STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 3086. A bill to permit the televising of Supreme Court proceedings; to the Committee on the Judiciary.

OPENING THE SUPREME COURT TO TELEVISION

Mr. SPECTER. Mr. President, I have sought recognition today to introduce legislation on behalf of Senator BIDEN and myself, a bill which, succinctly stated, would provide the following: The Supreme Court of the United States shall permit television coverage of all open sessions of the Court unless the Court decides by a vote of the majority of Justices that allowing such coverage in a particular case will constitute a violation of the due process rights of one or more of the parties before the Court.

I will summarize that lengthy statement because of time limitations. The statement contains the citations of the cases referred to and the specific quotations which I shall cite.

The purpose of this legislation is to open to public view what the Supreme Court of the United States does in rendering important decisions. It is grounded on the proposition that since the Supreme Court of the United States has assumed the power to decide the cutting-edge questions on public policy today and has in effect become virtually a ''super legislature'' in taking on the decisions on these public policy issues, that the public has a right to know what the Supreme Court is doing, and that right would be substantially enhanced by televising the oral arguments of the Court so that the public would be able to see and hear the kinds of issues which the Court is deciding. The public would then have an insight into those issues to be able to follow what the Court decides after the due course of the Court's deliberations.

In a very fundamental sense, the televising of the Supreme Court has been implicitly recognized—perhaps even sanctioned—by a 1980 decision of the Supreme Court of the United States in a case captioned Richmond Newspapers v. Virginia, where the Supreme Court noted that a public trial belongs not only to the accused, but to the public and the press as well; and that people now acquire information on court procedures chiefly through the print and electronic media.

That decision, in referencing the electronic media, perhaps might be said to anticipate televising court proceedings, although I do not mean to suggest that the Supreme Court is in agreement with this legislation. It might be appropriate to note at this juncture that the Court could, on its own motion, televise its proceedings but has chosen not to do so, which presents, in my view, the necessity for legislation on this subject.

If one goes to the chambers of the Supreme Court, which are right across the green here in the Capitol complex, one may enter and observe the Court's arguments because they are public. Newspaper reporters are permitted to be in the Court. No cameras are permitted in the Court, of even still pictures, so when television wishes to characterize an argument, they have to send in an artist to have an artist's renderings.

When I argued the case of the Navy Yard back in 1964, the Court proceedings were illustrated by an artist's drawings. But in the year 2000, when the public gets a substantial portion, if not most, of its information from television, the availability strictly to the print media, is insufficient to give the public a real idea as to what is going on in the Supreme Court of the United States.

The Supreme Court has traditionally had an agenda. It is really nothing new. The Warren Court vastly expanded criminal rights. In the year 2000, I think no one would question at least some of the Warren Court's decisions, saying that anybody who is being prosecuted in a criminal proceeding has a right to counsel. It is really surprising to note that before 1963, the case of Gideon v. Wainwright, the defendant in a criminal case did not have a right to counsel except in murder cases.

There is no doubt that the Supreme Court of the United States in the 1930s had an agenda in striking down New Deal legislation. And then, in a historic move, President Franklin Delano Roosevelt, an enormously popular President in the mid- to late 1930's, very unhappy about the Supreme Court's activism in striking down New Deal legislation by five to four decisions—President Roosevelt suggested packing the Court by adding six additional Justices. There was quite a public reaction adverse to that proposal. Perhaps the Supreme Court of the United States had more public attention at that particular time than at any other time in its history.

In the face of what was happening, a Supreme Court Justice, Owen J. Roberts, who happened to be from Philadelphia, my hometown, decided to change his position and to support and hold constitutional the New Deal legislation leading to the famous phrase ''a switch in time saves nine,'' from the old adage about ''a stitch in time saves nine.'' The switch by Supreme Court Justice Owen Roberts, it is said, saved the nine-person constituency of the Supreme Court.

The Rehnquist Court, I submit, is unusually activist in pursuing its agenda. The Court has stricken acts of Congress, saying:

No Congressman or Senator purported to present a considered judgment,

Or striking acts of Congress saying there was a:

lack of legislative attention to the statute at issue,

Or striking an act of Congress saying the legislation was:

* * * an unwarranted response to perhaps an inconsequential problem,

Or declaring an act of Congress unconstitutional saying:

Congress had virtually no reason to believe [that the statute was well founded.]

There is no effort here to challenge the authority of the Supreme Court of the United States to have the final word. That has been established since Marbury v. Madison in 1803. I believe it is necessary that the Supreme Court of the United States have the final word on interpreting the Constitution and beyond that on saying what is a constitutional question. But given the breadth of the Court's authority and given the sweeping scope of what the Court is doing, the point is that there ought to be public knowledge and there ought to be a public response. Because I think it is fair to say that the Court is aware and does watch the public response, and it ought to really be a factor in whatever the Court decides to do—again, recognizing that the Court has the final say.

In June of 1999, the Supreme Court curtailed congressional authority in favor of the rights of States to sovereign immunity on patents and copyrights, not withstanding the express constitutional grant of authority to Congress to regulate patents and copyrights. Those cases led former Solicitor General Walter Dellinger, formerly a professor and a leading constitutional scholar, to describe these cases as:

* * * one of the three or four major shifts in constitutionalism we have seen in the last three centuries.

Those particular cases were subject to very substantial criticism by Professor Rebecca Eisenberg of the University of Michigan Law School, commenting on Florida Prepaid Postsecondary Education v College Savings Bank:

* * * the decision makes no sense,

Asserting that it arises from a:

* * * bizarre States' rights agenda that really has nothing to do with intellectual property.

The Court's decisions have moved, as I have noted, really onto the cutting edge of so many of the critical issues which are matters of great national concern. The Court has decided issues from birth to death and the vital issues in between, making the decision on the constitutional right to an abortion; making decisions on how the death penalty will be imposed; making decisions on the questions of freedom of religion, as illustrated by the case of City of Boerne v. Flores, where the Court struck down the Religious Freedom Restoration Act.

Freedom of religion, of online speech, in Reno v. ACLU, the Court struck down two provisions of the Communications Decency Act of 1998; Prince v. United States, the Court, by a 5-to-4 decision, reversed some six decades of firmly established constitutional authority on the supremacy of Federal laws over States under the commerce clause. And, in the Lopez case in 1995, the Supreme Court of the United

States invalidated congressional authority, which had been intact for some 60 years under the commerce clause.

So we have seen the expansion of the authority of the Supreme Court of the United States in so many lines, really, taking on the aura and the perspective of a superlegislature.

Justice Felix Frankfurter perhaps anticipated the day when the Supreme Court arguments would be televised when he said that he longed for a day when:

> The news media would cover the Supreme Court as thoroughly as it did the World Series, since the public confidence in the judiciary hinges on the public's perception of it, and that perception necessarily hinges on the media's portrayal of the legal system.

It is interesting to note that the columns of the Senate match up exactly with the columns of the Supreme Court of the United States.

In the early deliberations on the Constitution, there were proposals that Supreme Court Justices ought to be appointed by the Senate. I am not sure quite how that would have worked out given our large groupings and how we would go about making those decisions, but that was once thought about.

There was a constitutional amendment proposed that would have allowed Supreme Court decisions to be overruled by a two-thirds vote of the Senate, a proposal which I think would have been very unwise and did not get very far.

The Senate does have the constitutional authority on confirmation of Supreme Court Justices, perhaps our most important function as so many major decisions have been decided by a single vote on 5–4 decisions: 79 such decisions in the past 5 years; 20 such decisions in the last term of the Court.

The Court has been a strong point in our historical development, but as the Court has expanded into areas traditionally reserved for Congress, functioning virtually as a superlegislature, without in any way challenging the independence of the Court, the independence of the Federal judiciary, I do believe it is appropriate for the Congress to speak on the operation of the Court.

The Congress has the authority to establish the number of Justices so that if the Congress chose, we could expand the number beyond nine or curtail it. The Congress has established the number six as a quorum for the Court. The Congress has the authority to establish the jurisdiction of the Supreme Court of the United States and, in the landmark case of Ex parte McCardle, decided that the jurisdiction of the Court could be curtailed even on constitutional grounds. Frankly, I do not think that 1868 decision would stand today as to the authority of the Congress to curtail the jurisdiction of the Court on constitutional grounds, but during confirmation proceedings when those questions are asked, the nominees choose to leave that as an open question. It does remain an open question.

Televising, of course, is vastly different and a far range from the issue of jurisdiction. The Congress of the United States has established the time limits for Federal trials under the speedy trial limit and has established time limits for consideration of habeas corpus cases. So there is ample authority for the Congress to call for the opening of the Supreme Court for television.

Obviously, there are issues of separation of power which I think this legislation respects. Obviously, the final decision will be for the Court. I do not expect a rush to judgment on this very complex proposition, but I do believe the day will come when the Supreme Court of the United States will be televised. That day will come, and it will be decisively in the public interest so the public will know the magnitude of what the Court is deciding and its role in our democratic process.

The public's interest would be significantly promoted by televising the proceedings of the Supreme Court of the United States. Given the enormous importance of the decisions made by the Court, and the fact that so many of these decisions are really public policy choices rather than strictly legal decisions, the public deserves as much access as possible to the Court's proceedings.

This proposed legislation to televise sessions of the Supreme Court fully respects the authority of the Supreme Court to make the ultimate decision on Constitutional questions. It seeks to impose greater accountability upon a body which decides so many matters of the greatest importance to our country, often by a single vote.

In the normal course of events, the Supreme Court often renders opinions which, at their core, decide cutting-edge issues which are really within the legislative domain under the Constitutional doctrine of Separation of Powers. In recent years the Supreme Court has exaggerated this policy role by explicitly substituting its judgment for that of Congress and striking down legislation which it has found is not based upon a ''considered judgment.''

In our Constitutional scheme, who are the justices of the Supreme Court to substitute their judgment for that of Congress on these issues of public policy? By what right do the Justices decide that Congress has not exercised a ''considered judgment''? When it rules on this basis, the Court goes far beyond its role as final Constitutional arbiter and becomes a super legislature.

Senator BIDEN cogently addressed this issue in a July 26, 2000 floor statement. After discussing a number of recent Supreme Court opinions in which the Court exceeded its authority to strike down laws passed by Congress, Senator BIDEN noted that:

> It is crucial . . . that the American people understand the larger pattern of the Supreme Court's recent decisions and . . . the disturbing direction in which the Supreme Court is moving because the consequences of these may well impact upon the ability of American citizens to ask their elected representatives in Congress to help them solve national problems that have national impact. . . .
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> Make no mistake, what is at issue here is the question of power . . . basically whether power will be exercised by an insulated judiciary or by the elected representatives of the people.

The public has a right to know how, why and what the Court is doing. In particular, the deliberations of the Court should be open to the sunshine of public scrutiny. Television coverage would be a significant step to provide a meaningful opportunity for public to observe and understand what the Court is doing.

Beyond educating the public, enhanced public scrutiny may very well have the effect of discouraging judicial activism and overreaching. The example of Justice Owen Roberts is instructive. In the mid-1930's, the Supreme Court struck down many significant pieces of New Deal legislation by votes of 5 to 4. President Roosevelt went to great lengths to publicize this episode of judicial activism, culminating in his infamous proposal to pack the Supreme Court by adding six new members. Notwithstanding FDR's enormous popularity, that proposal raised a storm of protest and failed. In the midst of that controversy, a swing justice, Owen J. Roberts, shifted his position to support the New Deal programs. Accordingly, a majority of the Court then supported and upheld New Deal legislation. Justice Robert's change in position led to the famous phrase, ''a switch in time saves nine.''

The current Court broke with sixty years of tradition in curtailing Congress's authority under the Commerce Clause in *Lopez*, which invalidated Federal legislation creating gun-free school zones. In June 1999 in three far-reaching decisions, the Supreme Court curtailed Congressional authority in favor of the right of states to sovereign immunity on patent, copyright and other intellectual property infringement matters. These cases are: *College Savings Bank* v. *Florida Prepaid*, 527 U.S. 666, *Florida Prepaid* v. *College Savings Bank*, 527 U.S. 627, and *Alden* v. *Maine*, 527 U.S. 706.

The June 1999 patent and copyright infringement cases have been roundly criticized by the academicians. Stanford University historian Jack Rakove, author of ''Original Meanings'', a Pulitzer Prize winning account of the drafting of the Constitution, characterizes Justice Kennedy's historical argument in Alden v. Maine as ''strained, even silly''.

Professor Rebecca Eisenberg of the University of Michigan Law School, in commenting on Florida Prepaid Postsecondary Education Expense Board vs. College Savings Bank, said:

> ''The decision makes no sense'', asserting that it arises from ''a bizarre states' rights agenda that really has nothing to do with intellectual property.

Harvard Professor Laurence Tribe commented:

''In the absence of even a textual hint in the Constitution, the Court discerned from the constitutional 'ether' that states are immune from individual lawsuits.'' (These decisions are) ''scary''. ''They treat states' rights in a truly exaggerated way, harking back to what the country looked like before the civil war and, in many ways, even before the adoption of the Constitution.''

College Savings Bank v. *Florida Prepaid* 1999 U.S. LEXIS 4375, *Florida Prepaid* v. *College Savings Bank* 1999 U.S. LEXIS 4376 and *Alden* v. *Maine*, 1999 U.S. LEXIS 4374.

In addition to treating the Congress with disdain, the five person majority in all three cases demonstrated judicial activism and exhibited what can only be viewed as a political agenda in drastically departing from long-standing law. Former Solicitor General Walter Dellinger described these cases as:

''one of the three or four major shifts in constitutionalism we've seen in two centuries.''

A commentary in the Economist on July 3, 1999 emphasized the Court's radical departure from existing law stating:

''The Court's majority has embarked on a venture as detached from any constitutional moorings as was the liberal Warren Court of the 1960's in its most activist mood.''

In its two opinions in College Savings Bank v. Florida Prepaid and Florida Prepaid v. College Savings Bank, the Court held that the doctrine of sovereign immunity prevents states from being sued in Federal court for infringing intellectual property rights. These decisions leave us with an absurd and untenable state of affairs. Through their state-owned universities and hospitals, states participate in the intellectual property marketplace as equals with private companies. The University of Florida, for example, owns more than 200 patents. Furthermore, state entities such as universities are major consumers of intellectual property and often violate intellectual property laws when, for example, they copy textbooks without proper authorization.

