issue.)**

Amendments Submitted: **(See next issue.)**

Authority for Committees: **(See next issue.)**

Additional Statements: **(See next issue.)**

Record Votes: Three record votes were taken today. (Total—309)

Pages S11847, S11857–58 (continued next issue)

Recess: Senate convened at 9:30 a.m., and recessed at 9:20 p.m., until 9:30 a.m., on Friday, October 9, 1998. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S11885.)

Committee Meetings

(Committees not listed did not meet)

NOMINATIONS

Committee on Armed Services: Committee ordered favorably reported 1,731 routine nominations in the Army, Navy, Marine Corps, and Air Force.

DOE POSITION ELEVATION

Committee on Armed Services: Committee concluded hearings to review the recommendation to elevate the position of the Director, Office of Non-Proliferation and National Security of the Department of Energy, after receiving testimony from Rose E. Gottemoeller, Director, Office of Non-Proliferation and National Security of the Department of Energy.

NOMINATIONS

*Committee on Banking, Housing, and Urban Affairs:*Committee ordered favorably reported the nominations of William C. Apgar, Jr., of Massachusetts, to be Assistant Secretary for Housing and Federal Housing Administrator, Saul N. Ramirez, Jr., of Texas, to be Deputy Secretary, Cardell Cooper, of New Jersey, to be Assistant Secretary for Community Planning and Development, Harold Lucas, of New Jersey, to be Assistant Secretary for Public and Indian Housing, and Ira G. Peppercorn, of Indiana, to be Director of the Office of Multifamily Housing Assistance Restructuring, all of the Department of Housing and Urban Development.

NOMINATION

Committee on Commerce, Science, and Transportation: Committee concluded hearings on the nomination of Ashish Sen, of Illinois, to be Director of the Bureau of Transportation Statistics, Department of Transportation, after the nominee, who was introduced by

Representative Danny Davis, testified and answered questions in his own behalf.

NOMINATIONS

Committee on Environment and Public Works: Committee ordered favorably reported the nominations of Robert W. Perciasepe, of Maryland, to be an Assistant Administrator for Air and Radiation of the Environmental Protection Agency, Isadore Rosenthal, of Pennsylvania, and Andrea Kidd Taylor, of Michigan, both to be Members of the Chemical Safety and Hazard Investigation Board, and William Clifford Smith, of Louisiana, to be a Member of the Mississippi River Commission.

Prior to this action, committee concluded hearings on the nomination of Mr. Perciasepe, after the nominee testified and answered questions in his own behalf.

COLUMBIA/SNAKE RIVER SYSTEM SALMON RECOVERY

Committee on Environment and Public Works: Subcommittee on Drinking Water, Fisheries, and Wildlife concluded oversight hearings to examine scientific and engineering issues relating to Columbia/Snake River system salmon recovery, after receiving testimony from Col. Eric Mogren, Deputy Commander, Northwestern Division, U.S. Army Corps of Engineers; Danny Consenstein, Columbia Basin Coordinator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; Daniel D. Roby, Oregon Cooperative Fish and Wildlife Research Unit, U.S. Geological Survey-Biological Resources Division, and Department of Fisheries and Wildlife/Oregon State University, Corvallis; Joseph Cloud, Department of Biological Sciences/University of Idaho, Moscow; and Richard K. Fisher, Jr., Voith Hydro, Inc., York, Pennsylvania.

AFGHANISTAN

Committee on Foreign Relations: Subcommittee on Near Eastern and South Asian Affairs concluded hearings to examine recent events in Afghanistan, after receiving testimony from Karl Frederick Inderfurth, Assistant Secretary of State for South Asian Affairs; A. Abdallah, Representative of the Islamic State of Afghanistan to the United States; Zalmay Khalilzad, RAND Corporation, Washington, DC; and Barnett Rubin, Council on Foreign Relations, New York, New York.