But now, Florida and all other states will enjoy an enormous advantage over their private sector competitors—they will be immune from being sued for intellectual property infringement. Since patent and copyright infringement are exclusively Federal causes of action, and trademark infringement is largely Federal, the inability to sue in Federal court is, practically speaking, a bar to any redress at all.

The right of states to sovereign immunity from most Federal lawsuits is guaranteed in the Eleventh Amendment to the constitution, which provides that:

The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any foreign state.

It has long been recognized, however, that this immunity from suit is not absolute. As the Supreme Court noted in one of the Florida Prepaid opinions, the Court has recognized two circumstances in which an individual may sue a state:

First, Congress may authorize such a suit in the exercise of its power to enforce the Fourteenth Amendment—an Amendment enacted after the Eleventh Amendment and specifically designed to alter the federal-state balance. Secondly, a state may waive its sovereign immunity by consenting to suit. *College Savings Bank* v. *Florida Prepaid* at 7.

Congress' power to enforce the Fourteenth Amendment is contained in Section Five of the Fourteenth Amendment, which provides that ''The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.'' One of the provisions of the Fourteenth Amendment, Section One, provides that no State shall, ''deprive any person of . . . property . . . without due process of law.'' Accordingly, Congress has the power to pass laws to enforce the rights of citizens not to be deprived of their property—including their intellectual property—without due process of law.

Employing this power under Section 5 of the Fourteenth Amendment, Congress passed the Patent Remedy Act and the Trademark Remedy Clarification Act in 1992. As its preamble states, Congress passed the Patent Remedy Act to ''clarify that States . . . are subject to suit in Federal court by any person for infringement of patents and plant variety protections.'' Congress passed the Trademark Remedy Clarification Act to subject the States to suits brought under Sec. 43 of the Trademark Act of 1946 for false and misleading advertising.

In Florida Prepaid v. College Savings Bank, the Court held in a 5 to 4 opinion that Congress did not validly abrogate state sovereign immunity from patent infringement suits when it passed the Patent Remedy Act. In an opinion by Chief Justice Rehnquist, the Court reasoned that in order to determine whether a Congressional enactment validly abrogates the States' sovereign immunity, two questions must be answered, ''first, whether Congress has unequivocally expressed its intent to abrogate the immunity . . . and second whether Congress has acted pursuant to a valid exercise of power.''

The Court acknowledged that in enacting the Patent Remedy Act, Congress made its intention to abrogate the States' immunity unmistakably clear in the language of the statute. The Court then held, however, that Congress had not acted pursuant to a valid exercise of power when it passed the Patent Remedy Act. The Court wrote that Congress' enforcement power under the Fourteenth Amendment is ''remedial'' in nature. Therefore, ''for Congress to invoke Section 5 it must identify conduct transgressing the Fourteenth Amendment's substantive provisions, and must tailor its legislative scheme to remedy or preventing such conduct.'' Florida Prepaid v. College Savings Bank at 20.

The Court found that Congress failed to identify a pattern of patent infringement by the States, let alone a pattern of constitutional violations. The Court specifically noted that a deprivation of property without due process could occur only where the State provides inadequate remedies to injured patent owners. The Court then observed that:

Congress, however, barely considered the availability of state remedies for patent infringement and hence whether the States' conduct might have amounted to a constitutional violation under the Fourteenth Amendment. . . . Congress itself said nothing about the existence or adequacy of state remedies in the statute or in the Senate Report, and made only a few fleeting references to state remedies in the House Report, essentially repeating the testimony of the witnesses. Florida Prepaid v. College Savings Bank at 27–28.

Accordingly, the Court concluded that:

The legislative record thus suggests that the Patent Remedy Act does not respond to a history of widespread and persisting deprivation of constitutional rights of the sort Congress has faced in enacting proper prophylactic Section 5 legislation. Instead, Congress appears to have enacted this legislation in response to a handful of instances of state patent infringement that do not necessarily violate the Constitution. Florida Prepaid v. College Savings Bank at 31–32.

Not only is the result of this opinion troubling—that states will enjoy immunity from suit—but also by the reasoning which supports this result. Here we have a Chief Justice of the Supreme Court choosing to ignore an act of Congress because he has concluded that Congress passed the legislation with insufficient justification. In essence, the Chief Justice is telling us we did a poor job developing our record before passing the Patent Remedy Act. As we all know, however, many of us support legislation for reasons that don't make it into the written record. The record is an important, but imperfect, summary of our views. This is why past Courts have been reluctant to discuss Congressional motives in this fashion.

In College Savings Bank v. Florida Prepaid, the Supreme Court decided in a 5 to 4 opinion that Trademark Remedy Clarification Act (the ''TRCA'') was not a valid abrogation of state sovereign immunity. The Court, in an opinion by Justice Scalia, noted that Congress passed the TRCA to remedy and prevent state deprivations of two types of property rights: (1) a right to be free from a business competitor's false advertising about its own product, and (2) a more generalized right to be secure in one's business interests. The Court contrasted these rights with the hallmarks of a protected property interest, namely the right to exclude others.

Justice Scalia reached the surprising conclusion that protection against false advertising secured by Section 43(a) of the Lanham Act does not implicate property rights protected by the due process clause so that Congress could not rely on its remedies under Section 5 of the 14th Amendment to abrogate state sovereign immunity. If

conducting a legitimate business operation with protection from false advertising is not a ''property right'', it is hard to conceive of what is business property. That Scalia rationale shows the extent to which the Court has gone to invalidate Congressional enactments.

The Court then discussed whether Florida's sovereign immunity, though not abrogated, was voluntarily waived. Here, the Court expressly overruled its prior decision in *Parden* v. *Terminal R. Co*. 377 U.S. 184 (1964) and held that there was no voluntary waiver. In Parden, the Court had created the doctrine of constructive waiver, which held that a state could be found to have waived its immunity to suit by engaging in certain activities, such as voluntary participation in the conduct Congress has sought to regulate. Since Congress has sought to regulate interstate commerce, then a state which participated in interstate commerce by registering and licensing patents would be held to have voluntarily waived its immunity to a patent infringement suit. By overruling Parden, however, the Court held that a voluntary waiver of sovereign immunity must be express. Florida made no such express waiver of its sovereign immunity.

In other relatively recent cases, the Court has gone out of its way, almost on a personal basis, to chastise and undercut Congress. The case of *Sable* v. *FCC*, 492 U.S. 115 (1989) provides a striking example of this trend. In Sable, the Court struck down a ban on ''indecent'' interstate telephone communications passed by Congress in 1988. In rejecting this provision, the Court focused on whether there were constitutionally acceptable less restrictive means, short of a total ban, to achieve its goal of protecting minors. The Court then declared, in unusually dismissive and critical language, that Congress has not sufficiently considered this issue:

> aside from conclusory statements during the debates by proponents of the bill . . . that under the FCC regulations minors could still have access to dial-a-porn messages, the congressional record presented to us contains no evidence as to how effective or ineffective the FCC's most recent regulations were or might prove to be.
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> The bill that was enacted . . . was introduced on the floor. . . . *No Congressman or Senator purported to present a considered judgement* with respect to how often or to what extent minors could or would circumvent the rules and have access to dial-a-porn messages. (Emphasis Added)

If a member of the Congress made a judgment, by what authority does the Supreme Court superimpose its view that it wasn't a ''considered judgment''? A fair reading of the statements from the floor debate on this issue undercuts the Court's disparaging characterization of this debate. For example, Representative TOM BLILEY of Virginia gave a rather detailed and persuasive discussion of how he concluded that a legislative ban was necessary. Mr. BLILEY noted that in 1983, Congress first passed legislation which required the FCC to report regulations describing methods by which dial-a-porn providers could screen out underage callers. Mr. BLILEY then walks us through the repeated failure of the FCC to pass regulations which could withstand judicial scrutiny. Finally Mr. BLILEY notes that:

> it has become clear that there was not a technological solution that would adequately and effectively protect our children from the effect of this material. We looked for effective alternatives to a ban—there were none.

The Court repeats its critique of Congressional action in the case of *Reno* v. *ACLU*, 521 U.S. 844 (1997). Here, the Court struck down the Communications Decency Act, which prohibited transmission to minors of ''indecent'' or ''patently offensive'' communications. In this opinion, the Court again discusses whether less restrictive means were available and again concludes that Congress had not sufficiently addressed the issue. The opinion notes that:

> The Communications Decency Act contains provisions that were either added in executive committee after the hearings [on the Telecom Act] were concluded or as amendments offered during floor debate on the legislation. . . . No hearings were held on the provisions that became the law.

The Court in Reno later notes that, ''*The lack of legislative attention* to the statute at issue in *Sable* suggests another parallel with this case.'' (Emphasis Added)

Once again, if Congress passes a law, by what authority does the Supreme Court conclude that we did not devote sufficient legislative attention to the law? In the Reno opinion itself the Court noted that some Members of the House of Representatives opposed the Communications Decency Act because they thought that less restrictive screening devices would work. These members offered an amendment intended as a substitute for the Communications Decency Act, but instead saw their provision accepted as an additional section of the Act. In light of this record, how can the Court say that Congress did not consider less restrictive means?

Most recently, in its January, 2000, opinion in *Kimel* v. *Florida Board of Regents*, 528 U.S. 62, the Supreme court once again took aim at Congress' judgment. In Kimel, the Court held that a 1974 amendment to the Age Discrimination in Employment Act (the ''ADEA'') to extend its application to discrimination by state and local governments was not a valid abrogation of state sovereign immunity. The Court rejected Congress' action in truly dismissive tones:

> Our examination of the ADEA's legislative record confirms that Congress' 1974 extension of the Act to the States was *an unwarranted response to a perhaps inconsequential problem.* Congress never identified any pattern of age discrimination by the States, much less any discrimination whatsoever that rose to the level of constitutional violation. * * * (Emphasis Added)
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> A review of the ADEA's legislative record as a whole * * * reveals that *Congress had virtually no reason to believe* that state and local governments were unconstitutionally discriminating against their employees on the basis of age. Congress' failure to uncover any significant pattern of unconstitutional discrimination here confirms that *Congress had no reason to believe* that broad prophylactic legislation was necessary in this field. Kimel at (Emphasis Added)

Almost every member of Congress had had close working relationships with employees of the state and local governments back home, and all members of Congress meet state and local government employees when they are back in their states or districts. In fact, many members of Congress were once themselves state employees. Congress is therefore in a very good position to know that age discrimination by the states is not an ''inconsequential'' problem. In fact, the absence of an in-depth debate on this topic likely reflects the fact that this proposition that state and local governments discriminate on the basis of age was noncontroversial. The Supreme Courts failure to defer to Congress' experience on this issue and its jaundiced reading of the record are troubling.

While numerous other instances of judicial activism may be cited, the decisions during Chief Justice Warren's tenure from 1953 through 1969 are illustrative. While few, if any at this late date, would disagree with the Warren Court's decision holding segregation unconstitutional in Brown v. Board of Education, it was a clear-cut case of judicial activism overturning Pleassey v. Ferguson since neither the legislative nor executive branches of the federal or state governments would correct those rank injustices.

The Warren Court significantly expanded the interpretation of the due process clause of the 14th Amendment to add Constitutional rights to criminal defendants in state court cases. In Mapp v. Ohio, the Court rule that unconstitutionally seized evidence could not be introduced in a state criminal proceeding. In Gideon v. Wainwright, the Supreme Court required that the State provide a defendant a lawyer when ''hailed'' into criminal court. Miranda v. Arizona, perhaps the Court's most famous opinion, rule out a defendant's confession or statement unless five specific warnings were given by police and waivers obtained from the defendant before incriminating statements could be introduced against him/her in state court proceedings.

Another era of judicial activism occurred in the mid-1930's. During this period, the Supreme Court embarked on a very different activist agenda by striking down many of the core laws passed as part of President Roosevelt's New Deal. In the 1935 case of A.L.A. Schecter Poultry Corp. v. United States, the Supreme Court struck down the National Industrial Recovery Act on the grounds that it exceeded Congress' power under the Commerce Clause. Also in 1935, in Railroad Retirement Board v. Alton R.R., the Supreme

Court struck down the Railroad Retirement Act on the same Commerce Clause grounds. In the 1936 case of United States v. Butler, the Supreme Court struck down the agricultural Adjustment Act on the grounds that it sought to regulate a subject—the production of daily products—prohibited to Federal government under the 10th Amendment. Also in 1936, in Carter v. Carter Coal Co., the Court struck down the Bituminous Coal Conservation Act on the same 10th Amendment grounds.

These decisions, led to the infamous proposal to pack the Supreme Court by adding six new members. Notwithstanding FDR's enormous popularity, that proposal raised a storm of protest and failed.

Televised court proceedings better enable the public to understand the role of the Supreme Court and its impact on the key decisions of the day. Not only has the Supreme Court invalidated Congressional decisions where there is, in the views of many, simply a difference of opinion to what is preferable public policy, but the Court determines avant-garde issues such as whether aids is a disability under the Americans with Disabilities Act, whether Congress can ban obscenity from the Internet, and whether states can impose term limits upon members of Congress. Just this past term, the Court addressed whether the FDA has the authority to regulate tobacco products as a drug and whether states can ban partial birth abortion.

The current Court, like its predecessors, hands down decisions which vitally affect the lives of all Americans. Since the Court's 1803 historic decision in Marbury v. Madison, the Supreme Court has the final authority on issues of enormous importance from birth to death. In Roe v. Wade (1973), the Court affirmed a Constitutional right to abortion in this country and struck down state statutes banning or severely restricting abortion during the first two trimesters on the grounds that they violated a right to privacy inherent in the Due Process Clause of the Fourteenth Amendment. In the case of Washington v. Glucksberg (1997), the court refused to create a similar right to assisted suicide. Here the Court held that the Due Process Clause does not recognize a liberty interest that includes a right to commit suicide with another's assistance.

In the Seventies, the Court first struck down then upheld state statutes imposing the death penalty for certain crimes. In Furman v. Georgia (1972), the Court struck down Georgia's death penalty statute under the cruel and unusual punishment clause of the Eighth Amendment and stated that no death penalty law could pass constitutional muster unless it took aggravating and mitigating circumstances into account. This decision lead Georgia and many states to amend their death penalty statutes and, four years later, in Gregg v. Georgia (1976), the Supreme Court upheld Georgia's amended death penalty statute.