BUSINESS MEETING

Committee on the Judiciary: Committee ordered favorably reported the following business items:

The nominations of David O. Carter, to be United States District Judge for the Central District of California, William J. Hibbler, to be United States District Judge for the Northern District of Illinois, Yvette Kane, to be United States District Judge for the Middle District of Pennsylvania, Robert S. Lasnik, to be United States District Judge for the Western District of Washington, Norman A. Mordue, to be United States District Judge for the Northern District of New York, James M. Munley, to be United States District Judge for the Middle District of Pennsylvania, Alex R. Munson, to be Judge for the District Court for the Northern Mariana Islands, Margaret B. Seymour, to be United States District Judge for the District of South Carolina, Aleta A. Trauger, to be United States District Judge for the Middle District of Tennessee, Francis M. Allegra, of Virginia, Lawrence Baskir, of Maryland, Lynn Jeanne Bush, of the District of Columbia, Edward J. Damich, of Virginia, Nancy B. Firestone, of Virginia, and Emily Clark Hewitt, of Massachusetts, each to be a Judge of the United States Court of Federal Claims, Margaret Ellen Curran, to be United States Attorney for the District of Rhode Island, Byron Todd Jones, to be United States Attorney for the District of Minnesota, Harry Litman, to be United States Attorney for the Western District of Pennsylvania, Denise E. O'Donnell, to be United States Attorney for the Western District of New York, and Donnie R. Marshall, of Texas, to be Deputy Administrator of the Drug Enforcement Agency, Department of Justice;

S. 2024, to increase the penalties for trafficking in methamphetamine in order to equalize those penalties with the penalties for trafficking in crack cocaine;

S. Con. Res. 83, remembering the life of George Washington and his contributions to the Nation;

S. Res. 257, expressing the sense of the Senate that October 15, 1998, should be designated as ''National Inhalant Abuse Awareness Day'';

S. Res. 271, designating October 16, 1998, as ''National Mammography Day''; and

S. Res. 260, expressing the sense of the Senate that October 11, 1998, should be designated as ''National Children's Day''.

NATIONAL SECURITY INFORMATION

Committee on the Judiciary: Subcommittee on Technology, Terrorism, and Government Information concluded hearings to examine the use of classified evidence in certain immigration exclusion case proceedings, after receiving testimony from Paul W. Virtue, General Counsel, Immigration and Naturalization Service, Department of Justice; Warren Marik, Information for Democracy, former Central Intelligence Agency Case Office, and R. James

Woolsey, Shea & Gardner, former Director of Central Intelligence, both of Washington, D.C.

INTELLIGENCE

Select Committee on Intelligence: Committee held closed hearings on intelligence matters, receiving testimony from officials of the intelligence community.

Committee recessed subject to call.

House of Representatives

Chamber Action

Bills Introduced: 24 public bills, H.R. 4732–4755; and 14 resolutions, H.J. Res. 132, H. Con. Res. 336–345, and H. Res. 583, 585, 587, were introduced. **Pages H10075–77**

Reports Filed: Reports were filed today as follows:

Conference report on H.R. 2281, to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty (H. Rept. 105–796);

Report in the matter of Representative Jay Kim (H. Rept. 105–797);

H. Res. 580, providing for consideration of H.R. 4274, making appropriations for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1999 (H. Rept. 105–798);

H. Res. 586, waiving points of order against the conference report to accompany H.R. 3150, to amend title 11 of the United States Code (H. Rept. 105–799);

Conference report on H.R. 1853, to amend the Carl D. Perkins Vocational and Applied Technology Education Act (H. Rept. 105–800);

H.R. 3888, to amend the Communications Act of 1934 to improve the protection of consumers against ''slamming'' by telecommunications carriers, amended (H. Rept. 105–801);

H.R. 4353, to amend the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977 to improve the competitiveness of American business and promote foreign commerce (H. Rept. 105–802); **Pages H10032–75**

Journal: The House agreed to the Speaker's approval of the Journal of Wednesday, October 7 by a yea and nay vote of 325 yeas to 72 nays with 9 voting ''present'', Roll No. 495. **Pages H10013–14**

Recess: The House recessed at 10:23 a.m. and reconvened at 10:55 a.m. **Pages H10014–15**

Impeachment Resolution: The House agreed to H. Res. 581, authorizing and directing the Committee on the Judiciary to investigate whether sufficient grounds exist for the impeachment of William Jefferson Clinton, President of the United States, by a recorded vote of 258 ayes to 176 noes, Roll No. 498. **Pages H10015–32 (continued next issue)**

Rejected the Boucher motion to recommit the resolution to the Committee on the Judiciary with instructions to report the resolution back with an amendment to strike the first section and insert provisions to conduct an inquiry and if appropriate to act upon the Referral from the Independent Counsel; to review the constitutional standard for impeachment; and investigate whether sufficient grounds exist for the House to exercise its constitutional power to impeach the President. Following the conclusion of its inquiry the Committee shall make its recommendations sufficiently in advance of December 31, 1998 for the House to consider them (rejected by a yea and nay vote of 198 yeas to 236 nays, Roll No. 497). **(See next issue.)**