Over the years, the Court has also played a major role in issues of war and peace. In its opinion in Scott v. Sanford (1857)—better known as the Dredd Scott decision—the Supreme Court held that Dredd Scott, a slave who had been taken into ''free'' territory by his owner, was nevertheless still a slave. The Court further held that Congress lacked the power to abolish slavery in certain territories, thereby invalidating the careful balance that had been worked out between the North and the South on the issue. Historians have noted that this opinion fanned the flames that led to the Civil War.

More recently, the Supreme Court played an important role during the Vietnam War. Prominent opponents of the war repeatedly petitioned the Court to declare the Presidential action unconstitutional on the grounds that Congress had never given the President a declaration of war. The Court decided to leave this conflict in the political arena and repeatedly refused to grant writs of certiorari to hear these cases. This prompted Justices Douglas, sometimes accompanied by Justices Stewart and Harlan, to take the unusual step of writing lengthy dissents to the denials of cert.

In New York Times Co. v. United States (1971)—the so called ''Pentagon Papers'' case—the Court refused to grant the government prior restraint to prevent the New York Times from publishing leaked Defense Department documents which revealed damaging information about the Johnson Administration and the war effort. The publication of these documents by the New York Times is believed to have helped move public opinion against the war.

In its landmark civil rights opinions, the Supreme Court took the lead in effecting needed social change, helping us to address fundamental questions about our society in the courts rather than in the streets. In Brown v. Board of Education, the Court struck down the principle of ''separate but equal'' education for blacks and whites and integrated public education in this country. This case was followed by a series of civil rights cases which enforced the concept of integration and full equality for all citizens of this country, including Garner v. Louisiana (1961), Burton v. Wilmington Parking Authority (1961), and Peterson v. City of Greenville (1963).

When deciding issues of such great national import, the Supreme Court is rarely unanimous. In fact, a large number of seminal Supreme Court decisions have been made by a vote of 5–4. Such a close margin reveals that these decisions are far from foregone conclusions distilled from the clear meaning of the Constitution and legal precedents. On the contrary, these major Supreme Court opinions are really policy decisions reached on the basis of the preferences and views of each individual justice. In a case that is decided by a vote of 5–4, individual justices have the power by his or her vote to change the law of the land.

Given the enormous significance of each vote cast by each justice on the Supreme Court, it is important that each justice know that they will be held accountable for their vote. Televising the proceedings of the Supreme Court will allow the sunlight to shine brightly on these proceedings and ensure greater accountability.

The following are just a handful of examples of major 5–4 decisions handed down by the Supreme Court this century:

Lochner v. New York (1905). The Court struck down an early attempt at labor regulation by holding that a law limiting bakers to a sixty-hour work week violated the liberty of contract secured by the Due Process Clause of the Fourteenth Amendment.

Hammer v. Dagenhart (1918). The Court again struck down a labor law, this time the Keating-Own Federal Child Labor Act, on the grounds that Commerce Clause did not give Congress the power to completely forbid certain categories of commerce.

Furman v. Georgia (1972). The Court struck down the death penalty under the cruel and unusual punishment clause of the Eighth Amendment.

Plyer v. Doe (1982). The Court invoked the Equal Protection Clause of the Fourteenth Amendment to strike down a Texas statute which denied state funding for the education of illegal immigrant children.

Webster v. Reproductive Health Services (1989). In this case, which has been widely viewed as a retreat from Roe v. Wade, the Court upheld various restrictions on the availability of abortion including a ban on the use of public funds and facilities for abortions.

United States v. Eichman (1990). The Court invalidated state and Federal laws prohibiting flag desecration on the grounds that they violated the First Amendment.

Adarand Constructors, Inc. v. Pena (1995). The Court held that Federal racial classifications, like those of a state, must be reviewed under a strict scrutiny standard.

U.S. Term Limits v. Thornton (1995). The Court struck down a state law imposing term limits upon Members of Congress on the grounds that states have no authority to change, add to, or diminish the age, citizenship, and residency requirements for congressional service enumerated in the Qualifications Clause of the U.S. Constitution.

During the past five years alone, there have been eighty 5 to 4 Supreme Court decisions. Out of the 79 cases decided in the Court's most recent term, 20 were decided by a single justice on a 5 to 4 vote. The following are some of the important decisions handed down by the Court in its last few sessions that were decided by a 5 to 4 vote:

Tobacco regulation. In FDA v. Brown and Williamson Tobacco Corporation, the Court ruled that the FDA lacks authority under the Federal Food, Drug, and Cosmetic Act (FDCA) to regulate tobacco products.

Abortion. In Stenberg v. Carhart, the Court ruled that Nebraska's statute criminalizing the performance of ''partial birth abortions'' is unconstitutional under principles set forth in Roe v. Wade (1973) and Planned Parenthood v. Casey (1992).

Violence Against Women Act. In United States v. Morrison, the Court struck down a key provision of the 1994 Violence Against Women Act (VAWA) that allowed victims of gender-motivated violence to bring private civil lawsuits against the perpetrators in federal court. The Supreme Court said that Congress, in enacting the VAWA provision, overstepped its authority to regulate interstate commerce and enforce the Constitution's equal-protection guarantee.

HIV infection. In Bragdon v. Abbott, the Court ruled that HIV infection is a ''disability'' as defined by the American with Disabilities Act, even if the person who has tested positive for HIV is asymptomatic.

Fourth Amendment. In Pennsylvania Board of Probation and Parole v. Scott, the Court limited the exclusionary rule by holding that it does not apply in parole revocation hearings.

Freedom of Religion. In City of Boerne v. Flores, the Court struck down the Religious Freedom Restoration Act (''RFRA'') on the grounds that it exceeded Congressional power under Section 5 of the Fourteenth Amendment. RFRA had provided that governments can infringe upon religious practices only if they have health, safety or other ''compelling interest'' in doing so.

Freedom of Speech Online. In Reno v. ACLU, the Court struck down two provisions of the Communications Decency Act of 1996 prohibiting transmission of obscene and indecent messages to minors on the grounds that they violated the First Amendment.

In Printz v. United States, the Court voted 5 to 4 to reverse six decades of firmly established constitutional authority on the supremacy of federal laws over states rights under the Commerce Clause. Specifically, the Court held unconstitutional the provisions of the Brady Bill that require state and local law enforcement officers to conduct background checks on prospective handgun purchasers.

In Agostini v. Felton, the Court voted to lower the barrier between church and state by holding that the Establishment Clause of the First Amendment does not bar use of public school teachers to provide remedial education to disadvantaged children in parochial schools.

In Raines v. Byrd, the Court ruled that our colleagues, Senators BYRD, LEVIN, MOYNIHAN, and HATFIELD, lacked standing to challenge the constitutionality of the Line Item Veto Act since they failed to establish a particularized personal injury. The Court's rejection of an ''institutional injury'' to Congress as a basis for standing significantly limits the ability of legislators to raise constitutional challenges to legislation in the courts.

Cameras Should be allowed in the Supreme Court on Basic Public Policy and Constitutional Grounds.

Given the awesome national significance of the decisions made by the Supreme Court, the right of the public to view the process by which these decisions are made is self evident. In a democracy, the workings of the government at all levels should be open to public view. The more openness, and the more real the opportunity for public observation, the greater the understanding and trust. As the Supreme Court noted in the 1986 case of Press-Enterprise Co. v. Superior Court, ''People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.''

It was in this spirit that the House of Representatives opened its deliberations to meaningful public observation by allowing C-Span to begin televising debates in the House chamber in 1979. The Senate followed the House's lead in 1986 by voting to allow television coverage of the Senate floor.

Beyond this general policy preference for openness, however, there is a strong argument that the Constitution requires that television cameras be permitted in the Supreme Court.

It is well established that the Constitution guarantees access to judicial proceedings to the press and the public. In 1980, the Supreme Court relied on this tradition when it held in Richmond Newspapers v. Virginia that the right of a public trial belongs not just to the accused, but to the public and the press as well. The Court noted that such openness has ''long been recognized as an indisputable attribute of an Anglo-American trial.''

Recognizing that in modern society most people cannot physically attend trials, the Court specifically addressed the need for access by members of the media:

> Instead of acquiring information about trials by first hand observation or by word of mouth from those who attended, people now acquire it chiefly through the print *and electronic media*. [emphasis added] In a sense, this validates the media claim of acting as surrogates for the public. [Media presence] contributes to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system.

Today, television is the means by which most Americans get their information. To exclude television cameras from the court is to effectively prevent large segments of American society from ever witnessing what transpires therein. Furthermore, television provides a level of access to courtroom proceedings far closer to the ideal of actual attendance in the court than either newspapers or photographs can provide.

In addition, a strong argument can be made that forbidding television cameras in the court, while permitting access to print and other media, constitutes an impermissible discrimination against one type of media in contravention of the First Amendment. In recent years, the Supreme Court and lower courts have repeatedly held that differential treatment of different media is impermissible under the First Amendment absent an overriding governmental interest. For example, in 1983 the Court invalidated discriminatory tax schemes imposed only upon certain types of media in Minneapolis Star & Tribune Co. v. Minnesota commissioner of Revenue. In the 1977 case of ABC v. Cuomo, the Second Circuit rejected the contention by the two candidates for mayor of New York that they could exclude some members of the media from their campaign headquarters by providing access through invitation only. The Court wrote that:

> Once there is a public function, public comment, and participation by some of the media, the First Amendment requires equal access to all of the media or the rights of the First Amendment would no longer be tenable.

In the 1965 case of Estes v. Texas, the Supreme Court rejected the argument that the denial of television coverage of trials violates the equal protection clause. In the same opinion, the Court held that the presence of television cameras in the Court had violated a Texas defendant's right to due process. Subsequent opinions have cast serious doubt upon the continuing relevance of both prongs of the Estes opinion.

In its 1981 opinion in Chandler v. Florida, discussed above, the court recognized that Estes must be read narrowly in light of the state of television technology at that time. The television coverage of Estes' 1962 trial required cumbersome equipment, numerous additional microphones, yards of new cables, distracting lighting, and numerous technicians present in the courtroom. In contrast, the court noted, television coverage in 1980 can be achieved through the presence of one or two discreetly placed cameras without making any perceptible change in the atmosphere of the courtroom. Accordingly, the Court held that, despite Estes, the presence of television cameras in a Florida trial was not a violation of the rights of the defendants in that case. By the same logic, the holding in Estes that exclusion of television cameras from the courts did not violate the equal protection clause must be revisited in light of the dramatically different nature of television coverage today.

Given the strength of these arguments, it is not surprising that over the last two decades there has been a rapidly growing acceptance of cameras in American courtrooms which has reached almost every court except for the Supreme Court itself. Ironically, it was a Supreme Court decision which helped spur the spread of television cameras in the courts. In 1981, in the case of Chandler v. Florida, the Supreme Court decided that televising

criminal proceedings did not inherently interfere with a criminal defendant's constitutional right to a fair trial, and that there was no empirical evidence to support a claim that it did. Shortly after the Chandler decision, the American Bar Association revised its canons to permit judges to authorize televising civil and criminal proceedings in their courts.

Following the green lights provided by the Supreme Court and the ABA, forty-seven states have decided to permit electronic coverage of at least some portion of their judicial proceedings. In 1990, the federal Judicial Conference authorized a three-year pilot program allowing television coverage of civil proceedings in six federal district courts and two federal circuit courts. The program began in July, 1991 and ran through December 31, 1994. The Federal Judicial Center monitored the program and issued a positive final evaluation. In particular, the Judicial Center concluded that:

Overall, attitudes of judges toward electronic media coverage of civil proceedings were initially neutral and became more favorable after experience under the pilot program.

The Judicial Center also concluded that:

Judges and attorneys who had experience with electronic media coverage under the program generally reported observing small or no effects of camera presence on participants in the proceedings, courtroom decorum, or the administration of justice.

Despite this positive evaluation, the Judicial Conference voted in September, 1994, to end the experiment and not to extend the camera coverage to all courts. This decision was made in the aftermath of the initial burst of television coverage of O.J. Simpson's pretrial hearing. Some have argued that the decision was unduly influenced by this outside event.

In March, 1996, the Judicial Conference revisited the issue of television cameras in the federal courts and voted to permit each federal court of appeals to ''decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments.'' Since that time, two circuit courts have enacted rules permitting television coverage of their arguments. It is significant to note that these two circuits were the two circuits which participated in the federal experiment with television cameras a few years earlier. It seems that once judges have an experience with cameras in their courtroom, they no longer oppose the idea.

On September 6, 2000, the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts held a hearing on ''Allowing Cameras and Electronic Media in the Courtroom.'' The primary focus of the hearing was Senate bill 721, legislation introduced by Senators GRASSLEY and SCHUMER that would give federal judges the discretion to allow television coverage of court proceedings. One of the witnesses at the hearing, Judge Edward Becker, Chief Judge U.S. Court of Appeals for the Third Circuit, spoke in opposition to the legislation and the presence of television cameras in the courtroom. The remaining five witnesses, however, including a federal judge, a state judge, a law professor and other legal experts, all testified in favor of the legislation. They argued that cameras in the courts would not disrupt proceedings but would provide the kind of accountability and access that is fundamental to our system of government.

In my judgment, Congress, with the concurrence of the President, or overriding his veto, has the authority to require the Supreme Court to televise its proceedings. Such a conclusion is not free from doubt and is highly likely to be tested with the Supreme Court, as usual, having the final word. As I see it, there is no constitutional prohibition against such legislation.

Article 3 of the Constitution states that the judicial power of the United States shall be vested ''in one Supreme Court and such inferior Courts as the Congress may from time to time ordain and establish.'' While the Constitution specifically creates the Supreme Court, however, it left it to Congress to determine how the Court would operate. For example, it was congress that fixed the number of justices on the Supreme Court at nine. Likewise, it was Congress that decided that any six of these justices are sufficient to constitute a quorum of the Court. It was Congress that decided that the term of the Court shall commence on the first Monday in October of each year, and it was Congress that determined the procedures to be followed whenever the Chief Justice is unable to perform the duties of his office.

Beyond such basic structural and operational matters, Congress also controls more substantive aspects of the Supreme Court. Most importantly, it is Congress that in effect determines the appellate jurisdiction of the Supreme Court. Although the Constitution itself sets out the appellate jurisdiction of the Court, it provides that such jurisdiction exists ''with such exceptions and under such regulations as the Congress shall make.'' In the early days of the Supreme Court, Chief Justice Marshall, writing for the Court in Durousseau v. United States, recognized that the power to make exceptions to the Court's jurisdiction is the equivalent of the power to grant jurisdiction, since exceptions can be ''implied from the intent manifested by the affirmative description [of jurisdiction].''

the Supreme Court recognized the power of Congress to control its appellate jurisdiction in a dramatic way in the famous 1868 case of Ex Parte McCardle. In this case, McCardle, a newspaper editor, was being held in custody by the military for trial on charges stemming from the publication of articles alleged to be libelous and incendiary. McCardle petitioned the Supreme Court for a writ of habeas corpus. The Court heard his case but, before it rendered its opinion, Congress repealed the statute that gave the Supreme Court jurisdiction to hear the habeas appeal. In light of this Congressional action, the Supreme Court felt compelled to dismiss the case for lack of jurisdiction.