Hand-Enrollment Resolution: The House passed H.J. Res. 131, waiving certain enrollment requirements for the remainder of the One Hundred Fifth Congress with respect to any bill or joint resolution making general or continuing appropriations for fiscal year 1999. **(See next issue.)**

H. Res. 580, the rule that provided for consideration of joint resolution, was agreed to by voice vote. **(See next issue.)**

Suspensions: The House agreed to suspend the rules and pass the following measures:

Congressional Medal of Honor to Theodore Roosevelt: H.R. 2263, to authorize and request the President to award the congressional Medal of Honor posthumously to Theodore Roosevelt for his gallant and heroic actions in the attack on San Juan Heights, Cuba, during the Spanish-American War; **(See next issue.)**

Science Policy Report: H. Res. 578, expressing the sense of the House of Representatives that the print of the Committee on Science entitled ''Unlocking Our Future: Toward a New National

Science Policy'' should serve as a framework for future deliberations on congressional science policy and funding; **(See next issue.)**

International Child Labor Relief: H.R. 4506, amended, to provide for United States support for developmental alternatives for underage child workers; **(See next issue.)**

Providing Rewards for Information: H.R. 4660, amended, to amend the State Department Basic Authorities Act of 1956 to provide rewards for information leading to the arrest or conviction of any individual for the commission of an act, or conspiracy to act, of international terrorism, narcotics related offenses, or for serious violations of international humanitarian law relating to the Former Yugoslavia. Agreed to amend the title; **(See next issue.)**

Condemning Forced Abduction of Ugandan Children: H. Con. Res. 309, amended, condemning the forced abduction of Ugandan children and their use as soldiers; **(See next issue.)**

Veterans Employment Opportunities: S. 1021, to amend title 5, United States Code, to provide that consideration may not be denied to preference eligibles applying for certain positions in the competitive service—clearing the measure for the President; **(See next issue.)**

Federal Employee Life Insurance Programs: Agreed to the Senate amendments to H.R. 2675, to require that the Office of Personnel Management submit proposed legislation under which group universal life insurance and group variable universal life insurance would be available under chapter 87 of title 5, United States Code—clearing the measure for the President; **(See next issue.)**

Recognizing Importance of Children and Families: H. Con. Res. 302, recognizing the importance of children and families in the United States and expressing support for the goals of National Kids Day and National Family Month; **(See next issue.)**

Campaign Finance Sunshine: H.R. 2109, to amend the Federal Election Campaign Act of 1971 to require reports filed under such Act to be filed electronically and to require the Federal Election Commission to make such reports available to the public within 24 hours of receipt; **(See next issue.)**

Coats Human Services Reauthorization: Conference report on S. 2206, A bill to amend the Head Start Act, the Low-Income Home Energy Assistance Act of 1981, and the Community Services Block Grant Act to reauthorize and make improvements to those Acts, to establish demonstration projects that provide an opportunity for persons with limited means to accumulate assets—clearing the measure for the President; **(See next issue.)**

Granting Consent to the Potomac Highlands Airport Authority Compact: S.J. Res. 51, granting the consent of Congress to the Potomac Highlands Airport Authority Compact entered into between the States of Maryland and West Virginia—clearing the measure for the President; **(See next issue.)**

Depository Institution Regulatory Streamlining: H.R. 4364, amended, to streamline the regulation of depository institutions, to safeguard confidential banking and credit union supervisory information; and **(See next issue.)**

Fair Credit Reporting Act: S. 2561, to amend the Fair Credit Reporting Act with respect to furnishing and using consumer reports for employment—clearing the measure for the President. **(See next issue.)**

Suspensions—Votes Postponed: The House completed debate and postponed votes on the following measures until October 9:

Importance of Mammograms and Biopsies: H. Res. 565, expressing the sense of the House of Representatives regarding the importance of mammograms and biopsies in the fight against breast cancer; **(See next issue.)**

Concerning the Inadequacy of Sewage Infrastructure: H. Con. Res. 331, expressing the sense of Congress concerning the inadequacy of sewage infrastructure facilities in Tijuana, Mexico; **(See next issue.)**

Efforts to Identify Holocaust-era Assets: H. Res. 557, expressing support for U. S. government efforts to identify Holocaust-era assets, urging the restitution of individual and communal property; and **(See next issue.)**

William F. Goodling Child Nutrition Act: Conference report on H.R. 3874, to amend the Child Nutrition Act of 1966 to make improvements to the special supplemental nutrition program for women, infants, and children and to extend the authority of that program through fiscal year 2003. **(See next issue.)**

Labor, HHS Appropriations: The House began consideration of amendments to H.R. 4274, making appropriations for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1999, by a vote of Roll No. **(See next issue.)**

Agreed To:

The Istook substitute amendment to the Greenwood amendment to (agreed to by a recorded vote of 224 ayes to 200 noes, Roll No. 504); and

(See next issue.)