Congress also exercises broad and significant control over the timing within which federal courts must act. For example, Congress passed the Speedy Trial Act to quantify an individual's Sixth Amendment right to a speedy trial. Specifically, the Act requires that an individual arrested for a criminal offense be indicted within thirty days of arrest and be brought to trial within seventy days of an indictment.

Likewise, the habeas corpus reform I authored, which became law as part of the comprehensive anti-terrorism act of 1996, imposes strict timetables upon the filing and review of habeas corpus petitions and appeals. For example, in the case of both death row inmates and other prisoners, the Act establishes a one-year deadline within which state and federal prisoners must file their federal habeas petitions. In capital cases, the Act requires a district court to render a final determination of a habeas petition not later than 180 days after the date on which it is filed, and it requires a court of appeals to hear and render a final determination of any appeal of an order granting or denying such petition within 120 days after the date on which the reply brief is filed.

Some objections have been raised to televised proceedings of the Supreme Court on the ground that it would subject justices to undue security risks. My own view is such concerns are vastly overstated. Well-known members of Congress, including such high profile personalities as Senator TED KENNEDY, walk on a regular basis in public view in the Capitol complex. Other very well-known personalities, presidents, vice presidents, cabinet officers, all are on public view with even incumbent presidents exposed to risks as they mingle with the public. Such risks are minimal and, in my view, are worth the relatively minor exposure that Supreme Court justices would undertake through television appearances.

The Supreme Court could, of course, permit television through its own rule but has decided not to do so. Congress should be circumspect and even hesitant to impose a rule mandating the televising of Supreme Court proceedings and should do so only in the face of compelling public policy reasons. The Supreme Court has such a dominant role in key decision-making functions that their proceedings ought to be better known to the public; and, in the absence of Court rule, public policy would be best served by enactment of legislation requiring the televising of Supreme Court proceedings.

By Mr. DORGAN (for himself, Mr. GREGG, and Mr. DURBIN):

S. 3087. A bill to amend the Internal Revenue Code of 1986 to simplify the individual income tax by providing an election for eligible individuals to only be subject to a 15 percent tax on wage income with a tax return free filing system, to reduce the burdens of the marriage penalty and alternative minimum tax, and for other purposes; to the Committee on Finance.

THE FAIR AND SIMPLE SHORTCUT TAX PLAN

Mr. DORGAN. Mr. President, for all the talk about taxes in this chamber, we often overlook one of the worst burdens of the current tax system. I'm talking about the monumental hassle that taxpayers face to file their tax returns each year.

It is simply inexcusable that Congress has made it so expensive and complex for Americans to fulfill this basic civic duty. Taxpayers will probably spend somewhere around three billion hours and at least $75 billion next year in the effort to meet their federal income tax obligations. It's no wonder they barrage congressional offices with letters each spring imploring us to simplify the Tax Code.

They are right. Each little provision in the tax code has a justification, but together they add up to a big headache for the American taxpayer. We can't blame the IRS for the misery endured this past year or in the years ahead. There's no way to truly simplify tax day unless Congress changes the underlying law.

That's why I'm pleased to be joined by Senators GREGG and DURBIN in introducing a tax reform proposal that we call the ''Fair and Simple Shortcut Tax'' (FASST) plan. Our plan would give most taxpayers the opportunity to pay their federal income taxes without having to prepare a tax return if they so choose. Some thirty countries already enable their citizens to pay their federal taxes in this way. We believe tax simplification along these lines can work in this country, too. Our approach would also be less costly than other major tax simplification plans that have been proposed in Congress in the past several years.

Our bill is based on a principle that both sides of the aisle generally are eager to espouse—namely, choice. The bill would allow taxpayers to choose to pay their taxes without complexity, paperwork and hassle. Those who prefer to use the current system, with its complexity and expenses, could do so if they wanted. But if they want something simpler, they could choose that instead.

Under FASST, most taxpayers could forget about filing a federal tax return on April 15th. Instead, their entire income tax liability would be withheld at work. There would be no more deciphering statements from mutual funds, no more frantic search for records and receipts, and no last minute dash to the Post Office in order to meet the midnight deadline. According to Treasury Department officials who have studied it, the FASST plan would give up to 70 million Americans the opportunity to elect the no-return option.

Specifically, under the FASST plan, most taxpayers could choose the no-filing option by filling out a slightly modified W–4 form at work. Using tables prepared by the IRS, their employers would determine the employee's exact tax obligation at a single rate of 15 percent on wages—after several major adjustments—and withhold that amount. This amount would satisfy the taxpayer's entire federal income tax obligation for the year, absent some unforeseeable changes in circumstances or fraud.

The FASST plan would be available for couples earning up to $100,000 in wages and no more than $5,000 in other income such as interest, dividends or capital gains. In the case of individual taxpayers, the wage and non-wage income limits would be $50,000 and $2,500, respectively. Popular deductions would continue under this plan: the standard deduction, personal exemptions, the child care credit and Earned Income Tax Credit, along with a deduction for home mortgage interest expenses and property taxes. Our bill would include critical savings incentives for average Americans by exempting up to $5,000 of all interest, dividends and capital gains income from taxation for couples, $2,500 for singles. Moreover, savings contributions made through employers would be excluded from the wage calculations in the beginning.

Consider some of the advantages of this hassle-free plan:

No taxpayers would lose. If a taxpayer prefers to file an ordinary return, he or she would still have that choice, and no one would be forced to lose a tax deduction that he or she wants to keep.

Wages would be taxed at a single, low rate of 15 percent.

A deduction for home mortgage interest expenses, the Earned Income Tax Credit, and other popular parts of our current tax code would be preserved. Other major tax reform plans would eliminate those deductions, which many people count on.

The alternative minimum tax, AMT and the marriage penalty would be eliminated.

Compliance costs for taxpayers and government alike would fall. If 70 million Americans chose the FASST option, hundreds of millions of dollars now spent on paper pushing could be used in more productive ways.

Those taxpayers who continued to file under the old system would get relief too. The plan would reduce the marriage penalty by making the standard deduction for married couples double the amount available for single filers. Also, it would virtually eliminate the complicated AMT for most sole proprietors, farmers and other small businesses by exempting the first $1 million in self-employment income from the AMT calculations. This legislation also would provide a 50 percent credit for up to $1,000 in expenses that businesses might incur implementing the FASST plan. In addition, it would grant taxpayers who continue to use the current system a 50 percent tax credit for up to $200 in tax preparer expenses, provided they file their returns electronically. Finally, the bill would offer individuals a substantial incentive for savings and investment by exempting up to $500 of dividend and interest income, $1,000 for couples.

Mr. President, millions of Americans in this country are tired of spending countless hours wading through complex forms and instruction books. Our bill is both simple and fair, and it gives most taxpayers the choice to avoid the annual nightmare that the federal tax system has become.

In testimony before a Senate subcommittee earlier this year, IRS Commissioner Rossotti testified that it's ''unquestionable that this bill provides significant tax simplification.'' Imagine how much better life would be if April 15th were just another day. Under the FASST plan, for millions of Americans, that could be true. We urge our colleagues to support this important legislation, which we think will go a long way toward eliminating the burden of ''tax day'' for tens of millions of taxpayers in the future.

I ask unanimous consent that the full text of this legislation be inserted in the RECORD immediately following my statement.

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

S. 3087

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the ''Fair and Simple Shortcut Tax Plan''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—FAIR AND SIMPLE SHORTCUT TAX PLAN

SEC. 101. FAIR AND SIMPLE SHORTCUT TAX PLAN.

(a) IN GENERAL.—Subchapter A of chapter 1 (relating to determination of tax liability) is amended by adding at the end the following:

''PART VIII—FAIR AND SIMPLE SHORTCUT TAX PLAN

''SEC. 60. TAX ON INDIVIDUALS ELECTING FASST.

''(a) TAX IMPOSED.—If an individual who is an eligible taxpayer has an election in effect under this part for a taxable year, there is hereby imposed a tax equal to 15 percent of the taxpayer's applicable taxable income.

''(b) COORDINATION WITH OTHER TAXES.—The tax imposed by this section shall be in

lieu of any other tax imposed by this subchapter. The preceding sentence shall not apply to taxes described in section 26(b)(2) other than subparagraph (A) thereof.

"SEC. 60A. COMPUTATION OF APPLICABLE TAXABLE INCOME.

''(a) IN GENERAL.—For purposes of this part, the term 'applicable taxable income' means the taxpayer's applicable wage income, minus—

''(1) the standard deduction,

''(2) the deductions for personal exemptions provided in section 151, and

''(3) the homeowner expense deduction allowable under subsection (c).

''(b) APPLICABLE WAGE INCOME.—For purposes of this part—

''(1) IN GENERAL.—The term 'applicable wage income' means, with respect to an individual, wages received by such individual for the taxable year for services performed as an employee of an employer.

''(2) EMPLOYMENT.—The term 'employment' has the meaning given such term in section 3121(b).

''(3) WAGES.—The term 'wages' has the meaning given such term in section 3401(a).

''(c) HOMEOWNER EXPENSE DEDUCTION ALLOWED.—

''(1) IN GENERAL.—For purposes of subsection (a), there shall be allowed as a deduction for the taxable year an amount equal to the product of—

''(A) $5,000, and

''(B) a fraction, the numerator of which is the number of months in such year in which the taxpayer owned and used property as the taxpayer's principal residence (within the meaning of section 121) and the denominator of which is 12.

''(2) SPECIAL RULES.—For purposes of this subsection—

''(A) MARRIED INDIVIDUALS.—In the case of a married individual, the ownership and use requirements of paragraph (1) shall be treated as met for any month if either spouse meets them.

''(B) DIVORCE; COOPERATIVE HOUSING.—Rules similar to the rules of paragraphs (3) and (4) of section 121(d) shall apply.

''(C) OUT-OF-RESIDENCE CARE.—If a taxpayer becomes physically or mentally impaired while owning and using property as a principal residence, then the taxpayer shall be treated as meeting the ownership and use requirements of paragraph (1) during any period the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

"SEC. 60B. CREDITS AGAINST TAX.

''No credit shall be allowed against the tax imposed by this part other than—

''(1) the credit allowable under section 24 (relating to child tax credit),

''(2) the credit allowable under section 32 (relating to earned income credit), and

''(3) the credit for overpayment of tax under section 6402.

"SEC. 60C. ELECTION.

''(a) ELECTION.—An eligible taxpayer may elect to have this part apply for any taxable year.

''(b) ELIGIBLE TAXPAYER.—

''(1) IN GENERAL.—For purposes of this part, the term 'eligible taxpayer' means, with respect to any taxable year, a taxpayer who receives—

''(A) applicable wage income in an amount not in excess of—

''(i) $100,000, in the case of a taxpayer described in section 1(a), and

''(ii) 50 percent of the amount in effect under clause (i) for the taxable year, in the case of any other taxpayer, and

''(B) gross income (determined without regard to applicable wage income) in an amount not in excess of—

''(i) $5,000, in the case of a taxpayer described in section 1(a), and

''(ii) 50 percent of the amount in effect under clause (i) for the taxable year, in the case of any other taxpayer.

''(2) EXCLUSIONS.—The term 'eligible taxpayer' shall not include—

''(A) a married individual unless the individual and the spouse both have the same taxable year and both make the election,

''(B) a nonresident alien individual, or

''(C) an estate or trust.

''(3) INFLATION ADJUSTMENTS.—In the case of a taxable year beginning after 2001, each dollar amount under paragraph (1) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2000' for 'calendar year 1992' in subparagraph (B) thereof.

''(b) FORM OF ELECTION.—

''(1) IN GENERAL.—An individual shall make an election to have this part apply for any taxable year by furnishing an election certificate to such individual's employer not later than the close of the first payroll period after the individual commences work for such employer or January 1 of the taxable year to which such election relates, whichever is later.

''(2) CONTENTS OF CERTIFICATE.—The election certificate furnished under paragraph (1) shall—

''(A) contain such information as the Secretary requires to enable the Secretary to carry out this part and enable the employer to withhold the appropriate amount of wages under section 3402, and

''(B) contain a certification by the employee under penalty of perjury that the information furnished is correct.

''(3) AMENDMENT OF CERTIFICATE.—A new election certificate shall be filed within 30 days after the date of any change in the information required under paragraph (2).

''(4) ELECTION CERTIFICATE.—For purposes of this section, the term 'election certificate' means the withholding exemption certificate used for purposes of chapter 24.

''(5) ADVANCE PAYMENT OF EARNED INCOME AMOUNT.—The Secretary shall prescribe such regulations as may be necessary to allow an eligible taxpayer to treat an election certificate furnished under this section as including an earned income eligibility certificate under section 3507 in the case of an eligible individual claiming the earned income credit under section 32.

''(c) PERIOD ELECTION IN EFFECT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), an election under this section shall be effective for the taxable year for which it is made and all subsequent taxable years.

''(2) TERMINATION.—An election under this part shall terminate with respect to an individual for any taxable year and all subsequent taxable years if at any time during such taxable year such individual—

''(A) is no longer an eligible taxpayer,

''(B) elects to terminate such individual's election, or

''(C) commits fraud with respect to any information required to be provided under this section.

''(d) SAFE HARBOR FOR INELIGIBILITY.—In the case of an individual who has a termination under subsection (c)(2)(A), no addition to tax under section 6654 shall apply to any underpayment attributable to eligible wage income of such individual for such taxable year if such underpayment was not due to fraud, negligence, or disregard of rules or regulations (within the meaning of section 6662).

''(e) MARITAL STATUS.—For purposes of this part, marital status shall be determined under section 7703.

"SEC. 60D. LIABILITY FOR TAX.

''(a) AMOUNT WITHHELD TREATED AS SATISFACTION OF LIABILITY.—Except as provided in this section, any amount withheld as tax under section 3402(t) for an eligible individual with an election in effect under section 60C for the taxable year shall be treated as complete satisfaction of liability for the tax imposed by section 60(a) for such taxable year.

''(b) EXCEPTIONS.—Notwithstanding subsection (a)—

''(1) OVERPAYMENT.—If the amount withheld as tax under section 3402(t) for an eligible taxpayer with an election in effect under section 60C for the taxable year exceeds the tax imposed under section 60(a) for the taxable year, the excess amount shall be treated as an overpayment for purposes of section 6402.

''(2) UNDERPAYMENT.—

''(A) IN GENERAL.—If the Secretary determines that the amount withheld as tax under section 3402(t) for an eligible taxpayer is less than the tax imposed under section 60(a) and such underpayment is not due to fraud, the Secretary may assess and collect such underpayment in the same manner as if such underpayment were on account of a mathematical or clerical error appearing on a return of the individual for the taxable year.

''(B) DE MINIMIS EXCEPTION.—If the amount by which the tax imposed by section 60(a) exceeds the amount withheld as tax under section 3402(t) by less than the lesser of $100 or 10 percent of the tax so imposed, the taxpayer shall be treated as having no underpayment.

''(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations—

''(1) to allow a refund of an overpayment under subsection (b)(1) to a taxpayer without requiring additional filing of information by the taxpayer, and

''(2) to notify taxpayers of eligibility for credits allowable under section 60B and allow a claim and refund of any credit not claimed by an eligible taxpayer during the taxable year.''.

(b) WITHHOLDING FROM WAGES.—Section 3402 (relating to income tax collected at source) is amended by adding at the end the following new subsection:

''(t) WITHHOLDING UNDER THE FAIR AND SIMPLE SHORTCUT TAX PLAN.—

''(1) IN GENERAL.—An employer making payment of wages to an individual with an election in effect under section 60C shall deduct and withhold upon such wages a tax (in lieu of the tax required to be deducted and withheld under subsection (a)) determined in accordance with tables prescribed by the Secretary in accordance with paragraph (2).

''(2) WITHHOLDING TABLES.—The Secretary shall prescribe 1 or more tables which set forth amounts of wages and income tax to be deducted and withheld based on information furnished to the employer in the employee's election form and to ensure that the aggregate amount withheld from such employee's wages approximates the tax liability of such individual for the taxable year. Any tables prescribed under this paragraph shall—

''(A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and

''(B) be in such form, and provide for such amounts to be deducted and withheld, as the

Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable to such periods, including taking into account any credits allowable under section 24 or 32.

The Secretary shall provide that any other provision of this section shall not apply to the extent such provision is inconsistent with the provisions of this subsection.

''(2) ELECTION CERTIFICATE.—

''(A) IN GENERAL.—In lieu of a withholding exemption certificate, an employee shall furnish the employer with a signed election certificate and any amended election certificate at such time and containing such information as required under section 60C.

''(B) WHEN CERTIFICATE TAKES EFFECT.—

''(i) FIRST CERTIFICATE FURNISHED.—An election certificate furnished to an employer in cases in which no previous such certificate is in effect shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

''(ii) REPLACEMENT CERTIFICATE.—An election certificate furnished to an employer which replaces an earlier certificate shall take effect as of the beginning of the 1st payroll period ending (or the 1st payment of wages made without regard to a payroll period) on or after the 30th day after the on which the replacement certificate is so furnished.''.

(c) WAIVER OF REQUIREMENT TO FILE RETURN OF INCOME.—Subsection (a)(1)(A) of section 6012 (relating to persons required to make return of income) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by inserting after clause (iv) the following new clause:

''(v) who is an eligible taxpayer with an election in effect for the taxable year under section 60C.''

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The table of parts for subchapter A of chapter 1 is amended by adding at the end the following new item:

''Part VIII. Fair and Simple Shortcut Tax Plan.''

(2) Section 6654(a) is amended by inserting ''and section 60C(d)'' after ''this section''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 102. TAX CREDIT FOR EMPLOYER FASST PLAN STARTUP COSTS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

''SEC. 45D. FASST PLAN EMPLOYER START-UP CREDIT.

''(a) CREDIT ALLOWED.—

''(1) IN GENERAL.—For purposes of section 38, the Fair and Simple Shortcut Tax plan start-up credit determined under this section for the taxable year is an amount equal to the lesser of—

''(A) 50 percent of eligible start-up costs of the taxpayer for the taxable year, or

''(B) $1,000.

''(2) MAXIMUM CREDIT.—The maximum credit allowed with respect to a taxpayer under this subsection for all taxable years shall not exceed the amount determined under paragraph (1) for all taxable years.

''(b) ELIGIBLE START-UP COSTS.—For purposes of this section, the term 'eligible start-up costs' means amounts paid or incurred by an employer (or any predecessor) during the 1 year period beginning on the date on which the employer first employs 1 or more employees with an election in effect under section 60C for the taxable year, in connection with carrying out the withholding requirements of section 3402.

''(c) CREDIT AVAILABLE FOR EACH WORKSITE.—If a taxpayer maintains a separate worksite for employees, such person shall be treated as a single employer with respect to such worksite for purposes of the credit allowable under subsection (a).''

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) is amended—

(A) by striking ''plus'' at the end of paragraph (11),

(B) by striking the period at the end of paragraph (12), and inserting a comma and ''plus'', and

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

''(13) the Fair and Simple Shortcut Tax plan start-up credit determined under section 45D.''

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

''Sec. 45D. Fair and Simple Shortcut Tax plan start-up credit.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

TITLE II—PROVISIONS TO SIMPLIFY THE TAX CODE

SEC. 201. REDUCTION IN MARRIAGE PENALTY IN STANDARD DEDUCTION.

(a) IN GENERAL.—Section 63(c)(2) (relating to basic standard deduction) is amended to read as follows:

''(2) BASIC STANDARD DEDUCTION.—For purposes of paragraph (1), the basic standard deduction is—

''(A) 200 percent of the amount under subparagraph (C) for the taxable year, in the case of a joint return or a surviving spouse (as defined in section 2(a)),

''(B) 150 percent of such amount, in the case of a head of household (as defined in section 2(b)), and

''(C) $3,000, in the case of an individual who is not married and who is not a surviving spouse or head of household or a married individual filing a separate return.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 202. ALTERNATIVE MINIMUM TAX EXCLUSION OF SELF-EMPLOYMENT INCOME AND CERTAIN ITEMS OF PREFERENCE AND ADJUSTMENTS.

(a) INCREASED EXEMPTION FOR SELF-EMPLOYMENT INCOME.—Section 55(d)(1) (relating to exemption amount for taxpayers other than corporations) is amended to read as follows:

''(1) EXEMPTION AMOUNT FOR TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation, the term 'exemption amount' means the sum of—

''(A) an amount equal to—

''(i) $45,000 in the case of—

''(I) a joint return, or

''(II) a surviving spouse,

''(ii) $33,750 in the case of an individual who—

''(I) is not a married individual, or

''(II) is not a surviving spouse, and

''(iii) $22,500 in the case of—

''(I) a married individual who files a separate return, or

''(II) an estate or trust, and

''(B) an amount equal to the lesser of—

''(i) the self employment income (as defined in section 1402(b)) of the taxpayer for the taxable year, or

''(ii) $1,000,000.

For purposes of this paragraph, the term 'surviving spouse' has the meaning given to such term by section 2(a), and marital status shall be determined under section 7703.''.

(b) EXCLUSION OF CERTAIN ITEMS OF PREFERENCE AND ADJUSTMENTS.—Section 55 (relating to alternative minimum tax imposed) is amended by adding at the end the following new subsection:

''(f) SPECIAL RULE FOR SMALL BUSINESSES.—

''(1) IN GENERAL.—For purposes of this part, in computing the alternative minimum taxable income of a taxpayer to which this subsection applies for any taxable year—

''(A) no adjustments provided in section 56 which are attributable to a trade or business of the taxpayer shall be made, and

''(B) taxable income shall not be increased by any item of tax preference described in section 57 which is so attributable.

''(2) APPLICATION.—

''(A) IN GENERAL.—This subsection shall apply to a taxpayer for a taxable year if the taxpayer is not a corporation and the gross receipts of the taxpayer for the taxable year from all trades or businesses do not exceed $1,000,000.

''(B) SPECIAL RULES.—Rules similar to the rules of paragraphs (2), (3)(B), and (3)(C) of section 448(c) shall apply for purposes of this subsection.''.

(c) CONFORMING AMENDMENTS.—Section 55(d)(3) is amended—

(1) by striking ''paragraph (1)(A)'' and inserting ''paragraph (1)(A)(i)'' in subparagraph (A),

(2) by striking ''paragraph (1)(B)'' and inserting ''paragraph (1)(A)(ii)'' in subparagraph (B),

(3) by striking ''paragraph (1)(C)'' and inserting ''paragraph (1)(A)(iii)'' in subparagraph (C), and

(4) by striking ''paragraph (1)(C)(i)'' and inserting ''paragraph (1)(A)(iii)(I)'' in the second sentence.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 203. NONREFUNDABLE TAX CREDIT FOR TAX PREPARATION EXPENSES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by adding at the end the following new section:

''SEC. 25B. TAX PREPARATION EXPENSES.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the lesser of—

''(1) 50 percent of the qualified tax preparation expenses of the taxpayer for the taxable year, or

''(2) $100.

''(b) QUALIFIED TAX PREPARATION EXPENSES.—For purposes of this section, the term 'qualified tax preparation expenses' means expenses paid or incurred during the taxable year by an individual in connection with the preparation of the taxpayer's Federal income tax return for such taxable year, but only if such return is electronically filed. Such term shall include any expenses related to an income tax return preparer.

''(c) DENIAL OF DEDUCTION.—No deduction shall be allowed under this chapter for any amount taken into account in determining the credit under this section.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 25B. Tax preparation expenses.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred for taxable years beginning after December 31, 2000.

SEC. 204. EXEMPTION OF CERTAIN INTEREST AND DIVIDEND INCOME FROM TAX.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to amounts specifically

excluded from gross income) is amended by inserting after section 115 the following new section:

"SEC. 116. PARTIAL EXCLUSION OF DIVIDENDS AND INTEREST RECEIVED BY INDIVIDUALS.

''(a) EXCLUSION FROM GROSS INCOME.—In the case of an individual who does not have an election in effect under section 60C for the taxable year, gross income does not include dividends and interest otherwise includible in gross income which are received during the taxable year by such individual.

''(b) LIMITATIONS.—

''(1) MAXIMUM AMOUNT.—The aggregate amount excluded under subsection (a) for any taxable year shall not exceed $500 ($1,000 in the case of a joint return).

''(2) CERTAIN DIVIDENDS EXCLUDED.—Subsection (a) shall not apply to any dividend from a corporation which for the taxable year of the corporation in which the distribution is made is a corporation exempt from tax under section 521 (relating to farmers' cooperative associations).

''(c) SPECIAL RULES.—For purposes of this section—

''(1) EXCLUSION NOT TO APPLY TO CAPITAL GAIN DIVIDENDS FROM REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

"For treatment of capital gain dividends, see sections 854(a) and 857(c).

''(2) CERTAIN NONRESIDENT ALIENS INELIGIBLE FOR EXCLUSION.—In the case of a nonresident alien individual, subsection (a) shall apply only in determining the taxes imposed for the taxable year pursuant to sections 871(b)(1) and 877(b).

''(3) DIVIDENDS FROM EMPLOYEE STOCK OWNERSHIP PLANS.—Subsection (a) shall not apply to any dividend described in section 404(k).''.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 32(c)(5) is amended by striking ''or'' at the end of clause (i), by striking the period at the end of clause (ii) and inserting ''; or'', and by inserting after clause (ii) the following new clause:

''(iii) interest and dividends received during the taxable year which are excluded from gross income under section 116.''.

(2) Subparagraph (A) of section 32(i)(2) is amended by inserting ''(determined without regard to section 116)'' before the comma.

(3) Subparagraph (B) of section 86(b)(2) is amended to read as follows:

''(B) increased by the sum of—

''(i) the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and

''(ii) the amount of interest and dividends received during the taxable year which are excluded from gross income under section 116.''.

(4) Subsection (d) of section 135 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) COORDINATION WITH SECTION 116.—This section shall be applied before section 116.''.

(5) Paragraph (2) of section 265(a) is amended by inserting before the period '', or to purchase or carry obligations or shares, or to make deposits, to the extent the interest thereon is excludable from gross income under section 116''.

(6) Subsection (c) of section 584 is amended by adding at the end the following new flush sentence:

''The proportionate share of each participant in the amount of dividends or interest received by the common trust fund and to which section 116 applies shall be considered for purposes of such section as having been received by such participant.''.

(7) Subsection (a) of section 643 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) DIVIDENDS OR INTEREST.—There shall be included the amount of any dividends or interest excluded from gross income pursuant to section 116.''.

(8) Section 854(a) is amended by inserting ''section 116 (relating to partial exclusion of dividends and interest received by individuals) and'' after ''For purposes of''.

(9) Section 857(c) is amended to read as follows:

''(c) RESTRICTIONS APPLICABLE TO DIVIDENDS RECEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—

''(1) TREATMENT FOR SECTION 116.—For purposes of section 116 (relating to partial exclusion of dividends and interest received by individuals), a capital gain dividend (as defined in subsection (b)(3)(C)) received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend.

''(2) TREATMENT FOR SECTION 243.—For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend.''.

(10) The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 115 the following new item:

''Sec. 116. Partial exclusion of dividends and interest received by individuals.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

By Mr. LEVIN:

S. 3088. A bill to require the Secretary of Health and Human Services to promulgate regulations regarding allowable costs under the Medicaid Program for school based services provided to children with disabilities; to the Committee on Finance.

ADMINISTRATIVE SERVICES ADJUSTMENT

Mr. LEVIN. Mr. President, today I am introducing legislation which provides fair relief to schools in Michigan and other states.

In 1993, the state of Michigan and our school districts worked out an agreement which would provide schools a portion of Federal Medicaid dollars based on school based health related activities that were being provided to eligible children receiving special education services. When these school superintendents looked around in 1996, they saw a similarly situated state which was providing administrative services to help special needs kids, and they decided to follow suit for children in Michigan. Michigan then implemented the Administrative Outreach component of school based services based on a program that had been in operation in that state for the previous two years.

Recently, HCFA disallowed $103.6 million in claims submitted by the state of Michigan to reimburse the schools for services already rendered in this effort. It is simply unfair that these school districts are now being penalized when they have been trying to provide health services through the schools for special needs kids in ways used in other states and after relying on HCFA regional guidance.