The Greenwood amendment, as amended, that prohibits title X funding to a family planning provider that knowingly provides contraceptives to a minor without the consent of a parent or legal guardian. (See next issue.)

H. Res. 584, the rule that provided for consideration of the bill, was agreed to by a recorded vote of 214 ayes to 209 noes with 1 voting ''present'', Roll No. 502. (See next issue.)

Agreed to table the motion to reconsider the vote on final passage by a recorded vote of 230 ayes to 192 noes, Roll No. 503. (See next issue.)

Earlier, agreed to order the previous question by a yea and nay vote of 224 yeas to 201 nays, Roll No. 500; and agreed to table the motion to reconsider ordering the previous question by a recorded vote of 231 ayes to 197 noes, Roll No. 501.

(See next issue.)

Motion to Adjourn: Rejected the Obey motion to adjourn by a yea and nay vote of 58 yeas to 349 nays, Roll No. 499. (See next issue.)

Presidential Veto Message—Agriculture Appropriations: Read a message from the President wherein he announces his veto of H.R. 4101, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and explains his reasons therefore—referred to the Committee on Appropriations and ordered printed (H. Doc. 105–321). (See next issue.)

Little Rock Central High School National Historic Site: The House passed S. 2232, to establish the Little Rock Central High School National Historic Site in the State of Arkansas—clearing the measure for the President. (See next issue.)

Federal Properties in Dutch John, Utah: The House passed S. 890, to dispose of certain Federal properties located in Dutch John, Utah, to assist the local government in the interim delivery of basic services to the Dutch John community—clearing the measure for the President. (See next issue.)

Carl D. Perkins Vocational and Applied Technology Act: Agreed to the conference report on H.R. 1853, to amend the Carl D. Perkins Vocational and Applied Technology Education Act—clearing the measure for the President. (See next issue.)

Senate Messages: Message received from the Senate today appears on page H10014.

Referrals: Senate measures referred to House committees appear on pages H10074–75.

Amendments: Amendments ordered printed pursuant to the rule appear on pages H10077–81.

Quorum Calls—Votes: Five yea and nay votes and three recorded votes developed during the proceedings of the House today and appear on pages H10013–14 (continued next issue). There was one quorum call (Roll No. 496).

Adjournment: The House met at 10 a.m. and adjourned at 1:40 a.m. on Friday, October 9.

Committee Meetings

U.S. TRADE ISSUES WITH CANADA

Committee on Agriculture: Subcommittee on General Farm Commodities held a hearing on current U.S. trade issues with Canada. Testimony was heard from Representative Hill; and public witnesses.

COMMODITY FUTURES TRADING COMMISSION—REVIEW BUDGET—ANNUAL PERFORMANCE PLAN

Committee on Agriculture: Subcommittee on Risk Management and Specialty Crops held a hearing on Review of the Commodity Futures Trading Commission's FY 2000 Budget and Annual Performance Plan. Testimony was heard from Brooksley Born, Chairperson, Commodity Futures Trading Commission; and Richard J. Hillman, Acting Associate Director, Financial Institutions and Markets Issues, General Government Division, GAO.

WILL JUMBO EURO NOTES THREATEN THE GREENBACK?

Committee on Banking and Financial Services: Subcommittee on Domestic and International Monetary Policy held a hearing on Will Jumbo Euro Notes Threaten the Greenback? Testimony was heard from Theodore E. Allison, Assistant to the Board, System Affairs, Board of Governors, Federal Reserve System; and Gary Gensler, Assistant Secretary, Financial Markets, Department of the Treasury.

SAFE DRINKING WATER ACT AMENDMENTS IMPLEMENTATION

Committee on Commerce: Subcommittee on Health and Environment held a hearing on the Implementation of the 1996 Safe Drinking Water Act Amendments. Testimony was heard from the following officials of EPA: J. Charles Fox, Acting Assistant Administrator, Water; and Cynthia C. Dougherty, Director, Office of Ground Water and Drinking Water; and public witnesses.

DOE'S HANFORD RADIOACTIVE TANK WASTE PRIVATIZATION CONTRACT

Committee on Commerce: Subcommittee on Oversight and Investigations held a hearing on A Review of the Department of Energy's Hanford Radioactive Tank Waste Privatization Contract. Testimony was heard from Representative Hastings of Washington; Gary L. Jones, Associate Director, Energy, Resources and Science Issues, Resources, Community and Economic Development Division, GAO; the following officials of the Department of Energy: Ernest J. Moniz, Under Secretary; James M. Owendoff, Deputy Assistant Secretary, Environmental Restoration; John Wagoner, Manager, Richland Operations Office; and Walter S. Howes, Director, Contract Reform and Privatization; and public witnesses.

DEPARTMENT OF EDUCATION—YEAR 2000 PROBLEM

Committee on Education and the Workforce: Subcommittee on Oversight and Investigations held a hearing on the Year 2000 Problem at the Department of Education, Part II. Testimony was heard from Joel Willemssen, Director, Information Resources Management, Accounting and Information Management Division, GAO; and Marshall S. Smith, Acting Deputy Secretary, Department of Education; and the following officials of the Corporation for National and Community Service: Wendy Zenker, Chief Operating Officer; and William Anderson, Assistant Inspector General, Audit.

MISCELLANEOUS MEASURES AND REPORTS

Committee on Government Reform and Oversight: Ordered reported amended the following bills: H.R. 4523, Lorton Technical Corrections Act of 1998; and H.R. 4566, District of Columbia Courts and Justice Technical Corrections Act of 1998.

The Committee also approved the following draft reports entitled: ''Hepatitis C: Silent Epidemic, Mute Public Health Response;'' ''Medicare Home Health Services: No Surety in the Fight Against Fraud and Waste;'' ''The Year 2000 Problem;'' and ''Campaign Fundraising Improprieties and Other Possible Violations of Law.''

The Committee also approved the release of Depositions and Interrogatories.

ASSESSING ADMINISTRATION'S FOREIGN POLICY

Committee on International Relations: Held a hearing on Assessing the Administration's Foreign Policy: The Record After Six Years. Testimony was heard from public witnesses.

DEPARTMENT OF DEFENSE MODERNIZATION

Committee on National Security: Subcommittee on Military Procurement and the Subcommittee on Military Research and Development held a joint hearing on Department of Defense modernization. Testimony was heard from Jacques S. Gansler, Under Secretary, Acquisition and Technology, Department of Defense; Richard Davis, Director, National Security Analysis, National Security and International Affairs Division, GAO; and public witnesses.

NAVY SHIP DONATION PROCEDURES

Committee on National Security: Subcommittee on Military Procurement held a hearing on Navy ship donation procedures. Testimony was heard from Representative Andrews; Michael C. Hammes, Deputy Assistant Secretary (Research, Development and Acquisition), Department of the Navy; Joseph Azzolina, Assemblyman, State of New Jersey; and a public witness.

CONFERENCE REPORT—BANKRUPTCY REFORM ACT

Committee on Rules: Granted, by voice vote, a rule waiving all points of order against the conference report to accompany H.R. 3150, Bankruptcy Reform Act of 1998, and against its consideration. The rule provides that the conference report shall be considered as read. Testimony was heard from Representatives Gekas, Nadler, and Jackson-Lee.

LABOR-HHS-EDUCATION APPROPRIATIONS

Committee on Rules: Granted, by a vote of 7 to 2, a rule providing for the further consideration of H.R. 4274, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1999, pursuant to H. Res. 564. The rule provides 1 hour of debate. The rule makes in order, before consideration of any other amendments, the amendments numbered 2 and 3 that were printed in the Rules Committee report (105–762) that accompanied H. Res. 564.

FASTENER QUALITY ACT: NEEDED OR OUTDATED?

Committee on Science: Subcommittee on Technology held a hearing on the Fastener Quality Act: Needed or Outdated? Testimony was heard from Representative Manzullo; Raymond Kammer, Director, National Institute of Standards and Technology, Department of Commerce; and public witnesses.

Joint Meetings

HUMAN SERVICES/HEAD START AUTHORIZATION

Conferees on Tuesday, October 6, agreed to file a conference report on the differences between the Senate- and House-passed versions of S. 2206, to amend the Head Start Act, the Low-Income Home Energy Assistance Act of 1981, and the Community Services Block Grant Act to reauthorize and make improvements to those Acts, and to establish demonstration projects that provide an opportunity for persons with limited means to accumulate assets.

APPROPRIATIONS—TREASURY/POSTAL SERVICES

Conferees on Wednesday, October 7, agreed to file a further conference report on the differences between the Senate- and House-passed versions of H.R. 4104, making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1999.

BANKRUPTCY REFORM

Conferees on Wednesday, October 7, agreed to file a conference report on the differences between the Senate- and House-passed versions of H.R. 3150, to amend title 11 of the United States Code.

DIGITAL MILLENNIUM COPYRIGHT ACT

Conferees agreed to file a conference report on the differences between the Senate- and House-passed versions of H.R. 2281, to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty.

CARL D. PERKINS VOCATIONAL-TECHNICAL EDUCATION ACT AMENDMENTS

Conferees agreed to file a conference report on the differences between the Senate- and House-passed versions of H.R. 1853, to amend the Carl D. Perkins Vocational and Applied Technology Education Act.

COMMITTEE MEETINGS FOR FRIDAY, OCTOBER 9, 1998

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Governmental Affairs, business meeting, to consider pending nominations, 10:30 a.m., SD–342.

House

Committee on Commerce, Subcommittee on Oversight and Investigations, to consider pending Subcommittee business, 9 a.m., and to continue hearings on the circumstances surrounding the FCC's planned relocation to the Portals, including the efforts of Franklin L. Haney and his representatives with respect to this matter and the circumstances surrounding the payment of fees to those representatives, 9:30 a.m., 2123 Rayburn.

Committee on Government Reform and Oversight, to consider the following draft report entitled: ''Investigation of the White House Database;'' and to consider release of Documents, 9:30 a.m., 2154 Rayburn.

Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, hearing on Will the Administration Implement the Kyoto Protocol Through the Back Door? 11 a.m., 2154 Rayburn.

Committee on House Oversight, to consider pending business, 1 p.m., 1310 Longworth.

Committee on Science, oversight hearing on The Road from Kyoto—Part 4: The Kyoto Protocol's Impacts on U.S. Energy Markets and Economic Activity, 10 a.m., 2318 Rayburn.

Committee on Transportation and Infrastructure, to consider the following: H.R. 3243, Alternative Water Source Development Act of 1998; GSA leasing program; Courthouse construction resolutions; Public building resolutions; Corps of Engineers water resources survey resolutions; and other pending business, 10 a.m., 2167 Rayburn.

Committee on Ways and Means, to consider a measure concerning expiring tax provisions, 11 a.m., H–137 Capitol.

Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China, executive, to continue to receive briefings, 8 a.m., H–405 Capitol.

Next Meeting of the SENATE
9:30 a.m., Friday, October 9

Senate Chamber

Program for Friday: Senate will resume consideration of H.R. 2431, Freedom from Religious Persecution Act, with a vote to occur thereon.

Senate may also consider any conference reports or legislative or executive items cleared for action.

Next Meeting of the HOUSE OF REPRESENTATIVES
9 a.m., Friday, October 9

House Chamber

Program for Friday: Consideration of the conference report on H.R. 3150, Bankruptcy Reform Act (rule waiving points of order);

Consideration of Suspensions:

1. H.R. 4651, Federal Criminal Law and Procedure Minor and Technical Amendments;
2. H.R. 1197—Plant Patent Amendments Act;
3. H. Con. Res. 334—Taiwan World Health Organization;
4. H. Con. Res. 320—Supporting the Baltic People of Estonia, Latvia, and Lithuania, and Condemning the Nazi-Soviet Non-Aggression Pact;
5. S. 2094—Amending the Fish and Wildlife Improvement Act of 1978;
6. S. 2505—Title conveyance to the Tunnison Lab Hagerman Field Station to the University of Idaho;
7. H. Con. Res. 214—Recognizing the Contributions of Bristol, Tennessee, and Bristol, Virginia, to the Origins and Development of Country Music;
8. Conference report on H.R. 1853—Carl D. Perkins Vocational-Technical Education Act; and
9. H.R. 2616—Community-Designed Charter Schools Act

Consideration of Additional Suspensions are Expected.

Extensions of Remarks, as inserted in this issue

HOUSE

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