I have met with a large group of Michigan school superintendents and their staff and I know how committed they are to helping children with special needs. Apparently, the rules need to be clarified, and in a meeting with HCFA that the Michigan superintendents had this week, HCFA committed to sitting down with the education community by the end of this month to finalize an administrative guide regarding claims for reimbursement. That is surely an appropriate goal, but in the meantime, Michigan claims have been disallowed although the state relied on regional HCFA guidance. While national guidance is being clarified, we should not penalize states who have acted reasonably based on existing guidance.

I believe Michigan school superintendents when they say they believed they were acting appropriately in providing services for children with special educational needs. These are honest hardworking people trying to run school districts on tight budgets. I am introducing this legislation because I believe any attempt to penalize schools who acted in good faith will ultimately hurt special needs kids as well as our schools themselves.

By Mr. ALLARD (for himself and Mr. CAMPBELL):

S. 3090. A bill to establish the Rocky Flats National Wildlife Refuge in the State of Colorado, and for other purposes; to the Committee on Armed Services.

ROCKY FLATS NATIONAL WILDLIFE REFUGE ACT OF 2000

Mr. ALLARD. Mr. President, I rise today, with Senator BEN NIGHTHORSE CAMPBELL, to introduce a very important piece of legislation for my state of Colorado and this nation—The Rocky Flats National Wildlife Refuge Act. My colleague, Representative MARK UDALL, is introducing companion legislation in the House cosponsored by the entire Colorado delegation.

Today we begin a new chapter in the history of Rocky Flats. This legislation will permanently designate the Rocky Flats Environmental Technology Site as a National Wildlife Refuge following the cleanup and closure of the site. It ensures that the Federal Government will retain full liability and ownership of this former nuclear weapons facility. This legislation will transform Rocky Flats from producing weapons to protecting wildlife. It will ensure that our children and grandchildren will be able to enjoy the wildlife and open space that currently exists at Rocky Flats.

This is a tremendous achievement. Once the bill is enacted, we will see Rocky Flats move from being an active nuclear weapons site into an active refuge for wildlife and wild flowers in less than two decades. An accomplishment which no one thought was possible.

My vested interest in Rocky Flats began during the 1980's when I was the

Chairman of the State Senate Committee on Health, Environment, Welfare and Institutions. Although I supported the national security mission of the Rocky Flats site prior to closure, I believe that the Department of Energy must also ensure the safety and health of all Coloradans and the environment. When the Rocky Flats site was shut down in 1990, cleaning up and closing down the site became one of my top legislative priorities and will remain so until this project is complete.

So where did the idea come from to turn Rocky Flats, a former nuclear weapons production facility, into a National Wildlife Refuge?

My experience with wildlife refuge designations began with Congresswoman Schroeder at the Rocky Mountain Arsenal in 1992. We worked on a bill very similar to the one we are here to discuss today, which designated the Arsenal as a National Wildlife Refuge. Given the success we experienced at the Rocky Mountain Arsenal, I am confident this is an appropriate designation for Rocky Flats.

Last year, I became the Strategic Subcommittee Chairman of the Senate Armed Services Committee, which has direct oversight of former DoE weapons facilities including Rocky Flats. This is the first site in the DoE complex to receive funding for cleanup and closure, and will therefore be a role model for other sites in the complex. As Chairman of the Subcommittee, I will continue to work closely with my colleagues to educate them on the importance of cleaning up and closing down Rocky Flats so it can be utilized as a National Wildlife Refuge. This education extends beyond the cleanup and closure of Rocky Flats to the importance of cleaning up and closing of all the former DoE weapons sites.

To this end, Congressman UDALL and I have worked in a bipartisan manner, with the Department of Energy, the EPA, the State of Colorado, the local governments and the Rocky Flats stakeholders to produce the proposed Rocky Flats National Wildlife Refuge Act. It has been hard work and with many discussion drafts, but in the end I believe we have produced a bill that the communities surrounding Rocky Flats can and will be proud of.

It is important to understand that this legislation maintains that the Rocky Flats site will remain in permanent Federal ownership, and that the administrative transfer of this site from DoE to the Fish and Wildlife Service will take place after the cleanup and closure of the site is complete. While cleanup is still our top priority, determination of official closure is determined by the Environmental Protection Agency's signing of the final on-site record of decision. There are many components of this bill which I will summarize as follows:

The sponsors of the legislation recognize the historic importance of the Lindsay Ranch homestead facilities and this legislation guarantees the ranch's preservation.

Additionally, this bill ensures that the site will remain a unified site, therefore disallowing the annexation of land to any local government, or for the construction of through roads. The only roads that may be constructed on the site would be by the Fish and Wildlife Service for the management of the refuge.

Currently, there is a provision in this legislation to allow the Secretary of Energy and the Secretary of the Interior to authorize a transportation right of-way on the eastern boundary of the site for transportation improvements along Indiana Street. We are aware of the continued evaluation of this issue and want this section of the bill to be consistent with the needs of the State of Colorado and the local governments.

With respect to the transfer of management responsibilities and jurisdiction over Rocky Flats, this bill requires the Department of Energy and the Fish and Wildlife Service to publish in the Federal Register a Memorandum of Understanding one year after the enactment of this Act. This Memorandum of Understanding will address administrative matters such as the division of responsibilities between the two agencies until the official transfer of the site occurs. This legislation clearly states that no funding designated for cleanup and closure of the site will be used for these activities.

It is important that the transfer of the site from the Department of Energy to the Fish and Wildlife Service exclude any property that must be retained by DoE for future onsite monitoring, as well as property which must be retained for protection of human health and safety.

The improvements necessary for the site to be managed as a wildlife refuge will be completed at no cost to the Secretary of the Interior. Therefore, the Secretary of Interior will need to identify appropriate improvement needs and submit this request to the Secretary of Energy in writing. This legislation also clarifies that in the event of future cleanup activities, this action will take priority over wildlife management. These two agencies must continue to work with each other towards their missions.

One of the most important directives in this Act states that ''nothing in this Act affects the level of cleanup and closure at the Rocky Flats site required under the Rocky Flats Cleanup Agreement or any Federal or State law.'' Through the ongoing discussions that Congressman UDALL and I have had with the Rocky Flats stakeholders we believe it is important to reiterate that this bill should not be used as a mechanism to drive the level of cleanup. We are confident that this language clarifies this issue. Our primary goal remains and will continue to remain the on-going cleanup and closure of Rocky Flats. And, nothing in this bill affects the on-going cleanup and closure activities at the Rocky Flats.

Once the site is transferred to the Fish and Wildlife Service, the refuge will be managed in accordance with the National Wildlife Refuge System Act to preserve wildlife, enhance wildlife habitat, conserve threatened and endangered species, provide education opportunities and scientific research, as well as recreation.

We recognize the importance of the locally elected officials and stakeholders in the effectiveness and success of this bill. Therefore, we want to ensure their continued contribution at Rocky Flats. Through this bill we direct the Fish and Wildlife Service to convene a public process to include input on the management of the site. The public process will provide a forum for recommendations to be given to the Fish and Wildlife Service on issues including the site operations, transportation improvements, leasing land to the National Renewable Energy Laboratory, perimeter fences, the development of a Rocky Flats museum and visitors center. Upon the completion of this report by the Fish and Wildlife Service, a report will be submitted to Congress to identify the recommendations resulting from the public process.

We have received a lot of input with respect to private property rights. This legislation recognizes and preserves these property and access rights, which include mineral rights, water and easement rights, and utility rights-of-ways. This legislation does direct the Secretary of Energy to seek to purchase mineral rights from willing sellers. For management purposes, this Act provides the Secretary of Energy and the Secretary of Interior the authority to impose reasonable conditions on the access to private property rights for cleanup and refuge management purposes.

Additionally, this bill provides the Secretary of Energy with the authority to allow Public Service Company of Colorado to construct an extension from an existing extension line on the site.

As a tribute to the Cold War and those who worked at Rocky Flats both prior to and after the site closure, Congressman UDALL and I, through this legislation, authorize the establishment of a Rocky Flats museum to commemorate the site. This bill requires that the creation of the museum shall be studied, and a report shall be submitted to Congress within three years following the enactment of this act.

Lastly, this bill directs the Department of Energy and the Fish and Wildlife Service to inform Congress on the costs associated with the implementation of this Act.

This process has moved forward successfully thanks to the hard work of the local governments and the Rocky Flats stakeholders. I also want to thank Representative UDALL for the bipartisan manner in which he and his staff worked with me and my office. Rocky Flats, like all other cleanup sites, is bigger than partisan politics and this effort proves it.

Once clean up and closure is accomplished in 2006, I look forward to returning to Rocky Flats for the dedication of new Rocky Flats National Wildlife Refuge.

I ask unanimous consent that the bill be printed in the RECORD.

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

S. 3090

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 ''Rocky Flats National Wildlife Refuge Act of 2000''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The Federal Government, through the Atomic Energy Commission, acquired the Rocky Flats site in 1951 and began operations there in 1952. The site remains a Department of Energy facility. Since 1992, the mission of the Rocky Flats site has changed from the production of nuclear weapons components to cleanup and closure in a manner that is safe, environmentally and socially responsible, physically secure, and cost-effective.

(2) The site has generally remained undisturbed since its acquisition by the Federal Government.

(3) The State of Colorado is experiencing increasing growth and development, especially in the metropolitan Denver Front Range area in the vicinity of the Rocky Flats site. That growth and development reduces the amount of open space and thereby diminishes for many metropolitan Denver communities the vistas of the striking Front Range mountain backdrop.

(4) Some areas of the site contain contamination and will require further remediation. The national interest requires that the ongoing cleanup and closure of the entire site be completed safely, effectively, and without unnecessary delay and that the site thereafter be retained by the United States and managed so as to preserve the value of the site for open space and wildlife habitat.

(5) The Rocky Flats site provides habitat for many wildlife species, including a number of threatened and endangered species, and is marked by the presence of rare xeric tallgrass prairie plant communities. Establishing the site as a unit of the National Wildlife Refuge System will promote the preservation and enhancement of those resources for present and future generations.

(b) PURPOSE.—The purpose of this Act is to provide for the establishment of the Rocky Flats site as a national wildlife refuge while creating a process for public input on refuge management and ensuring that the site is thoroughly and completely cleaned up.

SEC. 3. DEFINITIONS.

In this Act:

(1) CLEANUP AND CLOSURE.—The term ''cleanup and closure'' means the remedial actions and decommissioning activities being carried out at Rocky Flats by the Department of Energy under the 1996 Rocky Flats Cleanup Agreement, the closure plans and baselines, and any other relevant documents or requirements.

(2) COALITION.—The term ''Coalition'' means the Rocky Flats Coalition of Local Governments established by the Intergovernmental Agreement, dated February 16, 1999, among—

(A) the city of Arvada, Colorado;

(B) the city of Boulder, Colorado;

(C) the city of Broomfield, Colorado;

(D) the city of Westminster, Colorado;

(E) the town of Superior, Colorado;

(F) Boulder County, Colorado; and

(G) Jefferson County, Colorado.

(3) HAZARDOUS SUBSTANCE.—The term ''hazardous substance'' has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(4) POLLUTANT OR CONTAMINANT.—The term ''pollutant or contaminant'' has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(5) REFUGE.—The term ''refuge'' means the Rocky Flats National Wildlife Refuge established under section 7.

(6) RESPONSE ACTION.—The term ''response action'' has the meaning given the term ''response'' in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) or any similar requirement under State law.

(7) RFCA.—The term ''RFCA'' means the Rocky Flats Cleanup Agreement, an intergovernmental agreement, dated July 19, 1996, among—

(A) the Department of Energy;

(B) the Environmental Protection Agency; and

(C) the Department of Public Health and Environment of the State of Colorado.

(8) ROCKY FLATS.—The term ''Rocky Flats'' means the Rocky Flats Environmental Technology Site, Colorado, a defense nuclear facility, as depicted on the map entitled ''Rocky Flats Environmental Technology Site'', dated July 15, 1998.

(9) ROCKY FLATS TRUSTEES.—The term ''Rocky Flats Trustees'' means the Federal and State of Colorado entities that have been identified as trustees for Rocky Flats under section 107(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)).

(10) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

SEC. 4. FUTURE OWNERSHIP AND MANAGEMENT.

(a) FEDERAL OWNERSHIP.—Unless Congress provides otherwise in an Act enacted after the date of enactment of this Act, all right, title, and interest of the United States, held on or acquired after the date of enactment of this Act, to land within the boundaries of Rocky Flats shall be retained by the United States.

(b) LINDSAY RANCH.—The structures that comprise the former Lindsay Ranch homestead site in the Rock Creek Reserve area of the buffer zone, as depicted on the map referred to in section 3(8), shall be permanently preserved and maintained in accordance with the National Historic Preservation Act (16 U.S.C. 470 et seq.).

(c) PROHIBITION ON ANNEXATION.—The Secretary of the Interior shall not allow the annexation of land within the refuge by any unit of local government.

(d) PROHIBITION ON THROUGH ROADS.—Except as provided in subsection (e), no public road shall be constructed through Rocky Flats.

(e) TRANSPORTATION RIGHT-OF-WAY.—

(1) IN GENERAL.—

(A) AVAILABILITY OF LAND.—On submission of an application meeting each of the conditions specified in paragraph (2), the Secretary and the Secretary of the Interior may make available land along the eastern boundary of Rocky Flats for the sole purpose of transportation improvements along Indiana Street.

(B) BOUNDARIES.—Land made available under this paragraph may not extend more than 150 feet from the west edge of the Indiana Street right-of-way, as that right-of-way exists as of the date of enactment of this Act.

(C) EASEMENT OR SALE.—Land may be made available under this paragraph by easement or sale to 1 or more appropriate entities.

(D) COMPLIANCE WITH APPLICABLE LAW.—Any action under this paragraph shall be taken in compliance with applicable law.

(2) CONDITIONS.—An application for land under this subsection may be submitted by any county, city, or other political subdivision of the State of Colorado and shall include documentation demonstrating that—

(A) the transportation project is compatible with the management of Rocky Flats as a wildlife refuge; and

(B) the transportation project is included in the Regional Transportation Plan of the Metropolitan Planning Organization designated for the Denver metropolitan area under section 5303 of title 49, United States Code.

SEC. 5. TRANSFER OF MANAGEMENT RESPONSIBILITIES AND JURISDICTION OVER ROCKY FLATS.

(a) IN GENERAL.—

(1) MEMORANDUM OF UNDERSTANDING.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of the Interior shall publish in the Federal Register a draft memorandum of understanding under which the Secretary shall transfer to the Secretary of the Interior administrative jurisdiction over Rocky Flats.

(B) REQUIRED ELEMENTS.—

(i) IN GENERAL.—Subject to clause (ii), the memorandum of understanding shall—

(I) provide for the timing of the transfer;

(II) provide for the division of responsibilities between the Secretary and the Secretary of the Interior for the period ending on the date of the transfer; and

(III) provide an appropriate allocation of costs and personnel to the Secretary of the Interior.

(ii) NO REDUCTION IN FUNDS.—The memorandum of understanding shall not result in any reduction in funds available to the Secretary for cleanup and closure of Rocky Flats.

(C) DEADLINE.—Not later than 18 months after the date of enactment of this Act, the Secretary and Secretary of the Interior shall finalize and implement the memorandum of understanding.

(2) EXCLUSIONS.—The transfer under paragraph (1) shall not include the transfer of any property or facility over which the Secretary retains jurisdiction, authority, and control under subsection (b)(1).

(3) CONDITION.—The transfer under paragraph (1) shall occur not later than 10 business days after the signing by the Regional Administrator for Region VIII of the Environmental Protection Agency of the Final On-site Record of Decision for Rocky Flats.

(4) COST; IMPROVEMENTS.—The transfer—

(A) shall be completed without cost to the Secretary of the Interior; and

(B) may include such buildings or other improvements as the Secretary of the Interior may request in writing for refuge management purposes.

(b) PROPERTY AND FACILITIES EXCLUDED FROM TRANSFERS.—

(1) IN GENERAL.—The Secretary shall retain jurisdiction, authority, and control over all real property and facilities at Rocky Flats that are to be used for—

(A) any necessary and appropriate long-term operation and maintenance facility to intercept, treat, or control a hazardous substance, radionuclide, or other pollutant or contaminant; and

(B) any other purpose relating to a response action or any other action that is required to be carried out at Rocky Flats.

(2) CONSULTATION.—

(A) WITH ENVIRONMENTAL PROTECTION AGENCY AND STATE.—The Secretary shall consult with the Administrator of the Environmental Protection Agency and the State of Colorado on the identification and management of all property to be retained under this subsection to ensure the continuing effectiveness of response actions.

(B) WITH SECRETARY OF THE INTERIOR.—

(i) IN GENERAL.—The Secretary shall consult with the Secretary of the Interior on the management of the retained property to minimize any conflict between the management of property transferred to the Secretary of the Interior and property retained by the Secretary for response actions.

(ii) CONFLICT.—In the case of any such conflict, implementation and maintenance of the response action shall take priority.

(3) ACCESS.—As a condition of the transfer under subsection (a), the Secretary shall be provided such easements and access as are reasonably required to carry out any obligation or address any liability.

(c) ADMINISTRATION.—

(1) IN GENERAL.—On completion of the transfer under subsection (a), the Secretary of the Interior shall administer Rocky Flats in accordance with this Act subject to—

(A) any response action or institutional control at Rocky Flats carried out by or under the authority of the Secretary under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); and

(B) any other action required under any other Federal or State law to be carried out by or under the authority of the Secretary.

(2) CONFLICT.—In the case of any conflict between the management of Rocky Flats by the Secretary of the Interior and the conduct of any response action or other action described in subparagraph (A) or (B) of paragraph (1), the response action or other action shall take priority.

(3) CONTINUING ACTIONS.—Except as provided in paragraph (1), nothing in this subsection affects any response action or other action initiated at Rocky Flats on or before the date of the transfer under subsection (a).

(4) LIABILITY.—The Secretary shall retain any obligation or other liability for land transferred under subsection (a) under—

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

(B) any other applicable law.

SEC. 6. CONTINUATION OF ENVIRONMENTAL CLEANUP AND CLOSURE.

(a) ONGOING CLEANUP AND CLOSURE.—

(1) IN GENERAL.—The Secretary shall carry out to completion cleanup and closure at Rocky Flats.

(2) NO RESTRICTION ON USE OF NEW TECHNOLOGIES.—Nothing in this Act, and no action taken under this Act, restricts the Secretary from using at Rocky Flats any new technology that may become available for remediation of contamination.

(b) RULES OF CONSTRUCTION.—

(1) NO RELIEF FROM OBLIGATIONS UNDER OTHER LAW.—

(A) IN GENERAL.—Nothing in this Act, and no action taken under this Act, relieves the Secretary, the Administrator of the Environmental Protection Agency, or any other person from any obligation or other liability with respect to Rocky Flats under the RFCA or any applicable Federal or State law.

(B) NO EFFECT ON RFCA.—Nothing in this Act impairs or alters any provision of the RFCA.

(2) REQUIRED CLEANUP LEVELS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), nothing in this Act affects the level of cleanup and closure at Rocky Flats required under the RFCA or any Federal or State law.

(B) NO EFFECT FROM ESTABLISHMENT AS NATIONAL WILDLIFE REFUGE.—

(i) IN GENERAL.—The requirements of this Act for establishment and management of Rocky Flats as a national wildlife refuge shall not affect the level of cleanup and closure.

(ii) CLEANUP LEVELS.—The Secretary is required to conduct cleanup and closure of Rocky Flats to the levels hereafter established for soil, water, and other media, following a thorough review, by the parties to the RFCA and the public, of the appropriateness of the interim levels in the RFCA.

(3) NO EFFECT ON OBLIGATIONS FOR MEASURES TO CONTROL CONTAMINATION.—Nothing in this Act, and no action taken under this Act, affects any long-term obligation of the United States relating to funding, construction, monitoring, or operation and maintenance of—

(A) any necessary intercept or treatment facility; or

(B) any other measure to control contamination.

(c) PAYMENT OF RESPONSE ACTION COSTS.—Nothing in this Act affects the obligation of a Federal department or agency that had or has operations at Rocky Flats resulting in the release or threatened release of a hazardous substance or pollutant or contaminant to pay the costs of response actions carried out to abate the release of, or clean up, the hazardous substance or pollutant or contaminant.

(d) CONSULTATION.—In carrying out a response action at Rocky Flats, the Secretary shall consult with the Secretary of the Interior to ensure that the response action is carried out in a manner that, to the maximum extent practicable, furthers the purposes of the refuge.

SEC. 7. ROCKY FLATS NATIONAL WILDLIFE REFUGE.

(a) ESTABLISHMENT.—Not later than 30 days after the transfer of jurisdiction under section 5(a)(3), the Secretary of the Interior shall establish at Rocky Flats a national wildlife refuge to be known as the ''Rocky Flats National Wildlife Refuge''.

(b) COMPOSITION.—The refuge shall consist of the real property subject to the transfer of jurisdiction under section 5(a)(1).

(c) NOTICE.—The Secretary of the Interior shall publish in the Federal Register a notice of the establishment of the refuge.

(d) ADMINISTRATION AND PURPOSES.—

(1) IN GENERAL.—The Secretary of the Interior shall manage the refuge in accordance with applicable law, including this Act, the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.), and the purposes specified in that Act.

(2) SPECIFIC MANAGEMENT PURPOSES.—To the extent consistent with applicable law, the refuge shall be managed for the purposes of—

(A) restoring and preserving native ecosystems;

(B) providing habitat for, and population management of, native plants and migratory and resident wildlife;

(C) conserving threatened and endangered species (including species that are candidates for listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.));

(D) providing opportunities for compatible environmental scientific research; and

(E) providing the public with opportunities for compatible outdoor recreational and educational activities.

SEC. 8. PUBLIC INVOLVEMENT.

(a) ESTABLISHMENT OF PROCESS.—Not later than 90 days after the date of enactment of this Act, in developing plans for the management of fish and wildlife and public use of the refuge, the Secretary of the Interior, in consultation with the Secretary, the members of the Coalition, the Governor of the State of Colorado, and the Rocky Flats Trustees, shall establish a process for involvement of the public and local communities in accomplishing the purposes and objectives of this section.

(b) OTHER PARTICIPANTS.—In addition to the entities specified in subsection (a), the public involvement process shall include the opportunity for direct involvement of entities not members of the Coalition as of the date of enactment of this Act, including the Rocky Flats Citizens' Advisory Board and the cities of Thornton, Northglenn, Golden, Louisville, and Lafayette, Colorado.

(c) DISSOLUTION OF COALITION.—If the Coalition dissolves, or if any Coalition member elects to leave the Coalition during the public involvement process under this section—

(1) the public involvement process under this section shall continue; and

(2) an opportunity shall be provided to each entity that is a member of the Coalition as of September 1, 2000, for direct involvement in the public involvement process.

(d) PURPOSES.—The public involvement process under this section shall provide input and make recommendations to the Secretary and the Secretary of the Interior on the following:

(1) The long-term management of the refuge consistent with the purposes of the refuge described in section 7(d) and in the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

(2) The identification of any land described in section 4(e) that could be made available for transportation purposes.

(3) The potential for leasing any land in Rocky Flats for the National Renewable Energy Laboratory to carry out projects relating to the National Wind Technology Center.

(4) The characteristics and configuration of any perimeter fencing that may be appropriate or compatible for cleanup and closure, refuge, or other purposes.

(5) The feasibility of locating, and the potential location for, a visitor and education center at the refuge.

(6) The establishment of a Rocky Flats museum described in section 10.

(7) Any other issues relating to Rocky Flats.

(e) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary of the Interior shall submit to the Committee on Armed Services of the Senate and the appropriate committee of the House of Representatives a report that—

(1) outlines the conclusions reached through the public involvement process; and

(2) to the extent that any input or recommendation from the public involvement process is not accepted, clearly states the reasons why the input or recommendation is not accepted.

SEC. 9. PROPERTY RIGHTS.

(a) IN GENERAL.—Except as provided in subsection (c), nothing in this Act limits any valid, existing property right at Rocky Flats that is owned by any person or entity, including, but not limited to—

(1) any mineral right;

(2) any water right or related easement; and

(3) any facility or right-of-way for a utility.

(b) ACCESS.—Except as provided in subsection (c), nothing in this Act affects any right of an owner of a property right described in subsection (a) to access the owner's property.

(c) REASONABLE CONDITIONS.—

(1) IN GENERAL.—The Secretary or the Secretary of the Interior may impose such reasonable conditions on access to property rights described in subsection (a) as are appropriate for the cleanup and closure of Rocky Flats and for the management of the refuge.

(2) NO EFFECT ON APPLICABLE LAW.—Nothing in this Act affects any other applicable Federal, State, or local law (including any regulation) relating to the use, development, and management of property rights described in subsection (a).

(3) NO EFFECT ON ACCESS RIGHTS.—Nothing in this subsection precludes the exercise of any access right, in existence on the date of enactment of this Act, that is necessary to perfect or maintain a water right in existence on that date.

(d) PURCHASE OF MINERAL RIGHTS.—

(1) IN GENERAL.—The Secretary shall seek to acquire any and all mineral rights at Rocky Flats through donation or through purchase or exchange from willing sellers for fair market value.

(2) FUNDING.—The Secretary and the Secretary of the Interior—

(A) may use for the purchase of mineral rights under paragraph (1) funds specifically provided by Congress; but

(B) shall not use for such purchase funds appropriated by Congress for the cleanup and closure of Rocky Flats.

(e) UTILITY EXTENSION.—

(1) IN GENERAL.—The Secretary or the Secretary of the Interior may allow not more than 1 extension from an existing utility right-of-way on Rocky Flats, if necessary.

(2) CONDITIONS.—An extension under paragraph (1) shall be subject to the conditions specified in subsection (c).

SEC. 10. ROCKY FLATS MUSEUM.

(a) MUSEUM.—In order to commemorate the contribution that Rocky Flats and its worker force provided to the winning of the Cold War and the impact that the contribution has had on the nearby communities and the State of Colorado, the Secretary may establish a Rocky Flats Museum.

(b) LOCATION.—The Rocky Flats Museum shall be located in the city of Arvada, Colorado, unless, after consultation under subsection (c), the Secretary determines otherwise.

(c) CONSULTATION.—The Secretary shall consult with the city of Arvada, other local communities, and the Colorado State Historical Society on—

(1) the development of the museum;

(2) the siting of the museum; and

(3) any other issues relating to the development and construction of the museum.

(d) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary, in coordination with the city of Arvada, shall submit to the Committee on Armed Services of the Senate and the appropriate committee of the House of Representatives a report on the costs associated with the construction of the museum and any other issues relating to the development and construction of the museum.

SEC. 11. REPORT ON FUNDING.

At the time of submission of the first budget of the United States Government submitted by the President under section 1105 of title 31, United States Code, after the date of enactment of this Act, and annually thereafter, the Secretary and the Secretary of the Interior shall report to the Committee on Armed Services and the Committee on Appropriations of the Senate and the appropriate committees of the House of Representatives on—

(1) the costs incurred in implementing this Act during the preceding fiscal year; and

(2) the funds required to implement this Act during the current and subsequent fiscal years.

Mr. GRASSLEY (for himself, Mr. GRAMS, Mr. ASHCROFT, and Mr. BROWNBACK):

S. 3091. A bill to implement the recommendations of the General Accounting Office on improving the administration of the Packers and Stockyards Act, 1921 by the Department of Agriculture, Nutrition, and Forestry.

PACKERS AND STOCKYARDS ENFORCEMENT IMPROVEMENT ACT OF 2000

Mr. GRASSLEY. Mr. President, today I'm introducing a bill to implement recommendations by the General Accounting Office contained in a report—issued just today—which assesses the efforts of the Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) in implementing the Packers and Stockyards Act. Done correctly, GIPSA is supposed to use the Packers and Stockyards Act as a tool to prevent farmers from being subject to unfair and anti-competitive practices.

In August 1999, I asked the GAO to investigate whether GIPSA was taking full advantage of its authority to investigate competition concerns in the cattle and hog industries. In a nutshell, GIPSA has failed in its mission to protect family farmers. GIPSA has failed to ensure fairness and competitiveness in the livestock industry. The report recommends that significant changes need to be made to GIPSA's investigation and case management, operations, and development processes, as well as its staff resources and capabilities, in order for it to effectively perform its Packers and Stockyards duties.

The news of this administration's failure of duty couldn't come at a worse time. Family farmers and independent producers are experiencing some of the lowest prices for their commodities in years. In the meantime, agribusiness has become so concentrated that family farmers are concerned they can't get a fair price for their products. They are seeing fewer options for marketing their commodities and they are having to sustain increased input costs. The extent of concentration in agribusiness has raised serious concerns about the ability of companies to engage in unfair practices. Most of these complaints involve the livestock industry.

The Justice Department and Federal Trade Commission are responsible for protecting the marketplace from mergers, acquisitions and practices that adversely affect competition. But GIPSA, under the Packers and Stockyards Act, has substantial, explicit authority to halt anti-competitive activity in the livestock industry by taking investigative, enforcement and regulatory action. But GIPSA has done none of this. All we hear are calls for more legislation or more money. It's clear that this is just another example of this administration passing the buck to Congress by calling for new legislative authority, when they are the ones that have failed to exercise the broad authority they already have. If USDA won't use their existing powers, what makes us in Congress think they'd use new powers?

As I've stated, I asked for this GAO investigation because I suspected that USDA had not been doing enough to ensure that small and mid-sized producers were not being harmed by possible anti-competitive activity in the livestock industry. So, to tell you the truth, I wasn't surprised when GIPSA got a failing grade. But I can tell you that I am outraged by USDA and this administration's lack of priorities in doing their job and their failure to enforce the laws on the books. Let me make this clear, this USDA is not a friend to the family farmer. And the Clinton-Gore administration is one to talk about us here in Congress doing nothing about concerns in agriculture. Maybe I need to define what ''nothing'' means. I think that this GAO Report defines ''nothing'' quite well.

Let me summarize the findings of the GAO report. The report confirms that GIPSA's authority to halt anti-competitive practices and protect buyers and sellers of livestock is quite broad and, in fact, go further than the Sherman Act in addressing anti-competitive practices.

The report also found that two major factors have impacted GIPSA's capability to perform their competition duties. Investigation and case methods, practices and processes are inadequate or non-existent at GIPSA.

For example, the GAO found that GIPSA's investigations are planned and conducted primarily by economists and technical specialists without the formal involvement of USDA's Office of General Counsel attorneys from the beginning of an investigation. Attorneys only get involved when a case report is completed. On the other hand, DOJ and FTC have teams of attorneys and economists that perform investigations of anti-competitive practices, with the attorneys taking the lead from the outset to ensure that a legal theory is focused on the potential violation of law. The GAO also found that GIPSA does not have investigative methods designed for competition cases, nor does it have investigation guidance for anti-competitive practice methods and processes. In contrast, DOJ and FTC have detailed processes and practices specifically designed for these kinds of cases.

GIPSA is also inadequately staffed. The GAO indicated that although the agency has hired additional economists, they are relatively inexperienced. More importantly, even though I understand there are around 300 lawyers in the General Counsel's Office, the report found that the number of attorneys working on GIPSA matters has actually decreased from 8 to 5 since GIPSA reorganized in 1998. To add insult to injury, they are not all assigned full-time to GIPSA's financial, trade practice, and competition cases; some have other USDA responsibilities as

well. Consequently, very little attorney time is actually dedicated to competition cases, thanks to the low priority this administration has placed on the problem.

The GAO Report's recommendations are straightforward. It recommends that GIPSA come up with investigation and case methods, practices and processes for competition-related allegations, in consultation with the DOJ and FTC.

It recommends that GIPSA integrate the attorney and economist working relationship, with attorneys at the lead from the beginning of the investigation. It also suggests that USDA might want to report to Congress on the state of the cattle and hog market, as well as on potential violations of the Packers and Stockyards Act. In effect, the GAO provides a blueprint for how GIPSA should be run, and the policies and procedures it should have in place to protect family farmers.

So, the GAO is telling us that USDA and GIPSA just haven't gotten their act together to function like a competent agency. And they are recommending that USDA and GIPSA do something that makes common sense—develop a successful plan, train your people, get guidance from the experts, write effective processes and procedures designed for competition cases, hire antitrust lawyers.

Let me give you some more information. Way back in October 1991, the GAO issued another report which determined that, despite increased concentration in the livestock industry, GIPSA's monitoring and analysis were not up to speed to identify anti-competitive practices. Instead, GIPSA still placed its primary emphasis on ensuring prompt and accurate payment to livestock sellers. In 1997, USDA's own Office of Inspector General found that GIPSA needed to make extensive improvements to its Packers and Stockyards Program to live up to its competition responsibilities. The 1997 OIG report found that GIPSA did not have the capability to perform effective anti-competitive practice investigations because it was not properly organized, operated or staffed. It recommended that GIPSA make extensive organizational and resource improvements within the department, as well as employ an approach similar to that used by DOJ and FTC, by integrating attorneys and economists from the beginning of the investigative process. Sound familiar?

Because of the large number of complaints about competition in the livestock industry, one would have thought that USDA and the administration would have put addressing competition concerns in every way possible and ensuring the effective functioning of GIPSA at the top of their list. USDA and the administration had clear warnings in the 1991 GAO Report and the 1997 OIG Report that there were significant problems, yet they've been ineffective in addressing them. In fact, USDA agreed with the reports and acknowledged that they needed to reevaluate guidelines and regulations, as well as make appropriate organizational, procedure and resource changes. So why wasn't this done? Why weren't these concerns addressed in an effective manner? Why still all this mismanagement? Why still no guidance, policies or proceures?

And now this GAO report raises even more troubling questions. What are USDA's real priorities? Are ag concentration and anti-competitive activity of any concern to the Clinton/Gore administration? How many violations of the Packers and Stockyards Act have slipped through the cracks because of GIPSA's failure to execute its statutory responsibility? My hearing on September 25, next week in my Judiciary Subcommittee, will explore these and other questions.

I can already see the finger-pointing to come from USDA. They are going to say they need more time. Well, they've known since 1991 that they had problems, isn't that time enough to fix them? They are going to say that we haven't given them enough money. But the fact is that Congress has increased GIPSA and USDA OGC funding almost every year since 1991. If USDA saw that they needed more antitrust lawyers for their Packers and Stockyards competition cases, they should have dedicated more of their funds to hiring them. The problem is this administration's priorities. The problem is this administration's inability to take responsibility.

In any event, it's clear that we can't count on this administration's Agriculture Department to reorganize and fix the problems identified in this GAO report. USDA promised to respond to similar problems identified in the 1991 GAO Report and 1997 OIG report, yet did nothing of any real effect to change the situation. Promises made to farmers and promises broken. It's clear to me that recent movements on the part of USDA to address some of these issues are just another way to deflect criticisms of their failure to act. And my concerns continue to grow. Legislation is necessary to force USDA and GIPSA to do their job. It's obvious that if we leave it to this administration, it will be the same old, same old. And the family farmer will continue to wait for something to happen. USDA has broken too many promises already.

No more. My bill, the Packers and Stockyards Enforcement Improvements Act, will require USDA to implement GAO's commonsense recommendations, GAO's blueprint for success. Specifically, my bill will require that, within one year, USDA implement the recommendations of the GAO report, in consultation with DOJ and FTC. My bill will require that, during this one year implementation period, USDA will work with DOJ and FTC to identify anti-competitive violations and take enforcement action under the Packers and Stockyards Act. My bill will require USDA to set up a training program for competition investigations within one year. In addition, my bill will require USDA to provide Congress with a yearly report on the state of the cattle and hog industries and identify activities that represent potential violations under the Packers and Stockyards Act.

Finally, my bill will require USDA to report back to Congress within a year on what actions it has taken to comply with this act.

This is a good government bill. It doesn't change the authority of USDA to address anti-competitive activity in the livestock industry under the Packers and Stockyards Act. Obviously, there's no need to do that—USDA already has all the authority they need. Instead, my bill does something a lot more fundamental—it makes USDA and GIPSA reorganize, regroup and revamp their Packers and Stockyards program so they can do their job. Hopefully this will help change USDA's failure to take its current statutory responsibilities seriously. It seems to me that this is a recurring theme, the administration not enforcing the laws on the books and then blaming others for their inadequacies. But the report is clear. They are the problem. This GAO report is important because it has identified what the real problem is: USDA and the administration are asleep at the switch.

I ask unanimous consent to have my bill printed in the RECORD following my remarks.

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

S. 3091

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 ''Packers and Stockyards Enforcement Improvement Act of 2000''.

SEC. 2. ENFORCEMENT.

(a) IMPLEMENTATION OF THE GENERAL ACCOUNTING OFFICE REPORT.—Not later than 1 year after September 21, 2000, the Secretary of Agriculture shall implement the recommendations of the report issued by the General Accounting Office entitled ''Packers and Stockyards Programs: Actions Needed to Improve Investigations of Competitive Practices'', GAO/RCED–00–242, dated September 21, 2000.

(b) CONSULTATION.—During the implementation period referred to in subsection (a), and for such an additional time period as needed to assure effective implementation, the Secretary of Agriculture shall consult and work with the Department of Justice and the Federal Trade Commission in order to—

(1) implement the investigation management, operations, and case methods development processes recommendations in the report; and

(2) effectively identify and investigate complaints of unfair and anti-competitive practices, and enforce the Packers and Stockyards Act, 1921.

(c) TRAINING.—Not later than September 21, 2001, the Secretary of Agriculture shall develop and implement a training program for staff of the Department of Agriculture

engaged in investigations of complaints of unfair and anti-competitive activity, drawing on existing training materials and programs available at the Department of Justice and the Federal Trade Commission, to the extent practicable.

SEC. 3. REPORT.

Title IV of the Packers and Stockyards Act, 1921 is amended by—

(1) redesignating section 415 (7 U.S.C. 229) as section 416; and

(2) inserting after section 414 the following:

''SEC. 415. Not later than March 1 of each year, the Secretary shall submit to Congress and make publicly available a report that—

''(1) assesses the general economic state of the cattle and hog industries; and

''(2) identifies business practices or market operations or activities in those industries that represent possible violations of this Act or are inconsistent with the goals of this Act.''.

SEC. 4. IMPLEMENTATION REPORT.

The Secretary of Agriculture shall report to Congress on October 1, 2001, on the actions taken to comply with section 2.

By Mrs. BOXER:

S. 3093. A bill to require the Federal Energy Regulatory Commission to roll back the wholesale price of electric energy sold in the Western System Coordinating Council, and for other purposes; to the Committee on Energy and Natural Resources.

THE HALT ELECTRICITY PRICE-GOUGING IN SAN DIEGO ACT

Mrs. BOXER. Mr. President, today I am introducing a very important bill, the Halt Electricity Price-gouging in San Diego Act. This bill, a companion to the bill introduced in the House on September 7, 2000 by Congressman FILNER, sends a loud and clear signal to electric companies in California that the federal government will not tolerate price gouging of our people.

California is currently experiencing an energy crisis, particularly in San Diego. Energy supplies are barely adequate on any given day to meet demand. Wholesale electricity prices have soared, causing San Diego Gas and Electric to pass along increased costs to consumers and resulting in bills that have increased as much as 300 percent in the San Diego area.

Small business owners and people on small or fixed incomes, especially the elderly, are particularly suffering. Other utilities in the state have similar supply and cost problems, causing losses in the hundreds of millions of dollars.

This bill would direct the Federal Energy Regulatory Commission (FERC) to impose price caps on wholesale electricity prices. The bill would also require power suppliers to refund fees charged above the FERC-imposed price cap since June 1, 2000. The precise total of refunds due would be determined by the Federal Energy Regulatory Commission.

I urge FERC to act swiftly and bring relief to those who have been hit by this terrible situation.

The fight for fair utility rates is going to be difficult and may require a number of other solutions. I will continue to work with Congressman FILNER and others to ensure that we end the crisis and prevent similar incidents in California and elsewhere in the United States.

ADDITIONAL COSPONSORS

S. 61

At the request of Mr. DEWINE, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 61, a bill to amend the Tariff Act of 1930 to eliminate disincentives to fair trade conditions.

S. 459

At the request of Mr. HATCH, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 459, a bill to amend the Internal Revenue Code of 1986 to increase the State ceiling on private activity bonds.

S. 1314

At the request of Mr. LEAHY, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1314, a bill to establish a grant program to assist State and local law enforcement in deterring, investigating, and prosecuting computer crimes.

S. 1805

At the request of Mr. KENNEDY, the name of the Senator from Rhode Island (Mr. L. CHAFEE) was added as a cosponsor of S. 1805, a bill to restore food stamp benefits for aliens, to provide States with flexibility in administering the food stamp vehicle allowance, to index the excess shelter expense deduction to inflation, to authorize additional appropriations to purchase and make available additional commodities under the emergency food assistance program, and for other purposes.

S. 1822

At the request of Mr. MCCAIN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1822, 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.

S. 1900

At the request of Mr. LAUTENBERG, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1900, a bill to amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued by Amtrak, and for other purposes.

S. 1957

At the request of Mr. SCHUMER, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1957, a bill to provide for the payment of compensation to the families of the Federal employees who were killed in the crash of a United States Air Force CT-43A aircraft on April 3, 1996, near Dubrovnik, Croatia, carrying Secretary of Commerce Ronald H. Brown and 34 others.

S. 2123

At the request of Ms. LANDRIEU, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 2123, a bill to provide Outer Continental Shelf Impact assistance to State and local governments, to amend the Land and Water Conservation Fund Act of 1965, the Urban Park and Recreation Recovery Act of 1978, and the Federal Aid in Wildlife Restoration Act (commonly referred to as the Pittman-Robertson Act) to establish a fund to meet the outdoor conservation and recreation needs of the American people, and for other purposes.

S. 2264

At the request of Mr. ROCKEFELLER, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 2264, a bill to amend title 38, United States Code, to establish within the Veterans Health Administration the position of Advisor on Physician Assistants, and for other purposes.

S. 2345

At the request of Mr. SCHUMER, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 2345, a bill to direct the Secretary of the Interior to conduct a special resource study concerning the preservation and public use of sites associated with Harriet Tubman located in Auburn, New York, and for other purposes.

S. 2601

At the request of Mr. ASHCROFT, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 2601, a bill to amend the Internal Revenue Code of 1986 to exclude from the gross income of an employee any employer provided home computer and Internet access.

S. 2698

At the request of Mr. MOYNIHAN, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 2698, a bill to amend the Internal Revenue Code of 1986 to provide an incentive to ensure that all Americans gain timely and equitable access to the Internet over current and future generations of broadband capability.

S. 2717

At the request of Mr. SCHUMER, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 2717, a bill to amend the Internal Revenue Code of 1986 to gradually increase the estate tax deduction for family-owned business interests.

S. 2841

At the request of Mr. ROBB, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 2841, a bill to ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability,