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House of Representatives

The House met at 10 a.m.

PRAYER

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

We pray, O God, that in the business of every day, we will use our time wisely so we will gain healthy and holy lives. Remind us that our value comes not only in action in the cluttered hours of work, but also in reflection and meditation and prayer and an awareness of Your abiding spirit in our lives. As we take some time for those precious moments of quiet deliberation and circumspection, may we grow in the assurance that Your power and Your peace are sufficient for our needs. Amen.

THE JOURNAL

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

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

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from New Jersey [Mr. MARTINI] come forward and lead the House in the Pledge of Allegiance.

Mr. MARTINI led the Pledge of Allegiance as follows:

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

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 20. Concurrent resolution permitting the use of the rotunda of the Capitol for ceremonies as part of the commemoration of the days of remembrance of victims of the Holocaust.

The message also announced that pursuant to section 2761 of title 22, United States Code, the Chair, on behalf of the President pro tempore, and upon the recommendation of the Republican leader, appoints Mr. STEVENS as chairman of the Senate delegation to the British-American Interparliamentary Group during the 104th Congress.

The message also announced that pursuant to section 201(a)(2) of Public Law 93–344, the Chair announces, on behalf of the President pro tempore of the Senate and the Speaker of the House of Representatives, the appointment of Ms. June Ellenoff O'Neill as Director of the Congressional Budget Office for the term of office beginning on January 3, 1995, effective March 1, 1995.

The message also announced that pursuant to sections 276d–276g of title 22, United States Code, the Chair, on behalf of the Vice President, appoints Mr. MURKOWSKI as chairman of the Senate delegation to the Canada-United States Interparliamentary Group during the 104th Congress.

The message also announced that pursuant to sections 276h–276k of title 22, United States Code, the Chair, on behalf of the Vice President, appoints Mr. KYL as chairman of the Senate delegation to the Mexico-United States Interparliamentary Group during the 104th Congress.

The message also announced that pursuant to sections 276h–276k of title 22, United States Code, as amended the Chair, on behalf of the Vice President, appoints Mr. DODD as vice chairman of the Senate delegation to the Mexico-United States Interparliamentary Group during the 104th Congress.

The message also announced that pursuant to sections 276a of title 22, United States Code, the Chair, on behalf of the Vice President, appoints Mr. BURNS as chairman of the Senate delegation to the Interparliamentary Union during the 104th Congress.

The message also announced that pursuant to sections 1928a–1928d of title 22, United States Code, the Chair, on behalf of the Vice President, appoints Mr. ROTH as chairman of the Senate delegation to the North Atlantic Assembly during the 104th Congress.

The message also announced that pursuant to sections 1928a–1928d of title 22, United States Code, as amended, the Chair, on behalf of the Vice President, appoints Mr. HEFLIN as vice chairman of the Senate delegation to the North Atlantic Assembly during the 104th Congress.

PARLIAMENTARY INQUIRY

Mr. VOLKMER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. VOLKMER. Mr. Speaker, is there a number of 1-minutes per side set for today?

The SPEAKER. The Chair believes the leaderships have agreed that there will be 10 on each side today.

Mr. VOLKMER. Mr. Speaker, may I plead with the Chair, since it is in the Speaker's power, and point out that we have a number of Members in excess of that who wish to speak. I will make a commitment to the Speaker and a promise to the Speaker that I will not call for any votes today, and that I will be a very nice person today if the Speaker would go to 15 on each side.

The SPEAKER. Let the Chair say to the gentleman from Missouri that we will try to accommodate him in the

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next few minutes. I am told this was worked out last night in terms of some Judiciary Committee policy that also involved doing a favor for the gentleman's side. I do not want to stand up here and make this decision. I realize this is not the most momentous decision we will make this year, but if the gentleman will just wait for a minute or two on his potential opportunity, which the gentleman from Pennsylvania [Mr. WALKER] and I used to cherish deeply, I suspect we will accommodate the gentleman. But I do not want to do that without checking with Mr. ARMEY. The majority leader has that prerogative, and I want to make sure he is happy with me.

Mr. VOLKMER. I thank the Speaker.

APPOINTMENT AS MEMBER OF THE FRANKLIN DELANO ROOSEVELT MEMORIAL COMMISSION

The SPEAKER. Pursuant to the provisions of Public Law 84–372, the Chair appoints as a member of the Franklin Delano Roosevelt Memorial Commission the following Member of the House: Mr. LEWIS of California.

REPUBLICAN CONTRACT WITH AMERICA

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, we are on track in keeping the Contract With America. It is good policy, it is good government, and I am excited to be a part of it.

On the first day of Congress we required Congress to live under the same laws as everyone else in America. We also cut committee staffs by a third, and we cut the congressional budget. It is a promise that we kept.

During these 100 days we are now in, we have already passed the balanced budget amendment, unfunded mandates, line-item veto, a new crime package, the National Security Restoration Act, and Government regulatory reform. We are keeping our promises. We are working hard to keep our promise to the American people.

In the future we are going to be working on welfare reform, on family reinforcement to crack down on deadbeat dads, a tax cut for middle American families, the Senior Citizens Equity Act to allow our senior citizens to work without Government penalty, commonsense legal reform, and term limits.

Mr. Speaker, we are going to keep our promises to America. This is our contract, it is good government, it is good policy, and it is about time.

THE REPUBLICAN WAR AGAINST SOCIAL SECURITY

(Mr. BONIOR asked and was given permission to address the House for 1 minute.)

Mr. BONIOR. Mr. Speaker, why have the Republicans declared war on Social Security?

In the Senate today, the balanced budget amendment is likely to fail because Republicans refuse to take Social Security off the chopping block.

In January, we offered a bill in the House to protect Social Security. Every Republican but six voted against it.

Last month, NEWT GINGRICH's think tank ran this editorial in their newsletter.

The headline reads, ''For Freedom's Sake, Eliminate Social Security.''

The article says, and I quote,

> As we bury the rest of the welfare state in preparation for the 21st century * * * it is time to slay the largest ''entitlement'' program of all—Social Security.

And let us not forget—the Speaker himself once offered a bill to eliminate the Social Security system as we know it.

Mr. Speaker, Franklin Roosevelt once called Social Security a sacred trust that must never be taken away.

But after just 55 days of Republican rule, Social Security is facing its greatest threat in six decades.

Republicans keep talking about a revolution.

But nobody ever told us that the real revolution would be a war on older Americans.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. QUINN). The Chair wishes to announce that agreement has been reached this morning that there will be 13 1-minutes on each side. That is a total of 13 on each side.

CHILDREN SUFFER HUNGER UNDER FAILED WELFARE SYSTEM

(Mr. LAHOOD asked and was given permission to address the House for 1 minute.)

Mr. LAHOOD. Mr. Speaker, I am pleased that there was an accommodation made on 1-minutes, and I hope that the gentleman from Missouri will abide by his word and not interrupt the good business of the House during the day.

Mr. Speaker, do you remember the incident in Chicago last year when authorities found 19 children living in squalor in a single apartment on the west side. Some of the children were eating food from the same bowl used by the family dog.

Kim King of the Cook County Public Guardian's Office had this to say in the aftermath of the incident:

> The welfare system is a humongous failure. There's no question about that. The welfare system condones having children and not being responsible for those children.

This, Mr. Speaker, is what liberalism's failed welfare system has wrought.

To those liberals who come down here to defend this system, I say you have a lot of explaining to do. And when they talk about taking the food out of babies' mouths, I have news for my liberal colleagues—it is already happening on a far grander scale than imaginable.

Yet you all have the nerve to take the well to call for more of the same.

PENTAGON MAKES PEACE WITH MORGAN COUNTY, WV; MILITARY FLIGHTS RESUMED

(Mr. WISE asked and was given permission to address the House for 1 minute.)

Mr. WISE. Mr. Speaker, today I am happy to announce that as of 10 a.m. this morning the skies over Morgan County, WV, are now open to Federal flights. Members may remember that after helping in the cleanup 2 years ago of a tragic military crash, the Morgan County Commission asked the Pentagon to reimburse it by almost $11,000.

After 2 years of being turned down, this small rural county passed a resolution banning military overflights. But peace is here. As I speak, in a ceremony in Martinsburg, Gen. Joseph Skaff is presenting a check for full payment. Following that, he will board a C–130 to resume regular flights over Morgan County.

Mr. Speaker, many worked hard for this day—General Skaff, Colonel Lloyd, the 167th in Martinsburg, and Lt. Col. Marcia Bachman. They all deserve special credit for breaking the impasse. Morgan County officials have shown consistent firmness and respect, and I appreciate the efforts of Members of Congress like the gentleman from Pennsylvania [Mr. MURTHA], who assisted me.

Rest assured, Mr. Speaker, when Members board a plane to head home this weekend, as they bank over Berkeley Springs and Paw Paw, they will once again fly the friendly skies of Morgan County.

ANTI-IMMIGRANT SENTIMENT GAINING IN AMERICA

(Ms. ROS-LEHTINEN asked and was given permission to address the House for 1 minute.)

Ms. ROS-LEHTINEN. Mr. Speaker, as a person who came to this country at the young age of 7 as a refugee fleeing the Communist dictatorship of Fidel Castro in Cuba, I know first hand the generosity and opportunities this great country has offered immigrants from around the world.

Unfortunately, I am afraid that today, an anti-immigrant sentiment is growing from an unreal perception that immigrants only come to the United States to take advantage of our generous society and become a burden on the state while never integrating nor becoming productive citizens.

Nothing could be further from the truth. Immigrants have contributed

greatly to all facets of American life in the economic, cultural, and political fields.

I appeal to my colleagues to not be swayed by those who would place all of the problems of this Nation on the backs of immigrants. Let us look at immigrants for what they are: hard working, god fearing, law-abiding, honest residents, who like native born Americans, want to provide themselves and their children a better future.

A PLEA FOR FULL FUNDING OF SCHOOL LUNCHES

(Ms. WOOLSEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, 27 years ago I was a single, working mother with 3 small children forced to rely on AFDC and food stamps, in order to give my children the health care, child care, and food they needed.

Twenty-seven years later, I am shocked that the Republicans are talking about taking school lunches away from almost 7,000 children in my congressional district alone while they are refusing to take money away from pork barrel military projects like the F–22 fighter plane. Clearly, House Republicans are willing to punish children just so they can pay for their Contract on America.

In fact, Mr. Speaker, I have only one thing to say about the Republican plan: States don't get hungry, children do. And starving children is not the solution to balancing our budget.

Mr. Speaker, children cannot learn when they are hungry. It is time to talk about full funding for school lunches and full stomachs for our children.

ENDING WELFARE AS WE KNOW IT

(Mr. MARTINI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARTINI. Mr. Speaker, Americans are a generous, caring people. We also are realistic and result oriented. We want our private and public generosity to raise ladders of opportunity for those who have fallen behind. We intend our efforts to serve as a hand-up, not simply a handout.

It has been more than 50 years since the Federal welfare system was conceived. Today, Americans overwhelmingly agree it has been an expensive failure and, in many instances, has inflicted disastrous consequences on its recipients, and on our national well-being.

Finally, Congress has accepted the wisdom of the people. And in the next few days, the new Republican majority will bring to the House a number of proposals that will end welfare as we know it.

In its place, we will initiate an era of genuine human compassion, of opportunity, of personal responsibility and self-reliance and lifted hopes.

That, Mr. Speaker, is our Contract With America.

DEALING ON A TIMETABLE FOR SOCIAL SECURITY PHASEOUT

(Mr. KLINK asked and was given permission to address the House for 1 minute.)

Mr. KLINK. Mr. Speaker, I rise to salute some brave Senators who are standing up for our Constitution, standing up for Social Security, and standing up to a Speaker of the House who has called them liars and is intimating that they are perpetuating some mythical fraud.

In the rush to judgment on these contract issues that we are facing, we are being told, ''Trust us. Go along with our 100-day schedule.'' We are also being told to go along with the fact that Social Security is not really going to be affected by the balanced budget amendment. But in the more deliberative conduct of the other body the mask has now come off.

Republicans now not only admit that they are attempting to pull the largest daylight robbery in the history of the Social Security fund, but in an effort to get that one last vote they need to pass the balanced budget amendment, they are now trying to negotiate for how long that theft will occur. Will it happen by 2012, 2010, or 2008?

Mr. Speaker, this is Monty Hall's ''Let's Make a Deal.''

□ 1015

PART OF THE PROBLEM

(Mr. JONES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JONES. Mr. Speaker, amid the cry from liberal Democrats regarding Republican welfare reform comes one clear message: The liberals are fighting hard for the bureaucratic status quo.

Instead of joining with reformers who want to make current programs more efficient, more effective, and more fair, liberals prefer to make baseless attacks on Republicans.

The liberals claim that our proposals would hurt children. Several studies have proven that our block-grant initiatives will cut a layer of bureaucracy while delivering more services for those in need.

The liberals are instead defending a group of bureaucrats who waste the taxpayer's money and drain precious resources from our Nation.

Someone once said: If you are not part of the solution, you are part of the problem. Clearly, defenders of the status quo are part of the problem that most Americans thought they solved in the last election.

SCHOOL LUNCH PROGRAM HELPS THOSE WHO NEED IT MOST

(Mr. BEVILL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEVILL. Mr. Speaker, I rise today to urge my colleagues to fight back attempts to end the National School Lunch Program. This is one of the best programs we have because it helps those who need help the most.

For 49 years, this program has helped the schoolchildren of this Nation. For many of these children, their school lunch is the most nutritious meal they get all day. This program has meant that poor children do not have to go hungry during the day.

I cannot imagine anything more mean-spirited than taking food away from hungry children. This is certainly no way to promote strong family values. And, it is certainly no way to promote better health and better educational opportunities. Hungry children have a hard time learning.

By proposing to end this national program, Congress essentially is saying to the States, ''It's your problem now. Deal with it.'' I doubt that many States would have the financial ability to meet this need in difficult economic times. During the last recession, 1.2 million additional children received free school lunches. A block grant program certainly wouldn't take up the shortfall during a recession. States like Alabama which serve a large percentage of low-income children would be penalized.

Nationwide, more than 25 million school children participate in the National School Lunch Program. Approximately 56 percent of Alabama's schoolchildren receive free or reduced price school lunches. Approximately 87 percent of Alabama's schoolchildren receive free or reduced price school breakfasts. Under the proposed cuts, our State would lose an estimated $141.5 million by the year 2000 to feed these children, according to the U.S. Department of Agriculture.

I certainly think we can make the school lunch program more flexible and easier to administer for the States. But, under no circumstances should we jeopardize the health and well-being of our Nation's children. They are our most important national resource.

REFORM WELFARE NOW

(Mr. CHRYSLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHRYSLER. Mr. Speaker, it is time for us to be honest with the American people. It is time for us to say that after $5 trillion our Great Society experiments to end poverty have been an utter failure.

And while there are those who feel threatened by this honest assessment, mainly because their jobs or outdated

way of thinking is finally being scrutinized, I submit these are well-intentioned people with well-intentioned programs that simply have not worked.

After billions of taxpayers dollars we have not ended poverty and in fact, the problems associated with poverty has worsened. Welfare programs should not be judged by how many people are on them, But instead, by how many people are off them.

Mr. Speaker, this situation must end and that is why this Congress must reform welfare now. I remember when our President as a candidate said: ''We will end welfare as we know it.'' Instead of fighting us, instead of using disingenuous scare tactics, I encourage our President to join us in our efforts.

TEXAS INDEPENDENCE DAY

(Mr. GENE GREEN of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GENE GREEN of Texas. Mr. Speaker, today is a day for the State of Texas. It is Texas Independence Day. I wanted to ask the House to sing just one chorus of ''Texas, Our Texas,'' but I did not get much response.

Unfortunately, I looked at it and looked at the Republican Contract on America and realized that they are celebrating giving women, children, and senior legal immigrants independence from nutrition programs. They are celebrating by putting in jeopardy Social Security.

Today is also Sam Houston's birthday, the first President of the Republic of Texas. But he was not born in Texas. Actually he was born in Virginia and was a Federal officeholder in Tennessee and in Texas.

But under the bill that passed out of the Economic and Educational Opportunities Committee last week, he would be ineligible for programs under that Republican bill. Because of the Republican bill, the USDA estimated that $1.3 billion would be cut over 5 years for the school breakfast and lunch programs. The Texas Education Agency estimated the welfare bill would cut school lunches in Texas $261 million.

DEMOCRATS DISTORTING REPUBLICAN WELFARE PROPOSAL

(Mr. EVERETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EVERETT. Mr. Speaker, the current welfare system has been a nightmare for children. It is a fact that long-term welfare dependency harms children.

A study by Child Trends found that children in families dependent on welfare for long periods of time have more developmental problems than children dependent for only short periods. The problem is, most welfare recipients are long-term dependents. So it is no surprise to learn that 69 percent of children in chronically dependent welfare families score in the bottom third of all children on vocabulary and language skills tests.

The sad fact, Mr. Speaker, is that welfare is probably far worse for children than for anyone else involved, because it gets them into the same habits of dependency they are surrounded by, resulting in an almost unbreakable cycle of welfare.

And yet, my liberal Democrat colleagues come to this floor to deceive, to distort, and to disinform about the Republican proposal on the school lunch program. They are so concerned with protecting the bureaucracy that they are blind to the greater tragedy to children that is going on in my State of Alabama and right outside this Capitol. That is sad, Mr. Speaker.

BALANCED BUDGET AMENDMENT PUTS SOCIAL SECURITY AT RISK

(Mr. FRANK of Massachusetts asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FRANK of Massachusetts. Mr. Speaker, those who are arguing that the current form of the balanced budget amendment puts Social Security at risk are undeniably correct. The amendment says that in the year 2002 it will be mandatory that any surplus from Social Security be used to reduce the overall deficit elsewhere in the Federal Government for the purposes of achieving balance. What this means is that there will be a constitutional imperative to the Congress to cut Social Security expenditures if they need to do that to make up the deficit elsewhere.

That is not an academic threat. The Speaker of this House has demanded that the Bureau of Labor Statistics recalculate the Consumer Price Index. Reducing the Consumer Price Index has as its major impact saying that older people get less of a cost-of-living increase under Social Security.

So when the Republicans push a form of the balanced budget amendment that allows, indeed, compels, any surplus in Social Security to be used to offset a deficit elsewhere and simultaneously argues that we should cut the Consumer Price Index, which has as its major fiscal impact reducing the cost-of-living increase, we see why Senators are right to oppose this amendment in its current form.

LOOK BEYOND THE RHETORIC

(Mr. EWING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EWING. Mr. Speaker, the House Republicans work hard to change the way Congress does business. The minority party in both Chambers works hard to preserve the status quo. The balanced budget amendment, up for a vote today, hinges on the cooperation of Democratic Members. Without their help, the hopes of the American people will be dashed.

Unfortunately, the prospects do not look very bright. Of course, once the country goes broke we will have Social Security and all the other programs they complain about being cut. And as the Republicans attempt to reform welfare systems, they are being met by stiff resistance.

Mr. Speaker, I urge the American people to look beyond the rhetoric. The Republicans are trying to change the direction of this Government. We are trying to pass the balanced budget amendment. We are trying to reform a broken welfare system. Sadly, the Democratic Party now is left defending only the status quo.

DO NOT REPEAL THE NATIONAL SCHOOL LUNCH ACT

(Mr. KILDEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KILDEE. Mr. Speaker, in this contract hysteria, let us not lose sight of the things that came into being for a strong national purpose.

The voters in November did not mandate the destruction of a program that has worked well for half a century.

Repealing the National School Lunch Act, which has successfully fed hundreds of millions of hungry children since 1946, will affect children in public and parochial schools, regardless of income.

In 1981, the Reagan administration slashed over $1 billion from the school nutrition programs.

As a result, over 2,000 schools were forced to drop out of the program, leaving 2 million children without a nutritious school lunch. Under this block grant proposal, States would receive $2 billion less for school meals over the next 5 years.

Due to drastically reduced funding, a State may choose not to subsidize meals for children who pay full price, forcing the school to raise prices.

BLOCK GRANTING SCHOOL LUNCH PROGRAM WILL GIVE STATES MORE CONTROL

(Mrs. CUBIN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CUBIN. Mr. Speaker, I find myself compelled to rise and speak once again on behalf of truth and against the untrue accusations from the other side of the aisle.

In no uncertain terms, the Republicans in Congress do not intend to deprive school children of nutritious meals.

Less than a week ago a Wyoming newspaper's headlines read ''GOP Hopes To Abolish School Lunch Programs. Democrats Say Children May

Starve by the Thousands.'' Nothing could be further from the truth and the Democrats know it.

Funding for school lunch programs will increase by 4.5 percent each year over the next 5 years. That is not a figure that would lead a reasonable person to believe that the school lunch program will be eliminated.

Block granting the school lunch program will give the States more control to spend the funds where they are most needed. And by requiring States to use at least 80 percent of the funds for meals for low-income children, no one should be afraid that children will go hungry.

The school lunch program will not be eliminated. Now, eliminating the jobs of the Federal bureaucrats who micromanage the nutrition programs is an excellent idea. That is one way to save money in Washington for food for kids.

Let the Democrats take care of the bureaucrats—the Republicans will care for the children.

WELFARE REFORM SHOULD EMPHASIZE SELF-SUFFICIENCY THROUGH WORK

(Mr. ORTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ORTON. Mr. Speaker, I, like many of my colleagues and the majority of Americans, strongly favor welfare reform. It is crucial to transform the welfare system from one which fosters dependency to one based on self-sufficiency.

Yet, the plan moving through Congress lacks emphasis on the one element critical to welfare reform: work. A person entering this newly reformed system could spend 2 years before engaging in any activities that are geared toward work. That simply isn't good enough. It is not good enough for taxpayers, and surely it is not good enough for people receiving welfare benefits who are becoming more alienated from the labor market.

The goal of welfare reform should be to provide people with assistance in setting a path toward self-sufficiency through work.

I have filed H.R. 865, the Self-Sufficiency Act, patterned after a successful welfare reform program in Utah which has reduced the welfare caseload in one area by 30 percent in just 2 years. More importantly, this was accomplished by putting people to work in the private sector.

Let us reform welfare, but let us base it on work.

AN UP-OR-DOWN VOTE NEEDED ON AID TO MEXICO

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, we are not going to take food out of hungry children's mouths, and we are not going to cut Social Security. That is baloney. But let me tell you something that really is happening, today. The President of the United States and the Secretary of the Treasury are sending $52 billion, $52 thousand million down to Mexico, without any act of Congress.

This is where the people's money is supposed to be spent, in the Congress of the United States. They could not get the votes to bail out Mexico in the Congress, so the President and the Secretary of the Treasury, who is protecting his own rear end in my opinion because he is a financial adviser, did an end run around the Congress of the United States.

They have already sent $7 billion, $7 thousand million down to Mexico, and that economy continues to go down into the tank. We need an up or down vote in this Congress on spending the taxpayers' money to bail out Mexico. The President is not a dictator. He should not be doing it unilaterally.

THE TRUTH ON SOCIAL SECURITY

(Mr. BROWN of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of Ohio. Mr. Speaker, once again the truth is revealed. Republicans want to cut Social Security today, and then abolish Social Security tomorrow. Listen to this editorial from American Civilization, the rule book for the extremist wing of the Republican Party.

> As we bury the rest of the welfare state in preparation for the 21st century, it is time to slay the largest government entitlement program of all, Social Security.

The Republicans say they will not cut Social Security and Medicare. Then when they get caught they admit they want to. Then they deny it, then they admit again they plan to cut Social Security and cripple Medicare. The Speaker should come clean on Social Security before he accuses others of lying about it.

In the one chance this year to save Social Security from major cuts, every Republican but six voted against an amendment to exempt Social Security. Social Security is a covenant between the American people and the Government. It should not be violated.

□ 1030

DEMOCRATIC WHINING

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, every day the Democrat Party stands up and they weep and they whine and they mourn about the Contract With America. In fact, there has been so much crying on the left side of the aisle that the EPA has had to declare it a wetlands.

Because while the Republican Party is busy contracting with America, the Democrat Party is busy contracting from America.

The Democrats are outraged because issues that they have ignored and oppressed for 40 years can be brought up before the American people for a vote in 100 days. It has left them without an agenda. To them welfare works. Bureaucrats and regulations are good. Deficit spending is OK because amending the Constitution to keep America alive is somehow worse than balancing the budget.

Mr. Speaker, this revolution is not about NEWT GINGRICH. It is not about the Contract With America. It is not about the Republicans taking over Congress. It is about change and challenging the status quo. It has a momentum of its own. It is about less government, lower taxes, fewer regulations, and more personal freedom. I hope that they will join us.

IT'S MEAN

(Mr. VOLKMER asked and was given permission to address the House for 1 minute.)

Mr. VOLKMER. Mr. Speaker, I rise today seeking an answer. The House Appropriations Committee is meeting this morning to mark up legislation that would rescind selected appropriations that were authorized for fiscal year 1995. My question is: How do they justify some of these rescissions that have been proposed by the appropriations subcommittees?

We all realize that cuts have to be made in the Federal budget and that we have to rethink how we spend our constituents' tax dollars. But how can they be so mean-spirited as to make these cuts at the expense of the people we are trying to help.

Discretionary programs for low-income people account for 12 percent or $64 billion of the Federal Government's total discretionary spending; but as a result of proposals made by the appropriations subcommittees, these programs would bear 63 percent or almost $11 billion of the cuts. Of $17.5 billion that was cut by appropriations committees last week, $14.9 billion were cut from five departments: Education, Health and Human Services, HUD, Labor, and VA. To my thinking, that is just mean. It looks to me that these cuts are intended to justify the tax cut for the wealthy that the Republicans promised in their Contract on America.

FACTS ON SCHOOL LUNCH

(Mr. GANSKE asked and was given permission to address the House for 1 minute.)

Mr. GANSKE. Mr. Speaker, I rise today to let the American people know the truth about school lunches. I keep hearing that the Republican proposal

from the Economic and Educational Opportunities Committee is going to take food out of the mouths of children. It is time the media and school lunch bureaucrats who keep feeding the American public these horror stories realize that the only horror here is that the facts are not getting to the American people.

Let me share a few facts with you.

Fact: Funding for school lunch programs will increase by 4.5 percent each year over the next 5 years.

Fact: Eighty percent of the funds in this block grant will be used to feed low-income children.

Fact: By eliminating mounds of Federal red tape and regulations, a school will be in a better position to put its money where the children's mouths are.

The American public needs and deserves to hear the facts. This program ensures that low-income children in our country will not go hungry. Opponents should stop stuffing people's ears with falsehoods and start filling our children's mouths with food.

DEBATE ON PROPERTY RIGHTS

(Mr. TAUZIN asked and was given permission to address the House for 1 minute.)

Mr. TAUZIN. Mr. Speaker, today we begin a historic debate, one that I and many Members of this House have long awaited, the debate on private property rights.

I want to remind the House that this debate started with Democrats. It was Democrats who put together the private property owners' bill of rights which has now been incorporated into the Republican contract. Democrats like the gentleman from Texas, GREG LAUGHLIN, the gentleman from Louisiana, Mr. HAYES, and the gentleman from California, Mr. CONDIT, and the gentleman from Texas, Mr. STENHOLM, and I together joined with our colleague, the gentleman from Texas, Mr. FIELDS. We have tried for years to bring this issue to the floor of the House.

Today that debate begins and we are delighted. Today we begin providing protections for every private property owner in America, guaranteed under the fifth amendment. We are not going to be debating big landowner rights. They can go to court today to enforce their rights. Today we enforce the rights of every small landowner in America to enjoy the same civil rights and liberties guaranteed under the fifth amendment. Today we give meaning and life to the fifth amendment protection that says, no private property shall be taken by this Government, by regulation or otherwise, without just compensation.

SCHOOL NUTRITION PROGRAMS

(Mr. HOKE asked and was given permission to address the House for 1 minute.)

Mr. HOKE. Mr. Speaker, do you know how much money we are cutting from the school nutrition programs? Zero, zip, zilch, zippo, zippola, niente, nada, nothing, nil, none, squat, the big goose egg. Here are the facts.

Under the Republican proposal, spending on school nutrition programs increases the next 2 years by 4.5 percent. Unlike the current program, which has lax or few standards, the Republican plan requires that 80 percent of the funds go to low income kids, those that need it the most. Yet, all the Democrats can do up here is come and whine and posture, whine and posture. So much that these days will undoubtedly come to be known as the days of whine and poses.

But the American people are not buying this snake oil. They know that the welfare system has been a disaster, not just for the taxpayers but for those poor people it was designed to help. They know that no amount of money can right the current system. It is too corrupt. It is too destructive. They know it needs to be fundamentally changed. That is what they elected us to do. And do it we shall.

NICHOLAS LEESON

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, Nick Leeson, a 28-year-old common man, now known as Tricky Nicky, single-handedly bankrupted the Barings Bank of England. This is no ordinary bank. This bank financed the Louisiana Purchase and is known as the bank of kings and queens. Now, evidently, Mr. Speaker, the security at Barings was out for a spot of tea. But this is an unusual case, Mr. Speaker.

In the past, only millionaires and bankers and kings and queens could sting a bank. Not anymore. Evidently the common man has moved up from robbing the drug stores and the gas station and is now an equal member in the white collar advanced crime network opportunity program, my colleagues.

I said it all along, Mr. Speaker. Thanks to Tricky Nicky, we have come to see one thing. There is hope for the common man. After all, I never heard of the common man committing suicide by jumping out of a basement window. Think about that awhile. Maybe there is some hope left.

VOTE ON HOUSE RESOLUTION 101, PROVIDING FOR CONSIDERATION OF H.R. 925, PRIVATE PROPERTY PROTECTION ACT OF 1995

The SPEAKER pro tempore (Mr. QUINN). The unfinished business is the question of the vote on House Resolution 101.

The Clerk read the title of the resolution.

(For text of House Resolution 101, see page H2459 of the RECORD of Wednesday, March 1, 1995.)

The SPEAKER pro tempore. The vote is on the resolution on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 271, nays 151, not voting 12, as follows:

[Roll No. 189]

YEAS—271

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
de la Garza
Deal
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennelly
Kim
King
Kingston
Klink
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martinez
Martini
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Meehan
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant

Upton	Weldon (PA)	Wyden
Vucanovich	Weller	Young (AK)
Waldholtz	White	Young (FL)
Walsh	Whitfield	Zeliff
Wamp	Wicker	Zimmer
Watts (OK)	Wilson	
Weldon (FL)	Wolf	

NAYS—151

Abercrombie	Gibbons	Olver
Ackerman	Gutierrez	Ortiz
Andrews	Hall (OH)	Orton
Baldacci	Hamilton	Owens
Barrett (WI)	Harman	Pallone
Becerra	Hastings (FL)	Pastor
Beilenson	Hayes	Payne (NJ)
Bentsen	Hilliard	Pelosi
Berman	Hinchey	Peterson (FL)
Bishop	Hoyer	Pomeroy
Bonior	Jackson-Lee	Rahall
Borski	Jacobs	Rangel
Boucher	Jefferson	Reed
Brown (CA)	Johnson (SD)	Reynolds
Brown (FL)	Johnson, E.B.	Richardson
Brown (OH)	Johnston	Rivers
Cardin	Kanjorski	Roemer
Chapman	Kaptur	Roybal-Allard
Clayton	Kennedy (MA)	Rush
Clement	Kennedy (RI)	Sabo
Clyburn	Kildee	Sanders
Coleman	Kleczka	Sawyer
Collins (IL)	LaFalce	Schroeder
Collins (MI)	Lantos	Scott
Conyers	Levin	Serrano
Costello	Lewis (GA)	Skaggs
Coyne	Lincoln	Slaughter
Danner	Lipinski	Spratt
DeFazio	Lofgren	Stark
DeLauro	Lowey	Studds
Dellums	Luther	Taylor (MS)
Deutsch	Maloney	Thompson
Dixon	Manton	Thornton
Doggett	Markey	Thurman
Dooley	Mascara	Tucker
Doyle	Matsui	Velazquez
Durbin	McCarthy	Vento
Engel	McDermott	Visclosky
Eshoo	McKinney	Volkmer
Evans	Meek	Walker
Farr	Menendez	Ward
Fattah	Mfume	Waters
Fields (LA)	Miller (CA)	Watt (NC)
Filner	Mineta	Waxman
Flake	Minge	Williams
Foglietta	Mink	Wise
Ford	Moran	Woolsey
Frank (MA)	Nadler	Wynn
Furse	Neal	Yates
Gejdenson	Oberstar	
Gephardt	Obey	

NOT VOTING—12

Bilbray	Dicks	Moakley
Bryant (TX)	Dingell	Stokes
Clay	Gonzalez	Torres
DeLay	Metcalf	Towns

□ 1055

Mr. LEVIN, Mr. POMEROY, Mr. VOLKMER, and Mrs. MEEK of Florida changed their vote from ''aye'' to ''no.''

Mr. ROTH changed his vote from ''no'' to ''aye.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mrs. COLLINS of Illinois. Mr. Speaker, yesterday I was on the floor talking and omitted voting on rollcall 184.

If I had been paying attention, I would have voted ''aye'' on rollcall 184.

PRIVATE PROPERTY PROTECTION ACT OF 1995

The SPEAKER pro tempore (Mr. QUINN). Pursuant to House Resolution 101 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 925.

□ 1058

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, with Mr. SHUSTER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, March 1, 1995, 29½ minutes remained in general debate. The gentleman from Florida [Mr. CANADY] has 14½ minutes remaining, and the gentleman from Michigan [Mr. CONYERS] has 15 minutes remaining.

The Chair recognizes the gentleman from Florida [Mr. CANADY].

Mr. CANADY of Florida. Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. PORTER].

□ 1100

Mr. PORTER. Mr. Chairman, any honest person must admit that there have been instances of regulatory overkill in our Government. But this legislation is legislative overkill in the extreme. It will turn on the litigation tap with an absurdly low threshold for compensation of 10 percent. It will mean, Mr. Chairman, that every single regulation will be the subject of a lawsuit and every application of every regulation will be the subject of a lawsuit. Why would the lawyers not want to take it to court, roll the dice and see if they can get a recovery?

I take a back seat to no one in this Chamber in terms of my fiscal conservatism, and I cannot support this bill because it will create a new entitlement that will cost Government so much money that no Republican ought to support it.

I will be offering, Mr. Chairman, an amendment with the gentleman from Michigan [Mr. EHLERS], the gentleman from California [Mr. FARR], and the gentleman from Texas [Mr. BRYANT] that is the essence of legislation introduced in the Senate by Majority Leader DOLE as Senate bill S. 22. It is his answer to the takings problem. It is legislation that is based upon an Executive order issued by Ronald Reagan. Our amendment, like Mr. DOLE's bill, Mr. Chairman, leaves takings under the Constitution, where they belong, unless the agency fails to do a private property taking impact assessment before issuing any regulation. If the agency fails to do an assessment, then the Canady-Tauzin compensation scheme applies.

We should follow the Constitution, Mr. Chairman. It has worked very well for the last 200 years.

Finally, let me say that the Canady-Tauzin approach is a minority mentality approach. We are in the majority in this Chamber today and if there is a problem with the Endangered Species Act, let's change the act. If there is a problem with the wetlands law, let's change the law. But let's not write an entire new entitlement program that will cost the Government hundreds of millions of dollars in expenses. Let's instead support the approach that we will offer in our amendment that says let's look at the impact of a regulation on private property, let's ensure that the Government knows very well what it does, and let's then follow the Constitution which has served us well. If the impact statement is not done, we can then go to the approach offered by the gentleman from Florida [Mr. CANADY] and the gentleman from Louisiana [Mr. TAUZIN].

I urge Members to support the Dole approach to the amendment I will offer later.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. SMITH].

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

Mr. SMITH of Michigan. Mr. Chairman, the point is that we need to make some changes. There is a problem in this country where we have started passing on unfunded mandates to cities and counties to let them pay for our philosophy changes. This is also a problem where we are passing mandates on to individuals to let them pay for our philosophical changes, while we are taking away people's property, sometimes by poorly written laws, sometimes by poorly written regulations, sometimes by overzealous Government agents.

I am a farmer from Michigan. Let me share with you a couple of farm stories. A vegetable farmer was ordered to stop farming when two endangered species were discovered on his farm. The farmer was told he would be allowed to return to farming if he gave the Government 1 square mile of his property and a mitigation fee of $300,000. When the farmer refused this offer, he was fined $300,000. That was 10 years ago. The farmer is still fighting.

A family of cabbage growers cannot farm 450 acres of its farmland because the Army Corps of Engineers declared this acreage to be a wetland. Because of the prohibitive court fees, the family could not afford to challenge the decision.

Close to me, a couple of odd miles away from my farm in Michigan, a farmer had almost one-quarter acre within the boundaries of his otherwise tillable land but that small little strip with a couple of cattails, the farmer had to drive 2 miles around to get to the other side because that farmer was not allowed to plow through it or have

the penalties of losing his Federal farm program payments.

In closing, look, we have got a bill here. If it needs perfecting, we have got essentially an open rule. Let's come up with the amendments to make it better. The point is we have got to do something in this country because we are depriving a lot of people of their living because we are taking away their property.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, I thank the gentleman from Michigan [Mr. CONYERS] for yielding me the time.

Members of the House, this debate was opened by a discussion of a case entitled Bowles versus United States. My friend the gentleman from Florida [Mr. CANADY] called that case to our attention.

I want Members to know a little bit more about Mr. Bowles. Mr. Bowles was a member, in fact an officer of a conservation group in Brazoria County, TX. He was one of the good guys. The group was designed to watch the Corps of Engineers so it did not give permits it should not give out. He was a member of the Texas Nature Conservancy, a good guy. He bought a lot in Brazoria County in a subdivision in 1980. In 1984 when he came to build on that lot, he was told he needed a 404 permit from the Corps of Engineers, a wetlands permit. In 1984, the corps denied him the right to build on his lot even though neighbors had built up next to him all around that subdivision.

He then filed suit in the Court of Claims. Ten years later, in March 1994, Mr. Bowles was finally awarded a judgment against the Government of the United States for the value of his lot. For 10 years our Justice Department, our Government, our Justice Department, fought him in court day and night telling the court we should not have to pay him or if we had to pay him, we should pay him some diminished value of his lot, something like what it was worth after the Government regulated it.

When Judge Loren Smith wrote the decision just last year after 10 years of litigation, Judge Loren Smith said, ''There must be a better way to balance legitimate public goals with the fundamental individual rights. Courts, however, cannot produce comprehensive solutions.''

Judge Loren Smith begged us to have this debate today, begged us to set down the guidelines for Government compensation of private citizens whose property is taken because of Federal regulations. Judge Loren Smith's call for us to act is a call upon all of us to protect, for little landowners like Mr. Bowles, who fought for 10 years and never got past the Court of Claims, for their rights under the fifth amendment.

Most citizens cannot get it after 10 years in the Court of Claims. Most have to go all the way to the Supreme Court, such as Mr. Lucas did from South Carolina. Others are struggling. In the Florida Rock case, it started in 1978, it has been in the circuit court of appeals three times and has been remanded to the lower court. Citizens cannot afford a $500,000 trip through the court system to find out whether the Government took their property, took their farm, took their subdivision lot, took their ranch, took their forestry lands. We ought to have a simpler system for citizens who cannot afford big lawyers, cannot afford to spend 10 years in court, cannot afford $500,000 of court fees. We ought to have a better way for citizens in our country to get their basic rights under the Constitution.

Remember what the court said in Dolan. This is a sacred right, a civil right under the fifth amendment.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. WAMP].

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

Mr. WAMP. Mr. Chairman, I am compelled to take to the well today to speak about private property rights and the pending legislation, H.R. 925, because I believe few issues touch closer to the hearts of most Americans than their right to own their property. It is also the issue that is close to my heart, because I come from a real estate background—that is how I made my living before coming to Congress.

More importantly, it is one of the fundamental rights guaranteed to us by the Constitution, and I ran for Congress on a platform of upholding the Constitution, and, like the rest of my colleagues, took an oath upon taking office that I would uphold that Constitution.

I remind my colleagues of that oath and of the words immortalized in our Constitution, specifically amendments number 5 and 14:

> No person shall be deprived of life, liberty, or *property* [emphasis added] without due process of law; nor shall private property be taken for public use without just compensation.—5th Amendment (part of the Bill of Rights)

This sentiment is reiterated in the 14th amendment, extending that protection to our citizens from that actions of States:

> * * *nor shall any State deprive any person of life, liberty, or *property* [emphasis added], without due process of law (Section 1)* * *. The Congress shall have the power to enforce, by appropriate legislation, the provision of this article. (Section 5)

Clearly, the defining document of our Government seeks to protect the American Dream—to own property, to own land, to have a stake in something that is your own. Congress is supposed to make laws to protect that dream. Clearly, many of the laws Congress has made and the regulations that came out of those laws do just the opposite. H.R. 925, the takings bill, seeks to correct this situation, by treating regulations that render a person's property useless, unsellable, or even worse, into a liability, by treating those regulations as takings of private property and cause for compensation by the Government, as guaranteed by the fifth amendment. Such rules mean that the Government must think twice about the reclassification of land or other property, or at the very least compensate the owners—our citizens—when making those decisions.

Private Property: It is what separates us from those countries that pretended to be democratic, that pretended to be republics, that pretended to be representative, that pretended to be market oriented, that pretended, Mr. Chairman, to be free. I respectfully urge my colleagues to pass H.R. 925.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. I thank the gentleman from Michigan for yielding me the time.

Mr. Chairman, I came to talk a bit about the makings part. We are going to hear takings, takings, takings, but I think unless we pass my amendment, the taxpayer is going to be in the tub for a tremendous amount of money. Because what we forget is very often what the Federal Government is doing also increases the value of land by a significant amount.

There are many areas where I can talk about that. If you look at dredging harbors, if you look at propping up beaches, if you look at planting trees, if you look at creating national parks, building roads, creating accessibility, all of these things give the land around it a much higher value. Is it not interesting that we ignore that?

People will say to me, ''Oh, yeah, but then you tax the increased value.'' Well, the Federal Government does not get that. That is the State government. I think many of the times when what we are going to hear is a taking, we could also flip that and find it as a making. In other words, what the Government might be doing is making the person's property much more valuable.

But the person can say, ''Yeah, but I don't want to use it for that, I don't want to sell it for that. I want to instead be a shepherd and run sheep'' rather than sell the land for something else. So they sue for their lack of ability to run sheep.

That is really phony. You are going to pay for that and you have also got land that is incredibly enhanced.

One of the areas that I thought I would bring to mind is in particular farm subsidies. I do not know if people are aware of this, but it has been proven over and over that farm subsidies annually add $83 billion to $111 billion a year in land values in the United States. That is a lot of money.

Obviously there is a difference between $83 billion and $111 billion, but whichever number you want to pick, economists say that if we did away with farm subsidies that come from the

Federal Government, land properties would drop somewhere in that range.

Obviously it would be a disaster, because banks have money loaned on that basis and so forth. Farm subsidies enhance the average value of the average farm in America somewhere between $120,000 a year and $440,000 a year if you want to break it down to just the average farm in America.

□ 1115

I think it is pretty ridiculous not to recognize this part of it, and I think if we are not careful when we get all done we are going to have one more thing which causes the American people to pay, pay, pay and they never get anything back, and we are going to find just a few people are very enhanced by this, and a few taxpayers are going to be left paying the billions.

I urge Members to listen to this debate very, very carefully.

Mr. Chairman, we will be spending a lot of time talking about takings. But, makings is the other side of this issue. Makings are when actions by Federal agencies increase the value of private land. Makings should be included in the takings debate. See, in many takings cases, the taxpayer will be paying twice. First, to increase the value of the property so that it is useful, then again to compensate the property owner who can't do exactly what they want with it.

The Federal Government engages in myriad activities on a daily basis that increase the value of private property, or make money for private property owners. For example, the Government increases property values when it creates a national park or forest adjacent to one's property. Likewise, when the Army Corps of Engineers creates harbors and navigation channels, restores beaches, or shores up coastlines; the Bureau of Reclamation brings irrigation water at subsidized costs to agricultural property; the Federal Highway Administration provides subsidized access to property that was otherwise inaccessible and previously valueless commercially; the Bureau of Land Management issues permits to graze cattle on Federal lands and the possession of those permits increase the property value of ranches. Federal regulatory action also safeguards property values by agency action to halt or prevent contamination or other degradation to property caused by activities of neighboring property owners.

The largest and most easily quantifiable making that that Federal Government creates for private property owners is the agricultural subsidy program. The taxpayer spends $10 billion on farm subsidies a year, and those subsidies increase the value of farm property by 15–20 percent. Because farming is not as much a family business as it used to be, and is now largely a corporate endeavor, this puts deep pockets in the overalls of a small number of already well-endowed taxpayers.

In other words, farm subsidies make $83 to $111 billion in land values for the 2.9 million farmland owners in the country. And over half of the Nation's farmland is owned by a mere 124,000 property owners. However, the larger the farm, the larger the subsidy.

Let me state that in another way: Farm subsidies enhance the value of the average farm by $120,000 to $440,000. When the farm programs began, 25 percent of the U.S. population lived on farms, and their annual income was less than half that of nonfarm households. Now less than 2 percent of the population lives on farms, and the average income of farm households is now greater than nonfarm households. While the family farm has so far evaded total extinction, the bulk of agricultural business is no longer the picture painted in American Gothic.

Farm subsidies make $1.5 to $2 billion for farmland owners in my State of Colorado in enhanced farmland values. Prices in California are enhanced by up to $8.6 billion. Farmland owners in Illinois and Iowa made up to $7 billion, and in Texas up to $10 billion. In fact, in 7 of the 17 States represented on the House Agriculture Committee, farm subsidy payments from 1985 to 1994 represented more than a quarter of the total farmland value in those States. All due to Government action.

If that weren't enough, under the ''swampbuster'' provision of the 1985 farm bill, we already pay farmland owners not to farm on wetlands. Not plowing wetlands is a precondition to receiving farm subsidies. Farmers who receive subsidies and then want to be compensated for not being able to farm wetlands, are double dipping.

If, under H.R. 925, we compensate farmers for limitations placed on their farmland by Federal regulation it will be the taxpayers, not the farmer's cows that will be milked.

The taxpayer has already paid an average of $10 billion a year into a program that makes farming more profitable, and as a result increases farmers' property values. Now you're asking the taxpayer to pay the farm owner again for a taking based on inflated land prices that the Federal Government created to benefit the farmer?

The only taking going on will be the farmland owners taking their loot to the bank.

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from Idaho [Mr. CRAPO].

Mr. CRAPO. Mr. Chairman, I appreciate the opportunity to address this important issue. People in America understand that our Constitution protects private property. It was one of the basic principles that our Founding Fathers knew must be protected if our Nation and the principles upon which our Nation was built were to survive.

So they put into the Constitution a protection that when the government comes to take the property, the private property of a citizen, that it must compensate them.

What they did not foresee was a regulatory bureaucracy of the kind that we have today that would figure out a new way to get around that protection. Instead of simply coming and taking the property, our Federal regulatory agencies have now developed numerous ways to simply regulate it in a way that gives the benefit to the State of what they need from the private property without actually taking it.

We are seeing regulations grow rapidly that impact the ability of a person to use his or her own private property. In fact there is a joke that has been said that now the right of private property these days is the right to pay property taxes and to use that property in the way that the State or the Federal Government tells you that you must use it.

We certainly are not to that point yet, but we are moving to that point dramatically, and the purpose of this act is to reassert the important principle of private property rights protection.

This act, as has been said, requires that when the Federal Government, through its agency action, regulates private property in a way that reduces its value, that then the Government must pay the private property owner for telling them they must use their private property or not use it in a way for the social benefit of the good of the country, and it must compensate for that private property right.

I know today during the debate we are going to see an assault on this bill. That assault is going to take the form of those who would say that it is going to cost too much.

Frankly, we have agencies today that do not look at the cost to the private sector, to the private property rights owners and, yes, this act is going to require them to look at it. But I am confident that creative people will figure out ways to accomplish the purposes of the agencies under the law without disregarding private property rights. And if it becomes absolutely necessary, that no other alternative can be found, then let us use the private property rights provision in this act to compensate for whatever may be done.

There is also going to be a subtle but nevertheless an attack on the concept of private property, and some will be so bold as to say it is a dated, antiquated notion and we ought to proceed and let our society proceed to undercut the benefit of that principle. You will not hear that said so directly today, but you will hear many arguments like the ones just heard that suggest that we should pay for the benefits that are provided by government to people as well as the decreases in the values.

We have to recognize today that the principle of private property rights was one of the key principles upon which this Nation was founded, and recognize it is critical, and I urge all Members in the Chamber to support it as we proceed.

Mr. CONYERS. Mr. Chairman, how much time is remaining on this side?

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] has 6 minutes remaining, and the gentleman from Florida [Mr. CANADY] has 7½ minutes remaining.

Mr. CONYERS. I yield myself such time as I may consume.

Mr. Chairman, the simple fact of the matter is the takings legislation is a budget buster. We have already been told by the Office of Management and Budget that it will increase the deficit by at least several billion dollars during the fiscal years 1995 to 1998 alone.

The bill contains no provisions to offset the increased deficit spending.

It creates, in effect, a new entitlement program that will surely drive up the deficit just as we are trying to do the opposite. That is why we had to have so many waivers of the budget bill to even get this measure up on the floor.

It will require a whole new class of Federal officials to evaluate claims and will lead to much more bureaucracy, redtape, and litigations that will be borne by ordinary American taxpayers.

In effect, H.R. 925 is a reverse Robin Hood. Ordinary Americans will end up paying to enrich wealthy speculators and the 65 million homeowners would lose because their tax dollars would go to pay off speculators or also their property values would fall because of reduced health, safety, and environmental protection that would otherwise go to their communities.

The takings legislation is supported by the mining companies, the developers, the industrial polluters. It is opposed by 30 State attorneys general. Forty States have already rejected takings legislation and even 9 have gone as far as to adopt the assessment legislation proposed and similar to the Porter-Farr measure.

Please, let us not be fooled by the biggest ripoff in the Contract With America. We do not need takings legislation that goes too far, as this does.

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, I yield 1 minute to the gentlewoman from Washington [Mrs. SMITH].

Mrs. SMITH of Washington. Mr. Chairman, I think as we listen to the words today we have to listen very carefully, because we just heard that the takings legislation is a budget buster. Now let us think about that.

If they believe there is that much taking of American people's property that it is going to cost billions for the government to pay these property owners, we are basically standing here and saying that the government as we are standing is robbing the American people and violating the constitutional right to keep property, to own property which is unique in the United States.

We are a people that can own property free from the government taking it from us, or we used to be.

Now listen very carefully today. If they say that if we implement this bill it will cost billions of dollars, they have to also say very clearly that they are robbing the American people of billions of dollars every day and violating their constitutional rights.

Mr. CONYERS. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, we have two points of view here, one that the American people are being robbed, and the second one is that the 65 million homeowners are going to be diminished because their tax dollars are going to go out to pay speculators on their property values.

I think that the attorneys general in the several States and the others who have joined in opposition to this bill are really more aware of the fact that this is going to hurt property owners rather than help them.

Forty States have rejected takings legislation, 32 attorneys general have opposed it, and this measure is opposed with letters that have just come in from throughout the government. From the Environmental Protection Agency we have a statement in opposition. The Interior Department has weighed in. We have comments from others as well that we are going to make available to the Members as we come across them. The Department of Justice has now taken a position. So we know where the interests of the ordinary homeowners lie; they lie in opposition to this big ripoff for speculators, for polluters and for mining interests in America.

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. Mr. Chairman, I appreciate the gentleman from Florida yielding time to me.

Mr. Chairman, today is Texas Independence Day, a fitting occasion for us to consider the Private Property Protection Act of 1995. This bill stands for government accountability, freedom, and fairness, essential virtues for which our forebearers gave their lives.

As we consider this bill, it's worth remembering what this legislation does not do. It does not harm our ability to protect the environment. If someone thinks that preservation of the bald eagle, protection of the spotted owl, and conservation of certain wetlands are important, they ought to be important enough to pay for.

What is not fair is to ride roughshod over certain people's rights in order to obtain environmental benefits at zero cost. It's not right to ask individual landowners who own the property where the golden cheeked warbler may wish to, for example, to shoulder the entire costs of protecting the bird.

Private property rights are not about harming the environment. They are about fundamental fairness—asking the government to share the costs of public benefits.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from Mississippi [Mr. TAYLOR].

Mr. TAYLOR of Mississippi. Mr. Chairman, I would like to engage the sponsor of the bill in a colloquy. I am particularly much aware of the Federal flood insurance program, since a good portion of my district was devastated during Hurricane Camille, after Hurricane Frederick. As the gentleman knows from the Federal flood insurance program, the government goes in and sets a minimum at which your house can be built, so many feet off the ground, so that the people of this country are not turning around and reimbursing the same people over and over every time there is a high tide.

It has turned out to be I think a very good program and it has helped people like myself to be able to live where I live, but also set some reasonable guidelines as to how I can construct my house. I think it is a two-way street.

My question is when the Federal Government, through the Federal flood insurance program, comes in and says your minimum structure will look like this, your minimal floor will be so many feet off the ground so as to prevent it from flooding every time there is a high tide, does that constitute a taking, because it has increased the cost of my building my house?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, that issue, I think, will be clearly addressed by the Tauzin amendment which limits the scope of the coverage of the bill to identified Federal programs, and the programs that are identified there would not include the Federal flood insurance program. So any concern the gentleman would have I think would be entirely eliminated by the Tauzin amendment, and that is one of the reasons we supported the Tauzin amendment. I think it eliminates some concerns about unintended consequences that this legislation might have, because we identify the specific programs that are affected.

Mr. TAYLOR of Mississippi. But for the sake of getting this on the record, it is not the gentleman's intention through this legislation to ask the people of Iowa, the people of Kentucky, all those people who live in areas that do not flood, to subsidize people for building houses at sea level, knowing that every time there is a heavy rain, every time there is a high tide, they are going to be going in changing all the carpets and sheet rock and everything?

Mr. CANADY of Florida. That is absolutely not our intention. The gentleman is absolutely correct.

Mr. Chairman, I yield 30 seconds to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding me this time. I want to associate myself with the remarks of the gentlewoman from Washington [Mrs. SMITH] who spoke just a few minutes ago and to add to her commentary the point that this is not about tax dollars going to speculators, as has been indicated by the other side, but rather, passage of a bill that will act as a deterrent to this rampant takings picnic on which the agencies have embarked over the past years.

So, in the long run, there will be less tax money used for condemnations and eminent domain when the agencies realize that they should not undertake the odious form of takings that we have suffered too long.

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Mr. CANADY of Florida. Mr. Chairman, I yield 5 minutes, the remainder of my time, to the gentleman from California [Mr. POMBO].

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

Mr. POMBO. Mr. Chairman, I thank the gentleman for yielding.

I would like to close out this debate on general debate on why this bill has come up to the floor in the way it has and why it is here at all.

Several years ago, as a cattleman in the Central Valley in California, I was faced with the frustrations of dealing with the Federal Government and the ever growing bureaucracy, and as I became more and more involved with what was going on with our Federal Government, I made the decision to come here and to fight for the property rights of the people that I represent and the people across this country.

Over the last 2 years that I have been here, I have pleaded and I have begged and I have tried to compromise on every piece of legislation that has come through here that affects private property. And it is being in the minority party and what at that time was the minority mindset in Washington, not across the country, but here, it was defeated time and time again, and in our dealings with people like the gentleman from Louisiana [Mr. TAUZIN], the gentleman from Texas [Mr. FIELDS], and the gentleman from Texas [Mr. SMITH], who carried those issues for years, we were defeated over and over again. And we would say, ''Look, if you guys do it this way, you are going to take away people's private property rights. You are making it almost impossible for someone to continue to farm, because their ranch is not worth anything anymore. You are forcing bankruptcies across this country because of the actions that are happening on this floor, because of the decisions that are made in the ivory towers in Washington that say that we know better than the people out in the States, that we know better than the people that are farming the land and ranching the land.''

Well, you do not know better. Because my family has been on the same ranch for four generations, and we take care of it. And part of my heritage is the wildlife that is on that property, and we take care of it, and you are taking that away from us through your regulations and your laws that you have passed in this place in the past several years.

That is why this country stood up and said, ''Enough is enough. If you take away someone's private property, you have got to pay them for that.'' Our forefathers understood that. That is why they put it in as a civil right in our Constitution that you cannot take away people's private property no matter what the goal.

Now, this bill, I admit, is a compromise. It is not what I wanted to do. I wanted to cover all private property, and I wanted to cover all Federal regulations. But I realize that we would not pass that. So we did compromise. We did narrow the scope.

The gentleman from Louisiana [Mr. TAUZIN] is going to bring up the amendment that narrows the scope. We compromised on what a threshold was. We compromised on what private property was. We narrowed this down dramatically, so that it only affected four major regulatory areas, and that it only had a threshold of 10 percent, because I contend that if you take away the value of someone's car, you ought to pay them for it.

I think that our forefathers were very clear about what they meant.

Now, we are hearing all of this talk about this is going to be a budget buster. In fact, I heard someone a few minutes ago say this is going to cost billions of dollars. Well, if it did cost billions of dollars, are you admitting that you are stealing billions of dollars worth of private property and not compensating for it? Is that what it is? Well, that is not OK. That is not all right.

If you take away someone's private property, you have to pay them for it, and you set up all the regulatory morass and all the judicial steps you want, it is still wrong, and we are trying to rectify that situation. We are trying to say that if you take away someone's private property, that you have to compensate them for it. It is a very simple concept that was grasped by our forefathers over 200 years ago that you cannot, as a tyrannical government, come in and take something away from an individual and not pay them for it.

This is probably the most important vote that we have in the Contract With America to me, and I believe that this has to pass, and it will pass.

I urge your support.

Mr. GEJDENSON. Mr. Chairman, I rise in opposition to H.R. 925 and urge my colleagues to defeat this ill-conceived measure. I want to thank the gentleman from Massachusetts [Mr. FRANK] and the gentleman from California [Mr. MILLER] for their efforts to point out the substantial flaws in this bill.

H.R. 925, as reported by the Judiciary Committee, requires the Federal Government to compensate any property owner whose property is devalued by 10 percent or more as the result of any agency action to limit its use in virtually any way. While the Federal Government has a special fund to pay compensation claims, this bill requires claims to be paid out of an agency's budget.

I have several concerns about this bill. First and foremost, it is at odds with the fifth amendment and decades of consistent Supreme Court decisions. I firmly believe that the Government must compensate property owners when it takes their property for public purposes as required by the fifth amendment. When we take a parcel of land to build a highway or for another project it is only appropriate to compensate the owner of that property.

However, the Supreme Court has consistently ruled that the right to compensation does not apply when the owner retains ownership of a parcel and can continue to derive economic benefit from it. The Supreme Court has ruled that compensation is required when a Federal action eliminates every conceivable use of a piece of property not just the most valuable possible use. In addition, the Court has held that a taking can only occur when the entire piece of property is affected not merely a portion of it. Furthermore, many lower courts have consistently ruled that a taking cannot occur if a landowner does not have a formal development plan at the time the restrictions are put into place.

Although some argue that the Court dramatically liberalized the definition of takings in the 1980's, a close review indicates that the major tenets remain unchanged. In Keystone Bituminous Coal Association v. DeBenedictis in 1987, the Court confirmed that the decision on whether or not a taking has occurred must be based on the effects of the action on the property as a whole. In the Lucas case in 1992, the Court reiterated the premise that a taking only occurs when all economic uses of a parcel are barred by a particular restriction. This bill sweeps longstanding precedent away and replaces it with a framework that the Supreme Court and lower courts have repeatedly rejected because it is at odds with what our Founding Fathers intended.

This leads to my second concern that the proponents of this legislation do not understand all its possible effects. They cannot tell us definitively what agency actions will or will not require compensation. The language of this bill is so vague and general that I believe it is impossible to determine which agency actions will be defined as working to prevent an identifiable hazard to public health and not require compensation. The bill does not define this concept and provides agencies with no guidance whatsoever. I believe that agencies will be so fearful of massive compensation claims that they will narrowly interpret this concept, thereby jeopardizing public health. The bill is purposefully vague to force agencies to constantly second-guess their actions and ultimately limit few activities.

Moreover, the bill's sponsors cannot tell us exactly how much it will cost the American taxpayer. The absence of accurate cost estimates is very disturbing to me especially as this body considers a multibillion rescission package which falls disproportionately on low-income Americans and a balanced budget amendment to the Constitution which could require us to cut the budget by more than $1 trillion over the next several years. While all these discussions about cutting government spending are going on, my Republican colleagues are moving forward with a bill that could cost the American people untold hundreds of millions of dollars. It is imperative that our colleagues understand that the costs of this bill will be borne by Americans coast to coast who will very likely be adversely affected by actions of other property owners. The vast majority of Americans will be required to pay a very small number of landowners not to take actions which could jeopardize public health, safety and the environment. It is outrageous to ask the American people to pay hundreds of millions of dollars to developers and large companies so that they won't take actions which put the public at risk.

Finally, this bill has the potential to undermine an agency's ability to carry out its statutory duties because it requires compensation from agency's budgets rather than from the existing government maintained compensation fund. The bill does not mention limiting compensation if it would adversely affect an agency's ability to carry out its duties. Instead, it would require an agency to shift funds from programs to pay unprecedented compensation claims. Claims against the Environmental Protection Agency could divert funds from efforts to protect air and water quality and clean up Superfund hazardous waste sites. Claims against the Department of Interior could reduce funding for our national parks and recreation areas. While the bill allows agencies to come to Congress for additional money, it is disingenuous to suggest that funds will be forthcoming as we are moving to slash Federal spending. Once again, these funding provisions demonstrate that this bill is a veiled attack on regulatory action of virtually any type. Agencies are being given the unmistakable signal that they will be penalized if they attempt to regulate land use.

Mr. Chairmen. H.R. 925 is a massive new entitlement for a select few and will be paid for by ordinary Americans who will ultimately feel the effects of allowing landowners to fill wetlands or mine habitat of endangered species. Finally, H.R. 925 is a budget buster purely and simply. If we truly want to protect the American taxpayers, we should defeat this measure.

Mr. FAZIO of California. Mr. Chairman, I am on record as being a strong supporter of private property rights. Private property rights are an integral part of the protections guaranteed to us all by the Constitution of the United States.

Each of us in this Chamber can point to examples in our own districts where property rights have been stepped upon by overzealous governmental intrusions. There must be a change.

As a strong supporter of property rights, it is ironic that this legislation has been so difficult to embrace enthusiastically.

We can debate whether the American people know or care about the details of the Contract With America. In my view, those details are not permeating beyond the beltway.

Setting that question aside, the sketchy nature of the contract is an advantage for proponents of the unamended bill because this bill is not the bill Republicans set forth in the Contract With America. Simply put, the bill, as brought to the floor, represents an extreme position, not the more reasonable position set forth in the Contract With America.

The bill is more extreme than the bill introduced by the Senate majority leader. It's more extreme than the position taken by Ronald Reagan in his 1988 Executive order. And, the bill is more extreme than the Contract With America in two fundamental ways.

First, the bill requires the Federal Government to compensate owners of private property whenever a Federal agency's action decreases the fair market value of their property by 10 percent or more. The Key here is the 10-percent figure.

On the other hand, the Contract With America called for compensation when the property value was diminished by one-third, which is 33 percent. The 33-percent figure in the contract was replaced with the 10 percent in the bill for purely political purposes.

The Republican leadership wants to set the mark so low that reasonable people who support property rights will have to give serious consideration to the impact of the 10-percent threshold.

Lowering the threshold to 10 percent flies in the face of two centuries of Supreme Court precedent. Both proponents and opponents of the bill agree that takings clause jurisprudence is too complicated and unclear. Nevertheless, the 10-percent threshold is not the answer. It was meant to force even the most staunch private property rights advocates like me to consider the crippling effect of the 10-percent rule.

Mr. TAUZIN from Louisiana is without a doubt the most adamant supporter of private property rights in this body. As a Member of the majority and now the minority, Mr. TAUZIN is recognized by Members of both parties as the leading advocate for property rights. Yet, even Mr. TAUZIN thinks that the 10 percent threshold is too restrictive.

Real reformers care more about giving small landowners regulatory relief than they care about political agendas. I want real improvement, not some purely symbolic act that is sure to die in the Senate.

Second, the bill differs from the Contract With America in the scope of the laws affected. The bill applies to any Federal law, not just those where there has been abuse. In contrast, the Contract With America was limited to the wetlands provisions of the endangered species act, the clean water act, reclamation law, and the farm bill.

Again, those of us who want real reform believe that we should focus on the laws that are the real source of the our constituents' frustration. The bill's shotgun approach misses the real target—the laws where abuse has occured.

I am glad that this House considered and passed the Tauzin amendment.

By passing the Tauzin amendment, this House sent a strong signal that we want real reform. As amended, the bill now requires the Federal Government to compensate owners of private property whenever a Federal agency's action decreases the fair market value of their property by 50 percent or more.

In addition, the Tauzin amendment limits the scope of the bill to the major laws that have been abused—the Endangered Species Act, the Clean Water Act, reclamation law, and the farm bill.

My constituents have placed their trust in me to be their voice on these issues. This bill still needs more work. We will have an opportunity to make needed refinements if the Senate passes a similar version of this bill and brings it back to the House for conference.

My vote here on the floor of the House of Representatives is a great honor and tremendous responsibility—one that I take very seriously. I am voting for final passage of H.R. 925 in support of the community leaders, farmers, small business owners, and individual citizens in my district who have expressed their frustration with regulatory burdens.

Mr. MINETA. Mr. Chairman, I rise in strong opposition to the bill H.R. 925, the Private Property Protection Act of 1995.

Mr. Chairman, I firmly believe that property rights is one of the most important constitutional guarantees we have as Americans. I am pleased to say that we currently have a balanced system that adequately safeguards those rights.

To protect property owners against unreasonable Government regulation, the courts have developed, over a more than 70-year span, an extensive body of law to address the issue of regulatory takings. They have generally taken a fact-intensive, case-by-case approach to determine if regulatory limitations are severe enough to warrant compensation for the owner.

The courts have concluded that Government regulation would have to result in an almost total elimination of value of the entire property before they would find that a taking has occurred. This is the current constitutional standard as established by the Supreme Court.

Under this bill, a mere 10-percent reduction in the value of that portion of the property which is affected by a regulation would trigger compensation. The 10-percent cutoff is one of many provisions that are fertile grounds for litigation, especially in view of the variability in appraisals. For example, the courts will have to determine whether the diminution was 11 percent or only 9 percent.

This drastic lowering of the threshold would encourage developers to deliberately propose the most damaging use of property just to receive payments in exchange for more responsible and still profitable use.

Proponents of this bill in committee even rejected an amendment that would preclude payment to an owner who, at the time of acquiring the property, knew or should have known that the use of the property would be limited by an agency action. So now large land speculators can go scouring the country buying up properties that are likely to be regulated, with the expectation of demanding ransom from the Federal Treasury. Why should we create this entitlement to pay fraudulent claims?

At the other extreme, the bill imposes unreasonable restrictions on the use of private property. It does so by subjecting a subsequent purchaser to limitations on land use even where the condition that gave rise to the limitation no longer exists, and the purchase price reflects that. And there is no requirement that subsequent purchasers be notified that the property they are buying is subject to a limitation that can be lifted only if a previous owner disgorges compensation he has received in the past.

The exclusions for uses considered to be nuisances under State or local law, or for regulations to prevent identifiable public health or safety hazards or damage to neighboring properties, are inadequate to protect public health and safety. Federal environmental laws are often enacted because not all pollution is unlawful or is a nuisance under State or local law. Why do taxpayers have to bribe polluters in order to stop their anti-social behavior?

The bill puts the Federal Government in the untenable position of having to pay compensation no matter what course it adopts. Denying a landfill permit to the owner of the proposed site would trigger compensation. But granting the permit may prompt nearby residents to assert taking claims based on reduction in their property value.

Implementing the provisions in this legislation would mean creating a whole new bureaucracy to handle the anticipated mountain of claims. Imagine the red tape.

In addition, substantial resources are required for endless litigation—for example, over such things as whether or not a limitation falls within the exemptions. These costs, when added to the costs of compensation, make the possibility of balancing the budget a true fantasy.

This bill, therefore, advances a radical new theory that would severely constrain the government's ability to protect public health and safety and the environment. It would create an entitlement for large property owners, tremendous windfalls for speculative developers, and perverse incentives for polluters. It would add layers of bureaucracy, realms of red tape, and enormous fiscal demands, without corresponding benefits.

That's why the National Conference of State Legislatures, the National Governors' Association, the National League of Cities, the Western Land Commissioners Association and 33 State attorneys general are all against this legislation.

Why are we not listening to the States, who strenuously oppose this legislation? States recognize that the Federal Government plays an important role in protecting citizens, and that the property rights of certain landowners must be balanced against the property and other rights of their neighbors.

As cautioned in testimony by the National Conference of State Legislatures, ''Compensation-type taking legislation not only has the ability to weaken the Federal Government's resolve to apply its laws, but it also has the ability to financially cripple the Federal agencies which implement such laws.''

We have been accepting States' views in considering other legislation recently. Why are States' views not equally deserving of our consideration today?

We should heed the States' advise and vote ''no'' on this bill.

Mr. EMERSON. Mr. Chairman, I rise today in strong support of both H.R. 925, and of the voices of private property owners that is being heard loud and clear by the conservative majority in Congress today. Clearly, the Fifth Amendment to the U.S. Constitution is one of the greatest liberties ever given to the free world. However, in recent years, private landowners have seen the Federal Government and radical ''preservationist'' groups infringing on private property rights protected by the Fifth Amendment.

The Fifth Amendment of the U.S. Constitution provides in part that ''no person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.'' Today, we continue to see a growing effort to make private property owners bear the burden and costs of government decisions—decisions that are ostensibly made in the interest of the public at large, but reach beyond the protection of public health and safety and other appropriate, historically sanctioned purposes.

Indeed, for too long, our private property protections have been eroded and our basic constitutional liberty—the protection of private property rights—has been undermined by a largely unelected, ivory-tower elitist class centered in Washington. Now, we have the opportunity to preserve our long-cherished liberties by supporting H.R. 925 and the Tauzin substitute.

The Supreme Court has recently shown outright support for private property right protections. Unfortunately, private land owners are still subject to harassment from elements of the Clinton administration. This very day, unelected government officials from the EPA and the Interior Department in particular, along with the Washington environmental lobby are pushing the ''communitarian'' approach to governing, making private property owners bear the burdens and costs of what are really subjective government land-use decisions.

Mr. Chairman, plain and simply, private property rights are the foundation for all economic progress and this premise must be maintained. Farmers, ranchers, small businesses, and related enterprises must feel secure in the ability to retain the fruits of their labors—not further frustrated by being forced to grapple with further regulatory burdens. Protecting these liberties for generations of Missourians and Americans to come is my goal that we can help achieve through successful passage of H.R. 925.

Mr. RICHARDSON. Mr. Chairman, as approved by a Judiciary Subcommittee last week, H.R. 925 would allow any landowner claiming as little as 10 percent diminishment in their property value as a result of a Federal Government regulation to sue the Government for damages.

The Tauzin amendment is even worse. It maintains the 10 percent level and adds a new provision that would force the Federal Government to buy property from landowners if a regulation diminishes the value of the property by more than 50 percent.

This blanket coverage in H.R. 925 will cost Federal, State and local governments billions of dollars in new taxes. American taxpayers just cannot afford this price tag.

H.R. 925 is a prime example of government bloat—it is a bureaucrats' job employment bill that jacks up costs, creates an even bigger government and increases red tape.

In short, Mr. Chairman, it wields a meat cleaver when a scalpel would be more appropriate.

This broad application of authority for landowners suits means that the Federal Government will be on the hook for billions of dollars in court fines from individuals who claim that any Federal regulation—even reasonable ones such as those that protect drinking water and clean air—has diminished the value of their property.

And of course, the people who would bear the brunt of this financial foolishness are the same people who elected us: the American taxpayers.

But passage of H.R. 925 will be a costly mistake for America for more than just budgetary reasons.

Takings means more than red tape, big government and bloated bureaucracy. It could also cost us basic protections that safeguard public health, protect workplace safety and ensure the value of our homes and our families.

For example, takings legislation could result in the weakening of Federal protections for safe drinking water, food inspection, and workplace safety standards, and would even affect local zoning regulations which protect the values of our homes and our property.

H.R. 925 replaces the Federal policy of ''the polluter pays'' with ''the people pay.'' The American people pay.

This takings legislation would require the Federal Government to pay people not to pollute.

For example, if a landowner decided to construct an incinerator on private property adjacent to a school or hospital and Federal regulations prohibited such construction, the Federal government could be forced to pay the landowner not to construct the incinerator because such a prohibition represented a diminishment of the value of his property.

This takings bill is supported by big business, big developers and big industrial polluters who have said by their support of this legislation that taxpayers should be forced to pay them to follow basic health and safety laws.

H.R. 925, does not explicitly limit compensation to property within the United States. It could require compensation for agency actions that affect property overseas.

H.R. 925 is not explicitly limited to property owned by individual American citizens. This could mean that H.R. 925 would require payments to domestic or foreign corporations. Not average Americans, not the little guy, but big corporations that are not necessarily even in this country.

H.R. 925 sets no limit on the amount to be paid for government limits on any individual property. This means that individuals could receive multiple compensation for different government actions on the same property.

H.R. 925 is not a remedy for small landowners and average Americans, its an entitlement program for big businesses.

Even if we add the Tauzin language to H.R. 925, and I don't believe we should, this legislation would force the American taxpayer to sign a blank check that could bankrupt the U.S. Treasury.

The Congressional Budget Office and the Congressional Research Service have both estimated the cost of payments due to government actions taken under the wetlands provisions of Section 404 of the Clean Water Act alone to be in the billions of dollars.

H.R. 925 is a solution in search of a problem. It should be renamed the Bureaucrat and Attorney Full Employment Act. It represents an assault on the Treasury that our pocketbooks cannot afford, and an assault on basic health and safety standards that our people will not stand for.

I urge a no vote on the Tauzin amendment and a no vote on this ill-advised sham reform legislation.

Mr. PACKARD. Mr. Chairman, for the past 40 years big government has ridden roughshod over our private property rights. The American people suffer the consequences as overzealous Federal bureaucrats administer costly, outdated regulations. Our Republican Contract With America works to restore our Founding Fathers' conviction that Government act to protect our rights—not to violate them.

Ownership of private property lies at the heart of the human experience. Burdensome and costly regulations assault private property rights. Government intrusion devalues land and infringes upon the fundamental right of private citizens to own land.

Our Republican regulatory reforms work to compensate landowners when they are denied the reasonable use of their land by overreaching Federal regulations. The Private Property Protection Act, H.R. 925, allows property owners to seek compensation when a Federal regulatory action has reduced the fair market

value of their property by 10 percent or more. This bill provides property owners with a more direct means of guaranteeing the constitutional right to compensation for property takings.

Private property owners have paid the tab for onerous Government regulations for too long. The regulatory burden will continue to rise if we do not act now. The Private Property Protection Act establishes a clear pay back procedure. It forces Federal agencies to prioritize their needs and makes them accountable to the needs of private property owners.

Mr. Chairman, the Private Property Protection Act ensures that landowner rights will be protected, not abrogated by Federal agencies. The new Republican-controlled Congress continues to work for a smaller, less costly, and less intrusive Government.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the bill is considered as an original bill for the purpose of amendment and is considered as having been read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 925

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 ''Private Property Protection Act of 1995''.

SEC. 2. RIGHT TO COMPENSATION.

(a) IN GENERAL.—The Federal Government shall compensate an owner of property whose use of that property has been limited by an agency action that diminishes the fair market value of that property by 10 percent or more. The amount of the compensation shall equal the diminution in value of the property that resulted from the agency action.

(b) DURATION OF LIMITATION ON USE.—Property with respect to which compensation has been paid under this Act shall not thereafter be used to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

SEC. 3. EFFECT OF STATE LAW.

No compensation shall be made under this Act if the use limited by Federal agency action is proscribed under the law of the State in which the property is located (other than a proscription required by a Federal law, either directly or as a condition for assistance). If a use is a nuisance as defined by the law of a State or is prohibited under a local zoning ordinance, that use is proscribed for the purposes of this subsection.

SEC. 4. EXCEPTION.

(a) PREVENTION OF HAZARD TO HEALTH AND SAFETY OR DAMAGE TO SPECIFIC PROPERTY.—No compensation shall be made under this Act with respect to an agency action the purpose of which is to prevent an indentifiable—

(1) hazard to public health or safety; or

(2) damage to specific property other than the property whose use is limited.

(b) NAVIGATIONAL SERVITUDE.—No compensation shall be made under this Act with respect to an agency action pursuant to the Federal navigational servitude.

SEC. 5. PROCEDURE.

(a) REQUEST OF OWNER.—An owner seeking compensation under this Act shall make a written request for compensation to the agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

(b) NEGOTIATIONS.—The agency may bargain with that owner to establish the amount of compensation. If the agency and the owner agree to such an amount, the agency shall promptly pay the owner the amount agreed upon.

(c) CHOICE OF REMEDIES.—If, not later than 180 days after the written request is made, the parties do not come to an agreement, the owner may choose to take the issue to binding arbitration or seek compensation in a civil action.

(d) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration shall include a reasonable attorney's fee and appraisal fees. The agency shall promptly pay any award made to the owner.

(e) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this section, may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and appraisal fees. The court shall award interest on the amount of any compensation from the time of the limitation.

(f) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

SEC. 6. DEFINITIONS.

For the purposes of this Act—

(1) the term ''property'' means land and includes the right to use or receive water;

(2) a use of property is limited by an agency action if a particular legal right to use that property no longer exists because of the action;

(3) the term ''agency action'' has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency;

(4) the term ''agency'' has the meaning given that term in section 551 of title 5, United States Code;

(5) the term ''State'' includes the District of Columbia, Puerto Rico, and any other territory or possession of the Untied States; and

(6) the term ''law of the State'' includes the law of a political subdivision of a State.

The CHAIRMAN. The bill will be considered for amendment under the 5-minute rule for a period not to exceed 12 hours.

No amendment to the committee amendment in the nature of a substitute made in order as original text shall be in order unless printed in the portion of the CONGRESSIONAL RECORD designated for that purpose in clause 6 of rule XXIII before the commencement of consideration of the bill for amendment. Those amendments will be considered as having been read. Second degree amendments offered to the Canady amendment, if offered, are not required to be printed in the RECORD and must be read unless they happen to be so printed.

Pending the consideration of the amendment in the nature of a substitute printed in House Report 104–61 by the gentleman from Florida [Mr. CANADY] and before consideration of any other amendment thereto, it shall be in order to consider the amendment printed in that report by the gentleman from Louisiana [Mr. TAUZIN] or a designee.

Are there any amendments to the bill?

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA

Mr. CANADY of Florida. Mr. Chairman, I offer an amendment in the nature of a substitute made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment in the nature of a substitute offered by Mr. Canady of Florida: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Private Property Protection Act of 1995''.

SEC. 2. FEDERAL POLICY AND DIRECTION.

(a) GENERAL POLICY.—It is the policy of the Federal Government that no law or agency action should limit the use of privately owned property so as to diminish its value.

(b) APPLICATION TO FEDERAL AGENCY ACTION.—Each Federal agency, officer, and employee should exercise Federal authority to ensure that agency action will not limit the use of privately owned property so as to diminish its value.

SEC. 3. RIGHT TO COMPENSATION.

(A) IN GENERAL.—The Federal Government shall compensate an owner of property whose use of any portion of that property has been limited by an agency action that diminishes the fair market value of that portion by 10 percent or more. The amount of the compensation shall equal the diminution in value that resulted from the agency action.

(b) DURATION OF LIMITATION ON USE.—Property with respect to which compensation has been paid under this Act shall not thereafter be used contrary to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

SEC. 4. EFFECT OF STATE LAW.

No compensation shall be made under this Act if the use limited by Federal agency action is proscribed under the law of the State

in which the property is located (other than a proscription required by a Federal law, either directly or as a condition for assistance). If a use is a nuisance as defined by the law of a State or is prohibited under a local zoning ordinance, that use is proscribed for the purposes of this subsection.

SEC. 5. EXCEPTIONS.

(a) PREVENTION OF HAZARD TO HEALTH OR SAFETY OR DAMAGE TO SPECIFIC PROPERTY.—No compensation shall be made under this Act with respect to an agency action the primary purpose of which is to prevent an identifiable—

(1) hazard to public health or safety; or

(2) damage to specific property other than the property whose use is limited.

(b) NAVIGATION SERVITUDE.—No compensation shall be made under this Act with respect to an agency action pursuant to the Federal navigation servitude, as defined by the courts of the United States, except to the extent such servitude is interpreted to apply to wetlands.

SEC. 6. PROCEDURE.

(a) REQUEST OF OWNER.—An owner seeking compensation under this Act shall make a written request for compensation to the agency whose agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

(b) NEGOTIATIONS.—The agency may bargain with that owner to establish the amount of the compensation. If the agency and the owner agree to such an amount, the agency shall promptly pay the owner the amount agreed upon.

(c) CHOICE OF REMEDIES.—If, not later than 180 days after the written request is made, the parties do not come to an agreement as to the right to and amount of compensation, the owner may choose to take the matter to binding arbitration or seek compensation in a civil action.

(d) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration shall include a reasonable attorney's fee and other arbitration costs (including appraisal fees). The agency shall promptly pay any award made to the owner.

(e) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this section, may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and other litigation costs (including appraisal fees). The court shall award interest on the amount of any compensation from the time of the limitation.

(f) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

SEC. 7. LIMITATION.

Notwithstanding any other provision of law, any obligation of the United States to make any payment under this Act shall be subject to the availability of appropriations.

SEC. 8. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to limit any right to compensation that exists under the Constitution or under other laws of the United States.

SEC. 9. DEFINITIONS.

For the purposes of this Act—

(1) the term ''property'' means land and includes the right to use or receive water;

(2) a use of property is limited by an agency action if a particular legal right to use that property no longer exists because of the action;

(3) the term ''agency action'' has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency;

(4) the term ''agency'' has the meaning given that term in section 551 of title 5, United States Code;

(5) the term ''State'' includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States; and

(6) the term ''law of the State'' includes the law of a political subdivision of a State.

Mr. CANADY of Florida. Mr. Chairman, I rise in support of my amendment in the nature of a substitute to H.R. 925.

Supreme Court Justice Joseph Story many years ago stated that, ''One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature and the rulers.''

Section two of my substitute amendment establishes the general policy that no Federal law or agency action should limit the use of privately owned property so as to significantly diminish its value. It sends a clear message from Congress to Federal agencies that we aim to be a good government in which justice is fairly administered, and therefore, are determined that private property not be subjected to the will or caprice of any agencies.

The threshold diminution in property value required for compensation in my amendment is the same as the threshold in H.R. 925, but my amendment provides that the diminution in value applies to the portion of the property affected by the agency action.

My amendment also clarifies that the payment of compensation to a property owner must come from the appropriations of the agency whose action resulted in the limitation on the use of the property.

If the agency does not have sufficient funds to compensate the owner, the agency head is required to seek the appropriation of such funds in the next fiscal year. Contrary to the claims of some opponents of the bill, it does not create a new entitlement. This point is made clear beyond any doubt by the language of section 7 of my amendment. That section states unequivocally that ''any obligation of the United States to make any payment under this Act shall be subject to the availability of appropriations.''

The payment provision is vital to the legislation because it will force agencies to recognize that when they limit the use of an owner's property, there are economic consequences. Agencies will have to weigh the benefits and costs of their actions carefully—paying close attention to the impact of those actions on individuals and the general public. Agencies also will be more accountable to Congress, and therefore, will be more likely to carry out the true intent of the statutes they are charged with enforcing—rather than continually extending their bureaucratic reach.

The amendment also contains a provision which explicitly provides that nothing in the act ''shall be construed to limit any right to compensation that exists under the Compensation or under other laws of the United States.'' This makes abundantly clear that bill will not supplant remedies that are currently available to landowners.

Mr. TAUZIN will offer an amendment to my substitute amendment. Most importantly, Mr. TAUZIN's amendment will limit the scope of the bill to actions carried out under specified regulatory programs—namely, the Endangered Species Act, wetlands protection provisions, and particular programs that affect the right to use water.

Together, my amendment and Mr. TAUZIN's amendment form a bipartisan compromise on the Private Property Protection Act. The compromise places the threshold diminution in property value required for compensation at 10 percent of the portion of property affected, but also allows a property owner to force the Federal Government to buy the portion of property affected outright if that portion's value is diminished by 50 percent or more.

Members on both sides of the aisle who are committed to the protection of property rights support the compromise legislation. It provides a workable way to ensure that property owners receive compensation when federal regulation causes a significant reduction in the market value of the owner's property.

I urge my colleagues to support my substitute amendment.

Mr. Chairman, I believe this is longoverdue legislation. This legislation is being brought to this floor now after many years, after languishing in this Congress without so much as a hearing in the Committee on the Judiciary. We are moving on this because this is important to the people of America. It is important to vindicating individual rights, and I would urge my colleagues to support my substitute amendment as well as the Tauzin amendment as we move forward with consideration of this legislation.

AMENDMENT OFFERED BY MR. TAUZIN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA

Mr. TAUZIN. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment. The text of the amendment is as follows:

Amendment offered by Mr. TAUZIN to the amendment in the nature of a substitute offered by Mr. CANADY of Florida: In section 3(a) after ''agency action'' the first place it appears insert '', under a specified regulatory law''.

Add at the end of section 3(a) ''If the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, the Federal Government shall buy that portion of the property for its fair market value.''.

In section 4, strike the first sentence and amend the second sentence to read ''If a use is a nuisance as defined by the law of a State or is already prohibited under a local zoning ordinance, no compensation shall be made under this Act with respect to a limitation on that use.''

In the heading for section 8, strike ''Rule'' and insert ''Rules''.

At the beginning of section 8, strike ''Nothing'' and insert:

(a) EFFECT ON CONSTITUTIONAL RIGHT TO COMPENSATION.—NOTHING

At the end of section 8, insert the following:

(b) EFFECT OF PAYMENT.—Payment of compensation under this Act (other than when the property is bought by the Federal Government at the option of the owner) shall not confer any rights on the Federal Government other than the limitation on use resulting from the agency action.

In section 9, after paragraph (4) insert the following:

(5) the term ''specified regulatory law'' means—

(A) section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(B) the Endangered Species Act of 1979 (16 U.S.C. 1531 et seq.);

(C) title XIII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.); or

(D) with respect to an owner's right to use or receive water only—

(i) the Act of June 17, 1902, and all Acts amendatory thereof or supplementary thereto, popularly called the ''Reclamation Acts'' (43 U.S.C. 371 et seq.);

(ii) the Federal Land Policy Management Act (43 U.S.C. 1701 et seq.); or

(iii) section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604);

Redesignate succeeding paragraphs accordingly.

Mr. TAUZIN. Mr. Chairman, members of the committee, the statement of administration policy on the bill before us reads as follows: ''The administration strongly supports private property rights and is continuing to implement regulatory reforms that will provide relief to property owners.'' It goes on to say, ''H.R. 925, as reported by the Committee on the Judiciary, would impose,'' and it goes on to say, ''an arbitrary compensation requirement that is unacceptable and extreme.''

Let me say I agree with the position of the administration, at least insofar as it is stated in this policy. The bill, as reported by the Committee on the Judiciary, is, indeed, an extreme version of the private property rights bill that I and many other Democrats in joining with my great friend, the gentleman from Texas [Mr. FIELDS], and many Republican colleagues have been fostering for many years now as a bill to be brought to the floor of this House. It is extreme because it covers all Federal agency regulations, and it is written in, I think, an unworkable fashion.

I am pleased to join with the gentleman from Florida [Mr. CANADY] today in announcing that we have resolved our differences of opinion with regard to the bill reported by Judiciary, that the amendment I now offer will do several very important things.

First of all, it will limit the scope of the bill. It will no longer cover all Federal regulatory actions that may amount to takings. It will now cover only those Federal regulatory actions undertaken pursuant to two, and actually three, if you consider water rights a separate issue, three kinds of regulatory takings.

The two are the two that we have been discussing for many years, endangered-species takings, a proposition this House debated on the Desert Protection Act, and overwhelmingly said they wanted to ensure that property owners were fully compensated when endangered-species regulations took away the value of their property.

And, second, the wetlands regulations under either the 404 Corps of Engineers Clean Water Act regulations or the wetlands regulations under the sodbuster provisions of the Food Security Act.

And, last, the bill, the amendment, will focus the bill on the last area of takings covered by the bill, which will be takings of water rights. It is important to note that water out west is as important, in fact, much more important a property right than land is out east, and that this bill recognizes that and makes clear that Federal regulatory actions which diminish the value and take a person's water rights away are considered a taking which can be indeed, arbitrated and compensated under this bill.

It is important to note with this amendment we will be scoping down the bill to the two general areas that the bill has generally focused on for many years, wetlands takings and endangered-species takings as they affect land and water.

□ 1145

Second, the bill does a very important thing. It says that under the Republican version of the bill this year that we have agreed upon, when a compensation is made for only a partial taking, 10 percent or more of the value of the affected land or the water right, when a compensation is made for a partial taking, the government does not become a co-owner with the property owner in that proceeding.

The government simply has the rights which are guaranteed under the statutes that created the regulatory authority to insist that the owner not use land in the ways that, indeed, amounted to the taking of that value of the property.

The third change we make is another very important one. I call my colleagues' attention to it, particularly those who have been concerned about the bill's original overreach. It clearly says that even though you may have a wetland, even though you may have a piece of property that is affected by Endangered Species Act, if under State law you cannot already use that property because under State law or city or local zoning laws you cannot, or because it is declared a nuisance under State law, then you will not be entitled to compensation for that which you could not do anyhow under legitimate zoning or nuisance authority.

Finally, the amendment will provide that when the diminution of value reaches that magical point of 50 percent or more, when the government owns more of your property than you do, when the government has more than 50 percent devalued the property you own, has told you that you cannot use it so much that the government now owns more of a right in that property than you own, when it reaches that point, as we had in our original bill, the owner will have the option to say to the government, ''All right, you got me, you have taken my property. Compensate me. Here is the title.''

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am rising in opposition to the amendment, but I want to engage the gentleman from Louisiana [Mr. TAUZIN] in a discussion because I think he overstated what the bill will look like if his amendment is adopted, and understated its effect.

Hr said, ''I believe that if something is prohibited by State law, it would not be compensable.''

But that is what the underlying bill says. His amendment would restrict that. His amendment would say that if it is restricted as a nuisance under State law, it would not be compensable but anything else restricted by State law would be compensable.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding.

The problem is that under the original bill reported by the Committee on the Judiciary, the committee reported a bill that covered all Federal regulations, and the Committee on the Judiciary also contained an exception saying that, as to all these Federal regulations, there had to be an exception for State laws that also regulated in those areas. Since we have toned the bill down, if you will, focused it on wetlands and Endangered Species Act taking, the courts have said that in these

wetlands and endangered species taking areas, the exception is—to compensation—is nuisance or zoning laws. That is the court's interpretation. That is what this amendment does.

Mr. FRANK of Massachusetts. I take back my time to say that the gentleman clearly finds the court's interpretation is inadequate because this bill goes beyond the courts. The gentleman is entitled to do that. But having decided it is way beyond what the courts have said, you cannot come back and say, ''Oh, but this policy, we didn't do it, we are just carrying out what courts did.'' But the fact is, and the gentleman has confirmed what I said, under the bill as it was reported out of the committee, the Committee on the Judiciary, in these areas, the compensation is denied if anything is illegal under State law.

If the gentleman's amendment is adopted, things that are illegal under State law could still be the basis for compensation unless they were illegal as nuisances. So if the State has outlawed something for reasons other than it is defined as a nuisance, it is entitled to compensation. By State law now. And it is very clear, and the law says on page 2, the underlying text of the bill, ''No compensation shall be made under this act if the use limited by the Federal agency action is proscribed under the law of the State.'' The gentleman's amendment would strike that. It would leave in the part that says, ''If the use is a nuisance as defined by the law of the State.'' So to there is a clear narrowing here of that exemption.

Mr. TAUZIN. I thank the gentleman. Again let me try to explain: The original bill also was broader, the exception was broader under the original bill because the original bill was broader. The original bill covered every Federal regulation.

Let me make one point if I can.

Mr. FRANK of Massachusetts. On this point.

Mr. TAUZIN. On this point.

Mr. FRANK of Massachusetts. But would the gentleman agree that this, in fact, narrows the exception?

Mr. TAUZIN. Yes, it narrows it as the bill narrows the focus——

Mr. FRANK of Massachusetts. No. I take my time back to say this. That is simply inaccurate, for this reason: The original bill did not say if it is against the law in all these other areas and if it is a nuisance in the wetland and environmental area.

What the gentleman has done is to narrow the scope of the law as it applies to the areas which would still apply because without that language, without that language, any State law violation would lead to no compensation even if it was under the Federal Wetland Act or Federal Endangered Species Act.

Under the gentleman's language, if you are proceeding under the Wetlands or Endangered Species or the agricultural subsidy program, anything that violated State law would not defeat the claim for compensation unless it was a State law that defines it as a nuisance.

Mr. TAUZIN. Will the gentleman yield further?

Mr. FRANK of Massachusetts. Yes.

Mr. TAUZIN. The problem is, if we do not straighten out this language as we straighten out the bill's focus, if I can make the point, Federal regulatory law in wetlands and endangered species areas can be and is, in fact, duplicated on the State level, in many cases. It is duplicated, in many cases, because some States carry out the Federal policy.

The point is, if under the court decisions you are only losing your right to use the property as a result of these wetlands and endangered species regulations, it should not matter that the State has duplicated those regulations. You ought to still be entitled to compensation.

Mr. FRANK of Massachusetts. Reclaiming my time, the gentleman's explanation is a very interesting one, and someday I will figure out what point he was explaining because it is not the issue I raised. The issue I raised is this: It says in the underlying bill with regard to wetlands and endangered species, if it violates State law, you do not get compensation, and the gentleman changes that. The gentleman's amendment says if it violates State law under the guise of a nuisance, you do not get compensation, but any other violation of State law will not defeat the claim for compensation.

Mr. TAUZIN. Will the gentleman——

Mr. FRANK of Massachusetts. No. I think we have made that clear enough. The gentleman has acknowledged that. He can discuss later and defend it later. But I think the point is clear.

The other problem I have with the amendment is this: In 1985, Congress said——

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has expired.

(By unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 1 additional minute.)

Mr. FRANK of Massachusetts. Mr. Chairman, since I yielded a good part of my time, I would like to make this one further point. Under the gentleman's amendment, one of the programs that will survive for compensation is if you have got property and you fill in a wetland or do something else that might be contrary to general conservation policies today, you lose your right to subsidy under the Agricultural Subsidy Program.

What the gentleman from Louisiana's amendment would do would be to restore that right. If, in fact, you have a piece of property that is ruled a wetland or otherwise, the Agriculture Department and others say should not be worked and you change the land and then plant on it, the gentleman from Louisiana says you can be eligible for a subsidy.

So we are not only talking about taking away the value, we are talking about the owner taking conscious action which enhances the value of the land in the nature of a Government subsidy.

Telling people they ought to be able to go and make these changes so they are eligible for agriculture subsidies seems to me a mistake.

The amendment in 1985 said they could not do that, the amendment passed under Ronald Reagan and the Republican Senate, as well as a Democratic House. I think that is a mistake.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has again expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 30 additional seconds.)

Mr. FRANK of Massachusetts. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman.

The bill is designed to compensate for lost value as a result of changes or applications of Federal regulations on the land. It does not compensate for loss of subsidy.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has again expired.

(By unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 30 additional seconds.)

Mr. FRANK of Massachusetts. It clearly does. The value of the land would include your right to get a subsidy. If, in fact, that were not the case, why would you be trying to put it back in?

The fact is, if you are able to get Government subsidies in the tens of thousands of dollars for your crops per year, that land is more valuable. Clearly, what we are doing here is restoring peoples' rights to get back into a subsidy program. I think that ought to be clear. It is different from making them whole.

Mr. TAUZIN. If the gentleman would yield——

Mr. FRANK of Massachusetts. Whatever time I have.

Mr. TAUZIN. The point is, regardless of what the value of the land is and how it is calculated, loss of a subsidy does not trigger the arbitration proceeding under this bill.

Mr. FRANK of Massachusetts. It is taken into account. It does not trigger it, but it, in fact, will be taken into account, and land that gets an agriculture subsidy is worth more.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Tauzin amendment.

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

Mr. FIELDS of Texas. Mr. Chairman, first of all, I want to compliment my colleague from Louisiana, Mr. TAUZIN, for his continued work in what I consider to be one of the most important areas that this Congress will address

during this contract period, because we are talking about a basic constitutional right that was not only envisioned by our forefathers but written into the Constitution.

I compliment my friend from Louisiana, and I also compliment our friend from Florida, Mr. CANADY, for his work because what he pointed out earlier was exactly the truth, that until there was this new majority, we did not have an opportunity to bring this type of legislation to the floor for debate.

So I am thankful we have the opportunity today to discuss issues that are extremely important.

I also point out, Mr. Chairman, there is a letter from the leadership, the Republican leadership, dated today, addressed to all our colleagues, saying, ''We are writing to express our support for the Tauzin-amended Canady substitute.'' That is signed by all the leaders.

Mr. Chairman, you can talk about a lot of things in this particular debate, and sometimes you can lose, with the clouds and the smoke that are thrown up by those who do not want to see change in the private property rights area. So I think it is instructive to look specifically at some of the cases.

Last night, after I addressed the House on the floor, I got a fax from Ms. Nan Robbins, in Paris, TN, not one of my constituents.

But Ms. Robbins says, ''Thank you for your support of the Private Property Protection Act. I watched C–SPAN tonight with some encouragement. I am a victim of the 404 Clean Water horror story. I wish I could tell all of my story to the entire Congress. I did send a letter to Billy Tauzin. Again, thank you for your support of the small, low- and middle-class people who cannot spend big bucks fighting government.''

Well, the story of Ms. Robbins is one that the entire House needs to know. Here is a lady and her husband who owned 39 acres within the city jurisdiction of Paris, TN. They sold their property. They were told by the city officials there in Paris that they had to go and get a permit from Corps of Engineers. The Corps came out and walked the property with Mrs. Robbins—her husband is disabled and could not accompany them—and that bureaucrat said that they had wetlands.

Now, this is after property around Ms. Robbins had been filled. Now, that statement was made last March. To this particular time, Ms. Robbins has yet to get her permit. The sale of her property has been stopped.

I hold out to the entire House, Mr. Chairman, this is the type of abuse that we are trying to stop with what I think is good commonsense legislation.

Again I want to applaud the gentleman from Louisiana for what he has been able to do in working with those of us on this side of the aisle who have an interest.

I would ask the question: Are we returning with this legislation to what our forefathers originally intended, and that is the protection of private property rights and the enjoyment of the same, with this legislation? The answer is: Absolutely. The question is: Are we gutting major laws, such as the Endangered Species and Clean Water? The answer is: Absolutely not.

What we are doing through this legislation is forcing bureaucrats to make proper decisions. We are forcing cooperation and consultation with that private property owner.

Again I want to applaud the gentleman from Louisiana and applaud the gentleman from Florida for their efforts.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding.

In the little time the gentleman has left, I want to say a word about JACK FIELDS. He has been the principal cosponsor of this bill for many years. He was chiefly responsible for getting over 150 Members to sign a discharge petition on this effort last year.

JACK, all of the country, all of the property owners of America who are looking forward to this day, deeply appreciate the gentleman's great work.

Mr. FIELDS of Texas. I appreciate the comments of the gentleman from Louisiana.

□ 1200

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it may come as a surprise to Members of this body, but I really had contemplated whether to support this bill. I thought that we were engaged in a populist effort to get to a point where we were compensating the American people for the diminution in value of their property that the Federal Government was causing by laws and regulations. That is where the bill starts. That is where Mr. CANADY's substitute starts. I thought I was going to be able to come with a straight face and consider, do I support this, and consider the possibility of voting for this bill.

Now I come with the gentleman from Louisiana, Mr. TAUZIN's amendment, and we get to what this bill is really all about. It is not about compensating Americans whose value to their property has been diminished. It is about doing away with legislation and regulations that my colleagues in this body do not like, because it seems to me that we have now sold out if we adopt this amendment offered by the gentleman from Louisiana [Mr. TAUZIN], the whole underlying purpose of the bill, to compensate the American people for agency actions and regulations that diminish the value of their property.

Look, America, at what is happening. This amendment will only deal with the Clean Water Act and the Endangered Species Act. That is all they are trying to do, is undercut these regulations under these laws.

So when you hear Members on this floor talk about is this a budget buster, it is not about busting the budget if you amend the bill as has been proposed. It is about forcing the agencies that enforce these two specific pieces of legislation, forcing them not to promulgate any regulations that will effectuate those laws.

Mr. Chairman, I would say to my colleagues I do not know how we can start with one purpose, which is a healthy, genuine purpose, to compensate the American people, and sell out the whole idea to wipe out two pieces of legislation, the Endangered Species Act and the Clean Water Act, and then go back and tell the American people ''We were up there fighting for you.''

If you believe in compensating the American people for diminution in their values, then you believe in compensating them regardless of whether it is done by the Clean Water Act or the Endangered Species Act or any other act that we pass in this body

So we have come to the point where we fleshed this thing out, we brought it out in the open now. At least we know what this bill is all about. It is our political opportunity to do away with these two pieces of legislation. And we are so gutless in this body that we will not, even with the new majority having the votes, they say, they will not bring these bills up and deal with them directly. They will say, ''Oh no, it is not us. It is some agency over there across Washington that we are beating up on. It is the agency over there.''

Understand, Members of this body, that no agency has written any regulations that are not pursuant to a piece of legislation.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(By unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. Mr. Chairman, I do not know of any agency in the Federal Government that is over there writing regulations, unless they are writing those regulations pursuant to statutes that we passed in this body. And if we do not like the regulations that they write pursuant to our statutes, then we ought to change the statutes. We ought to have the guts to stand up and say ''We do not like the Clean Water Act, we do not like the Endangered Species Act, and we are going to do away with them,'' rather than coming and telling the American people that somebody else over there on the other side of town has done something that we do not like, even though they are acting pursuant to the authority that we gave them.

This is the ultimate opportunity, political opportunity, to pass the buck and beat up on some Federal agency that is doing exactly what we authorized them to do, and we ought to reject

this amendment and either accept the underlying bill on the principle that it stands for, or vote it down. Do not pass the buck. Have the heart to do what you want to do up front with the American people.

Mr. LAUGHLIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is fitting that we gather here in Washington on the Potomac River on the 160th anniversary of the date that a group of Texans gathered at Washington on the Brazos in Texas to declare our independence from a repressive government in Mexico.

Five years ago the gentleman from Louisiana, my good friend, Mr. TAUZIN, and the gentleman from Texas, my good friend and colleague, Mr. FIELDS, and I filed a bill to protect the private property rights of the owners who had their rights taken from them in wetlands areas. So I think it is fitting that we are here at Washington on the Potomac on the anniversary of the Texas Declaration of Independence. So I rise in support of the Tauzin-Laughlin-Peterson-Fields-Danner amendment to the substitute that limits the scope of this legislation to a few specific regulatory laws.

The Framers of our Nation clearly recognized the need for protection of property rights as they laid out the foundation for American democracy. Furthermore, they understood the vital relationship between private property rights, individual rights, and economic liberty. Despite this, the rights of property owners have been progressively eroded away by actions of our Federal Government.

The most notable examples of the takings of landowner property values can be exemplified through restrictions imposed by its endangered species and wetlands regulations, which this amendment specifically addresses.

Under this amendment, the measures of compensation would apply only in cases involving restrictions on property imposed by Federal agency regulations contained in the clean water wetlands permitting program, the Endangered Species Act, swampbuster and sodbuster provisions, and the rights to receive and use water under the reclamation acts, Federal Land Policy and Land Management Act, and Forest and Rangeland Renewable Resources Planning Act.

Furthermore, this amendment is necessary because the courts are crying out for Congress to clarify this area of law. As Chief Judge Loren Smith of the Court of Federal Claims has stated in the case of Bowles versus the United States last year, ''There must be a better way to balance the legitimate public goals with fundamental individual rights. Courts, however, cannot produce comprehensive solutions. They can only interpret the rather precise language of the fifth amendment to our Constitution in very specific factual circumstances. Judicial decisions are far less sensitive to societal problems than the law and policy made by political branches of our great constitutional system. At best our courts sketch the outlines of individual rights. They cannot hope to fill in the portrait of wise and just social and economic policy.''

Mr. Chairman, I would hope that our colleagues would join me in supporting the amendment and provide private property owners with decision capability to employ their own lands. Just as the founders of this country understood in the Constitution and as the founders of the Republic of Texas understood of the importance in this Nation of private property rights, citizens all over America today are saying, ''protect us from our own government. We want to exercise control over that property that we paid tax on.''

Indeed, young men and women for over 200 years have served in the military forces and at times on the battlefield to protect these private property rights that we in Congress and Washington on the Potomac River should understand and protect today.

I urge support of this amendment.

Mr. GILCHREST. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. I am one of those veterans that fought overseas to protect property rights, but I think that this particular amendment and this particular bill overall goes a long way in changing the concept of the fifth amendment, because if people's property is taken away for the public good, then those people should be compensated.

But there is another side to the story that I do not think is entering the picture enough here this morning, and that is the value of certain Government regulations in the Endangered Species Act to protect biodiversity, and the value and the function of wetlands as far as a filtration tool holding on to problems so there are not floods.

I would not stand here and say there have not been problems with these two regulations. There are real horror stories that have to be corrected, especially in the West, whether it is a grizzly bear that ate somebody's sheep and the person was not compensated, whether it was a flood because they found an insect in the ditch and did not let anybody clear the ditch and the flood caused damage to people's homes, or wetlands, there are horror stories. But I do not think we should change the fundamental dynamics of the fifth amendment to the Constitution. We can correct these horror stories. And there are horror stories that happen, in the committees of jurisdiction.

Now, what is not being emphasized here——

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I just want to underline the point the gentleman made. You are going to be hearing about horror stories all day. As the gentleman is pointing out, this bill is not aimed at correcting horror stories. This bill affects those programs where they work exactly as they are supposed to. That is the central point. It is not the horror stories that are under attack here, it is the workings of these statutes exactly as they are being affected that is at point here.

Mr. GILCHREST. Mr. Chairman, reclaiming my time, I want to give some concrete examples of what these particular regulations, what the Endangered Species Act, for example, can do for us, some concrete examples to give you some understanding of the value of natural resources and why they should not become extinct.

According to Dr. Susan Mazer, who is a scientist in California:

> No scientist would have predicted, prior to their analysis in the laboratory, that the Pacific yew tree would prove an effective remedy for cancer, that the periwinkle would be a potent remedy for Hodgkin's disease and leukemia, that yams would be the source of oral contraceptives, or that bacteria from deep sea thermal vents would lead to the discovery of DNA fingerprinting, a critical source of evidence in forensic criminology.
>
> In the case of the rosy periwinkle, a road side weed (we laughed at the snail darter) parents of children with leukemia do not laugh at the road side weed, children have an 80-percent chance of being cured or have long term remission as a result of the medicine extracted from this plant. It is also important to note that the agent in the plant that cures the disease cannot be synthesized so we need to continue to have a healthy supply of the plant.
>
> Other plant sources have been used for drugs which control tissue inflammation, Parkinson's disease, antidepressants, antibiotics, as well as other life-saving, anti-cancer agents. Cyclosporin is a complex molecule discovered in an obscure fungus, a powerful immunosuppressive agent, it is the basis of the organ transplant industry today.

Doctor E.O. Wilson commented in a paper recently published:

> Many disease organisms, such as a malaria parasite and staphylococcus bacteria, are acquiring genetic immunity against conventional therapeutic agents, and new antibiotics must now be sought elsewhere, most likely in little known species of plant, fungi, and insects if we do not extinguish them first.

□ 1215

Dr. Elliot Norse, a chief scientist for the Center for Marine Conservation, reminds us that when an astronaut goes into space, that astronaut has to carry with him a life support system in the cold void of that infinity. Planet earth is in that cold void of infinity. And unless we protect those resources which sustain life for us, then the quality of our life overall is going to be degraded.

This is not the right forum to correct the problems in the Endangered Species Act or the wetlands. Those things can be done in committee.

I urge a ''no'' vote on the amendment.

Mr. PETERSON of Minnesota. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support and am happy to cosponsor this amendment. I want to first of all congratulate the gentleman from Louisiana [Mr. TAUZIN], the gentleman from Texas [Mr. FIELDS], and all the others that have worked on this legislation for the last number of years to bring it to this point.

I would like to point out that there are a lot of Members on our side of the aisle that have been working on this for some time. I also would like to point out that, Mr. Chairman, that I do not agree that we want to undermine some of these statutes. I come from the point of view that the bill that was originally put together by the other side was too extreme. I think this amendment brings us back to where I am more comfortable with.

For those of you that, and I do not want them to take this the wrong way, because I am from Minnesota, a State that is controlled by the Democratic Party, and we have takings legislation in front of our legislature right now. I would just like to point out, we have the majority leader of the senate, the speaker of the house, some of the more liberal members of the Minnesota Legislature. And they have a measure I would like to read to my colleagues here.

It says that property owners can bring an action against the State for loss of value of 5 percent or more of their property or $1,000. And if the reduction is that amount, it requires the State to purchase the entire property at its fair market value. So you can see that we have in Minnesota something going on, if you want to call it extreme, it is more extreme than what we are talking about here in this legislation.

Mr. Chairman, we are not against wetlands. I am someone who has had a long history in conservation. I support wetlands legislation. The problem is, we have a system that is kind of run amok, that has too much power, in my opinion, on the side of the Government, that has left ordinary folks in a position to have to hire lawyers and go through the court process to protect their private property rights, which is something that we ought not to be doing in this country.

What we are doing here is bringing this back to the areas where the problems are. And that is, with the Clean Water Act 404 permit area, the wetlands area, the farm bill and the Endangered Species Act and the water rights issues out in the West.

I think that this amendment, although if I had a chance to write this the way that I would do it, it would not be exactly the way this amendment is put together, but I think that we can live with this. I think that it will be workable, and it will give us a chance to get started to change the way that we deal with what is happening out there in terms of putting these regulations on private property.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. PETERSON of Minnesota. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, I wish to join with the gentleman from Minnesota, the gentleman from Texas, who spoke earlier and others, in very strong support of this amendment. This is one time when I have to leave my other friends within the Democratic Party, because of instances like the gentleman says, it has been alluded to here, there have been too many abuses.

Some people have said, why do not you just correct the basic law? I do not think that is going to solve the problem because the problem is basically, the way I see it is, is that the people that are actually making the regulations in this instance do not have what I call common sense.

I have got farmers out there in farmland that have less than an acre plot that have been designated as wetlands, swamp lands. The only time it gets wet in that field is when it rains and then it drains off or when there is snow melts and then it drains off. We have not seen any ducks on this land. We have not seen any waterfowl on that land for I do not know how long, ever.

And in another instance, I see that the gentleman from Massachusetts is over on this side. Another thing that concerned me, back when we were working as chairman of the forestry subcommittee and agriculture, we were working on the Northwest and the problems of the Northwest having to do with the spotted owl, what became apparent to me was that as that spotted owl left the Federal jurisdictions and went over to a private forest, that private forest had an endangered species in it. And the value of that forest was, before it may have been a life savings for somebody, just went down. And that person lost their whole livelihood as a result of that endangered species flying over there and making a nest in that area, at least potential.

The value of the property, at least we had testimony on it from some of the property owners out there, diminished.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. PETERSON] has expired.

(By unanimous consent, Mr. PETERSON of Minnesota was allowed to proceed for 2 additional minutes.)

Mr. VOLKMER. Mr. Chairman, if the gentleman will continue to yield, what concerned me is that basically what we have seen taking place is that people who have worked hard to have this property are now seeing it diminished in value or almost taken completely, not quite taken, so it is not actually a taking in the sense of the amendment, due process and all that, as far as the court is concerned. But they have lost a hunk of their money and they are hard-working taxpayers and it should not be right.

I agree with the gentleman, we need wetlands. We have wetlands. We have them all up and down the Mississippi. We have plenty of ducks, and we have got waterfowl. We have got goose hunting places in the State of Missouri, in the district of the gentlewoman from Missouri [Ms. DANNER]. We have plenty of room for that. So we support that.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. PETERSON of Minnesota. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for his comments and point out, the courts have said that a partial taking of your property is a taking under the Constitution. The court in Florida Rock, for example, said nothing in the language of the fifth amendment compels this court to find a taking only when the Government divests the total ownership of the property. It says the fifth amendment prohibits the uncompensated taking of private property without reference to the owner's remaining property interest, and it cited an example.

Indeed, if the Government took only 5 acres and left the property owner with 95, there would be no question that the owner was entitled to compensation for the parcels taken, plus even severance damages attributable to the remaining tract. The gentleman is right, partial takings should be compensable.

Mr. PETERSON of Minnesota. Reclaiming my time, I would like to close by saying that we have got some problems with the wetlands act. I ask everybody to work with us to try to get at some of these issues like the type one wetlands that the gentleman from Missouri was talking about. But this legislation is something that has been needed for a long time. I, again, commend the gentleman from Louisiana [Mr. TAUZIN], the gentleman from California [Mr. CONDIT], the gentleman from Texas [Mr. LAUGHLIN], and all the others that have been working on this for many years. I ask support for this amendment.

Mrs. SMITH of Washington. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support this bill and especially the amendment before us. It does not go as far as I would have liked to have gone, but I want a bill out of this area. We need a bill out of Congress.

In our area, we have the spotted owl. The constitutional interpretation right now is that if an owl flies and lands on your land, that owl gets all of your land and you are not compensated. That is unacceptable.

Currently in Washington we grew and use today more of it, timber, as a crop. Predominantly it is grown by mom and pop and small groups of small family operations. They grow it generation after generation so that they can make

sure that they pay for their own retirement. They pay for their own children's college, and they take care of themselves like good Americans do.

The problem is, right now, with the Endangered Species Act, is that an owl can land. The owl gets thousands and thousands of acres of buffers around where the owl landed, and there seems to be no reasonableness to the law that says these folks just cannot use their land. The owl gets the land. They get nothing. And they are left with no recourse.

The important thing about this is it focuses at least on those people. It does not overturn the State laws. It does not overturn local land use laws. But it does say that if we are going to allow the Endangered Species Act to take these people's property, and we are not talking about big, wealthy folks, we are talking about my neighbors, that they have to think about it and compensate them.

The other interesting thing in our State, we found out that the owl is a critter that is growing or was quite prolific to begin with. They now know there are twice as many owls as they thought there might have been to begin with, when they decided to allow the owl to be an issue in licking up our forests.

So what this amendment does is it brings some reasonableness back in. I commend the gentleman for this amendment, because it gives my family some hope.

Mr. Chairman, I yield to the gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. Mr. Chairman, as a member of both the Judiciary Committee and the Budget Committee, I would like to enter into a colloquy with the gentleman from Florida, the floor manager of this bill, regarding the intended budget status of this bill.

In sections 3 and 6 the bill would mandate Federal payment to an owner whose property had been adversely affected by Government regulations, however section 6(f) and 7 of the bill specify that the obligation to pay and the source of any payment under this bill is limited to available discretionary appropriations.

My question for the gentleman is this: Is it your understanding that the limitation on the obligation to pay and the source of payments in section 6(f) and 7 supersede the mandatory language contained in section 3 and 6, and thus any obligation pursuant to this bill would be fully subject to the availability of discretionary annual appropriations?

Mr. CANADY of Florida. Mr. Chairman, will the gentlewoman yield?

Mrs. SMITH of Washington. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, yes, it is my understanding that the language of sections 6(f) and 7 does limit the obligation to pay and the source of any payment under this legislation to discretionary annual appropriations, notwithstanding any other provision in the bill.

It is our intention to help compensate property owners for the harmful effects of Government regulations, not to create an uncontrollable entitlement.

Mr. SMITH of Texas. Mr. Chairman, if the gentlewoman will continue yield, following up, does this mean that a judge, in a case brought by a property owner under the provisions of this legislation, would be constrained from awarding payment from what is known as the ''judgment fund'', which is beyond the control of the congressional appropriations process?

Mr. CANADY of Florida. Mr. Chairman, if the gentlewoman will continue to yield, no—I do not believe that the ''judgment fund'' would be an available source of payment as a result of a court order.

As the gentleman knows, section 6(f) of this substitute clearly states that payments under this legislation are to come from an agency's annual appropriations, and if the agency that issued the regulation in question does not have sufficient funds to satisfy the property owner's claim then the head of that agency must seek the necessary funds in its budget request for the following year.

Mr. SMITH of Texas. I thank the gentleman for that clarification.

Mr. DEFAZIO. Mr. Chairman, I move to strike the requisite number of words.

I would like to engage the author of the primary amendment in a few questions here, if I could.

As I understand it, the Tauzin amendment does not change the portion of the gentleman's substitute, which would require when a specified regulatory law diminishes the fair market value of that portion or any portion of a property by 10 percent or more; is that correct?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, that is correct.

Mr. DEFAZIO. Mr. Chairman, if I could ask a couple of hypothetical questions, if I had a 100-acre tree farm and the restrictions apply to 1 acre, that would be, if it took more than 10 percent of that 1 acre, that would be mandatorily compensable?

Mr. CANADY of Florida. Mr. Chairman, if the gentleman will continue to yield, that is correct, assuming that there was a right to compensation and that particular circumstance was not subject to any of the other exceptions under the bill.

Mr. DEFAZIO. Mr. Chairman, I am going by the four statutes referenced by the gentleman from Louisiana [Mr. TAUZIN]. If it was one tree on the 1 acre, on the 100 acres, and I could not harvest that tree because of Federal restriction, if I lost, if by being required to have that tree stand, I would lose 10 percent or more of the value, I would be compensated for that one tree?

□ 1230

Mr. CANADY. Let me say this, I think that is a situation we really would not see arising.

Mr. DEFAZIO. I am going to get to an actual example, if I could. One other example, and then I will explain. This is a little off track, so bide me here.

I am curious, does the gentleman support the constitutional amendment to ban the desecration of the American flag?

Mr. CANADY. If the gentleman will continue to yield, I do not believe we should protect the desecration of the flag.

Mr. DEFAZIO. There is an amendment pending to ban the desecration. Does the gentleman support that?

Mr. CANADY. Yes.

Mr. DEFAZIO. Reclaiming my time, Mr. Chairman, I want to go to an actual example, the bald eagle, one of the few successes we can point to under the Endangered Species Act.

The requirements in my part of the country were practical and simple. You had to leave one tree. You had to leave the nest tree. You could have 100 acres of land, but you had to leave one tree to recover the bald eagle. It has now recovered. That is a live and living symbol of the United States of America. I think it was worth saving the bald eagle.

The gentleman wants to save the textile symbol of the United States from desecration. That is the American flag. I want to save a living symbol, and that is the bald eagle. Under this legislation, we would have had to compensate every single person who saved one tree, one tree. Is that too much to ask?

I do not believe that is an unwarranted intrusion. Ten percent is an absurd threshold. Ten percent of any portion of your land, that is 1 tree out of 10, you get compensated. That is not right.

This is something that is taking the relief that is needed too far to hamstring and follow another agenda. This is the big developers' agenda. This is not going to help the little people of my district who have been having problems with the Federal Government.

This is going to take the developer who has a 10,000-acre development and is required to leave a little riparian strip, which in my State we have all agreed to do, but if he is required to do that under Federal aegis, it will be compensable action, even if the State law would have required and the Federal law would have required it.

Mr. Chairman, let me talk about the realities of appraisals. How do we get to 10 percent? We hire an appraiser. I tried to purchase a piece of property in my district with a willing seller. I got an appropriation to do it. The willing seller came up with an appraisal of $2.2 million.

The Forest Service, the purchasing agent, came up with a price of $750. They were at loggerheads. Even though I could have saved this, I had an appropriation, I could not get an agreement.

I said ''How about we agree that the Forest Service and the owner choose another appraiser, and they will do that.'' They did that. Now we got a third appraisal. Do Members know what it was? $1.5 million. I had the owner with an appraiser at $2.2 million, I got the Forest Service with an appraiser at $600,000, and then we got the neutral appraiser at $1.5 million.

How are we going to say, under this bill, 10 percent variance in the value is compensable? All you have to do is hire two appraisers and the Federal Government has done nothing, and you are going to find a 10- or 20- or 30-percent variation. Therefore, I could just say because the Federal Government exists that I am compensated, because I have two appraisers that say ''Well, the Clean Air Act,'' no, that is not right, we have eliminated it from the Clean Air Act, but any other acts covered here make this a compensable action.

This goes too far. What this situation cries out for is reauthorization of the Clean Air Act, a reauthorization of the Endangered Species Act, with needed reforms and amendments.

It requires a rifle shot, not a 10-gauge shotgun filled with 00 buck. That is what we are doing here, blowing a hole through these laws so we will not even be able to save the bald eagle next time it is endangered, or some other bird.

That I think is a worthy thing. If we are going to save that symbol, let us save a living symbol.

Mr. HAYWORTH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS of Texas. Mr. Speaker, the eagles must be different in the Northwest than they are in Texas, because I have had two specific examples with abandoned nests. We are not even sure that the nests that were abandoned were eagles' nests.

In the one example I used last night, a road was stopped. Finally, the property owners had to mitigate by putting in an easement in perpetuity 4 acres, not just one tree.

The second specific example, across the lake an abandoned eagle's nest, so people were told, stopped the cutting of 100,000 dollars' worth of timber. Nobody was able to prove that an eagle was there. Someone said it was an abandoned eagle's nest; 100,000 dollars' worth of timber. That is not one tree.

I appreciate the gentleman yielding to me.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. HAYWORTH. I yield to the gentleman from Louisiana, on the other side of the aisle.

Mr. TAUZIN. Mr. Chairman, we need to correct the RECORD whenever we hear misstatements. The fact of the matter is the eagle was saved not under the Endangered Species Act, it was saved under FIFRA, Federal Insecticide and Rodenticide Act, which banned DDT. That is what saved the eagle, No. 1.

No. 2, the gentleman who spoke and said this bill is aimed at the the Government because the Government is there, whether it does something to your property or not, is absolutely wrong. This bill does not trigger compensation until the Government agency acts to regulate someone's property and diminishes the use of that property. Then the action is triggered. Then you go to an assessment of whether or not it has lost 10 percent or more value.

Finally, Mr. Chairman, let me refer back to what the court said here on partial takings. The courts have held that even relatively minor physical occupations are compensable, and it said that logically the amount of just compensation should be proportional to the value of the inherent interest taken as compared to the total property, but partial takings are compensable.

I thank the gentleman for yielding.

Mr. HAYWORTH. Mr. Chairman, I thank the gentleman and the author of the amendment from the great State of Louisiana.

The CHAIRMAN. The time of the gentleman from Arizona [Mr. HAYWORTH] has expired.

(By unanimous consent, Mr. HAYWORTH was allowed to proceed for 3 additional minutes.)

Mr. HAYWORTH. Mr. Chairman, before leading the Continental Army into the Battle of Long Island in 1776, Gen. George Washington told his troops:

> The time is now near at hand which must probably determine whether Americans are to be freemen or slaves; whether they are to have any property that they can call their own; whether their houses and their farms are to be pillaged and destroyed * * *

Two hundred and eighteen years later, Americans are again fighting for the right to have property they can call their own. Their enemy? Ironically, the same Government originally created to give people the freedom to own property. Government bureaucrats, acting without accountability, make decisions which, in effect, destroy households, farms, and businesses.

Currently, all landowners are unwillingly entered into a random sweepstakes drawing to select who will foot the bill for intrusive Government regulations. In this sweepstakes there are no letters from Ed McMahon informing them they have won a million bucks. Instead, landowners receive nasty grams from the likes of the Fish and Wildlife Service or the Environmental Protection Agency informing them that they own Mexican spotted owl habitat, and if they use it they could go to jail.

When Michael Rowe had finally saved up enough money to add an extension to his one-bedroom home on his 20-acre ranch in Winchester, CA, he was informed that his permit could not be approved because his property was in a kangaroo-rat study area. His only option would to hire a biologist at a cost of almost $5,000. If the biologist found a single rat, development of the property would be illegal and could result in a Federal prison sentence and up to $100,000 in fines. The good news? If the biologist did not find a single rat, the Rowe family could develop their property if they paid the Federal Government nearly $40,000 to purchase a rat reserve elsewhere. In essence, the home was destroyed by Federal regulators before it even left the drawing board.

In supporting this legislation, we in Congress have the opportunity to reaffirm what Locke referred to as the ''root of all liberty''—the right to own property.

This legislation requires the Federal Government to compensate landowners for an action by a Federal agency that reduces the value of their property. In simple terms, this legislation means: If the Federal Government deems it in the national interest to curtail a landowners use of his property then the Government, not an individual landowner, should pick up the tab.

Opponents claim that with the passage of this legislation we will see the end of 25 years of important health, safety, and environmental legislation. As we heard in a preceding speech, in a hypothetical, my colleagues on the other side know that the only thing that will end is decades of casting easy votes that might appease their special interest constituencies without having to consider the consequences. Some of these folks truly tremble at having to make the choice between what is truly in the national interest, and what is only in their narrow best interest.

Mr. Speaker, I urge my colleagues to support a return to the constitutional protections of private property.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. HAYWORTH. I am happy to yield to my good friend, the gentleman from North Carolina.

Mr. WATT of North Carolina. I thank the gentleman for yielding, Mr. Chairman.

Mr. Chairman, I simply want to inquire whether the gentleman was supporting the amendment of the gentleman from Louisiana [Mr. TAUZIN] or whether he was not supporting it. I could not tell from his statement.

Mr. HAYWORTH. I thank the gentleman for letting me clear this up.

I will end my remarks by saying I rise in strong support of the Tauzin amendment, and in strong support of the legislation.

Mr. MILLER of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. I do so mainly in one very specific case, and that is, the amendment as it is currently written includes the act of June 17, 1902, and all

acts amendatory thereto and supplemental thereto, properly known as the Reclamation Act.

This is an act written in 1902 where the Federal Government engaged in massive subsidies to landowners throughout the West to help settle the West and bring the lands into productive capacity by extending water subsidies to them.

In the State of California, the Federal Government has spent some $8 or $9 billion building canals and shipping water from the far north to the south, and the same is true in Arizona and elsewhere.

What this amendment would now do is take what we basically have, which are contract rights with the growers, and say ''if you sought to amend those, that could be adjudged as a taking.'' These people have a right to subsidize water based upon a contract, but now what you are doing is taking a contract and turning it into an entitlement. You are taking a contract which says and gives us the right to withhold water from those people in years of drought, as we have in California, over the last 6 or 7 years to say ''We are going to hold back 30 percent of the water for next year, or for the health and safety of the State, for drinking water supplies to metropolitan areas.''

Now, what you are saying is if this is a diminution of 10 percent of your land, which clearly it is, you have a right to compensation and to a taking. You are withdrawing the rights of the Federal Government and the right, more importantly, of the people of the State of California to manage the water supply within their State, because you are taking a contract, even if you shorten the contract, and in the new law we just said we want to go from 40-year contracts to 20-year contracts so we can manage the water supplies in the State of California on a more contemporary basis, in light of our population growth, the change in our economy and the need for water in our cities and suburbs for economic growth.

If we took that 20-year contract and made it a 10-year contract, that would somehow be a taking in the next law when that contract runs out. I think we have an unintended consequence here that locks us in, not only to billions of dollars in subsidies, but also locks us into a situation where we are now elevating what is a basic contract, and at the end of the contract, ''You have no right to that, we can do with the water what we want,'' but that was the agreement, now elevating that into a taking if we do not extend the water.

The reason that is so important is that we have areas in the West where we have massive competition between agricultural interests and the urban interests, in Utah, in Colorado, in Arizona, and in California. What this law does is locks these contracts in now under the provisions of taking.

I would like to ask the author of the amendment, the gentleman from Louisiana, what is his understanding of this act as it pertains to the Reclamation Act of 1902?

Because as I read it, if we change the level of the subsidy, if we change the contract's terms, if we withhold water because of the drought or we reallocate water from the agricultural interests to the urban interests or from the urban interests to the agricultural interests, that those people all have a right to a taking under this provision, if the value of their land is diminished by 10 percent.

Mr. TAUZIN. If the gentleman will yield, Mr. Chairman, the understanding is that no diminution of subsidy triggers the action to compensation. Subsidies are not a regulatory act under this bill. It is a change in the property ownership, a change in the right to own or the value to own that triggers the action under this for compensation under the act.

Mr. MILLER of California. Currently the growers have a 40-year contract. If the Government, and the new term was changed from 20 years or 10 years, and the banks decide that you do not have a bankable interest, as some growers speculate the banks would say, is that a diminution of the property values?

Mr. TAUZIN. No, contractual changes are not. Agreements are not. It is only when the Government mandates a change, a regulation, that diminishes the value or subtracts from the property right that triggers the action for an arbitration and compensation under the bill.

Mr. MILLER of California. Let me ask in another case. We have a situation where irrigated lands, where water is brought to those lands under contract, and in some instances we have had to tell growers in the past, and very likely are going to have to tell them in the future, that they cannot irrigate of some of their lands because of toxic runoffs that have caused problems, both with the environment and with health.

If we tell those growers that they cannot irrigate those lands under that water, are we under the purview of the gentleman's bill?

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has expired.

(By unanimous consent, Mr. MILLER was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. Mr. Chairman, I yield to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, under both the bill and the amendment we proposed, if the use is proscribed for reasons of toxic runoff, nuisance, all those kinds of issues, then it is not a compensable diminution of use. It is only when the use is proscribed for purposes of, as we claim, ESA, wetlands protection, or changes in the ownership or value of the water right.

Mr. MILLER of California. In this case the toxic runoff, the reason it was stopped at one point, and it may have to be stopped again in the future, is because of its threat to the water quality in the San Francisco Bay delta.

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Mr. TAUZIN. I understand. If the gentleman would further yield, there will be an amendment on the floor later on to apply the entire Clean Water Act under this bill. I will oppose that amendment for that reason. We have limited it to the wetlands protection of section 404, to the sodbuster wetlands provisions and to the water rights provisions as regulations in those acts we describe would affect the ownership or value of that water right.

Mr. MILLER of California. Can I ask the gentleman another question. Again the runoff from these lands cause duck hunters and others a great deal of consternation because of the impact it has had on the water fowl.

If it goes to the quality of the water in those wetlands, in protected wetlands or in private wetlands, is it covered under your provision?

Mr. TAUZIN. I would have to yield to the author of the main amendment. There was a provision as I understand that if the use is designed to prevent damage to neighbor's property as opposed to protection of a wetland or to protection of an endangered species, that that is an exempted use under the bill. If you would yield to him, I think we can get a clarification on that.

Mr. CANADY of Florida. If the gentleman would yield, I just bring your attention to section 5 of the substitute amendment, which provides a specific exception. It says that ''no compensation shall be made under this Act with respect to an agency action the primary purpose of which is to prevent an identifiable hazard to public health or safety, or damage to specific property other than the property whose use is limited.''

This is in here to deal with any sort of circumstance in which there is a hazard to public health or safety.

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has again expired.

(By unanimous consent, Mr. MILLER of California was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. Can the gentleman or the gentleman from Louisiana explain to me why, then, the Reclamation Act is included as one of the laws under this provision?

Mr. TAUZIN. I would be happy to tell the gentleman. Because it is one of the acts that has the potential of regulation to limit the value or the actual right to own water in the West, and because it has that potential, it is included as a regulatory action that could diminish the value indeed of an important property right.

Mr. MILLER of California. Without being argumentative, that sounds exactly contrary to what the gentleman just told me, because all of the water delivered under the Reclamation Act is delivered by virtue of contract. We

enter into a contract for a specified period of years. If that contract is not renewed, you have no rights.

It sounds to me that we are bootstrapping people who now have a contractual right into a position that if that contract is not renewed, that somehow you have a takings, because the land is not worth upkus.

Mr. TAUZIN. If the gentleman will yield, the contract is a contract between the private property owner, the water right, and the Government.

If the Government by regulation changes that contract without the agreement of the owner, that indeed would amount to an action to trigger activities under this bill. If, however, the contract is followed, no one has lost any rights, there is no trigger to compel an arbitration for compensation.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Idaho.

Mr. CRAPO. I think it is important to look at the section in the bill that describes the right to compensation we are talking about here, in section 3 of the bill.

It creates the right of compensation to an owner of property whose use of any portion of the property has been limited by an agency action. We are talking about situations where an agency has limited the use of property, and that is defined in the statute.

Mr. MILLER of California. Let me reclaim my time and then see if the gentleman can answer. The agency, in this case the Bureau of Reclamation, tells people that they cannot have 30 percent of their water supply or in a dire drier year, they can only have 30 percent, they lose 70 percent, the use of their land in dry land farming is gone.

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has again expired.

(At the request of Mrs. SCHROEDER and by unanimous consent, Mr. MILLER of California was allowed to proceed for 2 additional minutes.)

Mr. CRAPO. Will the gentleman yield?

Mr. MILLER of California. Yes.

Mr. CRAPO. The definition of use of property is defined in the statute to say, when the use of property is limited by an agency action, if a particular legal right to use that property no longer exists because of the action.

You are talking about a contractual relationship between the United States and between an individual landowner, or in some cases between those who are participating in a reclamation project.

The change of the terms of a contract under the terms of that very contract is not going to be a limitation on use that results from an arbitrary or an independent action by an agency that limits the use of that property.

Mr. MILLER of California. I find it very suspect that this law is now included when it is so narrowly drafted and the rights are handed out based only on contract.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. I am concerned about the Colorado River Compact. What effect does this have on that? Does this have an effect on things like the Colorado River Compact, which has been around for a very long time?

Mr. MILLER of California. That is exactly the question, because the Bureau of Reclamation administers that the Reclamation Act guides many of the contractors to that compact. As the gentlewoman knows, in Arizona we have contractors who are going bankrupt, we are trying to reallocate water, and there are people who had expectations but really cannot afford the water. The question is now, are we creating a compensatory act by not giving them the water and giving it to the city of Tucson or to the city of Phoenix?

That is exactly the problem. I worry about ulterior motives here in the inclusion of the Reclamation Act because I do not know why it would be included when these are contractual relations except that I understand there are a number of people who are very unhappy with the reforms that were passed overwhelmingly on a bipartisan basis in the last Congress and signed by President Bush that would now like to roll back those reforms where we have just entered into an agreement between the State of California, the municipalities, the environmental organizations, and the farm organizations about the usage of water. Some people would like to see that undone.

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has again expired.

(By unanimous consent, Mr. MILLER of California was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. I think that those of us who would now understand and appreciate the historic relationships in multi-State compacts, especially those of you who are from the upper reaches of the Colorado, you are now laying over the top of reclamation law, law that has been on the books since 1902, you are laying over the top of that a whole series of actions that conceivably people can come in and ask for compensation when in fact what they are getting from the Government is a huge amount of subsidies and rights that basically have a genesis in contractual relationships.

Water usage is changing so dramatically in Arizona, New Mexico, California, and Nevada, we have gone from 70 percent of the people in Nevada now use 10 percent of the water, but 70 percent of the water goes to 10 percent of the people. Those equations are changing. They just changed in Utah by a vote of the people, but now the question of whether that can be carried out and the implementation of that is drawn into question by this amendment.

I would hope that at some point we could just strike the reclamation law.

Mr. TAUZIN. If the gentleman will yield, I would say again to the gentleman that if the contracts the Government makes with those owners of water rights are upheld and the contracts are not violated by the Government, nothing triggers this act.

It is only when by Government regulation the rights of an owner to water under those contracts are changed without their consent, are regulated and changed, in other words, the contract violated by the Federal Government. That is when the trigger occurs, that is when the owner would have a loss of value of property he was entitled to under that contract.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Minnesota.

Mr. VENTO. I thank the gentleman for yielding and the gentleman from Louisiana for his explanation.

I have been looking through the language of the underlying substitute in the amendment to try and decipher the language. It suggests here that anytime there is a qualification of use. Of course if the landowner agrees to the qualification or the ownership of the water in this case who owns the water right agrees to it, then apparently there is not any problem. But the issue is that very often this is not agreed to.

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has again expired.

(At the request of Mr. VENTO and by unanimous consent, Mr. MILLER of California was allowed to proceed for 5 additional minutes.)

Mr. VENTO. If the gentleman from California would continue to yield to me, this really speaks to the issue of any type of qualification in terms of the use.

I might point out to my colleagues who think they recognize the qualifications of use that occur because of a development such as the salinization or other types of problems in terms of irrigation of land, that is one possibility, or you may have, for instance, if you are taking this water off of a national forest, which is included in here, the entire Forest Planning Act is included as a possibility, or off of the public domain lands, the BLM lands, the entire FLPMA law is included in this amendment in regards to water as I understand it, any time you are taking that water off national lands, you are dewatering that for other purposes, there may be exceptions in California. Sometimes it is coming from other private land. But anytime you would qualify the use of that because you may make a determination that it is having an adverse effect on that, even though somebody had that right, anytime you qualify it or, for instance, even during the year it changes and it has an effect in terms of at the water

right that is on, you would have a problem here in terms of what is going on.

Mr. MILLER of California. I appreciate the remarks. I think he makes a good point. I appreciate that this is in contract law, but let us remember what we are talking about.

In parts of Arizona, and a good portion of California, we are talking about people who have received hundreds of millions of dollars in subsidies from the Federal taxpayers, in some cases to grow subsidized crops. Kind of an insanity.

These same people have spent millions and millions of dollars to prevent any change from taking place in the reclamation law in this Congress. Finally, 2 years ago, we were able to defeat that effort and pass reclamation reform.

These are the same people now who are suing the Government, suing the State, suing everybody to hold onto their rights, and what is their allegation? Their allegation is everything we want to do is in violation of their contractual rights. They have a compensatory action if in fact they can show it is a violation of their rights.

But basically what these people have done is sought to delay the implementation of any reforms in the California water system. Just as recently as a couple of months ago where all of the cities got together, all of the environmental groups got together, many of the agricultural groups got together, all of the economic community in our State said that we have to change the way that we allocate and use water in the State of California.

We have the same handful of people that got this amendment inserted into this provision of law saying they did not want to go along. No matter how good we think it is for the welfare of California, no matter how important they said it was because they said they would lower the bond ratings of the State of California if we could not reallocate our resources, we have some obstructionists there that think that what they had as a contractual right to a limited subsidy is now a God-given right and now what they want to do is under this amendment make that an entitlement. They want to make that subsidy an entitlement that we cannot in any way change whether it is because of drought, whether it is because of population, whether it is because of changing economic circumstances in that State.

The fact was this land was not worth spitting on until the Federal Government came along and plowed billions of dollars of taxpayers' money, and we would just like to be repaid. Then they can do whatever they want with the land.

Mr. FIELDS of Texas. Mr.. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I would just like to point out to the gentleman, I think many of the things he is saying are valid. It is a valid discussion that we ought to have here on the floor.

But I just want to say to the gentleman that it was not my intent or others to try to get involved in your particular water fight. I am here today supporting a Tauzin amendment.

Mr. MILLER of California. I understand that. I commend the gentleman. I think this is a very important discussion. This discussion has been delayed too long on the issue the gentleman from Louisiana [Mr. TAUZIN] has raised.

But why is the reclamation act struck into this legislation? We are talking about a very narrow act for a very narrow group of people.

Mr. FIELDS of Texas. If the gentleman would yield to me, we have had private discussions about the excesses, and it is the excesses that I think bring us here today: The fountain darter in Texas that has abrogated our water rights as a State, the vireo and the warbler that has taken an entire area of central Texas and said you can't cut cedar, the abandoned eagles' nests that have shut down roads and shut down the cutting of forests. To me that is the reason we are here.

Mr. MILLER of California. Let me reclaim my time, and I have a great deal of respect for the gentleman.

That is not what this is about. This is about the excesses where a State and its population reach a consensus and whether or not you are going to provide a tool in this legislation so that people can obstruct that and obstruct it on the fallacy that somehow they have some value in their property that is there because of what they do as opposed to the billions of dollars in subsidy that flow down that canal every year from Shasta Dam down to Tulare Lake.

The fact of the matter is they do not have those rights, and my concern is we are now about to put the taxpayer of this country on the hook based upon very narrow interests that have rights under their contracts and now they are trying to bootstrap those into additional rights. I would hope we would oppose the amendment for that purpose.

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words.

What a stimulating debate. I was just absolutely excited to watch that debate go on, and I hate to step in, what I hope is not the end of the debate, but I am not sure that I follow it in the right schedule of things in this debate, because my statements are in support of the bill and in support of the amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. If the majority whip would get us more time under this restrictive rule, we could extend the debate more, so we would be glad to accommodate him if he would only get us a little more time.

Mr. DELAY. I think we have had a lot of time on this bill and it has generated a very stimulating debate.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I just want to make the point following the gentleman's debate on this issue before you make your statement in support of the bill, and that is that again we are not saying that the parties cannot contract water supplies any differently than they have contracted today. We are saying contracts are valid and contracts ought to be honored.

All we are saying in our provision is if the Federal Government invalidates a contract, violates it by depriving someone of water that they were guaranteed under the contract and if that supply of water is interrupted and it devalues their property, that is a taking under the fifth amendment.

You and I might like to agree to reallocate land values around the country or landownership around it. We do not have that right under the Constitution. If this Government takes land and property from people under the fifth amendment and violates a contract that entitles them to land or water, it is a taking of property, and that is all our bill provides for, the compensation for that taking. I thank the gentleman for yielding.

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Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield to me?

Mr. DELAY. I am glad to yield to my good friend and neighbor from Texas.

Mr. FIELDS of Texas. Mr. Chairman, I have great admiration for the majority whip, but in terms of sequencing I think he is coming at exactly the right time, because he has been the champion of regulatory reform, and as the gentleman knows and I both know in our area of Houston, TX it is the Corp of Engineers and U.S. Fish and Wildlife Service that is making determinations as to how people can use and even enjoy their property. That is absolutely wrong and it is those excesses we are trying to stop. And I think the sequencing is perfect, and I look forward to the gentleman's remarks.

Mr. DELAY. I appreciate the gentleman making those remarks about what is happening with the Corp of Engineers and the Fish and Wildlife Service in Houston. It reminds me we have been working now for 2½ years to build a golf course in Lake Jackson, TX where the Fish and Wildlife are claiming that footprints from cows are wetlands and we have to identify every footprint on this piece of property before we can get a permit. Footprints of cows are wetlands, it is just amazing to me and it is the reason we are coming together to try to pass this bill and try to bring some common sense to what is going on around the country.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I am glad to yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I wonder if giraffe prints would also be considered wetlands? Just an aside remark.

Mr. DELAY. I think giraffes are an endangered species in America and if you find a footprint it will probably be on the endangered species list.

The CHAIRMAN. The time of the gentleman from Texas [Mr. DELAY] has expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. DELAY was allowed to proceed for 3 additional minutes.)

Mr. DELAY. Mr. Chairman, in recent years the issue of property rights has been hotly debated, as a growing movement of property owners at the grassroots level feel that their rights are being seriously infringed upon. Some have characterized this movement as greedy, comprised of people who have no interest in the public good. I would like to go back to the beginning of the debate and bring some historical perspective into this discussion.

In 1772, Samuel Adams set out to ''state the rights of the Colonists * * * as men, and as subjects; and to communicate the same to the several towns and the world.'' He began his task with the declaration that:

> The absolute rights of Englishmen and all freemen, in or out of civil society, are principally personal security, personal liberty, and private property.

Throughout the succeeding revolutionary period, these three rights were time and again recalled—life, liberty, and property. It was only in drafting the Declaration of Independence that Thomas Jefferson altered the phrase to read, ''life, liberty, and the pursuit of happiness.''

In later years, Jefferson explained why he chose those words. ''A right to property,'' he said, ''is founded in our natural wants, is the means with which we are endowed to satisfy those wants.'' To Jefferson, the pursuit of happiness and right to private property were inextricably linked. One could not be attained without the other.

Two centuries later, the institution of private property has lived up to Jefferson's expectations. America's agricultural productivity, leadership in medical and engineering technology, and wealth of entrepreneurial opportunity can all be tracted to the incentives inherently created by private property rights.

Unfortunately, however, numerous battles are being waged at this time because of the continued infringement by government on private property. Although the fifth amendment to the Constitution requires fair compensation to a property owner when the Government takes his land, courts have interpreted that provision narrowly and many property owners are not being adequately compensated.

For example, the Wall Street Journal describes the case of Marj and Roger Krueger, who spent $53,000 on a lot for their dream house in the Texas Hill Country. But they and other owners were barred from building because the golden-cheeked warbler was found in ''the canyons adjacent'' to their land.

Further, a current law with respect to regulatory ''takings'' is unclear, requiring courts to resolve claims without set standards.

It doesn't make sense that a person is compensated when the Federal Government wants to build a highway through his front yard, but is not compensated when the Government prohibits him from farming on his land because it is determined that a wetland needs protection. In both cases, private use of one's land is being sacrificed for the public good.

We can argue the merits of whether land should be used for one particular purpose or another, but everyone should agree that one person should not have to shoulder the full costs of achieving a particular goal, whether it be environmental protection or improved infrastructure. Further, a person is not greedy when he asks not to have to bear the entire burden.

The Canady-Tauzin substitute will set clear standards for Federal agencies to follow under the Endangered Species Act, wetlands, and water rights. In this way, property owners will be guaranteed fair compensation when their land is either restricted in use or reduced in value.

Ownership of property is a right protected by the Constitution, a precious right which should not be infringed upon except in the most grave of situations. When such situations arise, let us live by the tenets of the Constitution and grant property owners the compensation that they are due.

Mr. Chairman, I ask Members' support for the bill. I ask Members' support for the Tauzin amendment and I ask Members' support to stave off any amendments to the bill.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words.

Mr. VENTO. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I wanted to just direct my attention to the gentleman from Texas [Mr. DELAY], and I want to say we accept him as an able spokesman for his point of view, but certainly not as an editor to Thomas Jefferson's prose on the Constitution. But I do say he is persuasive in terms of his point of view.

Mrs. SCHROEDER. I thank the gentleman from Minnesota.

Mr. Chairman, I rise and come to the well because I am terribly concerned about what this does on the Colorado Water Compact. Earlier this year there were meetings in Colorado that were reported in the press, and I am trying to put this in the clearest way we know. The Colorado Water Compact has been around for almost 90 years. We are obviously upstream and there are many States downstream that count on us to send allocations to them, and as Members heard the gentleman from California speaking, California has been way overusing their allotment, Nevada has now got all sorts of problems, they want more water and so forth.

The person who was in the State from Nevada was saying this would be a wonderful thing for Nevada because they could then go tempt Colorado water people to sell water to Nevada, which means our State then would not have any water. They could sell it to the highest bidder.

Here is the problem, the way I read this, is there is nothing that the Secretary of Interior could do that would be right. If the Secretary of Interior would move to stop private water owners from selling their property and in the State of Colorado a water right is considered a private property right, if they move to stop them from selling that right to a Nevada or a California, then the property owner would be able to get the Federal Government to pay all of that.

If they did not intervene and they allowed the property owner to sell that right, then they would have suits from Colorado water owners saying the Federal Government had taken an action or not taken an action, that would lose their water rights.

So the way I read this, because it has got this section in the Tauzin amendment, there is absolutely nothing you could do under the Colorado compact law that the Federal Government would not have to pay for.

Mr. VENTO. Mr. Chairman, would the gentlewoman yield?

Mrs. SCHROEDER. I am delighted to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I thank the gentlewoman for yielding. Is the gentlewoman suggesting that Colorado has overappropriated and California has overappropriated, in other words, they have actually given away or granted water rights that do not exist?

Mrs. SCHROEDER. Mr. Chairman, obviously we can have years of drought, and yes, we have overappropriated.

Mr. VENTO. I think it is a pretty well understood fact that some western States have in some cases overappropriated the water, for instance, as in the Colorado Basin.

If I can continue for a minute, I realize we are in a Colorado debate here, but the point is when we have overappropriated in these cases and the Federal Government has somehow become involved in this, either by being present or by being the Federal Government, even in terms of where there are compacts and other agreements between States, the suggestion is that insofar as the shortfall would occur in terms of somebody finally in getting

their 10 percent, that the Federal Government would then be liable to pay the difference.

And we would be paying for nonexisting, nonexistent water actually under this, because somehow we have been compliant in terms of inaccurately describing and quantifying the amount of water, even though it is generally appropriated by these States as it is, unless we are dealing with the McCarran Act; we would have to then make up the shortfall and in the end be left holding the bag.

Mrs. SCHROEDER. What the Colorado Water Congress apparently decided was basically this 73-year-old compact would implode because there would be nothing to stop when the Federal Government will not have to pay.

Mr. ALLARD. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I am happy to yield to the gentleman from Colorado.

Mr. ALLARD. Mr. Chairman, this is not going to have an impact on the Colorado River Compact. This is an agreement between the States and the Federal Government and it is passed by the Congress. What is going to have an impact, and the gentlewoman may be aware, but in Colorado law we have a provision which says if you are a private owner of property that you cannot sell it outside the State of Colorado. It is Colorado law the gentlewoman is addressing and so much of what she is referring to here in this particular bill has to do with a Federal agency coming in and literally blackmailing water from individuals and States.

For example, the permit to bring water through the forests, reclaiming 30 or 40 percent of the water, it is taking of private property rights. It is water.

Mrs. SCHROEDER. I do not profess to be a water lawyer, I only figure that the Colorado Water Congress who follows this very carefully, would interpret it differently, and feels that because our State declares a water right to be a property right under this Federal law, if we did anything that would impact upon someone's property right it would be a taking. And therefore, we really could mess up the whole thing.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has expired.

(At the request of Mr. VENTO and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 3 additional minutes.)

Mrs. SCHROEDER. I thank the gentleman from Minnesota.

So I am reading what people who have a lot more expertise in this than I have said at this Water Congress, and I think we should take it very seriously.

Mr. ALLARD. Mr. Chairman, will the gentlewoman yield on that point?

Mrs. SCHROEDER. I am happy to yield to the gentleman from Colorado.

Mr. ALLARD. The Colorado Water Congress sets a policy and makes it available to all of our offices, and I have not seen any poll stating, and I do not believe one has been put out from the Colorado Water Congress that says this particular bill is going to interfere with interstate commerce or the Colorado River Compact, and certainly I would suspect that they would probably very strongly support what is in this bill.

Mr. VENTO. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I am delighted to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I appreciate the gentlewoman yielding. I think the recognition here of course in terms of Colorado's rights in many instances is to appropriate water, that they are actually appropriating this water, but somehow in terms of the Federal Government being involved, for instance if we reserved water rights under the McCarran Act, we could in essence by reserving those particular rights for whatever reason, whether it is a forest or public domain lands or wilderness, which under court interpretation has reserved water rights, then we would in essence by exercising that designation of land, by exercising that water right we would be taking water again for these other purposes which in essence could result in the overappropriation being compounded. And that in essence, then, is forcing the Federal Government, you are backing the Federal Government into this by putting us on line in terms of this particular issue where we have reserved water rights under the McCarran Act, so this makes us pay again for those particular, for that water or property which is the property I might add of the people of this country that are the owners in essence of these public lands, of the forests, of these public domain lands.

So the gentlewoman is exactly right. This is a dilemma; there is not an answer, there is not a question. You are putting in this particular legislation specifically changing language in terms of takings. Also we are not talking about takings here, we are redefining regulation and what constitutes a compensatable property, a compensatable sum under law. That is what is being done in this particular legislation. We are not talking about takings because that is a much higher threshold, and there obviously then and admittedly there is significant effort there to try to change that.

Mr. TAUZIN. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, let me reassert two facts that I hope should be abundantly clear. First of all, the basis on which we amend it as it comes out of committee does not affect State actions.

□ 1315

To take water rights away from people, local actions to do that are not covered by this bill. So the State of Colorado, if it wants to take water away from people, is going to have to answer in some other court regarding that action.

Mrs. SCHROEDER. This is under a Federal law. This is the Colorado Compact that is enforced federally, so that does not hold.

Mr. TAUZIN. If the gentlewoman will yield further, the second point, as long as the Federal Government keeps its contract with the owners of that water, as long as the Federal Government does not violate the contract, whatever the State does is something else, as long as the Federal Government keeps the contract, there is no trigger in this bill for compensation.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has again expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. Mr. Chairman, the problem is that everything changes, and they cannot negotiate anything. They cannot negotiate anything for change, because it would become a taking.

Furthermore, because the water right is considered a property right, if the individual decided to sell their water to another State, this could be very, very critical.

Let me just say, I think this is all very confusing, and I am reading out of the Denver Post where it says spokesmen for Colorado, Wyoming, New Mexico, and Arizona held that the 73-year-old Colorado Water Compact could break down effectively if private water marketing is allowed. This could happen, they said, by people being able to do this, and the Federal Government being stuck by the taking.

I just want to finish my statement, if you do not mind. There was a wonderful article today in Roll Call that I think summarizes where we are. They said that we are moving to change these things so rapidly that it is like standing at the end of a conveyor belt with cream pies flying at you, and I think one of the reasons that no one is quite sure is we are changing things that have been around for a very long time. We are doing it so rapidly that we are all trying to make our best guesstimates.

This, I think, is really very frightening, because water is life out where we live. That is why I am very concerned about the gentleman including the Bureau of Reclamation and getting the Federal Government in under that.

Has the gentleman from Louisiana thought at all about taking that out?

Mr. TAUZIN. If the gentlewoman will yield further, first of all, the bill as it comes out of committee includes this and all Federal agencies and all Federal acts. We are limiting under this amendment to these acts, so the bill contains the total regulatory effect.

Second, the gentlewoman should not be concerned that anyone cannot renegotiate contracts under this bill.

You are perfectly entitled in Colorado, Louisiana, anywhere else to renegotiate contracts with the Federal Government. This bill only says if the contract is violated, invalidated by the Federal Government, and that diminishes someone's rights.

Mr. ALLARD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to rise in favor of the Tauzin amendment.

I think it is a good amendment. I think it moves us in the right direction as far as protecting private property rights. I think it is vital to the interests of the State of Colorado, because by recognizing water as a private property right, as the States do, we are saying to the Federal agencies that the States are in a better position to determine where one person's right begins and where another one ends, and we have, through Colorado water law and the doctrine of prior appropriations that has been adopted by most of the Western States, I think all of the Western States, and it recognizes there is a property right, and that that property right is going to be measured in a court. They take it to a water court in the States, and they determine exactly where one person's right begins and the other one ends.

And if nothing else, this amendment not only preserves private property ownership, but also recognizes the State's role, which is very important when we get into private property issues, particularly as they apply to water.

So I would just have to bring up a situation in the State of Colorado where we have cities, as well as individuals, but I will refer to cities who have purchased water or they have made, gained, water through annexation agreements, and this water was to be used for the purposes within the city, whether it is for open-space development or park development or municipal water supply, for drinking water or manufacturing or whatever. After the States had acquired this water, then the Federal Government changed the rules. They changed the rules and said all of a sudden, instead of automatically renewing permits that allowed the water to be transferred through the national forest, they were going to blackmail these cities to give them water for doing that, and it is the changing of the rules, not from private property, but by the agencies and traditionally they are doing that, and what they were requiring was 30 to 40 percent of the water would have to be left in that stream in a dry year.

And where were they going to get that water? They were going to get it from the cities who paid for it. They were going to get it from individuals who paid for it. It was obviously a taking, and that is the kind of problem that this particular amendment, as I see it, is trying to address our concerns, and so I think it is really very important.

The other thing I would like to make a point on, the Colorado Water Congress, they are a policy advisory board in the State, separate from State government. Usually when they take a position on water policy, we get a written comment on it. Now, there is not one individual that speaks for that particular Congress. It is usually done by a lot of consultation.

As far as I know, they have made no recommendations on action on this particular piece of legislation or this water language. I would suspect that if they reviewed this water language, because it is made up of a lot of cities of which I brought the situation up as well as private property owners, that they would support the language that is on the floor of the House today.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. I think one of the reasons that they have not come up with a statement, and it was in the paper that they were debating it, is because this has all come at them rather fast, but I have another question.

Is the gentleman at all concerned that the Tauzin amendment strikes the beginning of section 4 in the bill on page 2 which says no compensation can be made under this act if the use limited by the Federal agency is prescribed under the law of the State in which the property is located? Does that not concern the gentleman vis-a-vis what we have been talking about? And I wonder why the gentleman from Louisiana did not strike that?

Mr. ALLARD. Reclaiming my time, I yield to the gentleman from Louisiana to explain that at this point.

Mr. TAUZIN. I will try to address that again as I tried to earlier.

The concern is now we are limiting the bill to these areas of wetlands takings and ESA takings or actions of the agencies here to deprive people of water rights, that to allow the State to duplicate the Federal proscription and, therefore, violate the person's right to receive compensation by simply duplicating the same proscription would, in fact, not be appropriate. The person who has lost his property, whose rights to use it, whose value is diminished because of some Federal statute should not lose the right to compensation just because the State has also duplicated that prohibition. Only when the State has other reasons to prohibit it should that occur.

Ms. DANNER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I ask to strike the requisite number of words.

Mr. Chairman, the opportunity is before us to seize the moment and restore the faith of millions of Americans through passage of the Tauzin-Laughlin-Fields-Danner-Peterson amendment to the Private Property Protection Act.

Surely our Government does not expect the American people to abandon their rights on an issue that was decided when our Constitution was conceived over 200 years ago. A government whose very conception was founded upon empowering words such as life, liberty, and the pursuit of happiness.

We must avail ourselves of every opportunity to recognize and understand not just the text of our Constitution, but how remarkable that document is—it's a bold and masterful plan for governance and individual freedom.

One of the basic tenets of our Constitution and a principle upon which our country is founded is an individual's right to own property.

In addition, pursuant to ensuring that right is not violated, the fifth amendment provides that the Government must justly compensate private property owners for property taken for public purposes.

Certainly, the past two decades are evidence of where our Government has gone astray. In this day of mounting and excessive government regulation, all too often, private property owners lose the economic use of their property.

This amendment to H.R. 925 would further solidify the private property rights of millions of Americans across the country.

In situations where the Government regulates to the point that the property owner may not use his property, or that a portion of the property is devalued by 10 percent or more, the property owner must be justly compensated.

I urge my colleagues to support the Tauzin-Laughlin-Fields-Danner-Peterson amendment to H.R. 925.

Mr. TAUZIN. Mr. Chairman, will the gentlewoman yield?

Ms. DANNER. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentlewoman for yielding.

Mr. Chairman, I received a letter today that I want to read to the House. It is a letter from a young man named Patrick Becnel:

My name is Patrick R. Becnel. I am twenty-eight years old and married with two children. I am a life long resident of Plaquemines Parish and a sixth generation citrus grower in the Jesuit Bend area.

I have recently run into a serious problem in obtaining continued financing for my farm operation. The nature of this problem has been a letter from the Dept. of Corps. of Engineers. A wetland designation on a portion of my farming operation. (see attached) And there is a map.

''In an effort to obtain additional necessary financing the bank required an appraisal on my farming operation. The appraiser stated that due to a letter dated in November 1991, which is now expired, no value would be allocated to the portion of land subject to wetlands determination. This land is within the Plaquemines Parish maintained hurricane protection levee.

''We desperately and urgently request your assistance in this matter. My farming operation, which is my livelihood, is in serious jeopardy due to this situation.''

This is typical of what we are debating here today, government regulations that tell a young farmer, 28 years old, married with two children, that he can no longer get financing on his farm because of a letter sent to him by the Corps of Engineers in 1991, a letter expired even, that designated a portion of his land as a wetland. If we do not give this farmer and other Americans some redress, not here in Washington in the Court of Claims, not at the Supreme Court, but at home in an arbitration proceeding that gives him his rights, shame on us.

I thank the gentlewoman very much for yielding.

Mr. THOMAS. Mr. Chairman, I move to strike the requisite number of words.

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

Mr. THOMAS. Mr. Chairman, I had not planned on speaking on this amendment, but in listening to the discussion about California and somebody's re-creation of recent history about what happened in this House, I felt compelled to come down here and at least try to give a little balance to the CONGRESSIONAL RECORD that was being made by people who were perhaps folks who have not paid attention to what has been going on over the last several years, protesting a little bit too much, I think, about an amendment that says if the Federal Government violates a contract that it made with someone, the Federal Government is in the wrong.

And there was a discussion about the fact that the California water project, the Central Valley project, had been voted on by this House, and that an overwhelming bipartisan majority had already settled that question. And why in the world are we bringing it up again?

Now, one simple statement was missing in that entire dialog about how horrible it is that the Federal Government is entering into a contract with a private party, that the Federal Government has to honor that contract.

The changes that were made in the California water project law did not stand alone. We did not vote it up or down. It was a classic example of the arrogance and the way in which legislation had been managed for years by the now minority that was the majority at the time. When we decided the California water question, they rolled into the package the Central Utah project. The gentleman from Utah [Mr. HANSEN] stood here and kind of said, ''I can't do anything about it,'' to this gentleman from California. ''My project would be in jeopardy.''

The Central Arizona project was rolled into that little package. The Buffalo Bill Dam in Wyoming was rolled into that package. A water project in New Mexico was rolled in; the San Luis Valley project in Colorado was rolled in; the Mid-Dakota project was rolled in; the Lake Andrews Wagner project in South Dakota was rolled in.

Are you beginning to get the picture? There was not a vote on the California project. There was a vote on the Mountain Park Master Conservancy District in Oklahoma; there was a vote on the Cedar Bluff project in Kansas. There was an Indian rights provision. Texas was involved with the Lake Meredith salinity control measure, and on and on and on, the classic way they were able to get their way by creating an omnibus package that would put a number of people in jeopardy if they would not do the bidding of the former chairmen of the committees and subcommittees in the 103d Congress.

So when somebody stands in this well and tells you that the House voted on the California project, I want the RECORD to be straight on that, and when someone stands in the well and simply cannot understand either the logic of the amendment offered by the gentleman from Louisiana or the underlying amendment, the substitute offered by the gentleman from Florida [Mr. CANADY], I will tell you why they cannot understand it.

□ 1330

They do not understand the logic of the sanctity of contract. We had an amendment to the Constitution, the 11th amendment, over this very question as to whether or not government can abrogate its agreement under a contract.

The fact of the matter is the government has been abrogating its agreements over and over again, aided and abetted by the former majority.

This is a slight midcourse correction. It is an attempt to tell people who enter in good faith into a contract with the Federal Government that, in fact, we are going to make sure the Federal Government keeps its word, and, if it does not, you will be compensated. That is simply the totality of this discussion.

So when you listen to folks say, ''We don't understand why this is going on. We had a vote on the floor of the House,'' I want the record to show and for all of us to remember what used to go on around here. It is not going on around here anymore.

Mr. VENTO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the bill, H.R. 925, and the Canady-Tauzin amendment, which I believe is misguided legislation and amendments.

The bill, if enacted into law, will result in the biggest taxpayer bailout ever. This bill will dwarf the cost of things like the S&L bailout and will, in essence, establish a new welfare entitlement for land speculators, bankrupt developers and other want-to-be entrepreneurs seeking to make a quick buck off the Federal Government.

I appreciate my colleagues' attempts to improve this deficient legislation, but alas they fall far short of sound policy and law.

During today's debate we continue to hear the personal stories of hardships caused by the enforcement of laws on individual landowners. I do not disagree that at times, of course, law and regulation have an uneven impact, consequences that are unfair. However, the solution is not in a radical rewrite of what constitutes a regulatory compensation of property rights. After all, the Constitution needs, and especially Thomas Jefferson needs, little help from most of us. These are simply not a panacea cure-all to Government regulatory problems, in specific laws, correcting the basic shortfall or even the specific shortfalls outlined in the Tauzin amendment. Property rights under the U.S. Constitution have protection that is significantly different from what is being sought in this policy proposed on the House floor today.

I might say, incidentally, the rate at which this body is attempting to change the Constitution, the fifth amendment could well be on its way to being repealed at this point.

Under the auspices of this amendment, a process already exists to reimburse individuals and companies for property right takings, and ample legal history is in place for the courts to act.

I would also point out that the courts have not been hesitant to act to protect individuals' rights. However, this bill, with its lowered and almost nonexistent standards to limit regulations and to make the Federal Government pay to govern, now declares open season on taxpayers' pocketbooks to enrich passive logical limitation on private land, to pay for bad business deals and speculative disasters, for the failed developer. The American taxpayer will be the sucker of last resort and the source of funds.

Building homes on swampland? Just get denied a permit, and you can stick the taxpayer with the bill. Is your riverboat sinking? Seek a dock permit, get denied, and you have hit the jackpot. A new way to win at the gaming business. Who else wins? Some of this is for big business. Armed with the threat of massive Federal taxpayer payoffs and a corps of lawyers, big business will be able to blackmail most agencies to yield to their will. Who loses? Obviously, the public. Either we pay with our tax dollars or the surrendering of the Federal Government's ability to enforce crucial environmental laws.

Mr. Chairman, we should reject this proposal in total. This bill throws out over 200 years of judicial history and protections for the individual property owner and sets in place a radical and ill-conceived concept. We do not know how this process will work. We do not know how much this bill will cost. But, apparently, the advocates will not let those serious questions and costs to the taxpayers stand in the way of their ideological political goals.

The question with regard to appraisals, the 10 percent difference in terms of a piece of property's land appraisal,

is not unusual. You can get that by just asking two appraisers and then blame the difference on the government, and the government has to pay.

We had an example here of problems with the water rights. The legislation is designed to deal with specific problems with these laws, whether they be reclamation laws, the Endangered Species Act, or the other provisions that are touched under here, the Forest Planning Management Act or the entire law that governs the public domain, FLPMA. Then we ought to address those particular concerns.

There is a new majority here. These issues ought to be brought up, but what we are doing is superimposing this measure over a portfolio of law. This bill doesn't seek fair treatment, it seeks a change in the rules with regard to how we will govern or deal with these significant issues. This procedure greatly disadvantages those who are trying to regulate and implement the law to stop or delay them. Remember those regulators, those faceless, nameless bureaucrats some demean the public agent represent the people of this country and the implementation of the people's will. The Federal Government is standing in the place of the people in terms of achieving and advancing the various types of public policies. It is very important, I think, to recognize that and look at what happens in terms of the impact in these instances seeking the public good. So this proposal seeks to redefining and changing this procedure.

I might add, Mr. Chairman, there has been some indication about what the costs of this bill would be. In 1992, the gentleman from Louisiana's bill at that time, H.R. 1330, was brought before the Congressional Budget Office for a cost estimate.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. VENTO] has expired.

(By unanimous consent, Mr. VENTO was allowed to proceed for 2 additional minutes.)

Mr. VENTO. I thank the chairman.

Mr. Chairman, Mr. HAYES' bill on wetlands alone, and a bill that I might say had a very restrictive definition of wetlands, an estimate was made. An estimate was made on that particular bill with regard to what would the cost of the implementation of the bill be with regard to his specific provisions. The provisions of the measure were more limited than in the legislation before us.

In the CBO's estimate, excluding Alaska, excluding Hawaii, they estimated that the cost would be $10 billion to $15 billion in terms of cost, just for the provisions that deal with the wetland delineation process in H.R. 1330 of the 102d Congress.

As I said, I believe the restrictions that he had in the 1992 bill were much more limited. In fact, they calculated there were only about 100 million acres of wetlands, but the estimate dealt with touched on 9 million acres. It did not deal with Alaska, the wetlands in Alaska. That was the cost, that is what we were talking about, $10 to $15 billion.

Of course, the issue here is they say this bill does not appropriate, this bill isn't on entitlement according to the sponsors modifications. Mr. CANADY has made an effort to suggest that this would come only from appropriated funds. But how is the agency to carry out the responsibilities they have? In other words, in terms of paying for this, they have to say you take it from the agency, from other projects that they have to pay for it. The agencies entire budget could be wiped out by a single regulation action that would result in compensation being paid.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentleman.

Mr. TAUZIN. I thank the gentleman for yielding. First of all, let me correct the record. The bill covered endangered species as well as wetlands, No. 1. No. 2——

Mr. VENTO. Does the bill cover the reclamation provisions that the gentleman has?

Mr. TAUZIN. No, it did not.

Mr. VENTO. It did not.

Did the bill cover the public domain lands, the FLPMA lands?

Mr. TAUZIN. I am sorry?

Mr. VENTO. The gentleman's amendment, has the Federal Land Management Practices Act, [FLPMA] did it cover FLPMA?

Mr. TAUZIN. I am trying to tell the gentleman it covered endangered species and wetlands, and it was done at a time when the corps, in the 1989 agreement, was publishing a manual that said 60 percent of the State of Louisiana was going to be considered a wetland.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. VENTO] has again expired.

(By unanimous consent, Mr. VENTO was allowed to proceed for 2 additional minutes.)

Mr. VENTO. Mr. Chairman, I think this is an important discussion which the gentleman and I are having.

Mr. Chairman, I would just point out that in reviewing the letter, it indicated that there were 100 million acres but they only looked at 9 million acres that perhaps were being subject to this, and discounted Alaska and discounted Hawaii. But even under that particular provision, they came up with this figure of $10 to $15 billion.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield.

Mr. TAUZIN. I thank the gentleman.

Mr. Chairman, the amount that the Government is going to have to pay any landowner for taking his property is going to depend mightily on the actions of the agency from this date forward. If the agency wants to declare 60 percent of the State of Louisiana wetlands, I suspect it is going to be a very expensive propostion. If the agency wants to protect real wetlands and wants to protect habitat in circumstances where it does not have to take 21 counties of Texas for a single bird, it is going to have a much lower cost to that agency. It depends on the agencies and their regulatory practices.

Mr. VENTO. I appreciate the gentleman's observation. But I would say I do not think it covered that vast area. In fact, while they obviously identified 100 million acres of wetland, they only estimated 9 million acres of that might be affected, only a portion of that, excluding Alaska and Hawaii.

So this is a very conservative estimate by the CBO.

The point is, what the legislation says is that those dollars were not an entitlement, they must come from the agencies' appropriations.

I would suggest to my colleagues what does that mean, if it is the BLM or the Forest Service? If it is the Forest Service, you would have to completely—they would have no budget left to carry out the responsibility in terms of the law.

So I think the point I am trying to make is that if you want to change these laws, you ought to change it, you ought to deal with the Endangered Species Act or the wetlands laws on the floor.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield further?

Mr. VENTO. I am happy to yield.

Mr. TAUZIN. I thank the gentleman for yielding.

I point out that we purchased Louisiana for this Union for $14.5 million.

Mr. VENTO. And it was worth it, too, I might say.

Mr. TAUZIN. It definitely was. And if the Government wants to repurchase the State of Louisiana for the purpose of the gentleman or any other purposes, we are indeed willing to negotiate, but I suggest you pay a fair price.

Mr. VENTO. Part of that Louisiana Purchase was Minnesota, and I want to personally attest to its value.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. VENTO] has again expired.

(On request of Mr. THOMAS of California and by unanimous consent, Mr. VENTO was allowed to proceed for 1 additional minute.)

Mr. THOMAS. Will the gentleman yield?

Mr. VENTO. I yield to my colleague from California.

Mr. THOMAS. I thank the gentleman for yielding.

Mr. Chairman, in the course of his statement, the gentleman indicated that the amendment of the gentleman from Louisiana [Mr. TAUZIN] would be somewhat in the vicinity of $15 to $30 billion.

Mr. VENTO. If I may reclaim my time, that was only for the wetlands provisions.

Mr. THOMAS. Not this amendment. The previous amendment

Mr. VENTO. No, his amendment actually covered—that was a conservative estimate of just wetland cost of the regulatory compensation——

Mr. THOMAS. So, on a conservative estimate of $15 to $20 billion, but the other side of that coin, I would tell the gentleman, is that actions by this Government in regard to people who hold property put a burden on those private sector individuals to the tune of $15 to $20 billion. There was no discussion about priorities in terms of Government decisions. That is the problem.

Mr. VENTO. Reclaiming my time, I would just point out that the issue is, of course—the gentleman is redefining what value is. He is creating that value in the legislation, it is questionable whether it exists in reality.

Mr. TAYLOR of Mississippi. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, in my office I have a small bulldog that was awarded to me by a group for being a defender of the treasury.

I try as often as I can to try to save the taxpayers some money. I am trying to do that today by getting a clarification, hopefully, in law, so that this bill that is well-intended does not become the scam of 1995.

I would point out that the illustrations that many of you have given as far as wetland problems are real, and they have to be addressed, and I hope this bill will do that.

But I also see, in addressing those problems, the potential for multibillion-dollar losses to our country that I think have to be addressed.

This is an area of the district that I represent that adjoins Louisiana; it is a map of the Pearl River. The gentleman from Louisiana [Mr. LIVINGSTON's], district is right over here. It divides the State of Mississippi in the area that I represent.

As you can see, it is pretty hard to distinguish between the water and the land. This is a U.S. Geological Survey map. The reason for that is, when you get there, it is pretty hard to distinguish between the water and the land. It is a coastal marsh. With the wind blowing out of the north, you can pretty well walk across with a good pair of waders.

□ 1345

But if the wind is blowing out of the south during the springtime, the only way you are going to get across is by boat. It is a true wetland.

Now, what I have trouble with, and I hope the gentleman from Florida [Mr. CANADY] can explain this to me, is if someone buys a tract of this, a lot of this land was purchased during the Depression for about 1 dollar an acre. Say someone goes to the owner of the land and there is a wink and a handshake and he says, ''I want to pay you $5,000 per acre for that land because I want to put a shopping center there.'' And then he takes a napkin and draws on the back of that napkin and goes down to the nearest Corps of Engineers and says, ''This is the plan for my shopping center. I want to put it right here, elevation, six inches.'' The Corps of Engineers is going to say—

> There is no way on earth you can do that. It is the mouth of the Pearl River. Every spring it is going to flood, and every time there is a wind out of the south, it is going to flood. You will bankrupt the Federal flood insurance program. You can't build there.

Under the provisions of this bill as I read them, the person could then sue the Federal Government for that $5,000 an acre he paid for it. Now, you and I may look at it and say he was foolish to pay $5,000 an acre. But when you consider the highest priced property in the State of Florida is right along the canals that used to be marshes, and some of the highest priced property throughout our country is waterfront property, that person could turn around and make a fairly intelligent argument that this is right here on the Mississippi Sound, it is waterfront property, and I ought to be entitled to my $5,000.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Florida. Please tell me how we are going to keep people from abusing this bill?

Mr. CANADY of Florida. We are going to do that, because we grant them the right to compensation for the diminution in the fair market value of their property. What I am telling you is $5,000 in that case would be a sham. That is not the fair market value.

Mr. TAYLOR of Mississippi. I would ask the gentleman from Florida [Mr. CANADY] where is fair market value defined in this bill?

Mr. CANADY of Florida. That is a concept that is well defined in the law. We do not need a definition of that. That is defined in condemnation law already. That is there. There is no doubt about that. And the kind of circumstances you are describing are not going to result in compensation. I understand your concern, but I think it is not well founded.

Mr. TAYLOR of Mississippi. Mr. Chairman, reclaiming my time, let me ask the gentleman this: Is it fair market value if the 1 dollar an acre that the man bought it for during the Depression, is it fair market value for the $5,000 an acre that the man from the Midwest and does not know what a coastal marsh is worth, or he in good faith paid $5,000, or is it $50,000 an acre that it would be worth if he could build the shopping center? I would ask the gentleman from Florida [Mr. CANADY], with a rule of law, why are we so afraid to define something and why do not we define it in this bill?

Mr. CANADY of Florida. Mr. Chairman, if the gentleman will yield further, let me say this: I do not think anyone is afraid. No one is afraid to define this. It is already well-defined in the law and it is not going to cover the circumstances you are talking about.

This is an open amendatory process. If the gentleman has an amendment, that is something the House would consider. But I do not believe it is necessary, because that is a concept that is well-defined in the case law.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, the gentleman asked a very legitimate question, how do you determine the fair market value before and after the regulatory action takes place on the property. The courts have well-settled this issue. As the gentleman has indicated, if the gentleman wishes to incorporate that in the bill, that is fine. But the courts have held, and the arbitration proceeding called for in this act would follow those decisions, and I read from Florida Rock,

> The uncontroverted evidence of an active real estate market, you look at what a willing buyer, willing seller requirement in that real estate market produces as the fair market value on the date that the regulations took place.

If willing buyers and sellers are really out in those areas spending $5,000 an acre, I would be greatly surprised, and so would you. You know that is a sham price, so would the arbitrator. He would not award such a ridiculous amount.

The CHAIRMAN. The time of the gentleman from Mississippi [Mr. TAYLOR] has expired.

(By unanimous consent, Mr. TAYLOR of Mississippi was allowed to proceed for 4 additional minutes.)

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, what would happen would be that the individual who owned the property would go and get himself some kind of an assessor who would assay the value of the property. That individual would fix a value of the property after it was developed and before it was developed, a highly speculative process on which you could get a number of different people who would assess the value of that property quite differently depending on the assumptions they made and depending on a large number of other things, including highly speculative judgments as to the value of that property if it were in fact improved.

So what a fellow really would do under this legislation is to run in with two different estimates from a surveyor or an appraiser who would give him the best selection of choices that he felt would best enable him to come in and sue the Federal Government or to make claims against the Federal Government under this particular legislation, with consequences that the cost to the Federal Government would

be ballooned enormously. The Office of Management and Budget says it would cost literally billions and billions of dollars, in response to a request that I made to them.

Am I correct in my assumption?

Mr. TAYLOR of Mississippi. Mr. Chairman, reclaiming my time, I would say to the gentleman from Michigan [Mr. DINGELL], it is well known I am not an attorney but I share your feelings that a clever attorney could certainly bill the United States for a lot of money if we do not define fair market value as being fair market value at the time of purchase, fair market value of the potential of the property. We have to have a definition of what fair market value will be and at what time it is estimated.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I raised this before on Agriculture. It has always been my understanding in a variety of capacities at State and local governments as well as the Federal that what they talk about is appraising the value of property at the highest and best use. That is, whatever you can legally develop the property to be at the time that you had it and before the regulations that you were challenged under, that is what sets the value of the property. Any subsequent regulation which restricted the way you could use the property in fact devalues the property.

Mr. TAYLOR of Mississippi. Reclaiming my time and addressing the author of this measure, the sponsor of this measure, would you accept that as the definition of fair market value? The fair market value at the time that it was purchased?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, we will be happy to work with the gentleman on an amendment. I am happy to look at that language. I do not want to get wedded to a specific language here. But we want it to be fair market value. If we can come up with a definition that we think is consistent with the case law on that, we will be happy to work with you.

Mr. TAYLOR of Mississippi. I would say to the gentleman, the reason I do this, and I do it in good faith, is that I have met with several members of the staff that helped you draft this, and came up with several different interpretations of what would really happen under these scenarios.

These are intelligent people. I have got to believe that intelligent lawyers would be the same way and intelligent jurors would be the same way. That generally means that given that uncertainty, the liability to the American taxpayer would be phenomenal, and we need to prevent that.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Louisiana.

Mr. TAUZIN. The gentleman's concern is a valid one. The intent of the bill is that the fair market value is the fair market value at the time the regulation takes place as opposed to what it is worth once the regulation imposes a use restriction.

Now, that is generally defined in compensation cases in areas where the Government shows up to take your land and build a road. It does not look at what your grandfather paid for it. It looks at what the value was on the day they showed up to buy it for a road.

The courts have said for example, I would say to the gentleman from Mississippi [Mr. TAYLOR], that aberrational prices, the one you just cited, aberrational means outside the norm established by general activity. The court does not consider that fair market value. Neither have the appraisers under general law that applies to condemnation proceedings.

So what I am telling the gentleman is the intent is to do exactly what happens in a general condemnation proceeding, look at the value right before the regulation is prescribed, and the value right after the use is denied.

The CHAIRMAN. The time of the gentleman from Mississippi [Mr. TAYLOR] has expired.

(By unanimous consent Mr. TAYLOR of Mississippi was allowed to proceed for 3 additional minutes.)

Mr. TAYLOR of Mississippi. Mr. Chairman, I want to thank the sponsor of the measure and the sponsor of the amendment. I hope I have as a result of this colloquy the word, as a gentleman, of the gentleman from Florida [Mr. CANADY], that before the end of this day, before the passage of this measure, that we will do everything humanly possible to have a definition of fair market value included in this measure.

Mr. CANADY of Florida. I give you my assurance we will work with you to develop such a definition.

Ms. FURSE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong opposition to this amendment, and do that on behalf of the Northwest salmon fishing industry. I believe that while we talk about private property protection, we should also provide that protection to small businesses and local economies that are dependent on healthy natural resources.

I have heard statements today that the American people support this legislation. Well, I do not think that is quite true. The American people in poll after poll have said that they support protection of water and clean air, and they support legislation that does that.

Mr. Chairman, as recently as 1988, the salmon fishing industry in the Northwest contributed more than $1 billion a year to our economy, 60,000 jobs. This includes men and women who fish commercially, sports fishers, charter boat owners, hundreds of small businesses that sell to that industry.

But unfortunately, decades of habitat destruction through logging, mining, grazing and shoreline development, dam building, irrigation diversions, have sent our valuable salmon populations plummeting towards extinction.

Last year, for the very first time in history, the ocean salmon fishery was closed on the coasts of Washington and Oregon. Our legendary spring chinook fishery has been closed in the Columbia River. What has the economic impact been? A 42-percent decline in America salmon-related jobs. A 46-percent decline in overall salmon-related economic output.

I absolutely cannot understand how any Northwest Member of this House could support this legislation in opposition to the direct economic interests of their constituents. Recently, I received a piece of literature from the Pacific Companies Federation of Fishermen's Associations. I will include that in the RECORD. I would like to read a few excerpts from it.

> Without a strong Endangered Species Act, the only available remedy for the species recovery is closing down the fishery. And they say the ESA is not the enemy, it is only the messenger. Listing a species is like dialing 911 when you need an ambulance. It should be used rarely, but where needed, it is nice to have.

Finally they say about the importance of wetlands—.

> All around the country our industry is utterly dependent on species which themselves require healthy watersheds and estuaries for their most critical life cycle. Yet all this has been put at risk by the continuing destruction of wetlands and watersheds for those species dependent upon them for their very existence.

What H.R. 925 and this amendment does, it would make our already devastated fishing communities pay twice. They have already paid once with their livelihoods, because upstream property owners have overlogged or they have closed the streams to fish or they have developed riparian wetlands. But now we are asking them to pay again, to open up their wallets and pay again, to compensate landowners when the Federal Government has attempted to protect what little is left of a healthy fishery habitat.

Why should these hard working American taxpayers have to compensate corporate polluters and developers? They have wiped out our small businesses and our resource-based industries.

It is the cumulative impact, Mr. Chairman, of hundreds of private property owners acting in their own self interests that jeopardizes the public interest in such things as clean water and healthy fisheries.

Yes, we should compensate when there is a direct taking, but the American taxpayer should not have to pay landowners not to pollute or to degrade

our public resources, and water is a public resource.

I am a property owner myself, but I believe that although I have a private property right, I have a public property duty. If you care, if any of the Members here care about the American fishing industry, they should vote no on this amendment. This is not a takings bill, it is a corporate takeover bill.

Mr. CUNNINGHAM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I do not plan on taking the full 5 minutes. But the gentlewoman talked about the salmon in Washington. I went all the way through campaigning in Washington and looked at some of the dams and looked at the problems they had on even the impellers of their little edge in there that they were saying were killing salmon, the small ones going down. Part of the problem is recording. You release fingerlings. They go out to sea, and then they come back, and they actually measure how many salmon come back up river, not how many the sharks get or anything else, but the actual number that get back.

□ 1400

They also wanted to take and build this big venturi tube because they had a plan for $100 million to circumvent the dams up there that had no scientific basis, and it was going to cost them $100 million. The particular guy that runs the dam said, OK, we are going to save fish. They found out that there is this fish called a squawfish that eat their own body weight each day. Instead of $100 million, he took a group of high school kids for the summer and caught squawfish and saved about 90 percent of the fingerlings that went down and saved, this is big government's answer versus entrepreneurship.

They also want to take out a lot of the dams in Washington that have recreational value and storage of water and those kind of programs. But I look at, the President has just said, which I agree with, he wants to take a look, instead of just totally doing away with affirmative action. I think that is a reasonable view. But I think if you look at the reasons we have clean air, clean water, they have good purposes. But in many cases, those purposes have gone run amok. Same thing with the endangered species act and the wetlands.

I think that a reevaluation is what we are asking for, an economic impact where we do protect property rights of individual citizens in this country. Those are reasonable requests. But unfortunately, Mr. Chairman, there is many, many on the other side of the aisle, that do not want the reasonableness in any of those particular acts. They want to use it as a weapon, as a tool against our private citizens.

I know in the California desert plan, the property rights, and there was a portion of it that said that if you own property, they could take it and the Government would put you on a list because they are in arrears so much of paying for that taking. What happens is you could not build or improve your land over. You may be on there 10 years. The government then comes in and says, hey, now I want to give you fair market value after your land has been depreciated so much. That is not fair, Mr. Chairman.

I look in California at a fire that we had and hundreds of homes were burned. And one person said, I am going to grade regardless of what they tell me to save gnatcatchers because the brush, there is going to be a fire. That individual graded. The ones that were not allowed to are stuck with the law, their houses burned down.

I look in New Mexico at a young lad that was lost for 3 days in the wilderness and because it was a wilderness area, they would not let the helicopter land to pick up a child. He spent an extra night lost in the wilderness because a helicopter could not land in the wilderness.

I would think that Members would agree there are too many of these kinds of happenings, and we are looking for reasonableness, not extreme to where the people that want to concrete over the world or those that want to use the environmental issues as a leverage and as a weapon. I think that is the direction it is going.

Your take a look, look at the Colorado slag and what history has left. I mean that is a disaster. When you talk about property rights, miners have taken away our property rights to enjoy much of Colorado by the environmental damage they did.

Look at the Great Lakes. They cleaned that up. I look at the striper salmon on the eastern shore. I talked to my friend, the gentleman from Massachusetts [Mr. STUDDS]. I said, a long time ago I probably would have been one of those that fought against it; I would have been wrong, to my former chairman. I told him that in my long quest to become an environmentalist. He stated, ''Well, DUKE, you've got a long way to go.''

There are good things that we have done with all of these acts, but on the same measure, I think we need to have a reasonable approach to them. I do not think that is asking too much.

Mr. STENHOLM. Mr. Chairman, I move to strike the requisite number of words.

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

Mr. STENHOLM. Mr. Chairman, about 2 hours ago, I came to the floor very angry. I had received what I perceived to be a very threatening phone call as a result of my support of this legislation from what I consider the primary reason why we are there today, and the gentleman from California was just speaking to the fact that most of us would like to see a reasonableness applied to the laws that affected our land, whether it be the environment, whether it be the Endangered Species Act, whether it be the rights of private property owners. We would like to see a reasonableness. But that is not what we have been seeing.

Just as I listened, with a great amount of interest and certain support of the eloquence in regard to the protection of the American eagle or the salmon, all very good stories and certainly not the intent of this Member in being part of seeing something that would undo those laws that have protected in a commonsense way, if that is the way it has been done, but I, too, could sit up and stand up today and talk about some unreasonable acts.

An act in my district that cost taxpayers over $3.5 million in the protection of a water snake when all we were trying to do was build him a lake.

These are the kinds of dumb things that we have had imposed upon us by the elitists of the environmental community who choose to overlook the fundamental reason why we are here today. That is the fifth amendment of the Constitution. If you are going to take someone's property, the Constitution guarantees compensation, period. But we have had an interpretation of current laws to such a degree that there are those among us who believe their cause, and that cause often is a snake or a fish or a bird or some individual very important cause to an individual or a group of individuals, that believe that their opinion supersedes the right of an individual property owner. That is why we are here today.

We have heard a lot of talk about the budget. I am very interested in that. This bill will not cost one dime. It will not cost one dime, because what it will do, it will cause us to begin to look realistically at the cost of that which we are about to impose by the various agencies. And I suspect that the reasonableness that the gentleman from California just spoke about, and this Member certainly believes in, that we will find reasonable solutions, because I find that it will be the rare exception of a property owner that will deny a reasonable application of protection for the environment or protection for an endangered species that is reasonable and can be arrived at in the same manner in which those on the other side continue to argue we will not do under this law.

This bill does not pay polluters to pollute. This legislation, in fact, it specifically says, regarding the health and safety of this country, ''no compensation shall be made under this Act with respect to an agency action, the primary purpose of which is to prevent an identifiable hazard to public health or safety.'' There is a lot of red herrings out here, and that perhaps is a bad example to use today. But basically and simply, what we are talking about is returning to the actual application of the Constitution of the United States in saying that for whatever cause you are going to take my property, you

must compensate me for it. Primarily we should start by saying it is in the public interest that we do certain things and have reasonable discussions and we would never even be here today.

I rise, again, in strong support of the Tauzin amendment. I believe that it will actually do what the opponents say it will not do, it will actually protect the environment and protect the endangered species in a way in which no one has even thought of as yet.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Just to point out that one of the reasons people oppose this is, they say the American public can not be in support of this. Let me point out, Nations Business magazine just did a poll. The question was, should the Federal Government compensate owners when private property is restricted for environmental reasons? Do you know how many people responded yes? Ninety-two percent of Americans responding in that poll said yes. We ought to say yes today.

Mrs. CHENOWETH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to respond to some of the comments that were made by the gentlewoman from Oregon because I, too, come from the northwest. My State has been severely impacted by the listing of the redfish lake sockeye salmon in the summer and fall Chinook salmon. My State has had a great fall as far as its economic abilities because of the listing of the endangered species.

One of the problems that we are seeking develop now is the fact that the issue really is not the fish. The issue really is control of the land, control of the land without due compensation and just compensation and due process.

When we look at the health of the fish, we look at the health of the Pacific salmon and the fact that through agency research, we were able to use a technique called chemical imprinting, and actually take the Pacific salmon and place the Pacific salmon, in spite of his anadromous fish instincts and the desire to spawn upstream and be able to reprogram the fish's brain and natural instinct through a process of chemical imprinting so we took the Pacific salmon and placed him in the Great Lakes. And right now some of the best salmon fishing can be found in the Great Lakes, an area that was once considered polluted.

In addition, Mr. Chairman, in the Great Lakes, they are now suffering, because the salmon has been so successful, a decline of the whitefish because the salmon is now competing for the environmental space.

The salmon runs and the anadromous fish runs in the great northwest are a product of many things, least of which is the product of the Marine Mammal Protection Act. And because this body, several years ago, decided to pass the Marine Mammal Protection Act, it has thrown out of kilter the balance between marine mammals and fish. It is another product of the El Niño, which is a warming trend in the Pacific Ocean.

And so if we, as a body, could simply let science be free to do what science is best able to do, we could improve the fish.

Now, with regard to the taking of property, I rise in strong support of the Tauzin amendment. The value of property and fair market value is established by the dynamics of the market system. There are comparables that can be used on developed property or the potential of developed property, and there are appraisers who are licensed by the State to make sure that their appraisals will live up to the standards the State has imposed on them. They are trustworthy appraisers, and MIA appraisers can be depended upon.

So this whole concept of compensating people for the taking of their property should be one to slow down the Federal Government from taking of our property because, Mr. Chairman, if we do not stop this, this Nation will face a recession of great magnitude, because all wealth is acquired from the land. Unless we are able to take our creative energies and apply it to the land and bring out original wealth, this Nation will face economically.

Right now, Mr. Chairman, approximately 40 percent of our land base is under the control of the Federal Government. We cannot afford, as a nation, to have anymore under it.

I strongly support the Tauzin amendment.

Mrs. LINCOLN. Mr. Chairman, I move to strike the requisite number of words.

(Mrs. LINCOLN asked and was given permission to revise and extend her remarks.)

Mrs. LINCOLN. Mr. Chairman, in representing a totally rural district in eastern Arkansas, I certainly have realized how critical private property rights are. I was raised in a seventh generation farm family in Arkansas Mississippi River Delta. And as a farmer, my father has taught me not only a tremendous reverence for land conservation but also a very big respect for fairness and equity in property rights.

In the past years we have seen some of our individual property rights diminished. I think that the efforts today in trying to restore that, those property rights as well as the individual constituency respect in the Federal Government and what we are here to do.

We see in this bill the efforts to put fairness back into our constituents' property rights. That is a very important issue. But also there is another issue. That is the fairness in terms of the financial implications this may have to our constituents as taxpayers.

I allude to a little bit of what my colleague from Mississippi [Mr. TAYLOR] was talking about. I would like to engage the gentleman from Florida [Mr. CANADY] and/or the gentleman from Louisiana [Mr. TAUZIN] in a colloquy on that issue.

I would first like to applaud them on working hard to make this bill and their efforts on behalf of our constituents in private property rights a much better bill, something that we can all be proud of.

I would like to engage them in the meaning of the fair market value as it is set forth in this bill and certainly in the amendment.

I would like to certainly qualify if it is your view, in terms of the fair market value, that it means the present day fair market value and not the potential market value of the real property in question?

Mr. CANADY of Florida. Mr. Chairman, will the gentlewoman yield?

Mrs. LINCOLN. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, the gentlewoman is absolutely correct in that regard.

□ 1415

Mr. TAUZIN. Mr. Chairman, will the gentlewoman yield?

Mrs. LINCOLN. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, the answer is absolutely yes.

Mrs. LINCOLN. I know, for example, in many of the examples that I have gotten in from my constituents is a piece of property that perhaps contains the wetlands. For those of us living on the Mississippi River, that is a great deal.

Would it be valued according to the present use of the land surrounding the property, like farming, or, certainly, the residential purposes? It would not be valued according to the potential use of the land, like developing a golf course or resort area or things like that?

In terms of urban areas, a piece of land located in New York City, certainly that would be valued as is, but not according to the potential use of constructing a skyscraper or something other than that, is that correct?

Mr. CANADY of Florida. If the gentlewoman will yield further, that is absolutely right. In determining the value of property, the circumstances surrounding the property are absolutely essential to coming to the fair market value.

As we indicated before, there is a large body of case law on this subject, and this is something that has been dealt with by the courts repeatedly. However, we are happy to try to work with the gentleman from Mississippi [Mr. TAYLOR], as well as the gentlewoman, in developing a definition on that, if that is the will of the House.

Mr. TAUZIN. Mr. Chairman, if the gentlewoman will continue to yield, the case we opened this debate with,

Bowles versus the United States of America, was a good example of exactly the question the gentlewoman raises; that is, what is the Government's obligation in regard to paying the fair market value of a piece of property that came under a wetlands regulation.

He had a lot in a subdivision. The Government for 10 years argued that they only owed him the value after they had told him he could not build on it, after they said ''You cannot build a house on it.''

He argued for a long time ''This is a subdivision lot. My neighbors have built houses. If you tell me I cannot build a house, I should get the fair market value as a subdivision lot.'' He won after 10 years. What we are saying is it is the fair market value before the use regulation restricts the property, as compared to the fair market value after the use restriction. That is it, pure and simple.

If the gentlewoman recalls, we had the same debate on the Desert Protection Act last year. The arguments there were that when an endangered species occurs on a piece of property and it lowers the value of that property, that in that case, the person should be compensated for the value of his property before the endangered species restrictions were imposed upon his property, not after. That is the whole purpose of the act, to compensate him for the damage diminution by the imposition of the restriction.

The gentlewoman is correct, it is not the prospective value after you build houses and buildings and subdivisions, it is the value as an undeveloped piece of property before the regulation is imposed upon it, compared to the value right after.

Mr. WILLIAMS. Mr. Chairman, will the gentlewoman yield?

Mrs. LINCOLN. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, if I could, on the gentlewoman's time, ask the gentleman from Florida [Mr. CANADY] a question.

The gentleman mentioned something to the effect there is plenty of case law in effect. My question is, Mr. Chairman, moving, as I think this legislation does, even with the amendment, from access to the judiciary to a different appeals process entirely, how would the case law crosswalk with it?

The CHAIRMAN. The time of the gentlewoman from Arkansas [Mrs. LINCOLN] has expired.

(By unanimous consent, Mrs. LINCOLN was allowed to proceed for 1 additional minute.)

Mr. CANADY of Florida. Mr. Chairman, will the gentlewoman continue to yield?

Mrs. LINCOLN. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, the arbitrators who would be involved in this process would be governed by the same rules that would apply in the courts.

Mr. WILLIAMS. Mr. Chairman, will the gentlewoman yield further?

Mrs. LINCOLN. I yield to the gentleman from Montana.

Mr. WILLIAMS. That is not required under the act, is it, that the case law be crosswalked to the department as they try to mitigate for the appeals?

Mr. CANADY of Florida. Mr. Chairman, if the gentlewoman will yield further, that is what determines the definition of fair market value. That is the reference for determining fair market value. I do not think there is any question that that body of law that helps determine fair market value would be applicable in this context, as well as in the traditional context.

Mr. WILLIAMS. With congressional intent, and I assume we are making intent clear, Mr. Chairman.

Mrs. LINCOLN. Mr. Chairman, I first applaud the gentleman for working hard to make it a better piece of legislation, and I would encourage them all to work with both myself and the gentleman from Mississippi [Mr. TAYLOR] so we can codify that.

Mr. CALVERT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, there is no district in this Congress that has been more affected by private property right disputes than my district. I represent Riverside County where the Stephens kangaroo rat, several weeds, lizards, and bugs have seized control of the land.

No longer can private citizens use their property the way they wish, for fear of reprisals from the U.S. Fish and Wildlife Service. One notorious example of this occurred early last year when residents were not allowed to disk their property around their homes in order to protect the kangaroo rat.

The consequences of this was disastrous and outright irresponsible. Fires broke out in southern California that destroyed 25,000 acres and 29 homes near Winchester, CA. The irony of that fire is that it destroyed critical habitat area for the species we were supposed to be protecting.

I know my colleagues have heard this story before. However, I cannot repeat this story enough. This story is a perfect example of what can go wrong when the Government oppresses honest and hard working citizens.

These people deserve compensation for these extreme regulations. They deserve to be heard. They should be treated better than California's furry little friends. The Tauzin amendment would give power back to the people.

It would give compensation to landowners who bought their property, and then found a critter or weed was lurking around the corner ready to devalue the land. While my constituents support the protection of endangered species, they will not tolerate the Government's irresponsibility in handling this process, and ignoring a person's constitutional right to own and use the land which they paid for with their hard-earned dollars.

Mr. Chairman, it is about time that we put the rights and the welfare of the people before the rights of a weed, rat, or bug. I ask my colleagues to vote yea on the Tauzin amendment.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. CALVERT. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding to me, Mr. Chairman.

Mr. Chairman, I asked the gentleman to yield for the purpose of clarifying one part of the amendment we are offering. The amendment provides that when the excessive regulations of the Government exceed 50 percent of the value of the property, that the landowner then has a right to demand the Government purchase the property.

At that point ''It is yours, take it, just pay me, here is the title.'' That provision does not in any way derogate from the landowner's right, if he chooses, simply to be compensated for the diminution of value. It is simply an additional right accorded under the amendment to the landowner, where the Government really owns more of the property than he does anymore, to seek actual compensation for the property, and then turn the title over to the Government.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have listened to this debate for a goodly period. I find myself troubled.

We have a perfectly good Constitution. It provides that when there is a taking there is compensation, if it is the Federal Government that does it. That has been the law on the books since the Constitution was first ratified. This now changes that law in a fashion which no one can properly predict.

I have been seeking for some while a proper statement from both the Congressional Budget Office and the Office of Management and Budget as to the cost of the proposal now before us, either the basic legislation or the amendment offered by my good friend, the gentleman from Louisiana [Mr. TAUZIN]. They do not know. They say there is no way that an intelligent cost estimate can be made, but that the cost would be billions and billions of dollars.

This should certainly be a warning to us that we should be very careful. First of all, the bill and the amendment are full of curious contradictions. The consequences of what they do is to impose enormous liabilities upon the taxpayers to redress grievances which are real and grievances which are not real, and to address circumstances which, in many instances, are in fact beneficial to the landowner, and where requirements of the laws would in fact protect other landowners from wrongdoing by the person who would seek relief and redress.

For example, Mr. Chairman, the question of building on a flood plain.

Building on a flood plain imposes liabilities on the government if the Federal Government does not permit that. However, it also protects other landowners in the area from being flooded.

This legislation would require the Federal Government to compensate an individual for building on a flood plain and demanding redress from the Federal Government. I do not think that makes good sense.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield on that point?

Mr. DINGELL. I am glad to yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding.

I think the gentleman perhaps did not hear the discussion previously, Mr. Chairman.

Mr. DINGELL. I am discussing the basic legislation that is offered. I thank the gentleman for pointing that out.

Mr. TAUZIN. We are amending that to make sure that does not happen.

Mr. DINGELL. I understand that, but the amendment offered by my good friend, the gentleman from Louisiana [Mr. TAUZIN], suffers from its own defects, which are also substantial.

However, this is a most curious thing. It also says that where the Federal Government tells somebody they cannot build a nuclear power plant on a fault, the Federal Government has to compensate. Most curious. It sets up a circumstance where the Federal Government is going to have to hire legions of lawyers to process innumerable claims for compensations, real and imagined, bottomed on two estimates by appraisers of differing values, bottomed on some very interesting appraisals and estimates and assumptions.

I would urge my colleagues, Mr. Chairman, to think very carefully before this body adopts anything this hastily drafted, this hastily considered, and this hastily brought to this body for consideration. Remember that the Congressional Budget Office and the Office of Management and Budget have said no way, they have no way, no way of judging what the costs might be of this.

I have seen legislation like this come to the floor earlier in a great burst of good will. Remember one time we had legislation to compensate doctors and pharmaceutical manufacturers for their conduct under a swine flu bill, and for the manufacture of a swine flu vaccine? That was some years ago. That was in the days when $1 million was a lot of money.

We passed it. We agreed we would compensate the doctors for everything, and for the manufacturers of antitoxins and vaccines, for anything which occurred: bad manufacturing, rape in the parking lot, collapse of the building, fire, whatever it might be, as long as you were in there to get a shot.

The practical result of that was that the lawyers had a bonanza. We did not have any idea what the liability was. I would be happy to tell Members, I opposed the legislation, because I thought it was accepting an absolutely impossible liability.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 3 additional minutes.)

Mr. DINGELL. Mr. Chairman, we accepted that liability, and very shortly the lawyers were conducting seminars on swine flu law, and swine flu law was widely practiced by the legal bar, both by honest attorneys and, quite honestly, by shysters and ambulance chasers.

The practical result was that the Federal Government wound up with a liability of $5 or $7 billion, because the lawyers went out and said, ''Here is how you do this thing.'' Then they went around and solicited clients. Then they rushed into court. Then they began collecting huge judgments against the Federal Government. The Federal Government hired enormous numbers of lawyers, and the Federal Government paid enormous sums of money.

Here nobody knows what the liability is. Here the only thing we know is that if the legislation discussed by my colleagues on the Republican side of the aisle is adopted, that if the Federal Government does anything that anybody can claim impacts on the worth or the value of their land, they can be absolutely certain that they are going to be in the Federal courts or before the Federal agency to demand that they be compensated, and they will get themselves a slick appraiser who will come forward with a slick appraisal of what the land is worth before and what the land is worth after.

We can bet that those slick appraisals are going to be done to assure that the Federal taxpayers come up with the most money they possibly can. Farmers are going to be paid under this for the costs of loss of value on land which has been enhanced in value by Federal irrigation projects.

Does that make sense? Not to me. Maybe on the other side of the aisle it does, but not over here. All I can tell my colleagues is, they are assuming liabilities that will gray the hair of everybody else. They are adding to a valuable constitutional protection an irresponsible, incalculable liability for the taxpayers who pay our salaries and who expect us to legislate wisely, and they are assuming responsibilities for claims by every slick lawyer acting on behalf of a slippery client over claims which may or may not have value, and which may or may not have worth.

If there is a good basis for legislating in this area, I say we should do it wisely and well, but not to simply come out with this kind of blank check where people can back an armored car up to the Treasury and walk off with a truckload of cash.

□ 1430

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Montana.

(At the request of Mr. WILLIAMS and by unanimous consent, Mr. DINGELL was allowed to proceed for 1 additional minute.)

Mr. WILLIAMS. My request is only for the purpose of not having us interrupted here and have to do so in another moment.

My colleagues, those of you new here who do not know me, I am from Montana, and this takings issue is big-time stuff out my way.

But if the gentleman in the well is right, and nobody on the floor now has more experience at this than the gentleman in the well, and I have not known him to be wrong since I have been here, then those of us who are concerned about takings ought to listen very closely, because the legacy that the sponsors of the bill may carry around for a long time is one of bureaucracy, legal obfuscation and delay and enormous cost to the taxpayer if the gentleman in the well is correct.

I have a feeling that the sponsors of this bill and the good sponsor of the amendment, the main amendment, although well-intentioned in trying to reach a position that many of us like myself from the West would find comfort in having in fact began to move legislation that will create the enormous problems that the gentleman in the well describes. We should be very careful.

Mr. TIAHRT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the right to own and use private property is a fundamental right to our system of self-governance. H.R. 925 and this amendment on the Private Property Protection Act is a crucial step in restoring the constitutional integrity of the takings clause.

The ability to own property enables citizens to exercise their autonomy over Government authority. That is why this right to own private property is enshrined in the Bill of Rights.

The fifth amendment states: ''No person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.''

Mr. Chairman, it could not be more clear. If the Government deprives someone of their property, then we must compensate them.

What do we hear from the opponents on the other side of the aisle? The passage of this bill is too expensive.

That is precisely the point. If it is too expensive to compensate property owners after implementing regulation, then perhaps we do not need the regulation. It is never too expensive to uphold the Constitution. Let's not limit the property owner's freedom.

On March 1 in the Kansas House they passed legislation to help protect property owners. The Speaker of the Kansas House, Tim Shallenburger, claimed that this legislation was long overdue, and he urges us to pass H.R. 925.

Mr. Chairman, the horror stories that rogue Government regulations have created go on and on and it is a shame. It is a shame that the madtom catfish can end three generations of a family business.

In Kansas the Shepard family has spent over 100 years, or three generations, scooping gravel near the Neosho River. But regulators went mad about the madtom catfish. They shut down the Shepards because the madtom inhabited the Neosho River and they thought the fish might be threatened, so their gravel-scooping days were over.

Many people like the Shepards have been deprived of the use of their land and have to fight just to get Government to consider their claim.

The passage of H.R. 925, as amended, will restore the true meaning of the takings clause of the fifth amendment and will restore sanity to the regulatory craze.

Mr. Chairman, we have fought an expensive cold war for many decades. What that fight was about was freedom. In September 1991, the Soviet Congress declared in article 24 of their Declaration of Rights:

> Every person enjoys property rights, including the right to own, use and dispose of property. The inalienable right to own property guarantees personal individual interests and freedoms.

Do the Russians have a higher respect for private property than some Members of Congress? I hope not.

H.R. 925 and this amendment must pass. It is the right thing to do and it is the right time to do it.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. TIAHRT. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I want to thank the gentleman for his excellent statement, particularly reminding us how important private property rights and ownership are to the exercise of liberties and freedoms in our society. It is the cornerstone of the free enterprise system. Other countries who have gone through the awful experience of communism only to return to that system must be watching us with some humor to see people fighting the very rights that have made us special and different and emulated around the world.

I want to point out what the court, said, our Supreme Court said in Doland versus the City of Tigard:

> We see no reason why the takings clause of the fifth amendment, as much a part of the Bill of Rights as the first amendment or the fourth amendment, should be relegated to the status of a poor relation in these comparable circumstances.

In short it is as special, as sacred to our institutions of liberty as free speech, right of assembly, practice of religion, all the basic rights of our Bill of Rights.

Second, to point out that we are not creating this right on this floor today. It is a right inherent in our Constitution. We are not creating an obligation of this Nation to compensate. That is a right inherent in our Constitution.

All we are doing is saying that small individual landowners who cannot come to this Federal Court in Washington, DC, and spend 10 years of their lives and $500,000 of court costs and attorneys fees, who cannot do what big landowners are doing today, ought to have the same right to protections under that Constitution as those folks who can come to the court here in DC.

By golly, if we don't do that, we sacrifice an enormous part of that special package of Bill of Rights that our Founders knew were special and we have found out over generations makes us special, makes our country a great place to be. In fact, the place where most people would like to be. I thank the gentleman for yielding.

Mr. HAYES. Mr. Chairman, I move to strike the requisite number of words.

At one level, this afternoon's debate is about a statute, its words, its language, its construction, what it means individually as applied later by courts.

At a much greater and larger level, it is about a fundamental positioning of why each and every one of the persons who assemble in this room choose to do so, why they place themselves before a public for its endorsement to return here to represent their interests.

It is about that latter to which I would like to address a memory. He is a little man from Poland, about my dad's age. He sat very near where that rail is right by that door and watched the people's house that did not exist in Poland from whence he came. As he watched us last year deliberate an amendment involving property rights, he must have thought back to his arriving at this country, in Michigan, wishing no more than to work hard, to do well, and to be part of what had attracted him to this country.

In the late 1960's while I was in high school, he became part of the American dream, because Henry bought a little piece of property in Pennsylvania where he and his wife visited and where they some day planned to retire. That was 4 years before there was a Clean Water Act.

In 1971, before there was a Clean Water Act, the Corps of Engineers went to Henry who had paid 4 years of property taxes and 4 years of mortgage and said, ''We'd like to dredge a pit and put some of the spoil on your property. It will help some day when you retire.''

Two decades later, 21 more years of mortgage payments and interest, Henry retired. And the year I entered this Congress, he and his wife wished to enter that property to build their home. Instead, they got a cease and desist order from the U.S. Corps of Engineers. And the 70-year-old Henry Blaszkowski was told that after the fact we created the law where what you allowed the Corps of Engineers to do now means you have a wetland, even though it otherwise would not be and, therefore, you can't use this property.

The fundamental right to which I refer is whether as you stand in this well of this body to speak out on behalf of those who are aggrieved, you fear either that we will not write precisely the correct words so that we will not be able to do a perfect statute, and I suspect you are correct—we won't—but if we make an error today, I suggest to you that we err not on the side of the might of an endless bureaucracy, to a Henry Blaszkowski who did not have half a million dollars to try to reach the Supreme Court, to reach Mr. Madison's germane issue of right and takings in compensation, let's err against a mindless, faceless and thankless bureaucracy and on behalf of the Henry Blaszkowskis who now call America home.

In my case on behalf of those who occupy those bayous and inlets in coastal Louisiana and the 600,000 people who every 2 years have the right to tell me to get out and not be their Congressman, I want nothing more than for them to be given the same right with Federal agencies over whom they do not have the power of the ballot box and resources which they cannot otherwise match.

I want you to vote for an imperfect amendment and an imperfect bill in an imperfect world, because surely doing nothing is to say that you absolutely do not care.

Mr. MCINTOSH. Mr. Chairman, I move to strike the requisite number of words.

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

Mr. MCINTOSH. Mr. Chairman, let me commend the authors of this bill, the members of the Committee on the Judiciary, the gentleman from Florida [Mr. CANADY] and the gentleman from Louisiana [Mr. TAUZIN] for his amendment. They have done a tremendous job of crafting a consensus bill that can move forward in this House.

Many of us would have done slightly different things in the bill. I for one preferred the more broad coverage of all Federal laws that might present a takings of private property. But I have to say, they have done an excellent job of bringing this to the floor in a way that can secure passage and once again send a signal to the American people that we will stand up for their very basic liberties, in this case, the right to own property.

I wanted to bring to the body's attention two examples that come from my home State, one in my hometown. Mr. Bob Floyd is an 80-year-old farmer who one day went out to his field and discovered that his neighbor had accidentally broken the drainage tile in the adjacent property and a mudhole had started to develop. In came the Federal Government and told him that he could

no longer use his land because it was a wetland, subject to regulation. The gentleman, Mr. Floyd, lost $50,000 in the value of his property, $8,000 in farm income, and thousands of dollars in fighting to preserve his family farm.

Another example is the tragic story of a southwestern Indiana farmer named Bart Dye. Mr. Dye stands to lose his farmland which has been in his family since 1865. The Fish and Wildlife Service considers the protection of two species, mussels in a river adjacent to Mr. Dye's land, and the possibility that someday a bald eagle may decide to land on his property, none have been sighted, no nests have been found, and as far as anyone can tell, there are no bald eagles that live in the neighborhood, but the potential that it may be a habitat for that species has threatened to rob Mr. Dye of the use of his farm and prevent him from ever owning it.

The choice here is very simple. These laws will stay on the books, the government will be able to enforce them, but we must in so doing protect the private property rights of citizens who are affected by those laws. We will reestablish the basic principle that the property is owned by the citizen, not by the government given to them for their custody, and that if the government takes that property for a public use, they will receive fair and just compensation.

I urge the body to support the amendment and the underlying bill.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. MCINTOSH. I yield to the gentleman from California.

Mr. POMBO. In one of your examples, you talked about, I believe it was Mr. Dye, who had what would be suitable habitat or potential habitat for an endangered species, and they want to restrict the use of his property, based on the fact that if an endangered species ever wanted to live there, it could.

Mr. MCINTOSH. That is correct.

Mr. POMBO. Under this legislation, that would be a taking?

Mr. MCINTOSH. Yes. The diminution in value, because he would be unable to farm his farm would be a taking.

Mr. POMBO. If this legislation were to pass and in a few months when it is law, would Fish and Wildlife act in the same way and go out and just designate everything that they see as potential habitat and gain control of it? Or would they prioritize the areas?

Mr. MCINTOSH. It is my expectation that they would prioritize it for areas which are in fact critical habitat for species such as the bald eagle, but leave citizens such as Mr. Dye alone in their private property and actually seek out those areas that are critical to preserve that habitat.

Mr. POMBO. If that were the case and they had to prioritize what was critical habitat and they did not go after Mr. Dye, if there was a cost to the bureaucrats and the federal agencies of their actions and they did not go after Mr. Dye, what would it cost then?

□ 1445

Mr. MCINTOSH. At that point there would be no cost to the bureaucracy because they would not have deprived him of his property rights.

Mr. POMBO. So it would not bust budgets and Mr. Dye would not be able to back his U-Haul trailer up to the U.S. Treasury to take money because the U.S. Agency would be forced to be responsible for the first time in 40 years?

Mr. MCINTOSH. That is correct and that is the goal of this legislation.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. MCINTOSH. I yield to the gentleman from Louisiana.

Mr. TAUZIN. That was an excellent discussion of how this bill does not have to cost money if the agencies start being responsible.

I want to give you a similar example. Mr. Spiller of Lake Fausse Point in Iberia Parish, LA, built a crawfish pond on his property, 80 acres. He was then told he did not apply for a 404 permit. He was told you need a 404 permit to do that. It is a wetlands. He said, well, of course it is a wetland; I want to raise crawfish. They said well, you still need a 404 permit, so he went and applied for a 404 permit. In the meantime EPA issued a cease and desist order and told him to take down the 35,000 dollars' worth of levees he had built in order to raise the crawfish, and that would cost another $4,000. He had to do that. It cost him $40,000 for nothing. And then he filed for his permit and EPA objected. Do you know why he was denied his permit to raise crawfish on that property? Because EPA decided and found that it was a natural habitat for red swamp crawfish. He was told he could not raise crawfish on the property because the crawfish were there already.

I mean we get those crazy kinds of applications of the law, and the crawfish, you know, is not like the bald eagle, it is not likely endangered except by Cajuns like me and Mr. HAYES. It is fairly well prominent in Louisiana. And I thank the gentleman for his comments.

Mr. DOOLEY. Mr. Chairman, I move to strike the requisite number of words. Mr. Chairman, I rise in support of the amendment of the gentleman from Louisiana [Mr. TAUZIN] and the bill that is on the floor. And I rise in support of it for really one basic reason, because we are talking about fairness, we are talking about equity. We are talking about if this Government determines that it is in the interests of our greater society to provide for protection of a species, to provide for amenities that can benefit our life and our environment, that the cost of providing for that enhancement should not be borne solely by those who own private property.

The basic principle is if we are going to provide for benefits and the greater society is going to benefit from them, the greater society at large should bear those costs.

There have been some Members who have spoken that we are actually trying to change the Constitution with the amendment. Nothing could be further from the truth. What we are doing is basically building upon the precedents which have been set by the Supreme Court. But what we are trying to do is to ensure that that business owner on Main Street, that farmer in Illinois or that farmer in Louisiana or the farmer in California does not have to spend the legal fees, does not have to spend his time in the courts spending thousands of dollars in order to achieve the compensation for what is a taking by a regulatory action.

There are other comments that were made earlier about the fact this bill could bankrupt the country and there were some analyses that were made about a prior bill offered by the gentleman from Louisiana [Mr. TAUZIN] that dealt with wetlands, that it would cost the Government $15 to $20 billion if we were to provide for compensation and that is precisely the point we are trying to get at, is that $15 to $20 billion is now being borne by individuals, individuals that oftentimes do not have the resources, individuals who are working very hard to maintain a living for their family, to generate the income in order to send their children to college and in order to provide for a lifestyle which everyone should have the right to expect.

One other issue. There was some talk about the relationship to the Bureau of Reclamation being a part of this act. The bottom line is what we are talking about is that you cannot have the Government unilaterally abrogate a contract without compensation.

What we are trying to do is extend some of the same concepts that the private sector currently is mandated to comply with, that if you enter into a contract you are bound by that contract. If the Federal Government chooses to change an existing contract, they should be honor bound and mandated to provide a level of compensation for that.

I think that this is an appropriate extension of this act. I think by the passage of this legislation we are going to ensure a more judicious application of our environmental regulations, we are going to assure greater equity and greater compensation to all private individuals and private property owners.

Mr. FARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to speak today to those that have supported the Tauzin amendment. I want them to do two things. I want them to listen to this argument and to read the bill.

I want Members to think of this: All development, all land in the United States is somewhere, it is in some county or in some city. Anyone who

want to have any activity on that land starts at that level. They have got to go to a city council, board of supervisors or whatever the requisite there to petition for change in that land, whether it is change in zoning or they want to develop it or whatever.

The Constitution of the United States for over 200 years has said in the fifth amendment no person shall be deprived of life, liberty or property without the due process of law nor shall private property be taken for public use without just compensation. That did not just relate to the Federal Government. That did not just relate to the State government. That did not just relate to the county government. That did not just relate to the city government. It said no person shall be deprived of property by any government.

This issue in this bill speaks to the Federal Government, and why it is so difficult is because a lot of those Federal laws have become part of land use management at the local level. Think of wet plains zoning back in the 1970's. We asked every city and county in the United States to figure out where the wet plains were, we had that as Federal law in order that they could qualify for Federal flood plain insurance. That was Federal law carried out by local government.

This bill as it came out of committee is in trouble. We have seen that today. In the last 2 hours we have heard about how much trouble it is in. In fact, the gentleman from Louisiana [Mr. TAUZIN] has here an amendment to try to improve the bill and even with that there have been arguments about how you determine fair market value.

The trouble with the gentleman from Louisiana, Mr. TAUZIN's bill, with his amendment, is he is dealing with four issues. Two of those issues, the wetlands and Endangered Species Act come up for reauthorization this year. If indeed those are the problems, then let us deal with them at that time. Let us not change what this law does.

And I want to ask those Members who are supporting the bill to read it, because as I said, the Constitution says you cannot take for public use without just compensation. That is what the law has been for 200 years. This bill says, this bill says no law or agency of the Federal Government that diminishes value, not takes, diminishes the value by 10 percent of any portion of your property, you must find just compensation.

This is a radical departure from where we have been in the law in the United States. This is why the argument is that is going to be opening the bank, the Federal Government, that is why the argument is we are going to have to create so much Federal bureaucracy about what the law says that agency, that portion or that percent is all about. It is going to be a nightmare to implement.

Later on I am going to offer a bipartisan amendment that I think corrects all of this, but I think we are moving seriously with this Tauzin amendment into an area that is going to make this country in a lot of difficulty.

One of the comments the gentleman from Louisiana [Mr. TAUZIN] made is he said this bill is prospective, not retrospective, which is interesting to note because every speaker that has come up and talked about the problem talks about a problem that existed before this bill was introduced. This bill will not solve that problem, and it is interesting to note that those of my colleagues from California who talked about certain problems, as I looked at the list of supporters I never saw any planning commission, any county supervisors, any State legislator come in and support this bill in the form it has been presented.

This is a bill that hurts local government land use zoning, despite the fact that the author says it does not, and let me just tell you why. Because on page 6, line 10 through 15, it says but it also includes the making of a grant to a public authority, conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency. So, if the State of California takes over the 404 permit process, as it is planning to do, and if the local county and city governments implement that planning process, they would be triggered by this bill. And, therefore, we are going to really I think mess up the ability for local government to come up with sound land use planning. And I think that this amendment and the bill ought to be rejected.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FARR. I yield to the gentleman from Louisiana.

The CHAIRMAN. The time of the gentleman from California [Mr. FARR] has expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. FARR was allowed to proceed for 1 additional minute.)

Mr. FARR. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding. The gentleman makes the point that this gentleman said the bill was prospective; indeed it is. It is a new remedy for an old right and the new remedy is prospective, it starts as soon as this bill becomes law.

Mr. FARR. So all of those cases that were brought here on the floor today where people talked about problems they were having with their constituents, none of those constituents, under the conditions they brought, will benefit from the gentleman's legislation?

Mr. TAUZIN. If the gentleman will continue to yield, that is not so. The fact is that these regulations, these laws that are already on the books are going to continue to impede the use of property tomorrow and the next day. The right to seek compensation is already there; it is in the Constitution. All we are doing is creating a new remedy so that as these restrictions are applied to property from here on out, those new remedies become available but the right is a constitutional right and exists before we pass this bill.

Mr. FARR. The gentleman is changing the playing field because he is changing that from a right to discuss takings to a right saying that any portion that is affected or diminished.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The time of the gentleman from California [Mr. FARR] has again expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. FARR was allowed to proceed for 1 additional minute.)

Mr. TAUZIN. If the gentleman will continue to yield, the gentleman made the point that this is some kind of radical departure from the jurisprudence. A court in Florida Rock said,

> Nothing in the language of the fifth amendment compels a court to find a taking only when the government divests the total ownership of the property. The fifth amendment prohibits the uncompensated taking of private property without reference to the owner's remaining property interest.

In short, any partial taking that is compensable is a taking under the Constitution, is compensable yesterday, today, tomorrow. We are simply providing a new remedy, and I thank the gentleman for yielding.

Mr. CONDIT. Mr. Chairman, I move to strike the requisite number of words.

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

Mr. CONDIT. Mr. Chairman, I feel compelled today to rise and just make a couple of brief comments. I first would like to state that we have heard some discussion this morning about this bill, and this amendment, as though this is one of the first times we have heard it. This is not the first time we have visited this issue. This issue of private property rights has been around this Chamber, around the Capitol for a long time. And I feel compelled to commend the gentleman from Louisiana [Mr. TAUZIN] and the gentleman from Texas [Mr. FIELDS] who have been working long and hard on this issue.

Last year we had a vote on this floor on the Desert Act, which I think we debated for about 4 or 5 days, and we had 143 Democrats who voted in favor of full compensation if your property was taken because of an endangered species. So we have debated this issue. There have been people who have been working long and hard, and [Mr. TAUZIN] has been in the forefront and the leader of that issue.

We have also heard people say well, we should do this in a freestanding bill somewhere else, we ought to do this with reauthorization when it comes up, and those all have merit. It would be great if we could do that. But you know what, we did not do that.

The gentleman from Louisiana [Mr. TAUZIN] could not get a hearing on his bill in past years. We could not get reauthorization up before this House because this House clearly knew that if we did, we would pass private property right protection for the citizens of this country.

Let me tell Members, make no mistake what we are talking about here today is compensation. You take my property, you owe me something.

□ 1500

I worked long and hard for it. That is what the citizens of this country are saying. That is what the farmers in my district are saying. ''If you keep me from making a living on my property, you owe me something.'' Pretty simple.

Most people in this country think that is already the law. They believe they are protected. Let me assure you, ladies and gentlemen out there, you are not.

We need to strengthen the law. We need to strengthen the fifth amendment, and that is what we are doing here today. We owe the gentleman from Louisiana [Mr. TAUZIN], the gentleman from Texas [Mr. FIELDS], the gentleman from California [Mr. POMBO], the gentleman from Florida [Mr. CANADY], and those, the gentleman from Texas [Mr. LAUGHLIN], who have been involved; we owe them a thanks for bringing this to our attention and for fighting the hard battle for a long period of time.

The fifth amendment to the United States Constitution seems clear enough; ''* * * nor shall private property be taken for public use without just compensation.''

Unfortunately, in the last 20 years, many Americans across the country have found that they cannot farm, ranch, or build homes on portions of their land. Why? They are blocked by State and Federal regulations. Steadily increasing regulation at all levels of government now touch every conceivable aspect of property use. Through its ability to regulate, the Government has increasingly tended to ''take'' the uses and benefits of a property rather than condemn it and pay its owner fair market value as is required by the fifth amendment.

This encroachment upon the right to own and use property in a reasonable manner has resulted in strong public and congressional support for efforts to protect private property rights. Already in this Congress eight bills have been introduced to address this issue. We have been debating private property rights for two Congresses now. Also, there have been numerous proposals that vary in their approach to solve the problem, but all are based on the idea that the current practice of ''regulatory takings,'' where the cost of regulations which benefit our entire society are paid for by individual landowners, is simply not fair.

The U.S. Government is currently facing well over a billion dollars in outstanding ''takings'' claims. In addition, several of the largest takings judgments in history were handed down, including one totaling $120 million in 1990. In California alone, property owners who can afford legal costs are winning about 50 percent of their takings cases and according to a recently released report by the Congressional Research Service, property owners won regulatory takings cases before the Federal courts in 1990 more often than not. This is astonishing when you consider the Federal Government wins 9 out of 10 times in other areas of law. The basic questions we must ask is what good are Federal regulations if they are overturned in court?

The fact that property owners who can afford to mount legal battles against their own government and are winning in the courts is no consolation. For every property owner who wins such a battle, there are thousands who lack either the time or the money to defend their rights in court.

Mr. Chairman, I look forward to supporting H.R. 925 and the Tauzin amendment today and applaud this House for taking a vital first step toward restoring the rights of private property owners in this country.

Mr. STUDDS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, words are beguiling, especially when used by the Members of the new majority in this House.

If all I knew about the Contract With America were the titles of its respective component bills, I would be all for it: freedom, justice, and equality amendments of 1995, the commonsense amendments. I do not know if anybody knows what the title of this bill is. It is the Private Property Protection Act of 1995. Who could be against that?

Let me suggest, Mr. Chairman, that is not what this bill is about, and I commend the cleverness of the authors of the pending amendments, and particularly my good friend and colleague, the gentleman from Louisiana. He and I have fought this one out through many a long year.

But it is no accident what is before us. What is now before us is not some broad treatment of the question of property rights. It is not some reaffirmation of a constitutional right which is inherent for two centuries and is not changed by what we do or do not do today. What is before us is specifically directed at a couple of statutes in particular, the Endangered Species Act and the Wetlands Act.

Why do you suppose that is? Several people on the other side said earlier today that if this bill is very expensive, as others here have contended, then the American people are being robbed. Well, Mr. Chairman, that is true, but it is only true if you redefine robbery, and that is exactly what this bill purports to do.

Whatever in the world is meant by 10 percent of a portion of property is, among other things, a redefinition of robbery, and although the bill very wisely and cleverly exempts local zoning statutes, let me ask Members to contemplate the logical implications which underlie it.

To the extent that actions taken pursuant to these environmental statutes constitute takings, so precisely, and for exactly the same reasons, exactly the same way, do local zoning statutes constitute takings.

I own a piece of property in my district. My community says to me I cannot build within 70 feet of the sideline of that property. That is diminishing the value. I could have built something bigger there. I cannot build so many feet from the street. That further diminishes the value. I have to be so many feet back from the water. That further diminishes the value. I cannot build on more than 40 percent of my land. My God, how valuable it would be if only I could. And I cannot build more than three stories high. But if I put a skyscraper there, God knows what it would be worth. I cannot put, I do not know, what would I like to put there, a factory. I cannot even put a small shop or a bookstore there. That value is diminished considerably by a local zoning ordinance.

Now, if that is robbery, then I am willing to concede that what we are talking about in the statutes under assault here is robbery.

There have been a lot of horror stories cited here, and for all I know some of them are true, or variations of them, are true. Some of them are not, but I am willing to concede that some of them are. But this bill does not target horror stories.

As my colleague from Massachusetts said earlier in the day, this bill targets these statutes, and make no mistake about it. The absolute target of this bill is the statutes.

The real takings here, the real takings, if this bill becomes law, are two of our most important environmental laws in this land.

If that happens, who will compensate the American people? Who will compensate the American people for the loss of wetlands? And what are they worth? And how do you calculate that? And who will compensate the American people for the loss of diversity in species, and what are they worth? And how do you calculate that? What is the plant that gave us taxol worth? It is a cure potentially for breast cancer and ovarian cancer. What is that worth? If it is taken away from the American people, how do we compensate them for that? Is there a plant out there or an insect or something slippery and slimy which apparently people do not like much around here that has the cure for Alzheimer's in its genes or the cure for AIDS? How do we compensate for the potential loss of that? Do we really know what we are doing here?

The committees of jurisdiction of these two statutes have had no hearings on this. They have not even had a sequential referral for 1 minute of this bill in this Congress.

I know what the gentleman from Louisiana is going to say. Let me see if I can paraphrase it for him, perhaps not in the same accents, but he is going to probably suggest that in the last Congress, when I chaired the committee of jurisdiction over the Endangered Species Act, he, on I would say more than one occasion, asked if we might not be able to consider this.

I plead, in advance, guilty to the charge.

Mr. TAUZIN. Thank you, sir.

Mr. STUDDS. But I feel, let me say, I feel a little bit exonerated by that judgment by what has transpired here in the last 3 or 4 hours. Again, I do not mean to impugn the motives of any of the honorable gentlemen on the floor.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. STUDDS] has expired.

(By unanimous consent, Mr. STUDDS was allowed to proceed for 1 additional minute.)

Mr. STUDDS. Let me say again as forcefully and calmly as I can, I do not think it is stretching the point at all to suggest that the logic underlying this bill applies as well and as thoroughly to local zoning as it does to any statute which in any way diminishes the value of property at any level of government.

We need to make public policy decisions at all levels of government as to wherein lies the public interest and wherein lies the private interest.

When there is a conflict, we have some tough calls to make. But the fifth amendment to the Constitution has been there for a long time. It is going to be there whatever we do or do not do today, tomorrow, or next week. it does not need our help. What does need our help are the wetlands of our country, half of which have been gone since the first Europeans came here, the habitat for species, the cleansing of our waters, the flood protection, the nurseries of our fisheries; these are absolutely priceless. No dollar value can be put upon these natural resources. They are the ones at this point that need our protection.

Mr. PETE GEREN of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to first commend the gentleman from Louisiana [Mr. TAUZIN], the gentleman from Texas [Mr. FIELDS], the gentleman from Louisiana [Mr. HAYES], the gentleman from Florida [Mr. CANADY], and the gentleman from Texas [Mr. LAUGHLIN], those who have labored for literally years to bring this issue in front of the Congress.

This is not a new issue. This is not an issue that was dreamed up as a result of the contract for America. This issue has been around, as my friend, the gentleman from California [Mr. CONDIT], mentioned a little earlier. Last year we voted on this; 143 Democrats voted for it. This issue has been with us, because it has been on the hearts of the people we represent for year after year after year.

As the power of the Federal Government has grown, this issue has become more and more important to those people. This issue has been in front of the Congress. It has been on the hearts and minds of Members of Congress because it has been on the hearts and minds of the citizens of this country for a long, long time.

This is a bill that is based on democratic principles—small ''d'' democratic principles. As the gentleman from Massachusetts said, the fifth amendment was here before we got here, and it will be here long after we are gone.

Unfortunately, the protections of the fifth amendment only have been available to those who could afford to buy the best legal services. You have got the little guy having to go up against the Corps of Engineers, the little guy that has had to go up against the Environmental Protection Agency. If that little guy cannot afford to hire $100,000 worth of lawyers, cannot afford to leave his work and fight this thing tooth and nail, he is probably going to get run over by the Environmental Protection Agency. He is probably going to get run over by this Federal Government.

He has protection under our Constitution, but it does not mean a darn thing if he cannot afford the legal talent to push his issue. That is what this bill is all about. This bill says that the little guy is going to have the same kind of rights, going to have the same opportunity to avail himself or herself of the protections of the fifth amendment as all of these other people who have been challenging these takings over the last few years who could afford that kind of high-powered legal talent.

It is important to note that in every case, when one of these takings has been challenged and it has been carried up through the court systems, the citizen won. The citizen won because the fifth amendment does protect the citizen. But if you cannot afford that lawyer, that protection is meaningless.

This bill today says that whether or not you can afford that kind of legal talent, we are going to ensure that the fifth amendment protects you. It is a basic democratic principle. It is democracy in its finest sense. It is a democratic principle, and I urge my colleagues to support this amendment.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. PETE GEREN of Texas. I yield to the gentleman from California.

Mr. POMBO. I would just like to point out in light of some of the recent testimony that we have heard, in a recent case that Chief Judge Loren Smith of the Court of Federal Claims, I would just like to briefly read something that he said:

> There must be a better way to balance legitimate public goals with fundamental individual rights. Courts, however, cannot produce comprehensive solutions. They can only interpret the rather precise language of the fifth amendment to our Constitution in very specific factual circumstances . . . Judicial decisions are far less sensitive to societal problems than the law and policy made by political branches of our great constitutional system. At best courts sketch the outlines of individual rights, they cannot hope to fill in the portrait of wise and just social and economic policy.

I would just venture to say what we are trying to do here today is fill in that portrait.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana [Mr. TAUZIN] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY].

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

RECORDED VOTE

Mr. FRANK of Massachusetts. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 301, noes 128, not voting 5, as follows:

[Roll No 190]

AYES—301

Allard	Diaz-Balart	Johnson (CT)
Andrews	Dickey	Johnson (SD)
Archer	Dicks	Johnson, Sam
Armey	Dooley	Jones
Bachus	Doolittle	Kanjorski
Baesler	Dornan	Kasich
Baker (CA)	Doyle	Kelly
Baker (LA)	Dreier	Kennelly
Ballenger	Duncan	Kim
Barcia	Dunn	King
Barr	Durbin	Kingston
Barrett (NE)	Edwards	Klink
Bartlett	Ehrlich	Klug
Barton	Emerson	Knollenberg
Bass	English	Kolbe
Bateman	Ensign	LaFalce
Bereuter	Everett	LaHood
Bevill	Ewing	Largent
Bilbray	Fawell	Latham
Bilirakis	Fazio	LaTourette
Bishop	Fields (TX)	Laughlin
Bliley	Flanagan	Lazio
Blute	Foley	Leach
Boehner	Forbes	Lewis (CA)
Bonilla	Fowler	Lewis (KY)
Bono	Fox	Lincoln
Boucher	Franks (CT)	Linder
Brewster	Frisa	Livingston
Browder	Frost	LoBiondo
Brown (OH)	Funderburk	Longley
Brownback	Gallegly	Lucas
Bryant (TN)	Ganske	Maloney
Bunn	Gephardt	Manton
Bunning	Geren	Manzullo
Burr	Gillmor	Martinez
Burton	Gilman	Mascara
Buyer	Goodlatte	Matsui
Callahan	Goodling	McCollum
Calvert	Gordon	McCrery
Camp	Goss	McDade
Canady	Graham	McHale
Castle	Green	McHugh
Chabot	Greenwood	McInnis
Chambliss	Gunderson	McIntosh
Chapman	Gutknecht	McKeon
Chenoweth	Hall (TX)	McNulty
Christensen	Hancock	Metcalf
Chrysler	Hansen	Mica
Clement	Harman	Miller (FL)
Clinger	Hastert	Minge
Clyburn	Hastings (WA)	Molinari
Coble	Hayes	Mollohan
Coburn	Hayworth	Montgomery
Coleman	Hefley	Moorhead
Collins (GA)	Hefner	Moran
Combest	Heineman	Murtha
Condit	Herger	Myers
Cooley	Hilleary	Myrick
Cox	Hilliard	Neal
Cramer	Hobson	Nethercutt
Crane	Hoekstra	Neumann
Crapo	Holden	Ney
Cremeans	Horn	Norwood
Cubin	Hostettler	Nussle
Cunningham	Houghton	Obey
Danner	Hoyer	Ortiz
Davis	Hunter	Orton
de la Garza	Hutchinson	Oxley
Deal	Hyde	Packard
DeLay	Inglis	Parker
Deutsch	Istook	Paxon

Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Royce
Salmon
Sanford
Sawyer
Schaefer
Schiff
Schumer
Scott
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Williams
Wilson
Wise
Wolf
Wynn
Young (AK)
Young (FL)
Zeliff

NOES—128

Abercrombie
Ackerman
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Boehlert
Bonior
Borski
Brown (CA)
Brown (FL)
Bryant (TX)
Cardin
Clay
Clayton
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
DeFazio
DeLauro
Dellums
Dingell
Dixon
Doggett
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Franks (NJ)
Frelinghuysen
Furse
Gejdenson
Gibbons
Gilchrest
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hinchey
Jackson-Lee
Jacobs
Jefferson
Johnson, E. B.
Johnston
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
Kleczka
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Markey
Martini
McCarthy
McDermott
McKinney
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Mineta
Mink
Morella
Nadler
Oberstar
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Rahall
Rangel
Reed
Reynolds
Richardson
Rivers
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Saxton
Scarborough
Schroeder
Serrano
Skaggs
Slaughter
Smith (NJ)
Stark
Stokes
Studds
Thompson
Torres
Torricelli
Towns
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Woolsey
Wyden
Yates
Zimmer

NOT VOTING—5

Gekas
Gonzalez
Hoke
Lightfoot
Moakley

□ 1528

The Clerk announced the following pair:

On this vote:

Mr. Lightfoot for, with Mr. Moakley against.

□ 1528

Ms. MCKINNEY, Mr. COSTELLO, and Mrs. MEYERS of Kansas changed their vote from ''aye'' to ''no.''

Messrs. SAWYER, HILLIARD, and CLYBURN changed their vote from ''no'' to ''aye.''

So the amendment to the amendment was agreed to.

The result of the vote was announced as above recorded.

□ 1530

Mr. ALLARD. Mr. Chairman, I move to strike the last word so that I may enter into a colloquy as to the intent of the bill with the Tauzin amendment.

Mr. Chairman, I appreciate the opportunity to enter into a colloquy with my colleague, the gentleman from Florida [Mr. CANADY], as to the intent of the legislation as amended by the Tauzin amendment.

With respect to section 9 paragraph 5 subparagraphs (A), (B), and (C), section 404 of the Federal Pollution Control Act, the Endangered Species Act of 1979, and title XII of the Food Security Act of 1985 respectively of H.R. 925 as amended, am I correct in my understanding that agency actions, with respect to water under these laws can result in a compensable taking of property rights, specifically the taking of a water users right to use and receive water?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, the gentleman is correct. H.R. 925 as amended clearly protects water rights under section 404 of the Federal Pollution Control Act, the Endangered Species Act of 1979, and title XII of the Food Security Act of 1985. This section was clearly designed to protect all property rights outlined in section 9, paragraph (1).

Mr. ALLARD. Am I further correct in stating that section 9, paragraph (5), subparagraph (D) or H.R. 925 as amended, that the word ''only'' referred to in that subparagraph is a limitation on the Reclamation Acts, the Federal Land Policy Management Act, and section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, and not a limitation on enactments in subparagraphs (A), (B), and (C)?

Mr. CANADY of Florida. The gentleman is also correct on that point.

Mr. ALLARD. Mr. Chairman, I thank the gentleman for his clarifications.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I think it is important, as the author of the amendment just discussed, to add that I think he has received exactly the correct answers in this colloquy, and I concur ecactly with those answers.

Mr. ALLARD. Mr. Chairman, I thank the gentleman from Louisiana for his help in clarifying the record.

AMENDMENT OFFERED BY MR. PORTER TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mr. PORTER. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PORTER to the amendment in the nature of a substitute offered by Mr. CANADY of Florida, as amended: Page 3, after line 11, insert the following:

SEC. 6 EFFECT OF PRIVATE PROPERTY IMPACT ANALYSIS.

(a) IN GENERAL.—No compensation shall be made under this Act with respect to any agency action for which the agency has completed a private property impact analysis before taking that agency action.

(b) CONTENT.—For the purposes of this section, a private property impact analysis is a written statement that includes.—

(1) the specific purpose of the agency action;

(2) an assessment of the likelihood that a taking of private property will occur under such action; and

(3) alternatives to the agency action, if any, that would achieve the intended purpose and lessen the likelihood of a taking of private property.

(c) PRECLUSION OF JUDICIAL REVIEW.—Neither the sufficiency nor any other aspect of a private property impact analysis made under this section is subject to judicial review.

(d) EFFECT ON OTHER RIGHTS.—The fact that compensation may not be made under this Act by reason of this section does not affect the right to compensation for takings of private property for public use under the fifth article of amendment to the Constitution.

(e) DEFINITION.—As used in this section, the term ''taking of private property'' means an action whereby property is taken in such a way as to require compensation under the fifth article of amendment to the Constitution.

Redesignated succeeding sections accordingly.

Mr. PORTER. Mr. Chairman, this amendment is offered by myself, the gentleman from Michigan [Mr. EHLERS], the gentleman from California [Mr. FARR], and the gentleman from Texas [Mr. BRYANT] to the amendment offered by the gentleman from Florida [Mr. CANADY], as amended by the gentleman from Louisiana [Mr. TAUZIN].

The Chairman, we have a Republican majority in the Congress, and yet we are about to support a measure that creates what is essentially a brandnew entitlement program that will lead to more bureaucracy, and redtape and endless litigation. This measure, if it were to pass into law, would make the Superfund legislation look pale by comparison in response to the amount of litigation that would be engendered. This is not what I, a Republican, was sent here to do, Mr. Chairman. I believe all of us, as Republicans, were sent here to cut Government spending, to eliminate bureaucracy and to end the tidal wave of litigation.

Mr. Chairman, everyone agrees that there have been instances of regulatory overkill, but this bill, as it has been

amended, is legislative overkill. I believe that this bill will cost the Government untold amounts of money and will lead to the opening of a litigation tap that will be absolutely impossible to turn off. Every Federal regulation covered in this bill will likely be the subject of litigation for every piece of property affected by it.

Mr. Chairman, there is a better answer to this, there is a much better answer. Senator DOLE has the answer for us. He has introduced in the Senate S. 22, a bill that will address the concerns of private property owners. It is a codification of the Executive order issued by President Ronald Reagan in 1988, Mr. Chairman, and, like Senator DOLE's bill and the Reagan Executive order, our amendment will require agencies to do a private property impact assessment before issuing a regulation or taking agency action. Our amendment goes beyond the Reagan executive order in one critical way, Mr. Chairman, it requires that the public have access to that assessment. The amendment reaffirms citizens' rights to just compensation under the fifth amendment, and, if the agency fails to do the assessment, then compensation is payable under the terms of the amendment offered by the gentleman from Florida [Mr. CANADY] as amended by the gentleman from Louisiana [Mr. TAUZIN].

Mr. Chairman, we should follow the Constitution. It has worked for over 200 years. Yes, there are instances where it has not worked, but in general it has worked extremely well. If we have a problem with protecting wetlands in the regulations issued under them, let us reauthorize the Clean Water Act in a way that more fairly takes into account the concerns of the private property owner. If there are similar problems under the Endangered Species Act, let us rewrite the act to address those problems. But, Mr. Chairman, let us not write an entirely new entitlement program with an endless flow of litigation and huge costs to the Federal government that are entirely unnecessary.

Senator DOLE has the answer for us, and I commend the amendment to every Member.

Mr. CANADY of Florida. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Illinois [Mr. PORTER].

Mr. Chairman, I think it is very important that we understand exactly what the impact of this amendment would be, and to understand that we can just begin by reading in subsection A where it states in general no compensation shall be made under this act with respect to any agency action for which the agency has completed a private property impact analysis before taking that agency action.

Going beyond that, Mr. Chairman, I think it is important that we look at subsection C which follows in section 3. In subsection 3(c), Mr. Chairman, I think it is important that we note the provision for preclusion of judicial review. It says that neither the sufficiency, nor any other aspect of a private property impact analysis made under this section is subject to judicial review.

I say to my colleagues, When you put that section together with the first section that I referred to, you have an amendment here that absolutely guts the bill. It will render the compensation provisions of the bill entirely meaningless. All an agency will have to do is go through a sham of an analysis, and, if they've done that, there will be no right to compensation. It will not solve the problem we're trying to solve.

Now my good friend from Illinois has invoked the name of President Reagan—the names of President Reagan and Senator DOLE in support of this amendment, but in fact both Senator DOLE and President Reagan, I believe, would oppose the Porter amendment if they were present here on the floor today.

I have right here, which we have received today, letters from both Senator DOLE and from Roger Marzulla, President Reagan's Assistant Attorney General who authored the executive order requiring a takings impact analysis which was referred to earlier in the debate. Both Senator DOLE and Mr. Marzulla are indicating that the Porter amendment would be inconsistent with their goals in working for private property rights. As I said, the Porter amendment would gut the entire purpose of H.R. 925 to provide compensation to landowners burdened by overzealous regulation.

Let me quote. I will read the full text of the letter from BOB DOLE, the Republican leader of the U.S. Senate, to our Speaker. Senator DOLE says:

> As the author of legislation in the United States Senate to require the government to perform a taking impact analysis prior to taking any actions that might affect private property rights, I write to make clear that my bill differs significantly from the Porter Amendment to H.R. 925. One significant difference between my bill and the Porter Amendment is that the Porter Amendment specifically requires that no compensation shall be paid in cases when the takings impact analysis is performed. While my bill does not directly address the issue of compensation, I am an original co-sponsor of the Shelby/Nickles legislation which does require compensation be made.
>
> Best of luck on your efforts to pass meaningful legislation protective of private property rights.

Mr. Chairman, I would also like to read from a letter by Roger Marzulla, who I identified earlier as Assistant Attorney General in the Reagan administration who was responsible for the executive order on takings impact analysis. Mr. Marzulla says:

> Supporters of the Porter Amendment to H.R. 925, the Private Property Rights Act of 1995, suggest that this amendment would be consistent with President Reagan's ''Takings Impact Analysis'' set forth in Executive Order 12630. Nothing could be further from the truth. Executive Order 12630 simply requires federal agencies to complete a takings analysis prior to taking any action that might affect private property rights. The purpose of this Order was to avoid the destruction of lives and livelihoods by preventing the uncompensated taking of private property.
>
> Indeed, as chief architect of the Takings Executive Order, I can assure you that in no way was it ever intended that if the government went forward with action that did in fact violate the Fifth Amendment, the federal government was in any way relieved of its constitutional duty to pay just compensation to the affected property owner.

Mr. PORTER. Mr. Chairman, will the gentleman yield?

Mr. CANADY of Florida. I yield to the gentleman from Illinois.

Mr. PORTER. The gentleman does understand, I assume, that under the Porter amendment compensation would still be payable in accordance with the Constitution. The gentleman is not suggesting otherwise, nor are either of these two letters; are they?

Mr. CANADY of Florida. It is true that the right to compensation under the fifth amendment would be involved here, but the point is we are trying to have a workable way for individuals to receive compensation, and we have heard repeatedly today a quotation which I will repeat again from the chief judge of the Court of Claims concerning how the system in the courts is not working, and it bears repeating. He says the citizen likewise had little more Presidential guidance than faith in the justice of his cause to sustain a long and costly suit in several courts. Courts, however, cannot produce comprehensive solutions. He goes on to say judicial decisions are far less sensitive to societal problems in the law and policy made by the political branches of our great constitutional system. The political branches need to address this problem.

□ 1545

Mr. FARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of this amendment because the bill that we have just adopted, as amended, creates a massive hole in America's abilities to pay for its actions. We have just created an ability for anyone who feels that a portion of their property has been affected by a Federal decision can go into court and claim money for it.

As indicated by a letter from the administration, this creates new bureaucracies and it costs several billion dollars to have to pay for it. The amendment that I rise in support of essentially recognizes what I think everybody in this room has been talking about, that there is a remedy to the problem out there, but that remedy is not in the bill that is before you. It is actually in the amendment that we are debating right now.

That remedy says let us take a look at the way you make these decisions on property. Require Government to take a look at the likelihood that a taking of private property will occur if they develop a law or regulation or an

agency action; to require the Government to assess the likelihood that a taking of private property will occur if indeed you develop that regulation; and to require the Government to look into alternatives to the agency's action.

So you sit down and are able to work out with the landowner, with the local government that is involved, a way in which you can reach your goals, mutually agreed upon, without having to cause the taxpayers to have to pay for it.

This is a very sensible bill. It is so sensible that a former President recommended that agencies should follow this process. It is so sensible that the majority leader in the Senate has introduced similar type legislation.

Why have both those Republican leaders gone that route, rather than adopt the bill or support the bill that is before you now? It is because they both know that the Tauzin amendment as just adopted will indeed bankrupt the American taxpayer.

Now, look at the bill as adopted. Who are the special interests supporting this? The National Mining Association, the Chemical Manufacturers Association, the National Association of Manufacturers, the American Petroleum Institute, the American Independent Refiners Association, American Forest and Paper Association, and International Council of Shopping Centers.

Those do not sound like small landowners to me. They are the ones that are supporting the bill that was just adopted in this House. We need this amendment to correct the error that was made, to make sure that we protect the taxpayers' dollars, and indeed put land use planning back in local hands and protect the rights of property owners.

Mr. Chairman, I ask for an aye vote on the Porter-Farr amendment.

Mr. ZIMMER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, in this latest vote in which the House adopted the Tauzin amendment, the proponents of H.R. 925 have put their cards on the table. Their concerns are basically about the Endangered Species Act, wetlands programs, and water rights legislation.

If you have substantive problems with these programs, and I have problems with some of these programs, then what we should do is amend the substantive legislation, or we can deauthorize them entirely. If you think the agencies that administer these programs have excess money, then let us defund those agencies to the extent necessary.

We can cut the programs and cut the funding. But it makes no sense at all to do what this legislation would do without the Porter amendment, which is create a new multibillion dollar entitlement program that goes way beyond what the Federal Constitution requires and far beyond what any Federal court has interpreted the fifth amendment to mean.

It guarantees unlimited litigation and oceans of red ink for the Federal taxpayer. The Porter amendment fixes this situation. The Porter amendment would make Federal regulators more sensitive to takings without creating a new takings entitlement.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. ZIMMER. I yield to the gentleman from Florida.

Mr. CANADY of Florida. This issue of entitlement, we have discussed that and I understand the concern. But I want to point out in section 7 of my substitute amendment, there is language that makes clear beyond any doubt that we are not creating an entitlement in this bill. It is simply not so that we are creating an entitlement.

You may disagree with the bill, but let me read again the clear language here: ''Notwithstanding any other provision of law, any obligation of the United States to make any payment under this act shall be subject to the availability of appropriations.'' We must appropriate the money.

Mr. ZIMMER. Mr. Chairman, reclaiming my time, I understand that and have read that provision. It is a promise. You say we may break the promise by not funding the program. I am telling you that the first funds to redeem this promise will come straight out of the regulatory agency, as you intend it to do, and then if that agency runs out of money, the Federal Government will either have to break its promise or pass a supplemental appropriation.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. ZIMMER. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I have heard the gentleman say two or three times that this is subject to appropriation. I am trying to figure out what that means, because if somebody goes into court and gets a judgment against an agency of the United States of America, and that judgment is in effect in the courts of this country against the United States, how can we not appropriate the money and get out of that unless this is simply a false promise to property owners. I do not understand how we could as a nation with integrity say that somebody can get a judgment under a law, your law in this case, this law that we are debating today, and then turn around and say no, we are not creating any obligation to pay that judgment.

Mr. CANADY of Florida. If the gentleman from New Jersey will yield further, as the gentleman from North Carolina [Mr. WATT] and I have discussed previously, the purpose of the structure we establish in here is to make the agencies conscious of the cost they are imposing on people in the private sector.

Furthermore, if they impose costs, to pay for them they must come back to the Congress to seek the appropriation for that purpose. Ultimately, that decision does come back to the Congress.

But at least we will be confronting the reality of what we are doing. Right now what is happening is that that cost is just being imposed on the private sector like it was not a cost.

Mr. ZIMMER. Mr. Chairman, reclaiming my time, the fact is these agencies are not rogue organizations, they are creatures created by Congress and the executive branch. And if we have problems with the substance of the regulations, we should modify the underlying legislation.

The Porter amendment would make Federal regulators more sensitive to takings without creating a new entitlement and would protect private property owners because the takings assessment mandated by the Porter amendment would be available to property owners. In this respect it goes further than the Reagan Executive order.

So we should not pass the buck to regulatory agencies.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. ZIMMER] has expired.

(At the request of Mr. WATT of North Carolina and by unanimous consent, Mr. ZIMMER was allowed to proceed for 2 additional minutes.)

Mr. ZIMMER. Mr. Chairman, we should not pass the buck or pass the blame to regulatory agencies. We should not pass the burden on to American taxpayers with this huge new Federal entitlement program. I strongly urge the adoption of the Porter amendment.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment. One of the reasons I rise in support of this amendment by the gentleman from Illinois [Mr. PORTER] and others is after we passed the Tauzin amendment, I think there is an awful lot of concern by the Army as to what happens here.

Listen very carefully, because people forget this. The Corps of Engineers is the one who is to enforce the Wetlands Protection Act under section 404 of the Clean Water Act. Now, under the Tauzin amendment, 404 of the Clean Water Act is still being covered under these takings. So when the Corps of Engineers goes out to do these things, the Army is very concerned that this is the deepest pocket of all and can really come back against them and really jeopardize their budget.

Right now the way the law is, is that if there is a judgment against the Army Corps of Engineers, it goes into the general fund. It does not come out of the military. But under this bill, it would have to come out of the agency's budget.

Now, how does the Army project what kind of claims they are going to have? How does the Army plan for this? I have several letters that I will leave over here at the desk that I think are

very concerning for people who do not want to vote for this amendment, because I think this amendment is the one thing that might at least bring some rationality and some predictability to the process.

The first is a letter addressed to the Speaker, in which the Army is pointing out the problems that they will have and why they are against this bill overall. But they are pointing out if this passes, the Army's ability to carry on any essential civil works functions, such as responding to a flood or any other disaster, or protecting the public interest through development of water resources or projects for navigation, flood control, environmental restoration, and so on, is going to be severely impeded. And the way that I understand the Porter amendment is it is more predictable because it is more similar to what is happening now. So at least the Corps of Engineers and others would have some idea as to how the Clean Water Act would be moving.

Now, there will be many people saying ''Oh, no, the Army is just screaming 'wolf.'" But I think when you read this, and you read it, you will find out the Army is not crying ''wolf.'' They are really trying to get the EPA. But again under the statute, the EPA does not act under section 404, it is the Army Corps of Engineers that is directed to act. Therefore, they are the payor in all of these cases.

So there is also an information paper here from the Army that I will leave at the desk, talking about all the things that they are worried would happen. They are worried about its effect on readiness, what would happen in op tempos where they are out. Can people stop them from moving on missions because it might interfere? They are talking about the budgetary nightmares. They are talking about the civil works problems and the bureaucratic problem of not moving.

Since we are in this bill and since this bill may pass, I would hope that at least we could adopt this amendment, because it would be a bit more predictable as to what would happen.

But I am a little amazed that as we move through this contract, on the one hand we are trying to cut back people's claims on personal injuries, but we are moving out here into the private sector, and I sometimes wonder if we are not just trying to switch all of the tort attorneys into takings attorneys, because I would say if we do not adopt this amendment, what we are really doing is finding the deepest of all deep pockets, and I would advise any attorney in private practice to immediately forget any other sector but the takings sector, because you have got Uncle Sam standing behind it.

So I think the Porter amendment is a modification that would make it more predictable, and I would certainly think, although I understand the Army to be opposed to the whole bill, at least this would make it a little more predictable if it does pass.

Mr. Chairman, I will leave these two letters over here and hope people come read them, because I think they are very serious.

In our stampede to do things, I keep reminding people of Roll Call's article, saying it is just like we are running creme pies down a conveyor belt and expecting the Senate to bail us out. Read these first. Read these first, and then I hope you will vote for this amendment, and we will at least not make the mess for the Senate quite as deep as it will be if we do not adopt this amendment.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to this amendment and in support of the underlying bill. The opponents of this legislation, who are also the supporters of this amendment which will gut the bill, say that we do not need to do anything more with regard to private property rights than what is stated in the fifth amendment of the U.S. Constitution, which states I think very clearly, ''Nor shall private property be taken for public use without just compensation.''

□ 1600

I think that is very clear, when we use private property for public use, as we do in many of the pieces of legislation that are passed, the private property owner is entitled to compensation. The problem is that the U.S. Supreme Court and other lower courts have interpreted that in a fashion that they see fit to say that sometimes you get compensation and sometimes you do not.

The fact of the matter is that this Congress has the same responsibility that the Supreme Court has, to interpret the U.S. Constitution and pass laws in accord with the Constitution. And that is exactly what we are doing here. We are simply acknowledging that when you determine what private property is and when it is used for public purposes, then we have every bit as much right as the courts do to indicate our interpretation of that amendment so long as our interpretation is a constitutional interpretation.

Clearly, this statute is such a constitutional interpretation. So if we are going to be realistic about our responsibility to private property owners in this country, and this important principle embodied in the Constitution, then it is important that we take action to compensate people when their land is taken for public use purposes.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Maryland.

Mr. GILCHREST. Mr. Chairman, I cannot agree with the gentleman more. I just would like to make a couple of quick points. One, I really do believe that the problem with the Endangered Species Act or wetlands should be dealt with in the authorizing committees and not in this fashion.

The fifth amendment is clear that if your property is taken away for the public good, that is taken, actually your property is then rendered useless to you, because the Government has taken that property entirely. If your property is taken away for the public good, you should be compensated fair market value.

The more sticky question comes when we see how the regulators regulate the laws that we pass, and that is, should you be compensated if your property is regulated to prevent public harm. That is the fine point that I do not think we should address on the House floor. We should leave that up to the courts. Any problem with over regulators should come from the reauthorizing committees.

Mr. GOODLATTE. Mr. Chairman, reclaiming my time, I strongly disagree with the gentleman's statement that we should leave that to the discretion of the courts. We have the same responsibilities that the courts have for interpreting the law. If we find that they are indeed acting contrary to the intent of Congress and what we think is contrary to the U.S. Constitution, then we should take action. I think the gentleman is quite wrong.

With regard to leaving this to the authorizing committees, in point of fact, the authorizing committee with regard to legislation related to the fifth amendment of the U.S. Constitution is the Committee on the Judiciary. We held hearings on this issue. We held an extensive markup on this issue. We have now come to the floor with authorizing legislation. As the chairman of the subcommittee has already indicated to the gentleman from New Jersey, this is not an entitlement. This is an authorization.

I think that it is entirely wrong to suggest that just because somebody cannot use their property for a very major purpose because of legislation that has been passed by the Congress or because of court interpretations of those legislation, that they are not entitled to compensation when there is a substantial reduction in value of the property, which this bill requires, that they should indeed be compensated.

Mr. GILCHREST. Mr. Chairman, I was not referring to the Committee on the Judiciary authorization of this bill. It is clear that they authorized this bill. I was referring to the authorizing committees that deal with the problems. We are going to be dealing with the problems that the Endangered Species Act and the clean water, section 404, and the wetlands——

Mr. GOODLATTE. Reclaiming my time. I would say to the gentleman that I commend him for that and encourage him to do that because I think after this legislation passes and becomes law, it will be very important and very necessary for you to do that, whereas previously it has not been necessary and has not been done.

Mrs. MORELLA. Mr. Chairman, I move to strike the requisite number of words.

Thank you, Mr. Chairman. I rise today in opposition to any legislation that would provide additional takings compensation beyond that allowed for under the fifth amendment to the U.S. Constitution.

I realize there are many citizens who believe they have been dealt with unfairly or uncaringly by Federal regulatory agencies. I strongly support initiatives that would grant them relief.

I support the Porter amendment, which requires new takings assessments and which will heighten regulators' awareness of these important issues. I support the concept of installing agency ombudsmen—to explain the laws, to handle complaints, and to nip disputes in the bud. And I support the settlement of property claims by new, nonjudicial mechanisms.

However, to support a new and broad-based system of takings compensation would be to support one of the most unwieldy, unworkable, and unneeded entitlement schemes that has ever come before this body.

H.R. 925 would force us to make an impossible choice: either we agree to bloat the Federal deficit and clog the Federal judiciary with takings claims or—more likely—we must abandon the enforcement of those laws most crucial to the protection of our Nation's wildlife and its remaining natural areas.

That is the choice before us today. It is a choice that none of us can make, and it is a choice none of us should have to make.

To understand the law, Justice Holmes reminds us, we must understand what the law has been. Private property rights are not absolute—not now, not ever. In saying so, I am not quoting from the latest Greenpeace bulletin—I am not quoting from John Muir or Karl Marx. I am quoting a principle of common law which has existed for almost 1,000 years.

From the time of King Henry the Second, in the year 1166 A.D., the Assize of Nuisance stated that a property holder could be held to account for ''things erected, made, or done'' on his land that gave trouble to others.

If a property holder's cattle strayed from his land causing damage, his neighbors could sue and force him to build an enclosure. If the landowner raised or lowered the water level on his property, and that act caused detriment to others, the landowner could be held liable.

If a man cast dung into the ''ditches or waters which are next to any city, borough, or town,'' another citizen could sue and force the mayor or sheriff to take corrective or punitive action.

The nature of the nuisances and pollutants may have changed since the Middle Ages—the underlying principle has not. The principle that the polluter should pay is rooted in laws and customs that prevailed for centuries before Columbus sailed the Atlantic.

The bill before us today would fundamentally undermine these principles. It would undermine the property holder's responsibility for the public goods of which he is but a temporary steward.

A landowner does not own the air we all breathe, a landowner does not own the water that flows under his land and into our taps, a landowner does not own the eagle that lands in his tree.

Rather, these are public goods, and as such, they are the greatest and proudest possession of the American people. These public goods are for the property owner to respect and protect—they are not for him to sell back to the American people, their true and rightful owner, at the auction block.

I urge the defeat of the compensation bill, I urge passage of the Porter amendment, and I yield back the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, will the gentlewoman yield?

Mrs. MORELLA. I yield to the gentleman from Florida.

Mr. CANADY of Florida. I thank the gentlewoman for yielding to me.

There is a large portion of what you have said in your statement that I wholeheartedly agree with. I would just point out to the gentlewoman that the substantive amendment which I have offered specifically provides that ''no compensation shall be made under the act in circumstances where there is an identifiable hazard to public health or safety or damage to specific property other than the property whose use is limited.''

I believe we have covered that. In addition to that, in the amendment of the gentleman from Louisiana [Mr. TAUZIN], there is specific language that says, ''if a use is a nuisance as defined by the law of a State or is already prohibited under a local zoning ordinance, no compensation shall be made under this act with respect to limitation on that use.''

So I believe that the general sorts of concerns that you have raised are concerns that we have been aware of and that we have covered in the legislation that we are proposing.

Mrs. MORELLA. I admire the fact that you have tried to take a bill that is unnecessary and help it, but I think it is still unnecessary. We still have an amendment in the Constitution which is working, and we have the courts to help to enforce it.

Mr. CANADY of Florida. The Chief Judge of the Court of Claims thinks it is not working.

Mr. NADLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support the Porter-Farr amendment which really is in contradistinction to some of the worst provisions of the Canady-Tauzin compensation bill.

This bill constitutes a fundamental reinterpretation of the fifth amendment. Contrary to the gentleman from Virginia, it is the court's duty to interpret the law. It is our duty to change the law if we do not like the court's interpretation. But we make the law. We change the law. The court interprets the law.

The courts have interpreted the fifth amendment in light of the common law over the centuries to mean that if the use of the land is precluded by the government, then that is a taking. If the value is diminished because some uses are precluded but substantial use is still permitted, that is not a taking.

To interpret it otherwise, as this bill would do, would force the Government to compensate a landowner for any change, almost any change in value which would occur from almost anything Government does.

It would establish a major entitlement program for landowners and establishes no money to pay for that entitlement. In effect, when an Army Corps of Engineers project has an effect on the value of nearby land, it would be up to the Secretary of the Army to pay for that. That would have priority over guns and tanks and missiles and readiness and troop payrolls, which makes no sense at all.

And the bill is based on a fundamental misconception. The gentlewoman from Maryland referred to the misconception. Property rights under Anglo-Saxon law, Anglo-American law are not absolute.

A great Republican President, Teddy Roosevelt, said, I quoted this last night but it deserves to be quoted again, ''Every man holds his property subject to the general right of the community to regulate it to whatever degree the public welfare may require it.''

That that may sound, these intelligent words of President Theodore Roosevelt, radical today just shows how far some of our colleagues have gone from the common sense and public welfare conception of the Constitution.

What this amendment would do, Mr. Chairman, is to say that we are going to vindicate landowners' rights by requiring that any agency, before undertaking any rule or action, must do an impact analysis to see what impact, if any, that will have on the value of land by necessity say it, almost any action government takes is going to raise the value of some land, decrease the value of other land. But this at least recognizes the need to address regulatory burdens on individual landowners. It is a positive step in support of private property owners, but without escalating the cost, the size or the inefficiency of government and without making it impossible for government to take almost any regulatory action, because that is what the underlying bill, as amended by the gentleman from Florida [Mr. CANADY] and the gentleman from Louisiana, [Mr. TAUZIN] would do.

Almost any regulatory action would be impossible because somewhere

somebody's land value would be diminished. That would have to be compensated for and we all know there is no money for that. This amendment, based on President Reagan's executive order and on Senator DOLE's bill, is an intelligent, common sense, down-the-middle approach to say we have to recognize and minimize the impact on property values, but we are not going to subordinate the public welfare to any change in value on somebody's land.

Mr. EHLERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, approximately 12 years ago, I was elected to the Michigan legislature and rapidly became immersed in takings issues, because Michigan is the only State of the Union which has been delegated responsibilities for wetlands by the U.S. Government. Takings was a major issue, and my initial reaction was to do precisely what the bill before us does, and that is provide for immediate compensation to property owners whenever an area of their property was declared a wetland.

□ 1615

However, in researching the issue, I discovered that there is an extensive 200-year history. Takings is a very complex legal issue. It has a long history, as I mentioned, but it has developed into a basically fair approach.

Generally, in takings cases, courts engage in a rigorous balancing process in which they consider a variety of factors, including the purpose of the law and the benefit or economic impact of the law. Precedent, established through zoning laws and the like, looks at the entire piece of property, not only the portion of the land that cannot be used as the owner desires.

I believe that H.R. 925, as written, will destroy centuries of U.S. and common law and will create immense legal and financial problems if implemented as it is currently written.

In addition, we discovered in Michigan most takings problems can be resolved by ensuring that regulators work with the constituency to achieve a solution. That should be the thrust of the law, and that, I believe, is the thrust of the Porter amendment.

Mr. Chairman, I would like to quote from a letter I received today from a gentleman who served as a Justice in the Michigan Supreme Court for several years, and currently is serving as mayor of the city of Detroit, one of the major American cities.

His comment about the bill before us is as follows:

> These takings bills pose a radically new and constitutionally unsound theory for litigation. Historically, takings' issues have been decided by the courts. The judiciary has crafted just and adequate protection for property owners based on the constitutions of the Federal and State Governments, weighing in each individual case a property owner's justifiable expectations of property use against the rights and interests of the public as embodied in governmental regulation. There is no reason to expand the ''takings'' theory, because a substantial body of case law that the courts have developed to enforce constitutional protections is sufficient.

That is the end of the quote from former Justice Archer. We, of course, have experienced takings in other forms; zoning laws, for example. I recently bought a house in Grand Rapids. My wife and I would like to add an addition in the back, and discovered we cannot build exactly as we had hoped because the city government has said ''You cannot build anything on the rear 25 feet of the lot.''

That property cannot be used as I wish, just as it often happens with wetlands conditions. However, we have established procedures for that. We have established laws that result in what is for the greater good of the public. Even though I may not build on that piece of property, that particular zoning law has increased the value of my property and the value of my neighbors' properties.

Mr. Chairman, as a former State legislator, I also took a look at what the States are doing, because I know this is an issue before the States. 25 State legislatures have considered a law like the one before us, and have rejected it. Nine States have adopted some type of takings legislation, similar to the law before us, but it is interesting that 6 out of the 9 have adopted legislation that is modeled after the Reagan executive order and the Porter amendment that is before us. In other words, they are taking the same approach that we are recommending in the Porter amendment.

One State which adopted a takings law actually had it repealed by the people of the State 2 years later. That is the State of Arizona. The legislature adopted it and the people through a referendum rejected it.

Based on the information I have given, the 200-plus years of constitutional law, a great deal of work on the takings issue, the States' experience in rejecting the approach in H.R. 925 and adopting the approach largely in the Porter amendment, I urge adoption of the Porter amendment, and urge that we help property owners meet the law and treat them fairly.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. EHLERS] has expired.

(At the request of Mr. CONYERS and by unanimous consent, Mr. EHLERS was allowed to proceed for 1 additional minute.)

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. EHLERS. I am pleased to yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I want to compliment the gentleman from Michigan [Mr. EHLERS] on his presentation. I agree with him. I am pleased that he would quote the former Justice of the Michigan Supreme Court, now the mayor of the city of Detroit, Dennis Archer.

Just to show the bipartisan nature of this amendment, I am quoting Ronald Reagan and Senator DOLE, so I think this amendment has just about everything going for it as far as bipartisanship is concerned. I compliment the gentleman for his contribution.

Mr. ABERCROMBIE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, speaking in favor of the Porter-Farr amendment, there has been anecdotal evidence, Mr. Chairman, offered on the floor with respect to the overall bill here, 925. I would like to add to it by way of example, I hope illustrative of what might really be involved and what parallel experiences others might have.

I am going to cite the example of water, Mr. Chairman. There is an assumption, an underlying assumption in this bill that questions about private property have already been resolved; that is to say, we know who owns what. I would suggest, Mr. Chairman, that is not always the case, not by a long shot.

I would also suggest that if we go over the history, as we have in Hawaii, on water rights, who exactly owns the land where water coursing is concerned, where the water goes? What is the natural course that water takes? What if it is diverted?

What if we have an historical situation, as we have in Hawaii, where plantations came into existence and literally changed the course of nature, took water from one place and took it to another place for economic purposes? The land which was owned or leased, in some instances, where sugar was grown, where pineapple was grown, did not have sufficient water. It was taken from elsewhere.

Now we have a situation in which we have to determine whether we are going to, as sugar lands, utilization of sugar lands declines, whether we are going to return the water to its original course. If that happens, what consequences are there for landowners?

In that context, in Hawaii and elsewhere in the country we have the question of watershed areas, we have the question of water conservation. We have, in fact, the question of how will water be used for municipal purposes, for private purposes, for household purposes.

Once this takes place, there are immediate consequences for the land. The gentlewoman from Colorado [Mrs. SCHROEDER] has brought before the body, and I think it deserves reiteration now, the questions that have been raised by the Acting Assistant Secretary of the Army for Civil Works, and I want to repeat that, the Assistant Secretary for Civil Works in the Army, addressed to Speaker GINGRICH, strongly opposing the bill because of some of the kinds of questions that I have raised in the private-public sector with respect to water and how it is

used and whether or not private property can be seen as private, and that all questions concerning ownership that have to be resolved also exist in the wider sphere of public purpose, even going as far as to say what constitutes the national interest in terms of the military.

These things are not so easily decided. Quite the opposite. The reason I support, then, the Porter-Farr amendment is that this is an assessment bill. We have kind of gotten away from what the Porter-Farr amendment actually says. It is attempting to reduce some of the questions that have been raised by our friends on the other side in opposition to the Porter-Farr amendment.

This allows, in fact requires, that a private property impact analysis be made, all within the context of the fifth amendment. Mr. Chairman, let us not forget, the fifth amendment is not abandoned. I think the gentleman from Illinois [Mr. PORTER] raised that question in some of his previous commentary, that after all is said and done, and after all our interpretations are made, and I hope that everyone will grant that I am making mine in good faith, as I granted it to others that they are making it in good faith, that the fifth amendment must be satisfied. There can be no takings without just compensation under the fifth amendment.

What constitutes that just compensation and what constitutes that taking does now and will remain a question to be decided under the full protections of the fifth amendment. In the meantime, then, what we do legislatively is very, very important as to what will be presented to the court as a fifth amendment issue, a takings issue.

Therefore, I commend to the Members' attention, in conclusion, please look at the content of what the private property impact analysis says, and I think a lot of the fears and anxieties of those who favor not supporting the Porter-Farr amendment will be alleviated.

Mr. DOOLITTLE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this Reagan executive order which has been referred to, and which has not been very faithfully implemented, I might add, since it was promulgated, and this bill that we are considering are perfectly harmonious, and I believe will work very, very well together.

In fact, the Reagan executive order without this bill will not work nearly so well, and that is because if one is so unfortunate as to have the massive power of the Federal Government directed against himself, the average length of time to pursue a takings case is between 5 and 10 years, ranging in cost from $50,000 to $½ million or more.

I have heard a lot of rhetoric about how this is a big bonus for big corporations and wealthy landowners. I would say, Mr. Chairman, the only ones that do not have a remedy in this country are the average people.

Sure, we have had the fifth amendment for 200 years, and there has been no effective remedy, really, to implement it for 200 years. We have had some very vague Supreme Court cases, and unless a person was big and wealthy and had a staff of attorneys, they could never afford to pursue their right for relief under the fifth amendment.

Finally, we are to the point today, thankfully, with the Contract With America and the changes that have occurred, where we can respond to the voice of the average citizen, and we can provide a remedy in order to make real the protections afforded by the fifth amendment to the U.S. Constitution.

We have heard today, I just cannot believe it, I hear the words ''unwieldy, unworkable, radical,'' used about this piece of legislation, and these words spoken from the very mouths of those who have supported the Endangered Species Act and its bizarre conclusions, such as whereby the farmer who was unintentionally plowing his field and kills a rat, he stands now criminaly indicated because he has committed a taking of an endangered species. That sounds like it is pretty radical to me, pretty unwieldy, pretty unworkable.

Then we have this little critter, the fairy shrimp. This costs each new homeowner, and continues to cost today in the city of Roseville, in my district, $6,000 extra per house because of this creature which we are protecting. Radical? Yes. Unwieldy? Yes. Unworkable? Yes. That is what we seek of change by this very wise and judicious piece of legislation.

Mr. Chairman, we need this bill. I just want to point out, it has been implied that somehow we are going to impair defense readiness because the Army will have to respond to all these claims. I just want to point out that there are two funds. The defense readiness and all of that, the military stuff comes out of one fund, the defense appropriation, and the energy and water appropriation, a separate subcommittee, deals with the civil aspect of the Army, so there is no way this bill is going to impair defense readiness.

Mr. Chairman, I would urge this amendment to be defeated and the bill to be adopted.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Porter amendment, and in an effort to keep the U.S. Government from going bankrupt or pursuing any of the other alternatives that might result if this bill is passed. I have heard the argument here that this is not an entitlement program. I would submit to my colleagues that it is either an entitlement program or it is a fraud on the American people.

I have thought this thing through, and it seems to me that ther are four options that we have under this bill. The first option is if we apply it like it is written and we continue to apply the laws as they are written, and the regulations, we can bankrupt the Government, because everybody who has any decrease in value in their property will be making claims under this bill.

□ 1630

The second option is we can bankrupt an agency of Government which chooses to promulgate rules that are pursuant to statutes that this Congress has passed. We can have judgments entered against the agency and the agency can choose to continue to promulgate rules as we have directed them to do under our statutes, and if we do not appropriate some more money to fund these agencies or departments of Government, then ultimately that particular department of the Government will become bankrupt as opposed to the whole Federal Government becoming bankrupt.

The third option that we have under this bill is that we can work a tremendous fraud on the claimants who are coming into court by saying to them under this bill that we give you a cause of action but if you get a judgment against the Government or against the agency, that judgment is not going to be worth the paper it is written on because the Federal Government is going to refuse to pay the judgment.

The fourth option is that we can say to our Federal Government agencies that you will not promulgate any regulations in furtherance of the laws that this Congress has adopted because if you do, then you are going to have lawsuits against you.

With all respect to the gentleman from Texas [Mr. STENHOLM], at least he was honest enough to come to this floor and say that is exactly what he expects to happen, we are not going to have any more regulations promulgated, and that is the objective we are trying to achieve. At least that is honest with the American people.

What does the last option here do for respect for the laws of this country? It means we have got laws on the books that our departments cannot promulgate any regulations to enforce. Therefore, people's respect for the law goes down, and we already have a crisis in this country, we are told, about people's respect for the law. So we have got this vicious cycle going around.

The final point I want to make is you will recall several weeks ago I came into this body and I offered the exact language of the fourth amendment to the U.S. Constitution. My colleagues here by an overwhelming majority voted against the precise language of the fourth amendment. I did not bother to come back into this body today and bring the language of the fifth amendment. I guess my colleagues who have all stood up here and said this bill is in furtherance of the fifth amendment, if I had brought the exact language of the fifth amendment into this body and said, ''Please vote the fifth amendment

up or vote it down,'' I wonder what my colleagues would have done.

We are back here today saying we are furthering the Constitution when we are doing exactly the opposite thing.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(At the request of Mr. FRANK of Massachusetts and by unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 30 additional seconds.)

Mr. WATT of North Carolina. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. To answer your question about whether or not this body would vote for the fifth amendment, would you leave any of that self-incrimination stuff in your version?

Mr. WATT of North Carolina. Yes, I would.

Mr. FRANK of Massachusetts. Then the answer is, no, you would not get it.

Mr. GILCHREST. Mr. Chairman, I move to strike the requisite number of words and speak in support of the amendment.

I would just like to sort of clarify and frame the discussion that we are having here. We have had some problems with regulations, they have been described as regulatory takings. We have had problems probably to some degree at any rate all across the country. So we are attempting here to solve or find some reasonable cure, for an over, to some degree, in some people's minds, and to a certain extent that is true, regulatory insensitivity to private property.

What we have here, on the one hand, we have problems with property rights. Because if you find the little fairy shrimp on there, you cannot do something, and where is the value of that? On the other hand, we have jobs. Maybe you cannot lumber or timber or do something else in an area.

But on the other hand we have this crucial, critical thing called biodiversity which to a large extent is to be protected by the Endangered Species Act. So how do we as humans solve this particular dilemma? Do we solve it by talking and discussing with the regulators, with Members of Congress, with the landholders about what they can do with their property and still hold onto biodiversity for future generations? Or do we solve the problem by sterilizing debate, by saying that we are going to take care of this and if some regulator comes in there and wants to take your property or regulate your property, we are going to compensate you, flat out, the Federal Government will pay for you not to abide by the Endangered Species Act, or for protecting wetlands.

I think what we need to do, and I am coming from a position of what I do in my district, whenever we talk about wetlands in my district, or whenever there happens to be a beetle on the side of a hill, we try to get the Corps together, Soil Conservation, EPA, Fish and Wildlife, myself, the affected landholder, and we sit down and we discuss this issue. But unless we adopt the Porter amendment, there will be no more discussion of this issue. You will have the incentive for people not to want to talk to the regulator, not to want to talk to any State legislator or to their Congressman or anybody. The incentive will be dollars and cents. I do not think that is what we really want to do here. We want to solve the problem of some cases being insensitive with their regulation.

We ought to deal with this in the authorizing committee, of Resources, to fine-tune the endangered species act. We ought to deal with this in the Committee on Transportation and Infrastructure to fine-tune the wetlands provisions of the Clean Water Act.

I want to make one other point. When we look at this little tiny thing here that no one would ever notice, I suppose, now, I do not know if this has any medicinal value at all, and I recognize there is a problem with overregulation, but I do not want to throw out the idea that we live on this planet in a very cold void called the universe that is infinite, and we as human beings, getting fundamental now, rely on the resources of this planet to keep us alive and to keep the future generations alive. I see that if we enter into this problem of takings in the way that we are dealing with it, that some of those resources are going to be diminished.

Before there was human impact on this planet, and I recognize we have to manage what with we do because we have people here, we cannot save every species and we cannot live in the wilderness like people did a thousand years ago.

Before there was human impact on species, we had about an average of one species per million become extinct every year, for millions and millions of years on average, except for 2 catastrophes, one of which was the dinosaurs, one species, per year, out of a million became extinct.

Now it is close to 10,000 species becoming extinct out of a million every single year. We have accelerated that process, and we do not know what the value of wetlands and biodiversity will do for future generations, but let us make sure that when we have this debate, we do not throw those things out. Those are important. We must continue to discuss them.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. Am I out of time, Mr. Chairman?

The CHAIRMAN. The gentleman has 15 seconds.

(At the request of Mr. POMBO and by unanimous consent, Mr. GILCHREST was allowed to proceed for 3 additional minutes.)

Mr. GILCHREST. I yield to the gentleman from California.

Mr. POMBO. I originally came down here to ask you one thing, and as you continued, there is something else I have to ask you. You said that we had one species a year for a million years.

Mr. GILCHREST. I said that before there was human impact on biodiversity and ecosystems, there was one species for every million species on average, for every million species, you would have one species becoming extinct every year. That was before the human impact in the last, let's say 1,000 years.

In this particular decade, in an evaluation of our relationship with biodiversity or species on the planet, you have about 10,000 species, plants, insects, per 1 million becoming extinct every year. That is an acceleration.

Mr. POMBO. If the gentleman will yield, the study on the 10,000 was based on, if it is the same study I saw, was based on one island and what happened on that one island and extrapolated throughout the entire country.

Mr. GILCHREST. Reclaiming my time, the study you are talking about, there have been studies in the rain forests of Latin America, there have been studies in Indonesia, there have been studies all over the world, including the United States. The average is, now in the United States we would not have 10,000 species per every 1 million becoming extinct, but we have hundreds of species becoming extinct in the United States as a result of human impact.

What do we do, tell all the people to move? No. But you manage the resources with what you have. I yield to the gentleman.

Mr. POMBO. I do not know how in the world you can say that there is one species per million before human impact as humans were not here and I do not really follow that. But the main point I rose on——

Mr. GILCHREST. Reclaiming my time, the way you do that is through scientific discovery of the strata, of the biology of things, through research, through archaeology, through anthropology, through scientific techniques that can evaluate what species looked like throughout just about the course of time that the Earth has been here. There is a scientific technique to discover those kinds of things. I yield to the gentleman.

Mr. POMBO. The main reason why I came down here is because you and I have discussed this issue for a number of years about what to do. You have always said that you want to help, that you do want to protect people's private property and that that is an interest of yours. This amendment that is on the floor right now is purported to be the Reagan Executive order, or taken from the Reagan Executive order. I do not know if you even realize this or not, but the Executive order is still in existence. If this amendment passes, the only change in——

Mr. GILCHREST. Reclaiming my time, the Reagan order, the only thing

that will happen, if this Porter amendment goes through, this will offer us an opportunity to do two things: One, to make sure that the agencies are much more sensitive to what happens, and we can reauthorize the Endangered Species Act——

The CHAIRMAN. The time of the gentleman from Maryland [Mr. GILCHREST] has expired.

(At the request of Mr. POMBO and by unanimous consent, Mr. GILCHREST was allowed to proceed for 1 additional minute.)

Mr. GILCHREST. When we reauthorize the Endangered Species Act, we can certainly address those problems that have happened. When we reauthorize the Clean Water Act, we can do that for wetlands. This Porter amendment makes sure, it reemphasizes, it directs the agencies so that they will be told by us and we have the responsibility, that you must inform that person as far as the impact of their property is concerned and the value of their property whether it is diminished or whether it is not diminished.

The fifth amendment still holds true. But my problem with this bill as it stands without the Porter amendment is that in my mind it is going to create a huge, litigating, bureaucracy that we cannot anticipate.

Mr. POMBO. If the gentleman will yield, what you are worried about is you want to protect what is happening right now, which is not working, and that is what we are trying to change. That is the whole problem.

Mr. GILCHREST. Reclaiming my time, I just do not want to make it worse.

The CHAIRMAN. The time of the gentleman from Maryland [Mr. GILCHREST] has again expired.

(At the request of Mrs. CHENOWETH and by unanimous consent, Mr. GILCHREST was allowed to proceed for 3 additional minutes.)

Mr. GILCHREST. I yield to the gentlewoman from the beautiful State of Idaho.

Mrs. CHENOWETH. Could the gentleman just define for me what biodiversity and ecosystems are?

Mr. GILCHREST. Biodiversity means all of the species on this planet that have evolved over millions of years that have created, literally, life on the planet.

We have air because of living organisms on this planet. We have purifying techniques in life forms on this planet for our atmosphere. We have animals in the oceans, for example, a whole range of species, from microorganisms right on up to whales that interact with each other that cause what we call the balance of nature. The planet Earth exists the way we know it, we breathe the air, drink the water, eat the food, we find medicines in the natural environment to cure diseases. This happens as a result of over millions of years of evolution of different species reacting with each other to form the planet Earth.

Mrs. CHENOWETH. Would the gentleman yield for a second question?

Mr. GILCHREST. Yes, I will.

Mrs. CHENOWETH. Mr. Chairman, I ask the gentleman from Maryland [Mr. GILCHREST], what is an ecosystem?

Mr. GILCHREST. An ecosystem in Idaho, for example, would be an area where you have a certain type of tree, a certain type of animal life, a certain type of insect and so on that has evolved in that particular area and depends on that type of vegetation, that type of a full range of other animals like—I do not want to bring up wolves now, but let's say a moose is going to eat a certain type of vegetation.

□ 1445

In my area an ecosystem on the Eastern Shore would be a little bit different because we have deer, we have geese, we have fox and so on. So ecosystem is different from one place to another, but an ecosystem is an area where you have animals, plants and insects that will depend on each other to survive.

Mrs. CHENOWETH. Mr. Chairman, then is it the gentleman's suggestion then if ecosystem means all of this, that it is the responsibility of the Federal Government of the United States of America to manage and fund and control all of this?

Mr. GILCHREST. No; I would not say it is the responsibility of the Federal Government to control all the ecosystems and I am not sure how much time I have, Mr. Chairman, but property owners, local government, people in general need to cooperate with each other to find solutions to some of these problems that are vexing this institution.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words and I rise in support of the amendment.

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

Mr. DINGELL. Mr. Chairman, I have good news for my colleagues. Rejoice, the fifth amendment is alive and well. It is in the hands of the courts which are vastly more competent to interpret it, to enforce it and to provide for justice to be properly administered to the American citizens, to see to it that where there is a taking it is compensated, and to do so in a thoughtful fashion in accordance with law, and on thoughtful consideration of the requirements of the Constitution and the precedents which have interpreted that great institution of this country.

The fifth amendment says no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation.

This amendment implements that language. It sees to it that Americans are treated fairly, according to 200 years of constitutional law; and that where there is a taking they are properly compensated.

It is remarkable to note the curious way in which this legislation has been considered, brought rapidly to the floor, without proper consideration of the facts that are associated with it. When I was a young Member, no bill was brought to the floor until we had an estimate as to the cost from the Office of Management and Budget.

As I mentioned earlier in my remarks, we sought the views of the Office of Management and Budget, and of the Congressional Budget Office to find out what this legislation is going to cost the taxpayers. Those two agencies responsible for the administration of the public monies, and estimates of expenditures and costs, were not able to tell my office either how much is at stake here, how much this is going to cost, nor were they able to tell us what programs were involved.

Happily, there is a possibility that there is some limitation as to the sweep and scope of the cost of this from the original bill, but that is not enough. What we really need to know is what this is going to cost, why is it that we are rushing out to spend the public monies?

I have heard great groaning and great distress from my colleagues on the Republican side of the aisle about the fact that the budget is out of balance. Let me tell my colleagues that if there is a budget busting piece of legislation in this session of Congress, or indeed in any session of Congress, this will rank in the top three or four. There is not anyone on this side of the aisle who can tell this body what this is going to cost.

And there are very few who could justify all of the strange and anomalous consequences that are going to flow from this, people who are going to be compensated for enrichment which they have already gotten which might be diminished by the same problem project which has contributed to their enrichment.

I can understand there are people out there complaining about the fact that there are Federal laws that say you cannot pollute, that say you cannot flood your neighbor's land, that you cannot build where good sense says you should not, and taxpayers would have to pay you and want to be paid for being denied the privilege of building where you ought not. It is not good sense, but I understand that, and there is no reason why we should listen to it. What we ought to do is legislate with the full awareness of costs, a full appreciation of what it is we are doing, and whether or not it is wise public policy, the programs which we are amending and the behavior of this body. That is good legislation, that is good sense. It is not being applied here.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Let me just reinforce what the gentleman says. I am the ranking minority member of the subcommittee that would have had jurisdiction over this if the

minority had been willing to let it go to the subcommittee. Behind me is the ranking member of the committee that would have had jurisdiction over it if we had been allowed to discuss this in committee. But to reinforce what the gentleman said, the bill on which we had hearings disappeared when we went to markup; we had a very different version. So the language that is before us now, the Canady substitute as amended by the gentleman from Louisiana [Mr. TAUZIN], has never been before a committee for a hearing and in fact the great bulk of this has never been subjected to the markup process and that is why we do not have these answers because they did not want to subject it to scrutiny.

Mr. DINGELL. That seems to be consistent with the overall practices that we have observed with regard to legislation. I think that in almost every instance where we have dealt with questions which were involved in the contract in the 100 days we found that the legislation has changed faster than even the managers of the legislation could understand. And that they were incapable of explaining language which was in their own bill.

I think that good legislative practice deserved better protection of the public interests and requires better than the legislation we have before us.

Mr. BOEHLERT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong support of the amendment being offered by my good friend and colleague from Illinois, Mr. PORTER. The Porter amendment to H.R. 925 is well reasoned, and a fiscally responsible approach to the issue of regulatory takings.

The American people voted on November 8 for reasonable and responsible laws. As drafted, H.R. 925 passes neither of these tests.

As has been stated repeatedly, H.R. 925 is a budget buster. This legislation could require hundreds of billions of dollars in additional Federal expenditures, not tomorrow, not next week or next month or even next year, but over several years. I cannot support legislation that would increase the Nation's debt in such a sweeping and irresponsible manner.

Keep in mind we have got to be serious about addressing our Nation's budget crisis. We are spending $813 million every day just in interest on the national debt. It does not feed anybody or clothe anybody or educate anybody or indeed compensate anybody. It just services the national debt.

H.R. 925 is a budget boondoggle whose cost to the American taxpayers cannot be accurately estimated by any Member of this body. Not by the Congressional Budget Office, not by the Congressional Research Office, not by the author of this bill, not by the professional staff of the committee of jurisdiction.

We are being asked to venture forth into Rod Sterling's twilight zone.

Earlier this week this body passed legislation requiring Federal agencies to do risk assessments and cost-benefit analyses before proceeding with new regulatory actions. Ironically, many of the same proponents of conducting thorough cost-benefit analysis are before us today, asking us to support legislation that may cost the American taxpayers hundreds of billions of dollars over the long haul, without assessing the scope and impact of this far-reaching legislation.

The proponents refuse to admit the risk, and they fail to enlighten us as to the cost.

Now more than ever, we must take a hard look at the cost and implications of Government actions. The bill before us today needs such a hard look.

The Porter amendment assures us that we assess the costs and benefits of regulatory actions that may impact property values. The Porter amendment, which is based on legislation introduced by Senator DOLE and an Executive order issued by President Reagan, requires agencies to complete a private property taking impact assessment before issuing a regulation. This is a sensible way to determine if billions of dollars of taxpayers' money should be spent on compensation.

It is also worth noting that millions of dollars in litigation costs will also arise out of H.R. 925.

I would like now to share with you just a brief passage from an op-ed piece that appears in today's New York Times that outlines one of the many costly unintended consequences that could result if H.R. 925 is amended.

The op-ed piece states for their part landowners would be encouraged to shop for the highest possible appraisal of their loss, and lead to a new form of land speculation that had nothing to do with offsetting regulatory harms. That would lead to endless rounds of litigation over the necessity of compensation, the adequacy of economic appraisal and whether each side filled out the forms in the right order. That is not something we want.

We have heard about the Porter amendment guts this bill. The only thing being gutted is the taxpayers' wallet. We hear about shame; shame has been repeated over and over. The only shame I would submit is to suggest that the Constitution does not protect private property rights. It does in that sacred document in the Fifth amendment.

Let me point out there are a whole list of very respected opponents to this legislation. The National Council of State Legislatures, the National League of Cities, the National Governors Association. The only vote we have had on this recently was in the very conservative State of Arizona, where by a 60 to 40 margin the voters of Arizona rejected this.

The CHAIRMAN. The time of the gentleman from New York [Mr. BOEHLERT] has expired.

(By unanimous consent, Mr. BOEHLERT was allowed to proceed for 2 additional minutes.)

Mr. BOEHLERT. Mr. Chairman, the voters of Arizona rejected this. If the bill passes it will reverse decisions of very conservative members of the Supreme Court of the United States. In a 1993 decision, Chief Justice Rhenquist and Justice Scalia and every member of the Supreme Court reaffirmed 2 basic Fifth amendment principles. Takings can only be decided based on the impact on an overall parcel of property, not just the affected portion. And, and this is extremely important, particularly to this debate, Justice Rhenquist, Justice Scalia, and every member of the Supreme Court said diminution in the value of property is insufficient to demonstrate a taking.

I think the gentleman from Illinois [Mr. PORTER] is taking a very reasoned approach to a problem we all acknowledge, and I would urge that we follow his lead and support his amendment.

Mr. MILLER of California. Mr. Chairman, I move to strike the requisite number of words and I rise in support of the amendment.

(Mr. MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. MILLER of California. Mr. Chairman, I rise in support of the Porter-Farr-Ehlers amendment. I think it a well-reasoned amendment, for reasons my colleagues from New York just reiterated. It is also very fiscally responsible for those of us who are concerned about the Federal Treasury and potential raid on the Treasury that the underlying legislation holds out.

It is also a good amendment because it keeps in place what happens in most instances under the current laws, and under the current laws the matters between the enforcement of the Endangered Species Act, more importantly the enforcement with the Clean Water Act is a matter of negotiations between the landowner and the local agency and the Federal Government about how that land shall be developed or not be developed, and to bring it into compliance with the purposes of both the Endangered Species Act and the Clean Water Act.

We are all well aware, you cannot serve in the Congress of the United States and not be aware that we have had enforcement of these laws that defies common sense, that we have had enforcement of these laws that is about the arrogance of an agency. We have had enforcement over these laws and decisions rendered in many instances where there simply is a mismatch between the landowner and the agency, but this legislation comes in and says we will treat all situations as if that is the normal course of doing business under the law.

In fact, it is not, because the point is that there are thousands and thousands

and thousands of projects that are approved every year where they have to comply with Clean Water, comply with Endangered Species, and we negotiate it out.

□ 1700

Now your suggestion is the landowners can simply cross their arms and say, ''Pay me.'' That does not really help us in terms of the development that people want to see take place in their cities and their towns, and it means that we will have to reconsider projects because simply agencies will start to run out of money to comply with that act should they want to continue to go forward with those projects.

What we really ought to be doing, and over the last year, unfortunately, we were not able to do that, but I guess with the new majority, we will; the gentleman from Louisiana [Mr. TAUZIN], myself, and the gentleman from Louisiana [Mr. HAYES] and others have worked on an amendment to change procedures within the Clean Water Act to get people timely decisions. Most of the people I have been engaged in in the enforcement of the Endangered Species Act, what they want is a decision. They would like to have a decision, because time is money in their business, and then they would know what to do.

But these agencies drag them out and drag them out. But that goes to the underlying acts, especially with respect to Clean Water and how to make sure we can even up the negotiating positions of those parties.

But to come in at the end with the Tauzin amendment and suggest that in each and every case the issue is whether there is a taking or not is not so at all, because the vast majority of these cases, whether they are very large developments or small developments, have to do with negotiations between the landowner and the various entities pursuing or participating in the development plan for that piece of land.

And for that reason, I think we should strongly support the Porter-Farr-Ehlers amendment, and then get on, as a number of other people have suggested, get on with the reauthorization of the Endangered Species Act, with the reauthorization of the Clean Water Act, where many of us believe that structural changes have got to be made in that and definitional changes have got to be made in that, and we now have lands that the Clean Water Act is applied to and definitions of wetlands that leave us all speechless as to how that could have ever been the intent of the Congress.

I think in a number of instances it was not the intent of Congress. Those are the actions that have got to be taken to straighten out and preserve the environmental balance and the protection and the need for communities and landowners to be able to use and to develop their lands as they see fit.

So I would hope that we would take the Porter-Farr amendment as a stop-gap approach to the rewrite of that legislation in your committee, Mr. Chairman.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let us cut through all of the rhetoric of this amendment and get to the real intention of the authors of this amendment, and that intention is, and I am going to quote, ''to basically gut everything in H.R. 925.''

People may ask the question, Mr. Chairman, is that my interpretation of the amendment and the intentions of the authors? And the answer is absolutely not.

Mr. Chairman, I am going to read from the Congressional Green Sheet of March 1. It says here a Farr aide said that this amendment would basically ''gut everything in H.R. 925,'' which is what we are trying to do with this amendment. This is the aide to one of the authors, clear and simple, gut the private property rights bill.

Now, if you read subsection (a) of this amendment, and again I quote, ''no compensation shall be made under this act with respect to any agency action for which the agency has completed a private property impact analysis before taking that agency action.''

Mr. Chairman, no compensation does gut this legislation. The aide to the gentleman from California [Mr. FARR] is exactly correct. This particular amendment guts private property rights.

Now, I have heard speech after speech of how this is a budget-buster. That is why compensation should not be paid, if you listen to people on the other side of the argument.

No one that I know in Congress who supports private property rights wants another Federal spending program. No private property owner that I know wants compensation because of a wetland or an endangered species designation. Those of us who support private property rights and landowners want Federal bureaucrats to stay off of private property. We do not want them taking away the use of that property.

We feel that there is a constitutional right to use and enjoy one's private property. No one wants compensation for that.

So for us, those of us who have been involved in drafting the Tauzin amendment to the Canady substitute, we see compensation as a stick that forces the Government to make the right decision, not the bureaucratic frivolous decision that can be made with no compensation.

Now, I am going to say in regard to the authors, this bill does mandate a private property impact analysis before the Government takes the property, and I will credit the authors that alternatives have to be identified that lessen the likelihood of taking private property in the analysis that is done. That is positive. But, and I want to underline ''but,'' after the analysis is done and even if alternatives are identified, there is nothing that forces the Government to take those identified alternatives. But worse, in Porter, judicial review is precluded for the private property taking analysis, and we have seen situation after situation where the biologist or the scientist of the Government, of a private landowner disagree, and yet under this, it is precluded. So if you disagree with a Government biologist on a takings determination, you cannot get that judicially reviewed the way this amendment is drafted, as it regards the Government's analysis.

So what is the worth of that to a private citizen? Absolutely nothing. And I think this is a sham amendment to private property owners.

So what does Porter-Ehlers-Farr do for the private property owner? It says your right to compensation for takings to private property for public use under the fifth amendment is there. Well, that is there now, and a citizen can go to Federal court today if there is a question about a taking with endless appeals at an average cost of over a half-million dollars to that private citizen if they want to try that particular action in Federal court.

How many average citizens can afford that type of expense? Not many. And that is why you have not had that many cases taken through the Federal court system.

This is a gutting amendment. People should make no mistake about it.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

(By unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 1 additional minute.)

Mr. FIELDS of Texas. If you are for those people making wetlands and endangered species decisions in your district, basically the Corps of Engineers and Fish and Wildlife involved in every property transaction and building permit, you should vote for this amendment. If you told your constituents back home you are for private property rights, you should vote against this amendment that, in the words of the author, guts the true intent of H.R. 925.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to express my support for this amendment.

With regard to the previous speaker, I want to express my skepticism that a staff member of a Member on the minority side somehow captured the gentleman from Illinois [Mr. PORTER], the gentleman from Michigan [Mr. EHLERS], and other Republicans and turned them to his or her will. This amendment was drafted by the gentleman from Illinois [Mr. PORTER] and his colleagues long before my colleague from California got involved.

But let us get back to the merits. First, I want to talk briefly about the procedures. We do not know a great

deal about this bill. Questions about it have gone unanswered. There have been a great deal of uncertainties.

The chairman of the subcommittee has said we will have to get back to see if we can work that out to the gentleman from Mississippi. The problem is this bill has undergone none of the normal scrutiny of the legislative process. We had a hearing on the appropriate language, the relevant language, in the contract. That was a bumper sticker on a page. It had so little content it was an embarrassment even to them.

The chairman of the full committee, the gentleman from Illinois, tried to remedy that situation, so when we had the committee markup, there was no subcommittee markup, when we had a committee markup, he had a very different bill. It looked a little bit like the Tauzin bill, but still there were a lot of differences. That bill had a life of about an hour. It disappeared even before some of the species that our friend from Maryland has lamented.

Because back came something that was close to the original, and that went through the committee on a voice vote. Then when they realized that even by their standards that was too extreme to pass, they decided they had better make some kind of arrangement with the gentleman from Louisiana. So we got a fourth version of it, and the amalgam of the Canady substitute and the Tauzin amendment has never before been subjected to any legislative process. We are dealing with an extraordinarily complicated subject for the first time on the floor of the House this year without hearing and without any markup from the committee to which it was referred.

Now, we have the second issue, and that is the unwillingness of the sponsors to discuss what this bill will really do, because what they have talked about are those examples when the regulatory process itself may have gone astray, and things go astray, Members of Congress, and legislative processes and all kinds of things go astray. They have talked about what they call the horror stories, how this misapplication and that misapplication was involved.

But this bill, absent the amendment that we are now discussing, does not correct mistakes in the regulatory process. It applies, with its full force and effect, to those instances when the regulatory process is working perfectly and exactly as it was supposed to. This is a bill that deals with those instances when the Wetlands Act is being imposed to protect wetlands, because they have an important environmental purpose. Everyone acknowledges that wetlands have an important environmental purpose. They affect drinking water, a whole lot of things.

This bill deals with those instances, a great majority of instances, when the system is working exactly as it should. It deals with the Endangered Species Act when it is working exactly as it should.

Why do they talk about the exceptions? Because the real purpose is to undo the basic Wetlands and Endangered Species Acts, and if they want to do that, they should do that in those committees. They said, ''Well, in the past, we did not have control of those committees.'' But they do now. Those committees now have majorities amenable to them, so they ought to be brought up in those committees.

Instead, you have got this now you see it, now you don't process. In fact, what they did in the Committee on the Judiciary was pull the old hidden bill trick, because the bill that finally came to the floor had very little relationship to the bills we had hearings on and the bills we debated, and, again, what they are doing is attacking the Wetlands Act and attacking the Endangered Species Act collaterally, not by changing the substance, but by making them impossible to enforce.

Because, again, I want to be very clear about this, this is not a bill that says where the Corps of Engineers, where the EPA, where the Interior Department has misapplied the law they have to pay, where they have exaggerated, where they have had bad science, they have to pay. This is a law that says that when any of the Federal agencies charged with administering these acts carries out the act exactly as it was meant to be carried out to protect wetlands, to protect endangered species, to do exactly those environmental things which we said we wanted done, they will have to pay and engage in this very lengthy process. That is why, both for procedural and substantive reasons, it is a grave error to try to rush this bill through here.

It is one more example of undue haste on a complex subject, the result of which will be the kind of legislation we now have.

This amendment would slow it down. The amendment, for a bill from the Committee on the Judiciary dealing with process, is the appropriate amendment.

If Members feel that, as part of the Wetlands Act and as part of the Endangered Species Act, they have been overadministered, then deal with them here. Do not do it by stealth in this bill.

Mr. CRAPO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is important that we respond to some of the arguments that are being made here, because some of them are just wrong, and others need to be clarified.

Let us go through some of them. First of all, it has been said repeatedly here this is a budget-busting measure. I think that is kind of an interesting argument. Remember what the bill does, it says when the Federal Government is diminishing the value of private property owned by private citizens in this country, that it must pay for it.

Those who are saying this is going to cost hundreds of billions of dollars must at least be concerned the Federal Government is causing hundreds of billions of dollars of loss of property value to people in this country by their actions. Yet they seem to say that does not need to be addressed.

Well, I do not know whether it is hundreds of billions of dollars that this act will cost or not, but if the Federal Government is doing that to the people of this country, then something should be done to stop it, and this bill addresses that.

Now, I do not think it is going to cost the Government that much money, because I believe there are a lot of creative people in this country, and when the regulators find out they cannot simply ignore private property rights any longer, then they are going to be able to look for other alternatives to accomplish the same solutions, alternatives that do not run roughshod over private property owners.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. Mr. Chairman, on that very point, that is what is happening in my congressional district with the red-cockaded woodpecker. The Government has come in and identified colonies of nests and begun to move those to Federal forestry land off of private property. That makes sense. That is the type of creative work the gentleman is talking about, and I really appreciate you making that point.

Mr. CRAPO. I thank the gentleman for that specific example.

That is the point. Today we have a Government that does not care enough about private property ownership and protecting that principle in our system of government, and this bill will force it or force them to pay for the social costs of running over those rights.

Then there are those who say that the fifth amendment protects our rights adequately, and we do not need to go beyond the constitutional protection. But one of the very speakers in support of this proposed amendment said the Supreme Court has already declared that under the fifth amendment the protection is against a total taking of your property.

□ 1715

It goes not against the taking or diminishing in value of the property. As I said earlier today, the Federal regulatory system we have has found out that if they do not take your whole property but just go in and regulate it to the point that you have to do with your own property what they tell you with it, then they can get around the fifth amendment requirement on takings.

I think the Founding Fathers of this country would have put something in if they had known what our regulatory system today was trying to do with regard to private property.

The point is the fifth amendment protects against takings. This statutory protection protects against diminishing in value.

Then there are those who say, well, this is just the Dole-Reagan approach. It has been said before, but I want to repeat, that Senator DOLE said in a letter that he sent us that this amendment which we are debating here, which is a killer amendment to the legislation we are bringing, does not represent his approach and that he supports the concept of compensation as this bill requires. And the person who sponsored, who drafted the letter——

Mr. PORTER. Mr. Chairman, will the gentleman yield?

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

Mr. PORTER. I thank the gentleman for yielding.

Mr. Chairman, I have read the letter from Roger Marzulla and also the letter from BOB DOLE. And it is very evident from both letters, if you read the last paragraph of the Roger Marzulla letter, he says, ''As chief architect of the Takings Executive Order, I can assure you that in no way was it ever intended that if the Federal Government went forward with action that did in fact violate the fifth amendment, the Federal Government was in any way relieved of its constitutional duty to pay just compensation.''

Obviously, neither Senator DOLE nor Roger Marzulla understood the amendment. The amendment says, ''No compensation shall be paid under this act,'' referring to the Canady-Tauzin legislation. If you read section (d) of the amendment, it says the fact that compensation may not be made under this act by reason of this section does not effect the right to compensation for takings of private property for public use under the fifth Article amendment to the Constitution.

So, what the amendment does is entirely different from what Senator DOLE thought it was, or Roger Marzulla. Both did not understand it.

Mr. CRAPO. Reclaiming my time, I think the gentleman's point about the fifth amendment is correct. Senator DOLE clearly said he supports separate legislation that does address compensation. Senator DOLE is saying although his initial letter does not address that issue, his sponsorship of two separate pieces of legislation should never be taken to mean that he does not support private property compensation.

Mr. PORTER. If the gentleman would yield further, there is one significant difference—there is the Dole letter I am reading—''One significant difference between my bill and the Porter amendment specifically requires that no compensation shall be paid in cases when the takings impact analysis is performed.'' That indicates that Senator DOLE does not understand the amendment. He did not understand that the compensation is still payable under the Porter amendment.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired.

(By unanimous consent, Mr. CRAPO was allowed to proceed for 3 additional minutes.)

Mr. CRAPO. I yield further to the gentleman from Illinois.

Mr. PORTER. I will finish up very briefly.

It is payable under the Constitution except if an impact analysis is not done. Then it is payable under the Canady-Tauzin approach. In either case, compensation is payable.

Mr. CRAPO. I understand the point. I want to continue on my time because I have a number of points to make on my time, and it is already running out.

Let me respond to that point by saying that the amendment—and I want to refer to the amendment—the amendment allows compensation only if an agency does not conduct a property impact analysis. If the agency does conduct that analysis, they do not have to compensate, regardless what the impact analysis said. Is that correct? And I yield to the gentleman.

Mr. PORTER. That is incorrect. The agency has to pay compensation under the Constitution.

Mr. CRAPO. OK. Except for the Constitution.

Mr. PORTER. Yes.

Mr. CRAPO. It applies only in a taking.

Mr. PORTER. In a taking of private property.

Mr. CRAPO. If the agency is successfully able to identify a way to impact the property without totally taking it, there is no compensation as long as they analyze it and say so.

Mr. PORTER. As long as they look at the regulation to see its impact on private property, they have looked at the specific purpose of the agency action, an assessment of the likelihood of the taking of private property will occur under the action, alternatives to the agency action that would achieve the intended purpose and lessen the likelihood of the taking the private property. If they have done that kind of thorough analysis, then they escape the provisions of Canady-Tauzin and must pay compensation under the Constitution.

Mr. CRAPO. I understand the point. But we still have a difference of opinion on this in terms of whether it is viable, because we have agencies being required it do an analysis but no penalty, no requirement that they are to be reviewed. In fact, under the very amendment we are talking about, there is no judicial review to be sure the agency is conducting the analysis properly. All the agency has to do is conduct an analysis to avoid the problem of compensation.

Mr. Chairman, the point I make here is that we have a basic difference in philosophical point of view. There are those who want to say the constitutional protection against a taking, a total taking of the property, is sufficient if we add to it a requirement that the agency study what they are doing, with no requirement that the agency must compensate or that the agency must be subject to review.

The basic difference here is this: Our agencies today have shown, and I think here is where the philosophical difference lies, I believe our agencies have shown the American people that they do not give enough consideration to private property rights.

There are those who are willing to trust the agency with simply reviewing that issue without requiring that when the agency reaches a conclusion that there is no better way to do this to impact private property, then even in that case, when there has been a review, if society's requirement so deems that that person's property should be diminished in value for society's purposes, then that should be compensated. That is the basic philosophic debate we are having today, and that is why we must not support this amendment.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired.

(At the request of Mr. FIELDS of Texas and by unanimous consent, Mr. CRAPO was allowed to proceed for 2 additional minutes.)

Mr. CRAPO. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I want to make sure I understand this, if the gentleman will yield.

As I understand the amendment as drafted, if an impact analysis is done, which, by the way, is a positive step, particularly from the fact that they look for alternatives, there is no compensation directly from the government but you have your constitutional right for a taking, which means you go as a private landowner, spend half a million dollars in Federal court with endless appeals, questioning biologists. It is just a sham. If you are for the system as it is, vote for this; if you are for private property rights, you had better vote against it or you had better have good explanation for your constituents if you said you are for property rights.

Mr. CRAPO. That is right. Let me clarify one point. We have to understand, in this debate, the difference between protections under the U.S. Constitution and what this statute seeks to do. The Supreme Court has made it clear that the constitutional protections relate to what amounts to a full taking of the property. And when the Federal agencies do not fully take your property but simply regulate what you can do with your property to a lesser extent than actually taking it from you, the constitutional provisions under the Supreme Court decisions provide no protection. This statute is intended to fill that void and provide compensation when your property is diminished in value but not totally taken.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has again expired.

(By unanimous consent, Mr. CRAPO was allowed to proceed for 2 additional minutes.)

Mr. CRAPO. I Would yield further.

Mr. EHLERS. Mr. Chairman, Mr. Chairman, with your leave, I would like to comment on what the gentleman has said and also the gentleman from Texas. There is a very important point here that has not been emphasized in the debate.

The example of the gentleman from Texas about the red cockaded woodpecker is a good example of how it should be done. We had a similar situation in Michigan with the Courtlands Warbler a number of years ago. Once again we established areas within the national forest and within State forests and solved the problem without impacting private property owners.

The reason I mention this is that the portion of the Porter-Farr amendment which has not received emphasis in the debate is the part that requires the agency, as part of their private property impact analysis, to include alternatives to the agency action if indeed that would achieve the intended purpose and lessen that likelihood of a taking of private property, which is precisely what happened in Texas, which is precisely what happened in Michigan.

I can tell you from our experience, with takings in Michigan that once we turn the bureaucracy around and say, ''No, you cannot just simply say 'no' to some alternatives, you have to sit down with the property owner when they have a permit, you have to sit down with them and discuss alternatives with them.'' That solved virtually all of the problems that we had. Instead of just simply saying ''no,'' they have to look at alternative under this amendment. That is precisely what we did in Michigan, which solved the problems to a very great extent with wetlands, sand dunes, and other problems. It is something that the bureaucrats should have the sense enough to do in the first place without being told. But we told them and this amendment tells them, and it really takes care of most of the problems.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I thank the gentleman for yielding.

Mr. Chairman, let me just respond to the gentleman from Michigan.

First of all, I appreciate his sincerity. I have a feeling that he and I could probably sit down and work out most of the problems in a commonsense manner. The problem with the question on this amendment, though, is while it is mandated that those alternatives should be studied and brought forward, there is no mandate that the alternatives be implemented. So, in the red cockaded woodpecker example, instead of saying here we have an alternative, ''We are still going to take your property.'' There is no compensation. If you want to go to the Federal courts for half a million dollars, you can do that.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired once again.

(By unanimous consent, Mr. CRAPO was allowed to proceed for 1 additional minute.)

Mr. CRAPO. I thank the chairman.

Mr. Chairman, I want to address the comments which have just been made. It is correct that this amendment would be better than nothing, but it is much worse than the current statute we are considering. The reason is, as was said by the gentleman from Texas, there is no mandate in this amendment that the least oppressive or least intrusive alternative be selected. There are times when the agency is actually bound by statutory provisions that this Congress passes that require the agency to run roughshod over private property rights. In those cases, after there has been a congressional action or after there has been a full agency review, when it is decided private property rights must be diminished for some social purpose, there should be compensation, and this amendment does not allow for that compensation.

Ms. LOFGREN. Mr. Chairman, I move to strike the requisite number of words. I just want to make one point after listening to the debate here.

I think it is worth pointing out that the amendment provides the remedy to a landowner who feels they have been abused and their land has been taken and the remedy is to go to court. That is the same remedy that is provided in the underlying bill on line 10, page 4.

Ultimately, if you do not agree with the Federal Government, you are going to have to sue to get justice. I do not think there is anything inherently wrong with that.

I did want to say a few things as a member of the committee. I believe in the fifth amendment. As a matter of fact, as part of the Bill of Rights, I think it is a very important component of our rules of law and justice here in America. I personally have had some very unhappy run-ins with the Army Corps of Engineers in California, and I am not much of a fan of the Army Corps, but having spent the brief time the Committee on the Judiciary, which we had in marking up this bill, I would like to note that I fear that much mischief will be done by this bill, and I assume it is not mischief intended by the authors or proponents of the action, but when you think back to our law school training, the black acre and white acre, if the white acre is wet, any developer worth his salt is going to make sure that the development potential is focused on what is compensable by the Federal Government.

All of the developers that I know in California have not become successful by being stupid. There are sharp characters out there, good businessmen, they know how to play the angles, and that is why they have survived in business. And they will, and I understand why, there is nothing in this bill or law that would preclude them from coming down to the Federal Government because, ''Come on down, we got some free money for you right here under this bill.''

I really do believe this amendment should be supported, although I am not entirely pleased with every aspect of it.

I note the law in the area of takings is moving toward a more moderate approach with the Nolan case and the Dolan case, and now noting the regulatory impact must be proportional. I believe the court is going to move further in that area.

My concern with the underlying bill and the large reason why I am supporting this amendment is once again we will have a law of unintended consequences moving forward.

I believe this is an entitlement program that is virtually open-ended. At least we ought to make it a block grant, like we are doing with the school lunch program, to stem the loss.

I have many friends and associates and also supporters who are active in the private property movement in California who called me up and said that we should not support this, this is too extreme. They think the 10-percent limit is way too extreme. They think the Federal Government is going to bleed money off of this bill. I feel the same and would urge support of the amendment.

Mr. CRAPO. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield briefly to the gentleman.

Mr. CRAPO. I thank the gentlewoman for yielding.

I would just ask one question. I thought the gentlewoman said at the beginning of her debate that under this amendment, there would be a right for judicial review or the opportunity to go to court.

Ms. LOFGREN. Certainly.

Mr. CRAPO. As I read it, the amendment says neither the sufficiency nor any other aspect of a private property impact analysis under this section is subject to judicial review.

Ms. LOFGREN. Yes, but if you continue on, there is a note that the fact that compensation may not be due under this act by reason of the section does not affect the right to compensation for takings of private property for public use under the fifth amendment to the Constitution.

□ 1730

Mr. CRAPO. So what the gentlewoman is saying is, ''You still have a right to go to court for a taking under the Constitution.''

Ms. LOFGREN. Reclaiming my time, yes, I am. The argument made was that somehow this was unfair because those who felt that they had a wrong would have to go to court. I point out under the existing bill, unless the agency

agrees, or the arbitration is successful, the individual still has to go to court. So the remedy ultimately is no different under the bill before us or under the amendment before us.

Mr. PORTER. Mr. Chairman, will the gentleman yield?

Ms. LOFGREN. I yield to the gentleman from Illinois.

Mr. PORTER. I think we ought to make clear that the preclusion of judicial review goes to reviewing the impact analysis. It does not affect anything else. In addition, we ought to be clear that the impact analysis is not something that is kept internal to the agency. That document is made public so that the private landowner would know exactly what is in it.

The CHAIRMAN. The time of the gentlewoman from California [Ms. LOFGREN] has expired.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, Members of the committee, when one of the sponsors of this amendment was quoted as saying this amendment will gut the bill and that is what we intend to do, he knew what he was talking about. This bill is designed to give property owners whose property is taken away from them by Federal regulation under the named statutes now a right to get justice at home, to get compensation at home, from the very agency, the very agents of this Federal Government who took their property away from them in the first place.

I say,

This amendment literally leads you right back to court if you want compensation. It literally says that anytime an agency doesn't want you to have the advantage of this bill to get justice at home, all they have to do is do some kind of an impact analysis. It doesn't even have to be a good one, doesn't have to be a sufficient one, doesn't have to be at all relevant even. It just has to be an impact analysis. The property owner can't go to court and say, ''You haven't done a good analysis.'' That's proscribed in this amendment. It can't go to court to say, ''They're playing with me again, they won't compensate me, they're about to regulate me, and they did this silly analysis that has nothing to do with what is going to happen to me.'' They can't go to court and say, ''They're playing with me again.'' All he or she can do is do what they can do today which is to spend a half million dollars through the Federal court systems, 10 years of litigation, and maybe never even reach the Supreme Court. Ten years Mr. Bowles in Texas spent, and he never got out of the Court of Claims, just got a judgment March of 1994.

My colleagues, there was a time in America when we in our society said, ''You have to sit in the back of the bus,'' said to some of us, ''You can't eat at a lunch counter,'' said to some of us, ''You can't vote in America,'' and some of those same people said, ''Oh, but there is a Constitution. Don't worry about it. If somebody has a problem with that, take it to court.''

There are others, many of us, who rose in indignation in the 1960's and said,

Wait a minute, that's wrong. No society ought to tell, under our Constitution, anyone that you got to go to court, the Federal court, to get a right to sit in the front of the bus, eat at a lunch counter, go to school, to vote, in this country.

So, Mr. Chairman, we passed civil rights laws. We passed the laws so that no child in America had to go to Federal court to get their civil rights.

Now let me tell my colleagues what the Supreme Court said in Dolan versus the City of Tigard:

We see no reason why the takings clause of the fifth amendment of the Constitution, as much a part of the Bill of Rights as the first amendment or the fourth amendment, should be relegated to the status of a poor relation in these comparable circumstances.

In short, we are dealing with a civil right. Property owns no rights; we do. Our Constitution does not give property some rights, it gives citizens rights, and the Bill of Rights was not written for a farm, or a forest, or even a home or backyard. It was written for people in this country.

And Dolan said, ''This civil right, to be compensated for the taking of your private property, is as sacred as free speech, as sacred as the right of assembly or the practice of free religion in our country,'' and for those of my colleagues who support this amendment, who come to this floor and say they want all the citizens to go to Federal court to get their rights under the fifth amendment, it is the equivalent of telling every citizen of this country: ''If you want civil rights, file a lawsuit. Don't count on Congress to define your civil rights and to make sure you're protected at home.''

The bill, as it is written without this amendment, will give small landowners who cannot afford a trip to the Supreme Court a chance to get their civil rights, and my colleagues ought to stand for that proposition in this Congress just as we stood in the 1960's for citizens to have their civil rights. The bill without this amendment will do what the bill with this amendment tells them all, ''Go back to court. You'll get played with again.''

I say to the gentleman from Illinois, ''Mr. PORTER, if I have time, I will yield in a minute.''

If the fabric of the relationship between this Government and the people who have created it has been torn in the last several decades, I believe it has been torn for one word and one word more important than any other.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

(On the request of Mr. DELAY and by unanimous consent, Mr. TAUZIN was allowed to proceed for 5 additional minutes.)

Mr. TAUZIN. Mr. Chairman, I believe the fabric of the relationship between those who created this Government and this Government has been ripped apart for one word more than any other. The word is ''arrogance.'' There is a reason why people in this country believe Government is no longer their servant, it has become their master. There is a reason why people in this country do not trust Government agents on their private property anymore. There is a reason why people in this country, and business, and industry fear the Government representatives even when they call him for help because they know the Government agency is coming around to find them, to regulate them, to somehow make their life more difficult instead of serving them as it once did, and the word that turns most Americans so angry at this body and this Government is that word ''arrogance,'' and it was epitomized at home for me in Ascension Parish just a couple of years ago.

I had a family move into my district from out of State. They bought a home in Ascension Parish. Their names were the Chaconases. They bought their home from a family called the Gautreaus. The Gautreaus built their home. They built it first checking with the Corps of Engineers to see if it was all right to dig a pond and to use the material from the pond as a foundation for the home. The Corps said, ''No problem.'' They built the home. Then they built another home across the street and sold that first home as an investment to the Chaconases. Oh, but guess what happened in the meantime. The Corps of Engineers showed up because some neighbor did not like the drainage situation in the area and reported him to the EPA.

Mr. Chairman, the Corps of Engineers showed up and said to the Chaconases, new owners, ''You may have to take down part of your home because it's built on a wetland,'' and the Chaconases said, ''What's going on here? Did anybody notice me before I bought this home that it was a wetland?'' The answer was no. They filed suit against the Gautreaus.

The Gautreaus got involved and said, ''What's going on here? You told me I could build that home, dig that pond. What's happening here?''

The Gautreaus were told, ''Well, guess what. The road, the only road going to both of your homes, is also located, we think, on a wetland. It's got to come out, too.''

And Mr. Gautreau, with all the innocence of a citizen who believes in government as a friend, who believes that these people were going to try to help him out of this mess, said, ''Wait a minute. If you take away my road, how am I going to get to my house?''

And that official of this U.S. Government who is paid by the taxes that Mr. Gautreau spends each year, sends to this Government, has the arrogance, the audacity, to tell that man, ''Take a helicopter. You want to get home after noon, after work, you've sweated and toiled and sent your tax dollars to this government, take a helicopter because we're taking your road.''

Mr. colleagues, Mr. Gautreau ought not to have to come to this Federal

court here in Washington to file a suit against that kind of arrogance. Mr. Gautreau ought to have the confidence and the trust of this Congress working behind him. He ought to have this bill which says he can get justice at home. He ought to be able to go to that Corps of Engineers office in New Orleans and the EPA office in New Orleans, say, ''You did this to me. Now you pay for my property damage you caused me. You give me enough money to relocate if I can't live here. If my home is built on a wetlands that is so important to so many of you in America, save it for God's sake. But pay me the decent value for my property, and let me relocate my family where I don't have to take a helicopter to go home.''

That is why this amendment needs to be defeated, because the Gautreaus of America and the Chaconases of America were victimized under this system and ought to have a right to justice, civil right justice, at home and not to have to come to the court in Washington, DC, any more than we made any citizen in the 1960's have to come to Washington to file a suit here.

Mr. PORTER. Mr. Chairman, will the gentleman yield?

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

Mr. PORTER. How does the individual get his rights asserted under the bill under the gentleman's amendment? He does not have to go to court——

Mr. TAUZIN. Reclaiming my time, Mr. Chairman, I say to the gentleman [Mr. PORTER] under our amendment you deal with the agency at home just as the Gautreaus did, and, when the agency at home tells you that you can't use your property, you have to take your lane down, you have to destroy the house you built and bought, if you have to do all of that, you go to that agency, and you say, All right, if my property is so important for the rest of you in America to take it from me, which you have a right to do under wetlands protection, under—'' let me finish—under endangered species protection, then let's go to arbitration and find out how much you've cost me and the arbitrator then takes account of what the appraised value of Mr. Gautreau's home was and the appraised value of the home across the street, the Chaconases', and they calculate the appraised value before the regulators came to visit him, they calculate the appraised value after they have been told to take it down, and then they get paid——.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

Mr. DELAY. Mr. Chairman, I ask unanimous consent that the gentleman from Louisiana [Mr. TAUZIN] get 3 additional minutes.

Mr. FRANK of Massachusetts. Mr. Chairman, reserving the right to object, we are stuck with their 12-hour rule which I am not crazy about, but we have already used up more than 6 hours on two amendments, and I am reluctant to have this go on. I will not object at this point, but I would ask that people understand they have put to a rule which already limits this important bill. This is an example of the unfairness of a 12-hour type rule. We are on the second amendment. I do not think anyone thinks anyone has been dilatory. We have had serious debate. Members have engaged each other. But while we have been trying to deal with this very complex issue we used up, as we started at about 11:25, 11:35, more than 6 hours. So, if they keep this up, we have other people who have important amendments.

I am not going to object further. I am going to have to object if people keep extending it, but I wanted to make it very clear the reason is that they are insisting on debating this very complex subject under such a restrictive rule that I cannot allow this because other people who have important amendments are going to be constrained, and I hope they will, on the majority side, take this into account in the future so they will not be restricting the debate this much.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. The gentleman from Massachusetts withdraws his reservation of objection, and without objection the gentleman from Louisiana [Mr. TAUZIN] is recognized for an additional 3 minutes.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I can just answer the gentleman from Massachusetts [Mr. FRANK] very quickly in that I am taking this time so that I do not have to take 5 minutes, but I just want to compliment the gentleman from Louisiana. That was one of the most eloquent speeches on this issue, and many other issues for that matter, that I have heard. The gentleman understands this issue better than any man in the House, and any woman in the House, and understands it so well. He has been pushing for property rights for American citizens for many years. He is part of this American revolution that we are experiencing right now.

We have made great progress with this American revolution. We passed the balanced budget amendment, we passed the line-item veto, we worked to rein in unfunded mandates, and this week we passed several very important regulatory reform measures. Today in this legislation we take a giant step forward by protecting private property interests.

Unfortunately, Mr. Chairman, the amendment offered by the gentleman from Illinois [Mr. PORTER] is a giant step backward. Make no mistake about it, the Porter amendment will deal a devastating blow to the rights of private property owners. It creates an enormous loophole which will prevent government agencies from being accountable for the costs they impose on American citizens.

□ 1745

A single landowner would still be forced to shoulder the entire burden of regulations as long as agencies perform an impact analysis. But this impact analysis will be used by Federal bureaucrats to dodge responsibility for their regulations. And in the end, if the Porter amendment is adopted, the bureaucrats will get the land while the private property owners will once again get the shaft.

Mr. Chairman, the issue here is very simple: Do you support the rights of private property owners or do you support the power of government bureaucracies. My constituents as well as the constituents of the gentleman from Louisiana are sick and tired of the heavy hand of the Federal Government. They want relief from bureaucrats, not more power for the Federal bureaucracy.

Mr. Chairman, I urge my colleagues to defeat the Porter amendment and score a victory for the private property owners of this country.

Mr. SHADEGG. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong opposition to the Porter amendment and in support of the legislation as it stands before us. The Porter amendment, at least it has been acknowledged, will gut this bill, and that much and to that degree only has there been candor.

This bill is about the protection of private property rights, and I am personally outraged about the tone of the debate. First, we hear that it is too costly. You tell me when in America it is too costly to live up to the U.S. Constitution and the guarantees in that Constitution? You tell me when it is too costly.

It is not too costly to live up to the cost of the Endangered Species Act the Wetlands Act or the plethora of other laws we have pummeling the American people everyday. They are not too costly. And when they went through this body, we were told there would be no cost to them at all. Now we discover there are massive costs to them. But the opponents of this legislation call it too costly to pay those whose property rights they are taking.

Second, we are told it is too bureaucratic. I ask again, since when is it too bureaucratic to live up to the words of the U.S. Constitution which promise to each American citizen he will be compensated when his private property is taken?

But I could not stand silent any longer than when people took to the floor and cited my home State of Arizona in support of the Porter amendment and in support of defeating the legislation we have before us. It is critical that we set the RECORD straight. The fact is that the people of Arizona did not defeat a Private Property

Takings Compensation Act like we have before us in the Canady and Tauzin bill. What in fact they defeated was a bill very much like the Porter amendment.

What was put before the people of Arizona was not a private property takings compensation piece of legislation which would have said to people whose property was taken by government regulation. They did not have that before them.

What they had before them in the initiative which we recently debated in Arizona was a phenomenally bureaucratic piece of legislation very much like the Porter amendment which said what we ought to do is have a lot of government bureaucrats study the issue and do an analysis. At the end of the day it provided no remedy. The people of Arizona said that is not sufficient.

The people of Arizona believe in the fifth amendment. They believe it is not time for further bureaucracy, it is not time for an impact analysis, it is not time to empower bureaucrats to study the issue and, having studied the issue, no matter now valid the study, to deny people their private property rights. Rather, they want compensation. If, in fact, there are great and worthy purposes to be served by wetlands takings, by ESA takings, then so be it. But the people whose property is taken then deserve not bureaucracy, not words, but compensation for the property they have surrendered.

Mr. Chairman, I urge the defeat of the Porter amendment.

Mr. HASTINGS of Florida. I move to strike the requisite number of words.

Mr. Chairman, as I listen to the debate, I become genuinely concerned that all of us need to tone down a bit, for the reason that no one here wishes that anybody's property be taken without fair and just compensation. But I do believe that the Porter amendment would provide for that, and I do not believe that my good friend from Louisiana means to establish the rather extraordinary bureaucracy that likely will come into existence in order to be able to implement what is a well-intentioned bill.

Mr. Chairman, I yield to the gentleman from California.

Mr. FARR. Mr. Chairman, I want to point out the difference between the Porter amendment before you and the Tauzin amendment that you have adopted. If you are really interested in trying to solve the problem of the property owner, you will listen very carefully.

Because what the Porter amendment says is government, take a look before you do anything. The Tauzin amendment does not ask government to do anything except to act, and then to come back and bite you by suing you in court.

The Porter amendment says write down, government, what you are going to do and tell us what the impact will be. Is there a likelihood that there will be a taking? If so, write it down. Give us an assessment of the likelihood that that taking will occur under such action and write it down. The Tauzin amendment does not require that.

The alternatives that the government has to look to that would achieve the intended purpose and lessen the likelihood of taking the property, the Porter amendment does that. The Tauzin amendment does not.

Then you go to the other end and you say all right, what does Tauzin do? It says government, after you have done your action, the property owner has up to six months to write a letter and claim compensation for the portion of their property that has been taken. And if they are not satisfied, if the government does not pay them off right away, then what do you do? You go into the exact same court for the exact same reasons on the exact same issues that you go into court for the Porter amendment. The remedy is the same. It is the fifth amendment of the United States Constitution, and that is not changed by either of the bills.

To get some idea that the landowner is going to be more easily compensated, that the process is going to be cheaper, that the end result is going to be better under the Tauzin amendment, is absolutely wrong, and that is why the Porter-Farr amendment makes such good sense.

It is sense because it reaches a solution for the problem that occurs on the land by the landowner. It requires government to look before it leaps, to think before it acts, and to realize that if there is compensation need, to indeed pay for it. It is a much more sensible process to problem solving. If indeed that is what we were elected to do, then you will you support the Porter amendment.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. HASTINGS of Florida. I yield to the gentleman from California.

Mr. POMBO. Mr. Chairman, I wanted to ask one of the authors of the amendment a question on that. That is that at a recent Committee on Agriculture hearing on private property rights that the gentleman was in attendance at, the question of the Reagan Executive order did come up. One of the people that was testifying happens to be Roger Marzullo, the author of that particular Executive order. The question was put out whether or not it was still in force, and the answer was yes, it has never been rescinded. And when we asked does the current administration, as well as the Bush administration, did they feel that they were implementing the Reagan Executive order, the answer came back yes.

Now, if that is true, that it has never been withdrawn, then all we are doing by adopting something like the Porter amendment is reaffirming what we have now and telling the agencies to do what they claim to be doing now.

Mr. FARR. Mr. Chairman, if the gentleman will yield further, that is only partially correct. This bill takes it a lot further. One, it requires that the Government write it down, the analysis; two, that they publish it.

Mr. POMPO. That is in the Reagan Executive order.

Mr. HASTINGS of Florida. Mr. Chairman, reclaiming my time, the problem we have is making law by anecdote. As I have listened to the various speakers talk about rather extreme situations, each of those situations may very well have facts that are not put before us at a given time. For example, if there is a landfill that a person uses their property on, it may very well result in a different kind of result.

Mrs. CHENOWETH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I guess one of the things that strikes a freshman when they come to this very distinguished body is the fact that somehow the process just does not meet the reality. The process just does not meet the human misery that Government action has caused to happen, the human misery so adequately described by the gentleman from Louisiana [Mr. TAUZIN] and the human misery that I want to begin to impart to this body.

I had a client in Morrisville, PA, whose name was John Poszgai. Mr. Poszgai was a freedom fighter born in Hungary. When he was a young man he was a lieutenant in the Hungarian Army. He was a tank commander when the Russians came rolling into Hungary and the Hungarians, with a spark and desire to fight for freedom, were crying out to America to help them. And yet the Hungarian freedom fighters fought on their own.

When the Russian commanders took a bullhorn and told John Poszgai and the other tank commanders to turn fire on his own men, he instead turned fire on the Russians. The desire for freedom and liberty always burned very strongly in this man's heart and spirit.

We know what happened to the Hungarian freedom fighters in the late 1950's. But John Poszgai was able to escape with his life. He was able to set up a home, become a naturalized citizen in Morrisville, PA, and went to work for International Harvester. A man who would never dream he could come to American made the American dream come true. Yet here he found himself in America with the full rights and privileges, including owning property, as you and I have.

He was, of course, as I said, a naturalized citizen and very proud of his citizenship. John Poszgai's desire to be a good American far exceeded his ability to speak good English, but nevertheless he always paid his taxes, he raised his family, and he worked hard. And when International Harvester pulled out of Morrisville, PA, John Poszgai set up a truck repair store, using all the savings he had next door to his home, Mr. Chairman.

Morrisville is the industrial-commercial section of Philadelphia, and he was able, he and his Hungarian wife, were able to raise their two girls and put them through college.

Gloria and Victoria Poszgai were so thrilled when they graduated from an American college because of the hard work of their father, laboring in the fields as many of us have done, as many of us who understand the lay of the land and the ability to work and produce. And Mr. Poszgai and his wife received a present from their two daughters. On a billboard that the two girls rented after they graduated from college the girls wrote ''Thank you, mother and father. Thank you for helping us make the American dream come true, because you have. Thank you, from Vickie and Gloria Poszgai.''

The American dream didn't die there. There was a 14 acre parcel of property across the street from where the Poszgais lived. It had historically been used as an old dump. Mr. Poszgai checked with planning and zoning and the property, the 14 acre parcel of property, had been zoned as commercial and industrial, although illegally used as an old dump. The only cloud on the title was a ditch that ran counter, cater-corner across that property, for the purpose of exhausting rain water that had collected in the gutters of the streets at Morrisville across this property. But over the years an adjacent property owner had thrown about 7,000 tires out on this property.

The CHAIRMAN. The time of the gentlewoman from Idaho [Mrs. CHENOWETH] has expired.

Mrs. CHENOWETH. Mr. Chairman, I ask unanimous consent to proceed for 3 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Idaho?

Mr. FRANK of Massachusetts. Mr. Chairman, reserving the right to object, I just want us to understand again, and I am not going to object, but that is what your restrictive rule has forced us to. We have several more important amendments. The time is being eaten up by this process. I hope people on the other side asking for extra time, cutting into the time of other people who want amendments, will remember that the next time they vote for a rule which so restricts us on so important a piece of legislation.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Idaho?

There was no objection.

Mrs. CHENOWETH. Mr. Poszgai went in after mortgaging everything he had and buying up this 14-acre parcel of property, he cleaned it up, took 7,000 tires off the property, and was immediately charged with criminal violations of the Clean Water Act. He was arrested in his place of business and hauled off because he had destroyed a wetland by taking the tires off of his property.

Now, this is a Hungarian immigrant who had very little money. He did not even have a lawyer before. He was taken to court after his home was searched for guns, Mr. Chairman.

□ 1800

How in the world could a Federal Government even reason that there was reasonable cause to believe that a gun was used in the commission of a crime which was to remove 7,000 tires from private property? But nevertheless his home was searched. He stood trial. The judge narrowly instructed the jury about their only responsibility was to determine if Mr. Poszgai had destroyed a wetland or not.

The jury came back and said, yes, Mr. Poszgai had destroyed a wetland. This judge sentenced him to three years in Allenwood Federal Penitentiary, fined him $200,000, told him that he had to dig down on half of his property so that it became wetlands, this federal judge in Philadelphia. That is the reality of what we are trying to fight.

When I first met Mr. Poszgai, he was at Allenwood Federal Penitentiary. He finally served his sentence out. But that is what is happening to our people out there. That is what this bill will remedy I support the bill, and I oppose the Porter amendment.

Mr. VENTO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, listening to the comments of my colleague sounds like we are going to legislate by anecdotes. I take seriously some of the concerns that are raised about the individual circumstances, but certainly across the depth and breadth of this country, in terms of enforcing zoning codes, enforcing land use qualifications, if somebody chooses to in fact continue to oppose those and in such an unreasonable and unworkable manner, obviously it ends up with long appeals. It leaves one thinking you want to change the Constitution of the United States in terms of what constitutes a taking. I expect that you are going to be finding yourself in court for a long time at great expense. If you accept those precedents, in terms of what that means, then it obviously puts certain other limits on you.

But, Mr. Chairman, I rise because I want to, reluctantly, I rise to support the Porter amendment. I know my colleague's efforts in this effort are sincere, both the gentleman from Illinois Congressman, [Mr. PORTER] and the gentleman from Michigan [Mr. EHLERS] and the gentleman from California [Mr. FARR] but I am concerned about it because I think this is basically and fundamentally really a bad bill in terms of the 10 percent, the appraisal issues, and then of course then we have narrowed it down so now we are only focusing on what is the heart and soul of this. And that is to, in other words, stop the environmental laws, specifically the Endangered Species Act, with the lands, reclamation law. That is what this is really all about. That is what this is after.

While the word environment is not mentioned in the contract, the Republican Contract With America, the fact is that that has been the focus. We know that in terms of the regulations and the vendettas against the EPA. As I say to my colleagues, these did not become law because simply the Democratic majority for 40 years helped to write these. These are law because the American public wants them. Very often they are written on a bipartisan basis. I would like to really reclaim the word ''conservative'' and try to find some conservation in the conservatives in this body, because that is at the heart and soul. That is what the word means, is to conserve and to take care of the resources of this land for future generations. But that seems to be somehow lost in this new neo-conservative definition. I think that is a word we need to reclaim.

I would say further, Mr. Chairman, that this particular measure provides a screening device, a way to filter through and to get at the heart of it, to make the agencies look at whether or not in fact there is a takings, to go through a specific criteria in terms of stating that is outlined in the amendment. Then I think that is a useful activity in terms of avoiding the types of conflicts and the overreaching.

I would be certainly willing and understand that in some cases regulations do have an uneven effect. Sometimes they are unfair. And clearly, as legislators, that is why we are here day in and day out, year in and year out. We have not worked ourselves out of a job. We need to improve and work on many of these laws that affect the people that we represent.

That is what we spent the better part of our times doing, but trying to do this by some sort of a panacea, some sort of an overreaching, overarching activity which does not interpret the Constitution, I do not think any of us are equal to the task of improving on the Madisons and the Jeffersons in that particular sense. But what you are putting in place here is regulatory compensation. You are saying that the government is going to have to pay to govern.

I would just ask you to look, you say that this bill is not an entitlement because you subject it to appropriations. But you force the agencies in exercising the responsibility under law to take the money out of their coffers as they have it or from other agencies. That is going to require an appropriation and/or a cease and desist of the implementation of those particular laws.

We know, for instance, with the wetlands legislation, even a modest version of it, that the cost would be $10 to $15 billion. That is a CBO estimate, when they were making estimates on this. They cannot even estimate the

cost of this. But if your goal is to stop the implementation of these laws, then you do not worry about that, because there is not any money. Then you can stop it.

I would further say that if you are going to monitor what constitutes a 10 percent limitation on property, that somebody has to do that. If you buy these types of rights, as they are paid out, year in and year out, you literally have tens of thousands of small ownership that you have to monitor to make certain that those landowners do not use that. Imagine the bureaucracy that you would have to have in order to monitor.

I can tell my friends and colleagues, observing the types of easements on various lands owned by land management agencies, that the cost of managing those easements is far more expensive, for instance, than if we had bought the land outright in the first instance, is far more expensive because of the annual type of cost. They are contested. I would further make the observation that most law that deals with property and property law is uniquely State law.

I would ask my lawyer colleagues if I am correct in this, as you know, just a poor old science teacher from Minnesota, but most law that deals with property law is State law. So what you are doing in this instance is inviting the U.S. Congress to override and to set a precedent which will have to be followed by the States in terms of property law.

I do not think it is a good practice. You can move it in this direction, but we can come back at some particular time and move it in a different direction.

Mr. TRAFICANT. Mr. Chairman, I move to strike the requisite number of words.

I would like to say this to the managers of this bill. There are certain amendments that have been agreed to on both sides. I think the managers of this bill should sit down, bring those out, get them out of the way and put some time limits on the remaining amendments.

Mr. PORTER. Mr. Chairman, since it is my amendment, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman from Illinois [Mr. PORTER] already has addressed the body. Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. PORTER. I will take just 2 of the 5 minutes.

Mr. Chairman, let me summarize by saying, the legislation as it presently stands would take egregious bureaucratic action of a few cases and replace it with egregious legal action in every single case. An agency which does anything that affects private property would find itself in court. Every single regulation or the application of every single regulation would mean a lawsuit and ultimately the payment probably of compensation.

If the sponsors of the legislation think that there is too much going to court under the fifth amendment, I suggest that the way this legislation becomes law, every regulation you go to court, arbitration, we will delay it, yes, but you go to court. This is a lawyer's bill like no other lawyer's bill I have ever seen.

I suggest to the Members that the amendment that we have offered is a reasonable amendment. It was introduced by Senator DOLE as a piece of legislation in the Senate. It is built on the Reagan executive order except it goes beyond the executive order to make the assessment available to the property owner and to the public.

It maintains compensation under the Constitution for the taking of private property unless the agency fails to do the private property impact assessment on any agency action. Issuing a regulation or dealing with property in any way, there has to be an impact assessment. If they do not do it, then this legislation, the Canady-Tauzin, applies.

I commend it to the Members. I think it is a reasonable amendment. I think it handles the problem.

Ms. JACKSON-LEE. Mr. Chairman, I move to strike the requisite number of words.

I want to add my support to the amendment to H.R. 925, the Porter-Farr-Ehlers amendment, and to indicate that this is the fairest way to deal with property takings on behalf of citizens of the United States.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. PORTER] to the amendment offered by the gentleman from Florida [Mr. CANADY], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. PORTER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 186, noes 241, not voting 7, as follows:

[Roll No. 191]

AYES—186

Abercrombie
Ackerman
Andrews
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bishop
Blute
Boehlert
Bonior
Borski
Boucher
Brown (FL)
Brown (OH)
Cardin
Castle
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gilman
Greenwood
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hinchey
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
Klug
LaFalce
Lantos
LaTourette
Lazio
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McDade
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Mineta
Minge
Mink
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Porter
Quinn
Rahall
Ramstad
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Saxton
Schiff
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Smith (NJ)
Spratt
Stark
Stokes
Studds
Stupak
Thompson
Thornton
Torkildsen
Torres
Towns
Tucker
Velazquez
Vento
Visclosky
Walsh
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Williams
Wise
Woolsey
Wyden
Wynn
Yates
Zimmer

NOES—241

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bevill
Bilbray
Bilirakis
Bliley
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Jones
Kasich
Kim
King
Kingston
Knollenberg
Kolbe
LaHood
Largent
Latham
Laughlin
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley

Packard	Schaefer	Tejeda
Parker	Seastrand	Thomas
Paxon	Sensenbrenner	Thornberry
Payne (VA)	Shadegg	Thurman
Peterson (MN)	Shaw	Tiahrt
Petri	Shuster	Traficant
Pickett	Sisisky	Upton
Pombo	Skeen	Volkmer
Portman	Skelton	Vucanovich
Poshard	Smith (MI)	Waldholtz
Pryce	Smith (TX)	Walker
Quillen	Smith (WA)	Wamp
Radanovich	Solomon	Watts (OK)
Regula	Souder	Weldon (FL)
Riggs	Spence	Weller
Roberts	Stearns	White
Rogers	Stenholm	Whitfield
Rohrabacher	Stockman	Wicker
Ros-Lehtinen	Stump	Wilson
Rose	Talent	Wolf
Roth	Tanner	Young (AK)
Royce	Tate	Young (FL)
Salmon	Tauzin	Zeliff
Sanford	Taylor (MS)	
Scarborough	Taylor (NC)	

NOT VOTING—7

Baesler	Gonzalez	Torricelli
Brown (CA)	Kleczka	
Bryant (TX)	Moakley	

□ 1827

Mrs. SMITH of Washington and Messrs. MCCOLLUM, ROSE, and HILLIARD changed their vote from ''aye'' to ''no.''

Mrs. KELLY and Messrs. SCHIFF, RUSH, and FROST changed their vote from ''no'' to ''aye.''

So the amendment to the amendment in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above recorded.

□ 1830

AMENDMENT OFFERED BY MRS. SCHROEDER TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mrs. SCHROEDER. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mrs. SCHROEDER to the amendment in the nature of a substitute offered by Mr. CANADY of Florida; as amended: At the end of section 3(a) insert ''The amount of compensation made under this Act shall be decreased by an amount equal to any increase in value of the property that resulted from any agency action.''

Mrs. SCHROEDER. Mr. Chairman, actually the concept of this amendment is really fairly simple. It is rather a taxpayer protection amendment to make sure there would be no double-dipping under the takings requirement we are debating today.

Mr. Chairman, we all know that public property is one of America's basic foundations, and also we are concerned about the public good. That is why this issue is so difficult. But there are many areas where Federal action enhances the value of the property, and it enhances the value of the property but the person is also able to say that they get money back for a taking.

Mr. Chairman, again I would think that this amendment would not be objectionable by anyone because it is really a very simple concept, and, that is, that we want to make sure that we do not see on some magazine program on television how somebody has been able to use this law to make all sorts of extra money.

Let me give Members some examples how this could be done. Under the Tauzin amendment, the swamp-buster provision of the farm bill could be a taking, and that is very interesting. If you do not plow up wetlands, that is a precondition to receiving farm subsidies that we are already paying farmers not to farm. So if we were to consider then the bill also of the takings part, you would see someone getting a double dip. The farmer could get a double dip in his subsidy for not plowing and also the loss because it has been declared part of the wetlands. I do not think that is what anybody intends. I do not think that they want to doubly benefit people.

We over and over talk about how the Government takes property, but the Government has taken many actions in which we have readily enhanced the value of property.

Let me cite a few, because I think often we have forgotten that in this debate. I suppose the No. 1 issue would be the water issue. When the Bureau of Reclamation is out there, and that is under this bill. As you know, the sole mission of the Bureau of Reclamation is to provide cheap irrigation water for farmers. As you can imagine, the value of the land before they come in is a whole lot lower than it was after they come in. But since 1902, the Federal Government subsidized almost 86 percent of all the irrigation construction costs and therefore enhance the value of this farmland.

People will say, well, folks pay property tax on that enhanced value, but they pay it to the State, not the Federal Government. So the Federal taxpayer has worked very hard in upping those values of the land because it is considered part of the public good, and I do not think we want to see them also be able to ascertain that they were harmed in some manner because of that.

This is kind of a commonsense amendment, that if someone is pleading harm, at least you look to see whether the overall value went up.

You can do this in any number of other areas, too. When you look at highways, you can say a Federal highway goes through, and people can say that that was very disruptive. However, if you look at the value of land, we constantly find the value of land goes up the nearer it gets to a Federal highway because of access coming into it.

So we would not want to be able to say that they had diminished the value by having a highway go through for some usage but we also find that the overall increase went up.

One of my favorite stories from Colorado has to do with ski areas. When the ski areas would come in through the national forests, and most of our ski areas are in national forests, obviously they dump into valleys and most of the valleys were privately owned. So we had some people claiming that they were displaced shepherds, or displaced cow herders.

I suppose that is true, but the value of their land had increased so radically because they were now owners of land that became very, very valuable for condominium owners and ski resort areas and all sorts of other things, that to just focus on that one issue, I think we would look silly.

I think this should be a very simple concept, where we are talking solely about looking at what the Federal Government also does to increase the value.

Some other areas that I talked about earlier, the Army Corps of Engineers, when they create harbors, when they do navigation channels, when they restore beaches, when they shore up coastlines.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has expired.

(At the request of Mr. VOLKMER and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. I thank the gentleman from Missouri.

Basically what I am saying, Mr. Chairman, is that I do think when we are looking at this whole issue of takings, we have to look at the whole picture. I think everyone knows that if the Army Corps of Engineers is helping protect your property from flood, there is a value to that. I go back to the earlier letters that I had from the Army talking about how they felt if we did not have some of these commonsense things, it could almost stop what the Corps of Engineers does.

First of all, under this bill, any money would go directly out of the Army's budget. But I think we ought to at least look at the public good they are talking about and see if that particular property was enhanced in value, maybe not value to the individual owner but the overall price to that public good, or to that individual owner before we start assessing money that we think the taxpayer should be paying back.

I just think this is an easy, easy one. I would hope that this could be approved.

Mr. VOLKMER. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Missouri.

Mr. VOLKMER. I was listening to the statement of the gentlewoman from the beginning, and I thought the gentlewoman said something that perhaps is very minute but needed to be corrected for the record, something about farmers being paid not to farm?

Mrs. SCHROEDER. No, I was saying that under the 1985 farm bill, you could as a precondition for receiving farm

subsidies in some areas, they were paying farmers not to plow under wetlands. So you would not want them to be getting money under that 1985 bill that I understand is there and then also have that considered a taking.

Mr. VOLKMER. We do not pay farmers not to farm anymore. We have a CRP program that pays farmers not to use that land for CRP, but that does not decrease the value of the land. They get a payment on the CRP. Environmentalists and everybody agrees on that program that it is a good program.

Mrs. SCHROEDER. That is right. But that is part of my point.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has again expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. We have, and I think it is right, in the farm bill these incentives to be environmentally sane, is how we work on that. But then if we also say later on that the farmer can then also claim this as a takings while they are also getting——

Mr. VOLKMER. No, this is a voluntary program. It is a voluntary program. The farmer comes in and asks that the land be. So it is not a taking.

Mrs. SCHROEDER. That is exactly my point. You could do that and do the other, too, and I think you just want to make sure that you look at the whole thing, so you make sure someone is not double-dipping. This is just a sensible anti-double-dipping that is possible, the way I read the two laws together.

Mr. CANADY of Florida. Mr. Chairman, I rise to speak in opposition to the amendment.

Mr. Chairman, I think it is very important that we focus on the exact wording of this amendment and its very, very broad scope. The amendment says, ''The amount of compensation made under this act shall be decreased by an amount equal to any increase in value of the property that resulted from any agency action.''

The important thing to note is there we are not talking about the same agency action that resulted in the diminution of value, because, of course, if that agency action had one impact that would tend to increase the value and another that tended to decrease the value, that would all be netted out in determining what the actual diminution of value was that was caused by that.

What this will deal with is any agency action, no matter how unrelated to the agency action in question that caused the diminution, and any agency action that occurred at any time in the history of the Republic. If there happened to be a road in which the Federal Government was involved in the neighborhood, if there were any public works in the vicinity that were ever participated in or constructed with the use of Federal funds through an action of a Federal agency, that would be included in this. So what we would be talking about under this amendment is providing an offset for benefits that have been provided over the whole history of this country to the general public in that particular vicinity, against the costs that are being imposed on an individual property owner. I do not think that is fair.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. CANADY of Florida. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. The gentleman is correct, and I guess we just disagree in what is fair. Because it is the taxpayer that is supporting the different Federal agencies, and I think that if one agency action has greatly increased the value of it, to then allow them to say on another area that it was a taking, we at least look at it.

Mr. CANADY of Florida. Reclaiming my time, what we are talking about here, though, are benefits that are provided to the general public and one thing we have to remember is that the individuals we are going to try to penalize in these circumstances are also taxpayers. They were paying taxes to help provide that benefit to the general public, of which they were beneficiaries, along with all the other people who might be in the vicinity. But to then come along and say, well, we are going to offset those benefits and that benefit you derived against this imposition that we are putting on you individually, at this point I do not think it is fair because they have already paid as taxpayers for those benefits they received as part of the general public. I believe the general public now should pay the cost of the burden that is placed on them as individuals as a result of its Government regulation.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield again?

Mr. CANADY of Florida. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. I think, though, it is much more specific than the gentleman thinks, in that it says any increase in value to the property.

Mr. CANADY of Florida. Reclaiming my time, the gentlewoman said that my analysis of this was correct. Now, if you want to differ with my analysis at this point, I would like to know what has changed your mind in the last minute?

Mrs. SCHROEDER. If the gentleman will yield, I will explain it. Analysis part A was correct, in that any agency increasing the value, you could look at the whole picture. But part B, I thought you were intimating that this was some generic overall thing, and I am saying, no, it is more specific than that. Whatever the agency action was, whichever agency it was, if you look at that, it must have increased the value of the property. So it is not a general public thing, it is this property that we are talking about.

Mr. CANADY of Florida. Reclaiming my time, there are all sorts of agency actions that benefit the general public that will also increase the value of individual property owners. That is what much of public works is about. It benefits the general public but as a consequence also benefits individual property owners. These are benefits that are provided to all members of the public and what you want to do here is penalize these individuals who have been singled out for imposition of regulations because they have benefited just like everybody else. The important thing to remember here is they were paying taxes like everybody else, also, for those general benefits.

□ 1845

Mrs. SCHROEDER. Mr. Chairman, if the gentleman will yield again, basically all I am saying is they cannot have it both ways. And I think that that makes sense.

Mr. CANADY of Florida. Reclaiming my time, the gentlewoman is really saying they cannot have it either way.

Mrs. SCHROEDER. No.

Mr. CANADY of Florida. You want to penalize them because they receive benefits like everybody else and I just do not think that is fair.

And another important thing I think you have to focus on here is there is no time limit on this. There is no time limit. We are talking about benefits that that property might have derived from the very beginning of the republic, and I do not think that makes sense.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is very important that the membership committee clearly understand what this amendment does and what it does not do. This amendment does not say that you take into account all of the pluses and minuses of the Government agency's action that is in question, reducing the use or the value, or changing the use of your property.

This amendment does not say that you weigh those pluses and minuses; the bill already does that. It says you look at the value of the property before and you look at the value of the property after. If the agency action has helped to increase the value and also decreased it in some way, those are going to be balanced out by the appraisal and the arbitration process, and you are going to get a commensurate measuring, a balancing of the positive and the negative effects of that agency's action on your property.

That is already in the bill. And so that is a concern you do not need to pass an amendment to do it, it is already in the bill.

Let us talk about what this amendment does do. This amendment requires the arbitration panel, the agency, to look at every single agency action in America that may have some impact on your property and may have helped its value out some time or other.

It will require that agency to do the most extensive and elaborate analysis of all Government agency actions ever done in the history of this country on your single piece of property. It is going to have to find out, for example, whether all of the roads built in America have enhanced the value of your particular piece of property; it is going to have to look at all of the harbors that were built, all of the drainage, all the levees, all the drainage, all of the public works that were accomplished in the history of this republic. It is going to have to look at how much we spent on defense because defending your property is certainly a Government action that enhances its value.

I mean this will be the most expensive, extensive review ever in the history of this country.

If this bill did not have in it, if it did not have in it provisions to make sure that when the appraisers look at the value of your property before and after their action, that you literally shake out the pluses and minuses and compensate for the difference, then maybe we would need that kind of amendment to do that, but it is already in the bill.

This amendment is clever; this amendment is absolutely devious. This amendment literally has the effect of saying that homeowners, property owners, farmers, ranchers, people on forestry land, anyone who might otherwise have a claim for a government taking is going to be defeated in that claim, because when this amendment gets through adding up all of the things that the Government has ever done in the history of this country in government action that may have enhanced the economic life of our country and thereby enhanced the value of our oaths properties.

By the way, all of the things which are paid for already, some of which we borrowed money to pay for, and are still paying at great interest rates with those borrowed funds, when it gets through doing all of that, let me tell you, you will have become so old, and your children will have become so old, your grandchildren will become so old that by the time you get the award, if you get any, the interest on that award will be astounding.

I suggest this is a clearer but a killer amendment. It ought to be defeated.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to my friend, the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from Louisiana for yielding, and I enjoy listening to him talk, but let me tell you it is not quite as broad as the gentleman points out. Let me point out the second part is what I think we are talking about.

Mr. TAUZIN. Why is it not as broad as I have defined it? Would the gentlewoman tell me why the amendment which says any agency actions which have affected the property is not as broad as I have described it?

Mrs. SCHROEDER. The way I understand what my colleague is saying, he is saying if there is a mortgage deduction, everybody is benefited by an IRS mortgage deduction, so they could take that into account.

Mr. TAUZIN. I suppose if Alan Greenspan ever did us a favor in this country and lowered interest rates, that would be an agency action that enhanced our values, but I am telling you we cannot count all of these things in America at these arbitration proceedings and if the gentlewoman insists on doing that she kills this bill.

Mrs. SCHROEDER. If the gentleman will yield again, what I am trying to say is I think there are generic things that go all across the board to all taxpayers, that is one thing. I think clearly a reasonable, prudent person would read this as saying we are talking about agency actions that specifically increase the value of that piece of property, because they were near a dam or they were near an airport or they were near something. Now it is not all pieces of property because they are not all near that.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, just to follow the conversation of my good friend from Louisiana, I have no doubt that the gentlewoman has a noble objective, and I am also thinking she probably has some specifics in mind that at some point we might be able to support, and to meet the objective of stopping double dipping is something that we should certainly consider.

But in my community I was trying to think of how we could be impacted, various pieces of property, and we do have an interstate highway system that goes through the area. Every piece of property was enhanced. I do not know if that is what was envisioned by this particular amendment.

We also have an airport in the area, and when that airport was first opened and finally the construction was finished, every piece of property was enhanced in value.

There are numerous flood control projects in the area, some are very specific, and when those flood control projects have been developed and actually brought to completion, the property value in those particular areas have gone up. But that does not diminish the fact that all of the area that I am talking about has wetland problems, all of the areas that I talk about have had endangered species designations, and it would seem to me in reading the amendment and trying to be fair to the gentlewoman, that much of this is extremely general. And as I read this, I do not know how this would be interpreted by an agency trying to make a determination. And if the gentlewoman would like for me to yield, I will yield.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman for yielding. If you start out with land and it is valued very cheaply at like $10, and say a highway goes through or a harbor comes in or irrigation comes in and it suddenly goes way up in value so it is like now $300 an acre, which has been known to happen in many places, and then let us say there is some other Federal action that they claim is harmful, you ought to at least include what the Federal Government did to increase it if you have got those records from $10 to $300, if the gentleman sees what I am saying.

The other piece I am concerned about is I spoke earlier saying I worry that what we are going to do is send a message tonight to all lawyer wannabes, they ought to run out and study takings law because this is going to be the most profitable form of law ever.

You know and I know the cases in the past of someone who had an airport built by their house, their house went way up in value, but they said they wanted to live in the House and could not bake angel food cakes.

Mr. FIELDS of Texas. I appreciate the gentlewoman's explanation, but it really does not answer the fear I have, because the property I have been talking about is property that in many instances has been held for a long period of time by families. They have not gone out and solicited government to be going out with a road or airport or flood control project, but if they are subject to a wetland or endangered species designation they do have a right to a fair market value of that property. They did not have an intent to use the Federal Government in one instance to enhance their property and the Federal Government comes in in another instance and causes a diminution of the value.

Again, I have to oppose this amendment. Again, I think the purpose and objective of the gentlewoman is noble, but I do not see this objective being met with this particular general amendment.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Colorado [Mrs. SCHROEDER] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

The amendment to the amendment in the nature of a substitute, as amended was rejected.

AMENDMENT OFFERED BY MR. GOSS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mr. GOSS. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The Clerk read as follows:

Amendment offered by Mr. GOSS to the amendment in the nature of a substitute offered by Mr. CANADY of Florida, as amended; In section 3(a), strike ''any portion'' and all that follows through ''10 percent'' and insert ''that property has been limited by an agency action, under a specified regulatory law, that diminishes the fair market value of that property by 30 percent''.

Mr. GOSS. Mr. Chairman, this is a very straightforward amendment. I do not think it will take a lot of time. It is in no way mischievous, it is exactly what it pretends to be and that is to change the threshold trigger for when a taking takes place.

In the legislation that we have before us, the ultimate trigger probably will be 10 percent of any affected portion of property. That could be at just about any part of the property. It is a very low percentage point, it is 10 percent or less triggers an automatic taking.

What I am proposing we do is we go back to a number we understood on the total parcel itself rather than determine what the affected portion is and we change the number to 30 percent. I offer this amendment in an attempt to bring a more reasonable standard to the Private Property Protection Act which we are dealing with here.

Let me say from the outset that I agree with the bill's sponsor that private property rights are a basic constitutional right and that in the light of some of the excesses we have seen in Federal regulation reaction that these rights certainly deserve more protection. And I commend my friend from Florida, and the gentleman from Louisiana, Mr. TAUZIN, especially for their great efforts to finally bring the bill off the shelf where the previous congressional leadership had placed it, hoping it would never see the light of day, but now we have to deal with it as we should.

I have some very grave concerns about the standard that H.R. 925 sets, as I said, including this 10-percent devaluation threshold on the affected property.

Under the Canady-Tauzin substitute to H.R. 925 a property owner must show only a 10-percent devaluation of a portion of his or her property to qualify for automatic compensation.

Mr. Chairman, I have grappled with the issue of planning and zoning at the city, county, State, and Federal level for a long time. I have been on the front lines for over 20 years and I am afraid that the 10-percent standard is neither practicable nor affordable.

As yesterday's New York Times Sarasota Herald-Tribune points out, I think wisely, a 10-percent difference in the appraised value on any land so easily arises from market factors, from different appraisal methods, for any number of reasons that have little or nothing to do with Federal regulations. Ten percent is within the margin of error, as they would say.

In my district of southwest Florida, land values fluctuate greatly every day and as anyone with experience in Florida real estate will tell you, the price, the actual price in the marketplace of a parcel of land sometimes has very little to do with its value. Nevertheless, there are customers.

To be workable, we must have a higher standard than the one in the bill before us, in my view and I think in the view of many others as well.

My amendment to raise the threshold to 30 percent of the entire property is an attempt to find a reasonable workable standard that everybody can define and clearly understand.

My other major concern with the 10-percent standard is that it is probably not affordable. But who could really tell whether it is or not. Mr. Chairman, one obvious outcome of the 10 percent on any affected portion is that the Federal Treasury could be flooded with claims both legitimate and otherwise that the low threshold for what I will call spot takings will encourage. As a strong fiscal conservative I have real trouble trying to support legislation that apparently invites such substantial costs, especially when we are already facing $200 billion-plus annual deficits and $5 trillion national debt.

There are other reasons to impose a higher threshold to trigger compensation. One that frankly comes to my mind is the burden we are probably going to be transferring to State and local government. There is clear evidence, especially in fast growth, low-lying waterfront areas that there is a coordinated relationship between Federal regulations and local land use regulations.

□ 1900

Simply put, local governments in some States rely on Federal regulations to help achieve community land use plans and goals. Of course, we should restrain any level of government from promulgating overzealous regulations, but that does not mean we should cripple the Federal Government's ability to use reasonable regulations which protect and provide for legitimate public health, safety, and welfare objectives in partnership with State and local government.

Mr. Chairman, I still feel that fundamental land use planning and zoning decisions should be made at the local level.

Interference from the Federal Government either to limit private property rights or to set a rigid formula for them is unwise and probably unworkable. However, if we are going to try to have a single Federal standard for private takings, then we must insure that this standard is both practical and affordable.

The CHAIRMAN. The time of the gentleman from Florida [Mr. GOSS] has expired.

(By unanimous consent, Mr. GOSS was allowed to proceed for 1 additional minute.)

Mr. GOSS. The 10 percent of affected area threshold is neither, in my view. Trying to do a quick and definitely unscientific overview of case law, I think it is fair to say that 30 percent of total market value is a whole lot closer to what our society has generally and traditionally accepted as qualifying as takings. Certainly that is true in the judiciary, and certainly the 10 percent of affected area threshold, in the Canady substitute, is a major departure, and likely a costly departure, I am afraid, into the unknown.

I am not arguing for consistency in the judicial branch in this, but I am stating that encouraging a nationwide frenzy of spot takings claims is poor legislation.

I urge my colleagues to join me in voting to raise the threshold to 30 percent of the entire parcel of land. We can understand that. We can deal with it. I think it will work.

Mr. CONYERS. Mr. Chairman, I rise to strike the requisite number of words.

I want to make sure we are talking about the 10 percent threshold going to 30 percent?

Mr. GOSS. Mr. Chairman, will the gentleman yield?

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

Mr. GOSS. My amendment calls for a 30 percent trigger for the total market value, for the market value of the total parcel.

Mr. CONYERS. And that changes the 10 percent that is presently in the bill?

Mr. GOSS. Yes. That changes 10 percent to 30 percent.

Mr. CONYERS. And that would reduce a number of, a large number, of claims that might be, while they may not be called frivolous, they certainly might not have the merit that the 30 percent threshold would have?

Mr. GOSS. I believe the gentleman's assessment is exactly correct.

Mr. CONYERS. I compliment the gentleman, and I wish I could tell him we accept the amendment on this side, but I do not have that authority.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

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

Mr. VENTO. I want to commend the gentleman from Florida for bringing forth this amendment. I think it points up, and I think the debate here should have brought to mind some problems with the issue. For instance, just the variation in terms of appraisal would itself lend itself to a great deal of variation in any area. That is one area where we know appraisals can come in such wide ranges in terms of the legislation being workable.

Second, each State, of course, defines the rights and the uses of land in a different way and, of course, this itself again enters in new variations in terms of what is going on.

I think unless we are going to completely hamstring the agencies in their ability to carry out some legislation like this, some sort of litigation, some sort of guidance ought to be provided. I think that from my point of view, it seems to me this regulatory compensation which is being provided in this bill for some specific laws is being cut from whole cloth. This is a entirely new allocation and definition of what constitutes compensation from the U.S. taxpayers.

Unless we are going to open up the coffers without limit, I think we have

to provide much more guidance than that which has been provided in the underlying legislation. It is seriously flawed. The legislation is seriously flawed. They do not know how they are going to administer it. They do not know how they are going to pay for it.

One would, I think, only be left with the conclusion that the effort here is, of course, to really pull the rug out from under the laws that we are talking about, and in doing so, superimposing a really radical new concept of regulatory compensation. They, or course, have left behind the health regulators now, they have left aside the safety regulations, and in the highway department, they have left aside those that affect energy issues. The only ones that are left are these focused, targeted in on these environment laws, the Wetlands and Endangered Species Acts, the issue in terms of water rights that are included in this legislation. And so they have targeted it.

So I think the gentleman's amendment may make this more workable. I still think it is a flawed concept. I think we ought to be careful, but I think this actually makes it more workable.

Mr. DAVIS. Mr. Chairman, will the gentleman yield?

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

Mr. DAVIS. Mr. Chairman, I would just want to say I want to support the amendment offered by the gentleman from Florida.

I have been in local government for 15 years. During that time I have sat through hundreds of zoning cases, literally hundreds of condemnation cases, sat through a number of appraisals that have come across our desks, and looked at the variations, and 10 percent is clearly within that margin of error.

Many, many times we get three appraisals, and they are all over 10 percent apart from each other. I think without this amendment you almost raise the presumption that any action could reduce property by 10 percent.

Any we know that market conditions, interest rates, financing mechanisms, the seasons, school districts, all of these which, extraneous to the governmental regulation, could reduce, actually could reduce the property values by 10 percent. Thirty percent looks to me like a reasonable threshold. It is beyond the margin of error. It addresses the anecdotal horror stories that we have heard on this floor that I think need to be addressed.

Without this, I think the legislation raises the presumption that any regulation will adversely affect the property values by 10 percent. That is just within the margin of error. That has been my experience.

I support the gentleman's amendment.

Mr. CONYERS. I thank the gentleman.

I would say, in closing, that this corrects a very serious problem that is in the bill. Ten percent is, frankly, shocking.

I think this makes it more attractive. There are still a lot of problems, but I want to compliment the gentleman from Florida for bringing this forward, and I hope that bipartisan support would carry this amendment through to a successful conclusion.

Mr. POMBO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take the entire 5 minutes, but I just would like to rise in opposition, because when we originally came up with this bill that we have been working on and all of the changes that have been made to it, in order to get it through committee and get it to the floor, when we originally started, we were at zero, because I felt that it was important that Federal agencies not come in and take people's private property.

I am not comfortable going to 30 percent. I felt that it was a moderate, modest compromise to put in a threshold, because in the Constitution it does not say the Federal Government can take 10 percent of your land before they have to compensate you. They say that they cannot take your land, period.

So the whole idea of putting in a threshold, I fought against, and because it was brought to my attention that appraisals can vary by 10 percent and market conditions can force things one way or the other, that we need to put in some kind of a threshold because of the other parts of the bill that make it easier to be compensated, I agreed to go to 10 percent. I agreed that that would be a modest and moderate way of attempting to get at the problem.

Now, to stretch that and go to 30 percent, what we are saying is that the Government can take 29 percent of your property in order to qualify under the provisions of this bill.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. POMBO. I yield to the gentleman from Michigan.

Mr. CONYERS. Did I understand you to say that you were originally at 1 percent and you went to 10 percent?

Mr. POMBO. The original way, a year and a half ago, when we first started working at this, was at 1 percent, yes.

Mr. CONYERS. You have come a long way, baby, and maybe you can keep on moving down the road. We think 30 percent is pretty low.

Mr. POMBO. Reclaiming my time, I think we went far enough when we went to 10 percent. I mean, I was trying to be nice about that.

In regard to another comment that was made about zeroing in on environmental laws, I would just like to point out that when this was before Judiciary, that it was all Federal regulations; the compromise that was worked out involved the Federal regulations that provide about 90 percent of our problems. The other 10 percent we are going to have to take care of in other legislation. But the whole attempt here is being undermined, I believe, by moving the threshold to 30, because the Constitution is clear that you cannot take private property without compensating for it, whether at 10 or 30 or 50 or whatever number you want to plug in.

And because we are setting up a different method of being reimbursed, a different method of being compensated, I felt that it was important that we do that.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman and members of the committee, the courts have struggled very greatly with this question of partial takings. The most definitive statement occurs in the case of Florida Rock. I have quoted it several times here.

Florida Rock was on a third trip to the circuit court of appeals. It started in 1979. It still had not been finished.

But in the lastest expression, the court said that nothing in the language of the fifth amendment compels the court to find taking only when the Government divests the total ownership of the property. The fifth amendment prohibits the uncompensated taking of private property without reference to the owner's remaining property interests.

It went on to talk about the Supreme Court decision in Lucas, a wetlands case decided by the Supreme Court in which Mr. Lucas was ordered to be compensated for the value of his beachfront lot that had been regulated, and in that case by a State action. The court said that in Lucas the Supreme Court touched upon the question, but concluded that the facts before it did not call the question to order, because the State of South Carolina had conceded that they took all the value from this man's land.

The court found a categorical taking, and thus did not have to decide the partial-taking question. They went on in Florida Rock to say the following, Justice Stevens, writing separately, criticized as arbitrary the notion a landowner whose property is diminished at 95 percent should recover nothing, where an owner whose property is diminished a hundred percent should recover the land's full value. Justice Scalia also wrote saying that the analysis errs in the assumption the landowner whose depravation is one step short of complete is not entitled to compensation.

The Supreme Court clearly has not yet dealt with this difficult area, but the Florida Rock case did. It said no such conceptual problem exists when the taking is by physical occupation. If an owner of a property owns a 100-acre tract, for example, and the Government shows up and takes 95 acres for a public park, no one would argue that the 5 acres remaining somehow precludes the property owner from claiming entitlement to just compensation

for the loss of the 95, and in Florida Rock, it went on to say, and listen to this carefully, indeed, if the Government took just 5 acres and left the property owner with 95, there would be no question that the owner was entitled to compensation for the parcel that was taken, with severance damages even attributable to the remaining tract. In short, the court said a taking as low as 5 percent is compensable under the fifth amendment to the Constitution.

Indeed, if the Government showed up tomorrow on your property or mine and said that it wanted one of our acres, a half of our acres to build a road, would it matter how big an acreage we have? We would get compensated under the condemnation proceedings, and we should under the fifth amendment.

And so the court in Florida Rock made it clear partial takings of some percent of your value are, indeed, compensable.

Now, what is the gentleman from Florida offering? He is offering a 30 percent threshold, and he does not apply it to the parcel that is affected by the regulation. It is now 30 percent of the whole of the property, pretty much like the original bill that was filed that said 10 percent of the whole of the property.

What is wrong with that? Well, can you imagine the gaming that is going to occur under such an amendment? Thirty percent of what whole? How many acres? If I have got a hundred acres today and I have only got 5 acres taken, can I sell part of my acreage away and qualify? Can I give some of it to my brother-in-law and let him file the claim? Can we do some kind of, you know, sweetheart deal with a counter letter that says I really have not sold it, just to qualify of the 30 percent figure?

You see, 30 percent of a whole opens it up to all kinds of gaming. Ten percent of the whole would have done the same thing. Thirty percent threshold, if I read Florida Rock, is awfully high, but more importantly, 30 percent of a whole just does not work.

As much as I know my friend just wants to raise the threshold, when he applied the threshold to the whole of the property, he created a mess. He created a situation where every landowner can game the system away, and we will be in court interminably arguing whether somebody is trying to defraud the government by gaming the system, claiming they own less than the whole of their property.

Mrs. CUBIN. Mr. Chairman, I move to strike the requisite number of words. I will be very brief.

Mr. Chairman, I want to bring this down to terms that we can all relate to in a real sense rather than a theoretical sense.

First of all, I need to say this legislation is needed to remedy a fundamental wrong, and that is that the Federal Government forces property owners to shoulder the entire cost of public benefits such as preserving wetlands, conserving endangered species, and that sort of thing.

□ 1915

Now when we talk about the difference between 10 and 30 percent for compensation, I want to give you an example of something that happened in my district. There is a home builder in the area in the Jackson Hole trying to provide some badly needed housing. But the EPA came in and the Corps of Engineers came in, both of whom administer section 404 of the Clean Water Act, and they stopped all development. There were 6 houses practically complete. They threatened to tear them down. Three more foundations had been poured. They would not allow those houses to be built. In fact, they had to remove the foundations.

Twenty-two homes in all were planned for this, and the whole thing came to a stop. Even at 10 percent, the owner would have lost over $250,000.

Now, when we go to 30 percent, we are talking about a $750,000 loss. It is not unusual to have a farm or a ranch that is valued at $300,000. Again, 10 percent is a huge loss, but 30 percent can put them out of business.

I stand opposed to the Goss amendment, and I hope it will be defeated.

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will try not to take the 5 minutes. I know we want to move ahead to the next amendment.

I just have to strongly rise to oppose my friend from Florida's amendment. I hesitate to do so because I know the gentleman from Florida [Mr. GOSS] is a strong Member and a well-thinking Member. I have to speak on this amendment.

I understand the argument about it is easier to prove a 30-percent loss of value than it a 10-percent loss of value. But I have to tell you something: I do not care if it is easier for the bureaucrats to determine whether it is 10 percent or 30 percent. I am interested in that homeowner, that farmer, that person that loses the value of that property because some bureaucrat or some agency has imposed a regulation on them. And I can guarantee you that if my house lost 10 percent of its value because of some action by the Federal Government, by the oppressive Federal Government, I will know that it is 10 percent but I can participate in the process and be able to bring forth my substantiation for a 10 percent loss in value.

What you are talking about is loss of value from 30 percent on is okay, but if you lose 29 percent or less of value, we do not care. The Federal Government does not care, this House does not care. So you just eat the loss of value of the 29 percent.

Mr. GOSS. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Florida.

Mr. GOSS. I thank the gentleman for yielding.

Mr. Chairman, that is not entirely true. You lose the automatic taking, you do not lose your constitutional right for less than 30 percent.

Mr. DELAY. Well, it is the same thing. What we are doing, what the gentleman is doing, is making it easier on the bureaucrats and easier for them to hide and manipulate and game the system.

I just think this is unfortunate. If you are strongly for property rights, if you are strongly for the rights of the property owner to be protected from loss of value of the property, then you will vote against the Goss amendment.

Mr. Chairman, earlier today I spoke of the historical basis for including the right to property in our Constitution. Federal overregulation has severely infringed on this right, and landowners are rebelling. Tonight we are fighting for the rights of private property owners to receive fair compensation for the loss of the use of their land.

As it stands currently, H.R. 925 requires the Federal Government to compensate a private landowner if regulations reduce the value of the property by 10 percent or more. The Goss amendment would raise that threshold to 30 percent.

Now, there is something here I don't quite understand. If you believe in the principle that property owners should receive compensation if the value of their land is reduced due to federal regulation, there is something strange about placing a percentage threshhold on that right.

I think property owners should receive compensation if government action reduces the value of their land by any percentage. However, I understand the difficulty involved in accurately appraising land value and believe 10 percent is a reasonable threshhold.

Raising that threshhold to 30 percent means if the value of your land is reduced by one quarter, you're out of luck. You simply can't use one fourth of your land or you lose one fourth of its market value if you choose to sell it.

The Supreme Court has said that the fifth amendment of the Constitution is designed to prevent the government from requiring a few individuals to ''bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'' If you believe in this principle, you must vote ''no'' on the Goss amendment.

Mr. DOOLITTLE. Mr. Chairman, I move to strike the requisite number of words.

I too rise, and I respect my colleague from Florida [Mr. GOSS], but I am very concerned about the effect of this amendment.

When you think about it, the fifth amendment obviously is designed to protect the individual from the oppressive acts of government. Think about your own house for a minute. Say it is worth $200,000, to take maybe an average; some will be worth less than that and some will be worth much more than that. But if we take the $200,000 figure, under the provisions of this amendment, we are saying the government can come in and can take away nearly 30 percent of that value, $60,000, and they can do it without your having any remedy except the traditional constitutional remedy, which has basically failed to

work for the common man or woman in this country.

The remedy of filing an action and working your way through the Federal court system, we know it takes up to 10 years, up to $500,000 in attorneys fees. You know what? If you are a big corporation, it is great; you have a staff of legal counsel who routinely handle matters and it just becomes part of the cost of doing business, which all the rest of us pay for as consumers.

But if it is your property, if it is your $200,000 value, we are saying under this amendment, ''Go ahead, government, we know that you are weak, we know that you need the help, we want to help you. So go ahead, take $60,000 of the value, no problem. We know you need it.''

Mr. Chairman, the government is not weak, the government is strong, the government is powerful, the government has an unlimited checkbook because it is our money as taxpayers, an unlimited checkbook to run people through the system, with their staff of attorneys paid at government expense.

We need to keep the value at 10 percent. Yes, we acknowledge a line has to be drawn for the purposes of his bill. But we think that line ought to be at 10 percent. 10 percent loss is significant. But, Mr. Chairman, a loss of 30 percent more often than not is not loss of the person's profit, his or her entire profit in the value of the property is out the window if the long arm of the government decides to reach out and regulate you in a fashion that destroys 29.9 percent of the value of your property.

So, Mr. Chairman, I would strongly urge our Members to oppose this amendment and to support the underlying legislation.

Mr. WYDEN. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Florida.

Mr. GOSS. I thank the gentleman for yielding. I will be very brief and not take advantage of his generosity.

I did want to say that the question of the Florida Rock case is certainly an interesting illustration. That is not the only case in the case law, as I think we all know. But I am not going to stand here and practice law without a license, but I think anybody who has done some work understands that the Supreme Court has done everything they can not to come to a final decision on this, because it has been just as hard for them as it is for us, and this remains sort of a case-by-case situation.

The reason we went to total property is because it is very easy to get an agreed-upon market price for a total parcel. It is very difficult to talk about whatever an affected area is on a percentage basis because we have three or four separate areas that may be involved in a low-lying piece of property, endangered species, 404, we may have several affected pieces of property. Once we have determined what the affected pieces of property are or what the fair market value of those are, then we figure out what the value is and we can tell what the 10 percent of that is. That is a long, complicated, new process that is going to create, in my view, another bureaucracy.

I think what we are trying to do is provide precision definitions so that private property owners know exactly what they are entitled to, under what circumstances, and so the government regulatory agencies know with precision what happens if they get the 30 percent, they have a problem on their hands.

I think it is fair because the other constitutional remedies certainly provide for anything less than the 30 percent as they do today.

Mr. DOOLEY. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of the Goss amendment. I stand behind no one in my efforts to protect private property rights, but those of us in this delegation also have an obligation to protect interests of taxpayers. With the 10-percent threshold, we have established in this bill, we are creating the opportunity to create a tremendous windfall that, for those of us who are interested in protecting private property rights, insuring they are going to receive some compensation, if we leave it at that 10 percent, we are going to ensure that this whole system of compensation will implode, because 1 year after this bill would be passed and enacted, we are going to have so many cases and examples of people throughout this country who are gaming the system at 10 percent because they are going to be able to find an appraiser, a lawyer who is going to be able to market a service that they are going to go out to landowners who have seen, because of market fluctuations, a decline in value, and they are going to be able to tell you that on a contingency basis, ''I will go out and work your case, take it to an arbitration panel, and if I win on that and get compensation for 10 percent, I will take a portion of that fee.''

We are going to be creating a nightmare. The amendment offered by the gentleman from Florida [Mr. GOSS] is bringing some reason to this; it is ensuring that there has to be a threshold large enough that it cannot be used—that has to be greater than what can be normal and traditional fluctuations in the marketplace.

We all know, those of us in farming such as myself, we have seen fluctuations in market values over 10 percent every year. For those of us who have been involved in the Endangered Species Act, we have also seen cases in California in the last several years where we have had droughts where you have had the listing of endangered species, and how are you going to differentiate between what is the lowering of the value from the drought and because of the delisting of a species? There is no way you can do that. At 30 percent, we provide some reason and some balance.

I think this is a reasonable compromise and makes this legislation far more effective.

Mr. BARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would respectfully say to the last speaker the nightmare is here, the nightmare is here because we have had year upon year of Government agencies coming in and running roughshod over property owners of this country.

The bill before us right now tells the Government in two words something that the voters and the taxpayers and landowners of this country have been voiceless to tell the Government for generations now, and those two words are, ''Back off.''

This bill tells the Government, ''Back off.'' If you have a legitimate claim to this property, no matter how much you take, you have to pay a legitimate price to the property owner for that. Under the amendment that my distinguished friend from Florida is proposing, the gentleman from Florida, that ''Back off'' becomes, ''Please don't.'' We need to hold the line here, we need to stand up for property rights. That is what brought us to this Congress. Let us not fail the American people. We need to defeat this amendment and support the underlying legislation.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. GOSS] to the amendment offered in the nature of a substitute by the gentleman from Florida [Mr. CANADY], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GOSS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 210, noes 211, not voting 13, as follows:

[Roll No. 192]

AYES—210

Abercrombie	Coleman	Foglietta
Ackerman	Collins (IL)	Foley
Andrews	Collins (MI)	Forbes
Baldacci	Conyers	Ford
Barcia	Costello	Fowler
Barrett (WI)	Coyne	Frank (MA)
Bass	Davis	Franks (NJ)
Becerra	DeFazio	Furse
Beilenson	DeLauro	Gejdenson
Bentsen	Dellums	Gephardt
Bereuter	Deutsch	Gibbons
Berman	Dicks	Gilchrest
Bilbray	Dingell	Gilman
Bilirakis	Dixon	Gordon
Bishop	Doggett	Goss
Blute	Dooley	Green
Boehlert	Doyle	Greenwood
Bonior	Durbin	Gutierrez
Borski	Ehlers	Hall (OH)
Boucher	Engel	Hamilton
Brown (FL)	English	Harman
Brown (OH)	Eshoo	Hastings (FL)
Cardin	Evans	Hefner
Castle	Farr	Hilliard
Clay	Fattah	Hinchey
Clayton	Fazio	Hobson
Clement	Fields (LA)	Jackson-Lee
Clinger	Filner	Jacobs
Clyburn	Flake	Jefferson

Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
Klug
Kolbe
LaFalce
Lantos
Lazio
Leach
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martini
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Mollohan
Moran
Morella
Nadler
Neal
Nethercutt
Oberstar
Obey
Olver
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Porter
Portman
Poshard
Pryce
Quinn
Rahall
Ramstad
Rangel
Reed
Regula
Reynolds
Richardson
Rivers
Roemer
Ros-Lehtinen
Rose
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sanford
Sawyer
Schroeder
Schumer
Scott
Serrano
Shaw
Shays
Skaggs
Slaughter
Smith (NJ)
Spratt
Stark
Stokes
Studds
Stupak
Taylor (MS)
Thompson
Thurman
Torkildsen
Torres
Towns
Tucker
Upton
Velazquez
Vento
Visclosky
Walsh
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Williams
Wise
Wolf
Woolsey
Wyden
Wynn
Young (FL)
Zimmer

NOES—211

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bateman
Bevill
Bliley
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Fox
Franks (CT)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Goodlatte
Goodling
Graham
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hoekstra
Hoke
Holden
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Jones
Kasich
Kim
King
Kingston
Knollenberg
LaHood
Largent
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Mica
Molinari
Montgomery
Moorhead
Murtha
Myers
Myrick
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Quillen
Radanovich
Riggs
Roberts
Rogers
Rohrabacher
Roth
Royce
Salmon
Saxton
Scarborough
Schaefer
Seastrand
Sensenbrenner
Shadegg
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Tiahrt
Traficant
Volkmer
Vucanovich
Waldholtz
Walker
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Wilson
Young (AK)
Zeliff

NOT VOTING—13

Baesler
Brown (CA)
Bryant (TX)
Gonzalez
Horn
Hoyer
Laughlin
Martinez
Moakley
Owens
Schiff
Torricelli
Yates

□ 1945

The Clerk announced the following pair:

On this vote:

Mr. Moakley for, with Mr. Horn, against.

Mr. KIM and Mr. SAXTON changed their vote from ''aye'' to ''no.''

Mrs. THURMAN and Mr. BARCIA changed their vote from ''no'' to ''aye.''

So the amendment to the amendment in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above.

PERSONAL EXPLANATION

Mr. HOYER. Mr. Chairman, I wish to have it noted that I was unavoidably absent on rollcall No. 192. Had I been present, I would have voted ''aye.''

Mr. CANADY of Florida. Mr. Chairman, I move to strike the last word.

Mr. Chairman, it is my intention to move to rise at 9:35 p.m. at the completion of 10 hours of debate under the 5-minute rule.

Mr. CLINGER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to engage in a colloquy with the gentleman from Indiana [Mr. MCINTOSH] regarding his amendment with the gentleman from Tennessee [Mr. BRYANT] to the Tauzin amendment.

Mr. Chairman, the amendment would broaden the scope of the bill's compensation provisions to all of the Clean Water Act, rather than just the section 404 permitting program.

Is it the gentleman's intent, I say to the gentleman from Indiana, to address concerns about EPA's nonpoint source management program?

Mr. MCINTOSH. Mr. Chairman, if the gentleman will yield, that is correct. The gentleman from Tennessee [Mr. BRYANT] and I have an amendment where property owners, members of the agriculture community, and others who are increasingly concerned about the impact of a Federal nonpoint source program on private property rights would receive protection.

In fact, the American Farm Bureau has expressed similar concerns about not only section 319, but the Coastal Zone Management Act as well. They support efforts to address these issues in the context of H.R. 925.

Mr. CLINGER. I share the gentleman's concerns and appreciate his leadership on this issue. As the vice chairman of the Transportation Infrastructure Committee and speaking on behalf of my chairman, the gentleman from Pennsylvania [Mr. SHUSTER], who is presently serving as the Chair, I can assure the gentleman that he is committed to a thorough review of the nonpoint source pollution programs and any other EPA program that might adversely affect private property rights in the context of the Clean Water Act.

In fact, our committee has scheduled a markup of a comprehensive Clean Water Act reauthorization over the next several weeks.

Wetlands reform and flexible nonpoint source pollution programs, both as part of the Clean Water Act and the Coastal Zone Management Act, will be very much a part of the debate. To the extent our hearings and review on nonpoint source pollution indicate a need to impose specific provisions on takings and compensation, we will be happy to work with the gentleman from Indiana, the Farm Bureau, and any other interested party.

Mr. MCINTOSH. I thank the gentleman from Pennsylvania.

Mr. BRYANT of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. I yield to the gentleman from Tennessee.

Mr. BRYANT of Tennessee. Mr. Chairman, I would respectfully withdraw my amendment.

AMENDMENT OFFERED BY MR. WYDEN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mr. WYDEN. Mr. Chairman, I offer an amendment to the Canady substitute.

The Clerk read as follows:

Amendment offered by Mr. WYDEN to the amendment in the nature of a substitute offered by Mr. CANADY of Florida, as amended:

In section 5(a)(2) strike the period and insert '', or''.

At the end of section 5(a), insert:

with respect to an agency action that would prevent or restrict any activity likely to diminish the fair market value of any private homes.

In section 9, insert the following new paragraph after paragraph (4), and redesignate subsequent paragraphs accordingly;

(5) the term ''private home'' means any owner occupied dwelling, including any multi-family dwelling and any condominium.

Mr. WYDEN. Mr. Chairman, most of our citizens look at the title of this legislation. It has a sweeping name, the Private Property Protection Act. When you look at the sweeping title of this bill, one assumes that all American property owners are protected. In fact, this legislation protects only a limited group of private property owners, those property owners whose use or development of their property is regulated by the Federal Government.

The typical homeowner that we all represent, and there are 65 million of them, live in an already-constructed

home, they use their property in a typical fashion, and they are not regulated by the wetlands law, the endangered species law, the reclamation law, and the various laws outlined in this bill, and that is why those 65 million typical homeowners are not protected under the legislation.

I believe that these typical homeowners are going to be surprised that they are not protected. I think they deserve consideration, and it is why I offer this amendment on behalf of myself and the gentleman from Maryland [Mr. GILCHREST], a bipartisan amendment, to make sure that the typical homeowner gets a fair shake and that some needed balance is brought to the legislation.

As written now, the legislation provides exceptions when agencies do not have to pay compensation for agency actions that diminish the value of private property. This amendment that I offer with the gentleman from Maryland simply adds another exception when compensation does not have to be paid, so as to make sure that typical homeowner gets a fair shake.

We stipulate that you would not have to pay compensation when the regulated property owner's activity would actually decrease the value of those homeowners that live in the adjoining area. This amendment would enable Federal agencies to avoid a Hobson's choice of either restricting development and incurring liability to the developer, or allowing the development to proceed, even when this will cause a typical homeowner to suffer a devaluation their property.

Let me use an example very briefly. A property owner wants to develop a 10-unit subdivision. If the Corps of Engineers tells us the developer of the proposed subdivision that one of the units is a wetland and cannot be developed, under the legislation the Corps is liable to pay compensation. The corps's only choices are to write a check or let the developer fill in the wetland. To conserve scarce funds, the Corps often decides to let the developer fill the wetland. Wetlands often help control flooding by acting as sponges to soak up rainfall. When a wetland is filled, the excess water has to find someplace to go, and that could be the basement of one of the neighbors of a homeowner who lives downstream from the development.

Under the bill as it stands now, even if the corps knows that allowing the developer to fill in the wetland might increase the risk of flooding to the homeowner downstream, the corps would have to pay compensation to the developer if it denies the permit.

Under this amendment, the corps could deny the permit to fill in the wetland without incurring any liability, if it was determined that denying the permit was the lesser of the evils, that greater damage would be done to those homeowners who live downstream.

I would also like to note this would help the corps to preserve its limited budget for flood control and other important activities.

Mr. Chairman, I want to thank the gentleman from Maryland [Mr. GILCHREST] who worked with me on this legislation. We feel with this amendment the bill can protect the 65 million typical homeowners and be a true Private Property Protection Act.

Mr. GILCHREST. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I think this is well crafted, well thought out. It gives some consideration to the problem of all property rights for all Americans and not just a few.

Just to make a comment, as we go through this debate and as we begin to ensure the protection of all Americans against insensitive, overregulated bureaucrats, I think we must continue to keep two things in mind: One, all Americans, and not just those few who are filing for Federal permits, all Americans must know that their property is to be protected not just from takings by regulations, but protected from pollution from other people that develop.

□ 2000

The other thing I think we have to keep in mind is the fact that when we manage, I think we would all agree that when we manage where we live, that we cannot manage as if there are no people. I think that is where we got into some problems around the country: ''Let us manage this, and you cannot do that and you cannot do that because we have a certain species that we do not want to become extinct.''

We all know we cannot manage thinking there are no people, but by the same token, we cannot manage thinking there are no species out there that support the resources that support people on the planet.

Mr. Chairman, if we believe people should be compensated when their property is devalued, then let us not fool around. This amendment is based on a bill whose purpose is to ensure that people are compensated in cases where their property is devalued by polluting actions of others.

That bill, our bill, H.R. 971 is the Homeowners Protection Act. Unfortunately, the entire Homeowners Protection Act would not be germane to this bill. Get that, the Homeowners Protection Act, which protects private property, is not germane to this bill; and I hope Members do not miss the irony, protecting homeowners is not germane to a private property rights bill?

However, for today, the amendment that we are now offering is the best we can do. The amendment simply says that agencies need not provide compensation in cases where the proposed regulation is designed to prevent actions which would reduce the value of other private property. In other words, the amendment says that we should not pay people, we should not pay people to refrain from polluting other people's property.

How can any bill entitled the Private Property Protection Act not contain that? You and your property should not be paid to refrain from polluting somebody else's property.

Most environmental law is designed to prevent people from using their property in such a manner that they adversely affect other private property or public property. In my district, every time someone develops a wetland, they increase the amount of runoff into the Chesapeake Bay, thereby very often increasing the toxic levels of nitrogen in the water. This reduces the value of the homeowners who live near the water, because the water is not that clean or productive, and it certainly reduces the value of a person's right to go fishing there.

Mr. Chairman, I ask my colleagues, if they are for all property rights and all people, support the Wyden amendment.

Mr. CANADY of Florida. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I want to point out to all the Members the specific provision that is contained in section 5 of my substitute amendment. In that provision we are covering the sort of situation that the gentlemen who are proposing this amendment are concerned about.

I will say that they go beyond, far beyond, what we do to protect landowners from hazards to the public health or safety or damage to their specific property. What this amendment in effect does is really get the Federal Government into making zoning type decisions and distinctions between properties that are more appropriate for a local zoning board to be making.

By saying that the agency will consider whether a particular permitting action would restrict any activity likely to diminish the fair market value of private homes, they are in fact engaged in the sort of decision-making that a local zoning authority should be engaged in.

Mr. Chairman, the important matter to understand here is that State nuisance laws and other State laws already will provide protection for the interests that are sought to be protected here, and that we should not be establishing this zoning type of consideration at the Federal level.

Mr. WYDEN. Mr. Chairman, will the gentleman yield on that nuisance point?

Mr. CANADY of Florida. I am happy to yield to the gentleman from Oregon.

Mr. WYDEN. Mr. Chairman, what troubles me is this legislation creates a Federal express line where the developer and commercial interests can come in and have their claims addressed, but when it is the typical homeowner, under this bill we say ''Sorry, Charlie, you do not get in the

same place as the commercial interests. Go to the State and local level and see if things will work out.''

That is the reason I think this bill has a double standard, one set of rules for the commercial interests, another set of rules for the typical homeowner, and why we seek to promote some balance.

I thank the gentleman for yielding.

Mr. CANADY of Florida. Mr. Chairman, I think the point we need to understand here is that people have a right to use their property. The presumption the gentleman seem to be operating off of is that people do not have a right to use their property, they do not have a right to the value of their property.

I simply disagree with that. The philosophy behind this bill is that people do have a right to their property. When the Federal Government is going to impose restrictions on them that prevent them from using their properties, and those restrictions significantly diminish the value of that property, they are entitled to compensation.

I understand there is a difference of opinion on that subject. I think what is happening here, Mr. Chairman, is we are clouding that issue. I will not say it is an attempt, but I think the effect of what is going on here is to obfuscate that critical issue, when the interest that the gentleman purports to be protecting, and the gentleman from Oregon, Mr. WYDEN, is my friend, and I accept his good faith in this, however, the interests that the gentleman is attempting to protect here are interests that are already protected by local zoning ordinances.

Let me point out, Mr. Chairman, that the interests that we are attempting to protect do not receive that same sort of protection. I think that is something that is important to understand.

Mr. WYDEN. Mr. Chairman, will the gentleman yield further?

Mr. CANADY of Florida. I yield to the gentleman from Oregon.

Mr. WYDEN. Mr. Chairman, there are instances, of course, where the impacts of pollution are dispersed over a large area that are not covered under local ordinances. There are instances of pollution being dispersed across State lines.

Mr. CANADY of Florida. Reclaiming my time, Mr. Chairman, I think it is important to understand the impact of the Tauzin amendment. The gentleman is talking about pollution. The gentleman is talking about things that are not covered by this bill to begin with.

If the gentleman will look at the scope of the programs we are covering here, the sort of horribles that the gentleman is trotting forth are not possible. We are not going to provide compensation in those circumstances.

Mr. WYDEN. If the gentleman will yield further, I would like to stipulate that I think there are takings, and there are certainly takings that warrant compensation. What I am concerned about is we are not factoring in the consideration for the other people getting hurt.

Mr. CANADY of Florida. Reclaiming my time, what I would like the gentleman to stipulate is that the scope of this bill is such, based on the Tauzin amendment, that we are not going to get into the kind of problems that the gentleman is talking about. It is just not covered.

If the gentleman will look at those particular programs, he will see we are not talking about programs that deal with controlling pollution. That is not covered in this bill.

Mr. WYDEN. If the gentleman will continue to yield, I laid out a problem involving wetlands not covered under the law.

Mr. CANADY of Florida. Mr. Chairman, the bill is very clear on that point. I think what we have here is a red herring that is being raised. I understand what is going on, but I think it is unfortunate that we are not focusing on what the bill actually does. I have no problem with criticizing the bill, but let us focus on what this actually does.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. If this amendment passes, if it becomes part of this bill and it becomes law, the gentleman we began this debate discussing, Mr. Bowles in Texas, will lose his case. It took him 10 years to get the claims court to say that the Federal Government took his property when it said he could not build his house. All he wants to do is build a house on a subdivision lot next to two neighbors who have houses on their subdivision lot.

The gentleman from Maryland [Mr. GILCHREST] needs to pay, I hope, some attention to this. Mr. Bowles is not asking to pollute anybody. To use his property to build a house is not pollution, and to associate all the legitimate uses people put their property to pollution is something the courts have refused to do.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I am happy to yield to the gentleman from Maryland.

Mr. GILCHREST. Mr. Chairman, I do not think the courts have refused to do that. I think the courts have, to a certain extent, adequately dealt with that under the fifth amendment, but just because someone wants to build a house does not mean they are going to pollute anything. As you say, that depends on where the house is built.

Mr. TAUZIN. Let me reclaim my time, Mr. Chairman, and quote from the Court of Claims in the Florida Rock decision, again: ''Government may not circumvent the takings clause by defining an activity as pollution and rendering it noxious by fiat.'' It said in Florida Rock that you cannot get away with that anymore. You cannot tell people in America they cannot farm their land, they cannot build houses on their land, because you consider it pollution.

The court says that protecting wetlands is not protecting against pollution, necessarily. It said in that case, Mr. Chairman, that protecting wetlands for the good of all Americans, which is a good and worthwhile goal, is a public responsibility, not the responsibility of the few landowners in America who happen to own the wetlands.

If we want to protect the wetlands against uses that Mr. Bowles would like to put his lot to in the subdivision of Bresoria County, when all his neighbors built houses, if we want to prevent him from doing that in the guise of protecting wetlands, then we need to pay for that policy, not Mr. Bowles.

The reason Mr. Bowles would lose his case under this amendment is that his two neighbors would suffer when he built his house. Both neighbors would lose some right of view. Their property would be affected by the fact that another residence is close to it.

Under this amendment, there is no test for the diminution of value of the adjacent property owner. Any diminution of value, however significant, is enough to trigger the denial of the property owner's claim for compensation under this act.

In other words, if Mr. Bowles, who fought for 10 years for compensation, should now be faced with this act as amended by my friend, the gentleman from Oregon, what he would find is that the court would say ''Sorry, the Congress said that because your house now obstructs the view of your neighbor's, it has diminished their value to some extent. We are not authorized to provide compensation for you under the private property rights bill passed by the Congress in 1995,'' and so it would be for many other claimants. Claimants who perhaps have very large claims against the government for taking their property would find that those very large claims are lost because of some very small, diminutive, insignificant, almost, diminution of some neighbor's property.

The current bill provides for remedies. It currently says that even though you have a wetlands claim against the Federal Government under this bill, if the action, the activity you want to undertake is forbidden by a legitimate zoning law on the local level, you will not get compensated.

It presently provides that if the activity you are interested in is prohibited by a nuisance law in your State, such as flooding your neighbor, dumping, indeed, pollutants or toxins on your neighbor, if you intend to do that, or if your activity would do that, that you will not receive compensation.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

(By unanimous consent, Mr. TAUZIN was allowed to proceed for 30 additional seconds.)

Mr. TAUZIN. Mr. Chairman, if the purpose of the government's action in

denying the permit is not to protect wetlands in general for the rest of us, is not really to protect endangered species for all the rest of us, but if the purpose is to deny your right to damage your neighbor, that is already in the bill as an exception to compensation.

You do not need this amendment. This amendment will deny legitimate claims for de minimus effects on neighbors. It is not the right thing to do. We ought to defeat it.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I yield to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Chairman, I thank the gentleman for yielding to me.

First, if the gentleman from Louisiana feels his legislation already takes care of things, I cannot understand why he is objecting so strenuously to mine. I want to make it clear that this legislation now sets out a double standard that treats development interests better than the typical homeowner. Development interests get compensated if their property values are merely diminished, but the neighboring homeowners have to meet a higher standard, requiring physical damage to their properties for the exemption in the bill to apply.

What I would say to my colleagues is if they vote against this amendment, they are saying that developers can come to government agencies and get permits where the developers are going to be hurting neighboring homes, your constituents. When the constituents come to you and complain, and there are far more of them than there are of the developers, you should be ready to tell them why the developer's right to develop is more important than that typical homeowner's right to enjoy their home.

That is what this amendment is all about, trying to provide some balance. The gentleman from Louisiana [Mr. TAUZIN] is right in saying that there are examples of takings that warrant compensation, but there are also examples where in that process, the typical homeowner, who lives every day in a fashion that is not regulated by the wetlands law or the reclamation law, can be hurt in the process.

We are saying in considering compensation, factor in that typical homeowner. I would suggest to my colleagues that if they vote against this amendment, when they have problems in their community, there are homeowners who are going to come and ask why you rejected this opportunity to provide them some protection.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Maryland.

Mr. GILCHREST. I thank the gentleman for yielding.

In response to the gentleman from Louisiana, the agency, in this case the corps, their action prohibits the filling of wetlands, not building the house. Under the amendment, the wetlands destruction, not the house, is the thing that devalues the property.

The other question is does the government, do we the people, have the responsibility to have people feel that they have some sense of public safety, some sense of security.

□ 2015

In the real world, there are problems with filling wetlands, with the people downstream, and I do not care if it is 2 miles downstream, I do not care if it is 300 or 400 miles downstream, there has to be some sensitivity when that regulatory agency gives a permit to build, and that will happen because there certainly will not be enough money in the Federal Government to provide all the money for the takings claims that will result as a result of this legislation. The person downstream who has a pond that is going to be silted over as a result of the destruction of a wetland, that person needs to be brought into the process.

The gentleman from Florida [Mr. CANADY] said earlier that most of that has to do with local zoning ordinance, where do you have your commercial activity, where do you have your residential activity. I think at least in part he is absolutely correct and I would hope that the spinoff, or the result of this legislation, would send a signal to local zoning boards that they had better make sure that they have an understanding that if they are going to manage the growth of their own towns and communities, they have much more responsibility into doing that now if this legislation passes.

The last comment I want to make, the gentleman from Oregon [Mr. WYDEN] and I want to make sure that all property owners are protected under this legislation, and we hope that our colleagues will give us an ''aye'' vote on this amendment.

Mr. FIELDS of Texas. Will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I appreciate the gentleman yielding.

I was just going to propound a question to the gentleman from Oregon [Mr. WYDEN], because I was lost just a moment ago. I do not see two different types of property rights in this particular piece of legislation. If you are talking about a developer, a developer has a right to assert their property right just as a residential homeowner. The residential homeowner, however, cannot come and assert a right against someone else's property when that property has been taken either through an endangered species designation or a wetland declaration. The gentleman lost me with that example.

Mr. WYDEN. Will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Oregon.

Mr. WYDEN. Let me say again that while most people think all property owners are protected under the bill, the only property owners that are protected are those who are operating under some kind of Federal permit, such as a wetland.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(At the request of Mr. FIELDS of Texas and by unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. I continue to yield to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. More important, what I think highlights the lack of balance, and I use that word specifically, because there are takings, what highlights the lack of balance is, our friend, the gentleman from Florida, said that the homeowner, instead of getting this express lane, that this bill sets up for the developer, that their consideration is taken care of at the Federal level, the gentleman from Florida says, ''Sorry, Charlie, to the homeowner, you go try and get a fair shake at the local level. We won't be interested in you at the Federal level.''

Mr. GILCHREST. If the gentleman will yield, I would just like to say, does one property owner have the right to degrade the value of another piece of property, of someone else's property? If you do not think they have the right to do that, you ought to vote for the Wyden amendment.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. If I, as an adjoining property owner, do something to diminish your right as an adjoining property owner, I have a civil cause of action. But what we are talking about here is the homeowner, if there is a taking of that homeowner because of a wetland or an endangered species declaration, that homeowner has the exact same right as the property developer if they have a wetland or endangered species declaration. There is no difference.

Mr. WYDEN. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Oregon.

Mr. WYDEN. I make my point. You are talking about property owners that want to develop. There are property owners in America, folks, 65 million of them who just want to live in their homes. They are senior citizens, they are low-income people. They are not developers.

I know that some of my colleagues think that all Americans are covered under this, but only people who want to operate under some kind of Federal permit are covered. That is not the 65 million typical homeowners.

Mr. DEFAZIO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, what I just heard was the developer has an absolute right with 10 percent diminishment of any part, tiny fraction of his property under Federal regulation if it goes to the Wetlands Act, Clean Water Act, Endangered Species Act or others. But that the adjoining or downstream property owner has a right of civil action. So what we are saying here is we are creating two categories. If you are a major developer, you have an absolute right to reimbursement by Federal taxpayers if there is a tiny diminishment of the optimal development value of your land, but if you are an adjoining or downstream property owner, you can go to court.

That is what I just heard the gentleman say, civil right of action. I was a county commissioner. We had a gentleman who had an island in the river. He drove a giant belly scraper out there, a D–9 Cat, and he was just terrafirming the land, and this was not allowed under our State land use law but the State land use law had trouble prosecuting him. We had to bring in the Feds to put a stop to that development. The people who wanted that development stopped were the adjoining farm downstream, because he said, ''You know what happens when he builds those berms and he does that? My land floods, I get all these road seeds and pollution and sediment on my land and it ruins my land.''

But you are saying to my farmer downstream and where we use the Clean Water Act for an enforcement, my farmer downstream is now going to have to go to court as opposed to getting the Federal Government to enforce this.

Mr. FIELDS of Texas. If the gentleman will yield, that is not what I am saying. What I am saying is if I as a property owner impact your property, you have a civil cause of action against me for damages.

What we are talking about in this particular piece of legislation, if the Federal Government comes in through a regulatory act and takes your property because of an endangered species declaration or a wetland designation, you have the same right that I have whether you are a developer, a farmer, a private homeowner. There is no distinction.

Mr. DEFAZIO. If I could reclaim my time, the case I am talking about was an individual who was attempting to develop his island and he was restricted by Federal law, by the Clean Water Act, from doing that, and it was the downstream property owners who wanted the action stopped, and the only way they could get him stopped was an action by the Federal Government.

Under this bill, as I understand it, if the Federal Government took that action to restrict those activities which harmed everybody downstream, that gentleman would have to be compensated. It certainly diminished his development value more than 10 percent.

Mr. WYDEN. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to my colleague the gentleman from Oregon.

Mr. WYDEN. I want to come back to the fact that this legislation tries to ensure that pro-development interests get a fair shake. But now we also have to make sure that typical homeowners who are not development interests get a fair shake as well.

I am just struck by the fact that my colleagues are willing to say that the typical homeowner, 65 million of them, are supposed to be satisfied to go off and see what happens at the local level and people who want to develop their property get this Federal Express lane and rapid consideration of their claims. That is not my vision of balance.

Mr. DEFAZIO. I am just trying to get to what was a real-life example. It was a county commissioner, we did use the Clean Water Act to get an enforcement action against this individual, and he obviously felt very aggrieved. He gave lots of money to my opponent.

But the fact is that as I understood the gentleman, my downstream property owners now would have a civil right of action and this gentleman would get compensated by the taxpayers for not doing the egregious development that was going to harm the downstream people.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to the gentleman from Texas. I am trying to get an understanding.

Mr. FIELDS of Texas. Under this legislation, you would be deprived of using the Federal Government to stop an individual's beneficial use and enjoyment of their property. If that person was to lose——

Mr. DEFAZIO. Reclaiming my time, in this case what you are defining as beneficial use is for one person. There were quite a few people downstream who saw it as a detrimental use because it had a negative impact on their property.

Mr. FIELDS of Texas. If the gentleman would yield, what I am saying is a private property owner, a larger developer, has exactly the same rights under this particular piece of legislation. There is no distinction.

Mr. DEFAZIO. Reclaiming my time, again we are back to the point where in this case, Mr. McNutt was his name, and his island in the McKenzie River, I can be very specific, would have a right to be compensated by the Federal Government because he did not engage in development that was detrimental to his neighbors under Federal regulation. If that is the case, this is creating an extraordinary problem.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is important that we get this debate back on the subject matter. The subject matter of this legislation is to protect individual private property owners. There is no intent in this legislation to create a distinction between someone who might be described as a developer and a private homeowner. That is not the intent. The intent is to recognize that everyone has a right under the Constitution to enjoy private property. If the Federal Government comes in and denies the beneficial use and enjoyment of that property through a taking, and under this particular piece of legislation it is specific, weltlands, endangered species, and also some water rights.

We say that if there is a loss, there is a taking, that compensation is given.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding, and I thank him for taking time that I might jump in here.

The gentleman is abundantly correct. Property owners are being described derogatorily tonight in this amendment debate as developers. Mr. Bowles in Texas was not a developer. All he wanted to do was build his house, and that was the filling of the wetland that was denied jim, just to build his house next to his neighbors. That was the so-called filling of wetlands that became a deniable permit application that caused Mr. Bowles to spend 10 years in court. He loses under this amendment. He never gets compensated.

Let me tell Members what the court said on that subject matter, again in Florida Rock. This is the Court of Claims:

> It is impossible to use one's property in a society without having some impact positive or adverse on others. Courts do not view the public's interest in environmental and aesthetic values as a servitude upon all private property but as a public benefit that is widely shared and therefore must be paid for by all.

The court cited a list of other laws passed by this Congress in years past, environmental laws where Congress specified some sort of compensation. For example, the Wilderness Act, the National Trails Systems Act, the Wild and Scenic Rivers Act, and the Water Back Act.

What the court said there, I tell the gentleman from Texas [Mr. FIELDS], was that what these regulatory schemes have in common is that in each case, the propertyowner's interest has been considered and accommodated, not sacrificed on the altar of a public interest.

What you do when you adopt this amendment is you tell Mr. Bowles, who is not a developer, you tell the farmer I talked about earlier who is not a developer, you tell the Cachoneses and the Gautreauxs in Ascension Parish who are not developers, who are homeowners, you tell them that they cannot get recovery because of this little quirk that was adopted on the House

floor late one night that said if developing their property, building on it has any significant, insignificant even, impact upon their neighbors, they cannot recover under the fifth amendment their legitimate compensation rights.

Mr. FIELDS of Texas. Reclaiming my time, the gentleman from Louisiana makes an excellent point. The cases that I have cited today, whether it was an abandoned eagle's nest, the people who have been hurt were not developers. They were just average property owners. The farmers and ranchers in the hill country of Texas who have been affected by the warbler and the vireo, who cannot cut cedar, those are not developers. Or the people west of San Antonio who have had their water rights abrogated and were affected by a fountain darter in two springs, those were not developers. These are average citizens who just want to enjoy the basic constitutional right given to them by our forefathers.

I will be glad to yield to my friend the gentleman from Oregon.

Mr. WYDEN. I thank the gentleman for yielding.

Under this legislation as it is written now, if the developer hurts a huge number of private property owners downstream, that developer can still get compensation.

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Does the gentleman support that?

Mr. FIELDS of Texas. the individual who is developing a piece of property or building a home on a piece of property or have a home on a piece of property already built, they have the same rights. If the Government walks in and takes the value of that property to the limits set out in this legislation, they are due compensation. If I hurt you as an adjoining landowner or if I hurt your downstream interest, you have a cause of action against me in court. The Federal Government has not stepped in and given me any particular advantage.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Maryland.

Mr. GILCHREST. Mr. Chairman, I would like to ask the gentleman just one question. This is what seems to me, without this amendment, this is what the bill, or this goes to the heart of the bill, without this amendment; should we compensate someone to keep them from polluting someone else's property? That is the question.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

(By unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 30 additional seconds.)

Mr. FIELDS of Texas. Mr. Chairman, we are not talking about pollution. We are talking about endangered species and wetlands declaration, and we are saying that when an individual loses the benefit of their property and it is taken by the Federal Government, there is compensation that is given. You know, people can talk about collateral things to try to cloud the issue. This issue is about basic property rights and the protection thereof.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon [Mr. WYDEN] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WYDEN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 165, noes 260, not voting 9, as follows:

[Roll No 193]

AYES—165

Abercrombie
Ackerman
Andrews
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Boehlert
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Coyne
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gordon
Goss
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Mineta
Mink
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Porter
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Thompson
Thurman
Torres
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Zimmer

NOES—260

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Gilman
Goodlatte
Goodling
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Jones
Kasich
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Tiahrt
Torkildsen
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff

NOT VOTING—9

Bryant (TX)
Chenoweth
Flake
Gonzalez
Martinez
Moakley
Rangel
Torricelli
Yates

□ 2048

The Clerk announced the following pair:

On this vote:

Mr. Moakley for, with Mrs. Chenoweth against.

So the amendment to the amendment in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. KELLY. Mr. Chairman, on rollcall No. 193, the amendment offered by Mr. WYDEN, I

inadvertently voted ''aye.'' I intended to vote ''no.''

AMENDMENT OFFERED BY MR. MINETA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE, AS AMENDED, OFFERED BY MR. CANADY OF FLORIDA

Mr. MINETA. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The Clerk read as follows:

Amendment offered by Mr. MINETA to the amendment in the nature of a substitute, as amended, offered by Mr. CANADY:

In section 3(a), strike ''any portion'' and all that follows through ''10 percent'' and insert ''that property has been limited by an agency action, under a specified regulatory law, that diminishes the fair market value of that property by 20 percent''.

Mr. MINETA. Mr. Chairman, because of the plan to rise at 9:35 tonight, I ask unanimous consent that all debate on this amendment end at 9:20 p.m. and that the time available be equally divided and controlled by myself and a Member opposed to the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. DELAY. Mr. Chairman, reserving the right to object, has this been cleared with the leadership?

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from California.

Mr. MINETA. I thank the gentleman for yielding.

Mr. Chairman, I have spoken to the gentleman from Florida [Mr. CANADY] about it, and he is the floor manager on the other side.

Mr. DELAY. Mr. Chairman, I would have to object.

The CHAIRMAN. Objection is heard.

The gentleman from California [Mr. MINETA] is recognized for 5 minutes.

Mr. MINETA. Mr. Chairman, we have just debated and voted on the Goss amendment, which would have altered the 10 percent threshold in the substitute and made it 30 percent instead.

The amendment I am offering with the gentleman from Virginia [Mr. DAVIS] is exactly the same as the Goss amendment except that instead of 10 percent, my amendment would provide a 20 percent threshold. In all other respects, this is the Goss amendment. If you voted for the Goss amendment, you should vote ''yes'' on my amendment.

If you would have voted for Goss but thought that the 30 percent was a little too high, then you should vote ''yes'' on the Mineta-Davis amendment.

Mr. DAVIS. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I yield to my very fine colleague from Virginia [Mr. DAVIS].

Mr. DAVIS. I thank the gentleman for yielding.

Mr. Chairman, I am pleased to speak for the gentleman's amendment.

I supported the Goss amendment, which took the 10 percent threshold to 30 percent. This moves it to 20 percent, but it is much more reasonable.

I have been in local government for 15 years, and I have sat through hundreds of zoning cases, through a number of condemnation cases and appraisals, and a 10 percent variation, a 10 percent difference is within the margin of error that we see every day with appraisers coming out and appraising the same property.

The 10 percent threshold currently in the bill makes this ripe, nationally, for all kinds of litigation anytime a regulation comes out. Twenty percent threshold is a much more reasonable threshold. Anything from market conditions, interest rates, school boundaries, variations affect property appraisals more than 10 percent in appraisals. We see this every day. Those may be technically exempt from this bill because they are local decisions, but the marginality in appraisings of property vary even with the season.

The fact that a regulation comes in and then appraisals come in showing a 10 percent difference I think puts this at a dangerous threshold. To preserve this bill and make it credible, we need the legislation to raise the threshold to 10 percent. The presumption here would be to raise it to a 20 percent level. I think it is reasonable. I am happy to support the amendment. I hope my colleagues who supported the Goss amendment will support this, and others who thought that might have been too high at 30 percent, I remind you this legislation says 33 percent. It would come down to the 20 percent level.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I yield to my colleague from Idaho.

Mr. CRAPO. I thank the gentleman from California.

Mr. Chairman, I ask this question of either of the sponsors of the amendment. And I ask those in the Chamber to please listen to the answer to this question because I think it is very important.

The question that I have has been discussed by both of the sponsors of the amendment in discussing it that they are changing the percentage from 10 percent to 20 percent.

The question I have is: Does it also change—excuse me—from 30 percent to 20 percent.

Mr. DAVIS. From 10 percent to 20 percent.

Mr. CRAPO. My question is: Does it apply to the total?

Mr. DAVIS. It applies to the total property, not just to a portion.

Mr. CRAPO. That is the question. Does that change also that portion of the act which simply is talking about the specific property impacted to say we are talking about all of the property owned by the property owner?

Mr. DAVIS. The answer is ''yes.''

Mr. MINETA. It is the same as the Goss amendment. In this instance, it just changes it from 30 percent to 20 percent, and the Goss amendment had 210 votes.

Mr. DAVIS. The answer is that instead of the small parcel which could be covered under the existing legislation, a 10 percent diminution of that, that this is the entire property.

Mr. CRAPO. That is a bigger difference, then, than simply changing the percentage from 10 percent to 20 percent as in the bill.

Mr. DAVIS. I think it is reasonable.

Mr. MINETA. Reclaiming my time, I reiterate again that this is the same as the Goss amendment. In that regard, there is no change.

So, Mr. Chairman, I feel this is a fair and equitable amendment. It does not gut the bill. Just as there were 210 who voted for the Goss amendment, I think the same people ought to be voting to make sure that the Mineta-Davis amendment in this instance to change it to 20 percent should pass.

Mr. BARR. Mr. Chairman, I move to strike the last word.

Mr. Chairman, with all due respect to my good friend and learned colleague from Virginia, those of us who just voted a few moments ago or just a little bit ago against the Goss amendment did not vote against the Goss amendment because it was 30 percent versus 29 or 28 or 25 or 27; we voted against it because we believe that the fifth amendment to our Constitution should not be up for bid. We are engaged right now in a bidding war. 30 percent, 20 percent, 10 percent, next we will have an amendment for 15 percent.

The point, Mr. Chairman, is we need to listen to the people of this country who spoke loud and clear and very explicitly on this issue in the November 8 election. That is why many of us are in this Chamber this evening. Those people, citizens, voters, property owners across this land said property rights mean something. Those voters spoke loud and clear, they said we want you in the Congress to uphold the Constitution of this land. It does not say that the Government can take 40 or 50 or 30 or 29 or 20 percent of your property with impunity, without any compensation. It says if the Government takes a piece of property, and this body is now debating a bill, a piece of legislation that finally brings that home to the people, to the property owners of this country, we should not be engaged in the unseemly business this evening of auctioning off the fifth amendment.

□ 2100

This amendment is effective, as was the prior amendment, and it ought to be defeated so that we again stand up and say to the property owners of this country, ''No longer shall the Government be able to run roughshod by diminishing the value of your property.''

Tell the Government to back off, to let property owners rely on the Constitution. This amendment ought to be defeated.

Mr. DAVIS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would just take 2 minutes, and I say to my friend from

Georgia, and he is my friend on this, ''We're not in an auction. It's already a 10-percent threshold. We're not starting from ground zero, and 10 percent is what my friend feels is a reasonable number and members of the committee feel is reasonable, but 10 percent is a margin of error when you compare any two or three appraisals. I've looked at hundreds of these through my time in local government, and any time a regulation comes into play, and you can put the appraisals together, show a 10-percent loss, we're in court on litigation, paying with Federal dollars for efforts that in many cases have nothing to do with the regulation. I think 20 percent is a much more reasonable level, gets us beyond that traditional margin of error, and it's for that reason that I support this amendment.''

Mr. Chairman, I yield back the balance of my time.

Mr. CRAPO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it is very important for those who are considering this legislation to understand we are not talking about simply the issue of whether to change the percentage from 10 percent to 20 percent in this bill. There is a much more critical change that is being made that was not discussed in the previous bill—it was not understood very well, I think, in the last debate, and I think it has got to be critically understood in this debate.

The bill, as it now stands, says that when the Federal Government seeks to regulate property, if they are going to single out a piece of the property and call that piece of the property a wetland or address a specific portion of one's property to cause them to fill Federal requirements in the way they use their property, then it is that property that is singled out, that is looked at to see whether the Federal Government is impacting its value.

This amendment would change that and in a dramatic way increase the burden that is faced by the property owner in a way that probably will make it so that the Federal Government does not have to worry about compensating property owners in most of the cases that we deal with because the property that is being impacted would have to be mixed, if my colleagues will, with all of the other property owned by that property owner.

That means, just to give my colleagues an example, if a person owned a 100-acre farm, a small farmer owned a 100-acre farm, and the Federal Government came out and said, ''One of the acres on your farm is a wetland, and we're going to require you to stop farming on that 1 acre or require you to do something with that 1 acre,'' even if the Federal Government took the entire acre, this amendment would not allow for compensation to be made because the impact would have to be mixed in with the other 99 acres. In fact, the Federal Government under this amendment could literally take 29 of his entire 100 acres entirely, and he still would not be entitled to any compensation by the Federal Government for that impact on his property.

This is a massive change in this legislation. It is not a 10-percent to 20-percent change, and the Members of this House need to understand what is being done here to change the entire direction of this statute.

Mr. Chairman, I think it is also important that we remember the reason that we are here tonight. We are not here tonight because there is a concern about big developers. We are not here tonight because we are concerned about big large property owners around the country. Those who are large developers or large property owners can defend themselves very adequately in our current court structure. It is onerous, it is expensive to them, but they have the resources to fight back. It is the rest of America that is being overridden by the Federal regulatory bureaucracy that we are here to try to defend.

We are here trying to say that, when the Federal Government comes out to the private property owners in this country and says that they have to use their property in a way that benefits the whole, that there is some social purpose that we are going to say is so important that private property owners have to lose the use of their property or have to be forced to use their property in a certain way, that that social goal should be compensated. We are not talking here so much about whether the Government has the right to take the entire property. We are talking about whether the Government has the right to regulate our property to the point that we cannot use it for the purposes that we intended and then force us not to have to obtain compensation as long as we own enough property that they can mix it in and say they have not taken more than 30 percent of the entire value of what we own.

Mr. Chairman, it is critical to us in America that we recognize the importance of protecting this strong statement in favor of private property rights in telling the people of America that we would not water it down to let nearly a third of the value of their entire holdings be taken before we will permit that.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

I think we are in need of this sort of an amendment. It comes from the former chairman of the House Committee on Public Works, the ranking minority member who fully understands this well, and we are in great danger of getting into a de minimis situation where we will all be overwhelmed with litigation, and to better make this case, Mr. Chairman, because of his expertise I now yield to the gentleman from California [Mr. MINETA].

Mr. MINETA. Mr. Chairman, the important thing is that since the discussion of the Goss amendment a number of Members have come up to me to ask whether or not there is going to be anything further in terms of a change. It seems to me that 20 percent is a fair and equitable compromise, and frankly the kinds of arguments we are hearing now were the same ones that we heard earlier on the Goss amendment, and I am frankly ready and willing to go with a vote right now.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Texas who is going to please the assembly, and I am delighted to be an accomplice in his happy news.

Mr. DELAY. Mr. Chairman, I appreciate the gentleman from Massachusetts [Mr. FRANK] yielding to me.

If Members will listen up, if Members will listen up, there will not be any more votes tonight. We will continue to debate on the Mineta amendment, but we will rise before we take any more votes tonight.

Mr. FRANK of Massachusetts. Let me take back my time to announce to the Members, and let me do the color. My colleagues have now heard the play by play. This means we are ahead because we wanted to go to a vote now, but the gentleman, as the whip, has got some work to do. So we are not going to be able to vote on this tonight so the whip can do some whipping, and I say to my colleagues, ''If you go home early, you won't be whipped. I just want you to understand that.''

So, Mr. Chairman, now that people understand the state of play, we will come back tomorrow morning and vote on the 20 percent.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield further to the gentleman from California.

Mr. MINETA. Again, Mr. Chairman, it seems to me that the amendment offered by my colleague, the gentleman from Virginia [Mr. DAVIS], and I is a fair and equitable compromise.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield back the balance of my time.

Mr. BRYANT of Tennessee. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to weigh in also on this issue. I must stand up in strong opposition to this amendment, and, as has been alluded to earlier in the speeches, I am a strong supporter of the fifth amendment rights to protect property owners and their right to their land, and what we are talking about here is the equivalent to taking of property as if they bought it. The type of taking that we are talking about is simply no different than if we signed the deed of property over, and in fact it is even worse in that we still own the property and have to pay taxes on it.

I simply state that the people ought to be rightful and fully compensated, and I agree with the gentleman from

Georgia who says this should not be a bidding war. What we are doing here is a 100-percent taking. They are entitled to 100 percent. The fifth amendment talks about the 100 percent. I think 10 percent is the minimum we ought to allow in this situation.

My good colleague, the gentleman from Virginia, talks about the appraisals and the variances in those, and I think the 10-percent margin certainly allows for that variance. I say, ''I, too, believe that, if you're going to take the property, you ought to be compensated 100 percent for it.''

Mr. MICA. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Tennessee. I yield to the gentleman from Florida.

Mr. MICA. Mr. Chairman, I really did not plan to speak on this, but I have to address my colleagues and say, ''You might just as well take a gun and go and rob people of their life savings under the pretenses of the amendment that's being offered here.''

Mr. Chairman, we have to really look at what is being done here. People who have worked their entire life for home, or for property, or for business, and they are saying that we can come in, the government can come in, and take 20 percent of it before they are due any compensation. that is just not right. That is just not right.

The way this bill is structured with its current language does give the citizens some recourse, and if my colleagues are going to say that government can come in and regulate our lives, can steal from us in this fashion, then they support this amendment, but again I say to my colleagues, ''You go back and explain to your constituents, your moms and your pops who have worked all their lives, people who have acquired a piece of property—most people today don't even have 20 percent equity in their home, or their business or their property—but you're going to say that the U.S. Government can come in and take that property from you without compensation.''

Until we get to the 20-percent level, Mr. Chairman, is that fair, is that just, is that the way we want to treat the men, and women and wage earners of this country?

I can give my colleagues good examples of businesses that I have worked in and property that I have been involved in in which I do not even have 10-percent profit after working 20 years, but it is okay for the Federal Government to come in, pass regulations to deprive me of the use of that property, the use of it, the property that I have worked and slaved for or that my mom and dad have worked for, to protect their property.

Again I think that we have got to look at this just like any other situation where the government comes in and ruins property, takes property and fails to compensate us for that property, and that is why I strongly support the 10 percent provision.

I do not support the amendment that is being offered by my colleague today.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I was kind of thinking that we were stalling for 9:35 and that somebody might want to make a motion to rise. We have debated this at some length now, and I do not know that anybody can add anything else to it.

We have acknowledged that there will not be another vote tonight, so maybe somebody could make the motion to rise and my colleagues could quit talking about something that has been debated for the last hour and a half.

Mr. Chairman, I yield back the balance of my time.

□ 2115

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I appreciate the statement made by my friend just a moment ago, but some of us are concerned about this amendment, and we do not want to leave it unanswered tonight, because this amendment does sound seductive. It sounds palatable. It sounds as if it is a compromise. And someone mentioned just a moment ago, it sounds as if we are auctioning off a basic constitutional right, until you stop and realize that some of us believe that any taking, any loss whatsoever, should be compensated by the Federal Government.

But as was explained earlier by the gentleman from California [Mr. POMBO] in the debate, he put the 10-percent figure in the legislation as a sensible offer to settle some loss by the property owner, a loss that was greater than just some de minimis loss.

I think it is important for people to understand that this is a visceral issue with many of us. We have seen the effects of takings, both in terms of endangered species and in wetland declarations, and the effect this has had on families, property owners, basic property owners, average men and women in our congressional districts.

I think it is important to think about this just a moment. I literally have thousands of small property owners in my Congressional District, people who own, say, 100 acres. When you talk about the loss of 10 percent, which is in this legislation, that is a lot to swallow by some people, a tenth of their property. But when you bump that up, double it to another 10 percent, arriving at 20 percent, that is even more difficult. And we are taking about property that has been in some families for generations. My family is an example of that.

I think it is also important to look at some of the large effects, some things that have happened. Judge Bunton, a Federal Judge in Texas, ruled that Texas had to develop a plan to regulate the flow of water in the Comel Srpings and the San Marco Springs. They did this for a one inch fountain. The ruling presented a real problem because the Edwards Aquifer, which was affected by this particular decision, was the sole source of drinking water for one and a half million residents of San Antonio, which is our Nation's 9th largest city. It has been estimated that complying with the judge's ruling could result in a 68 percent reduction in available water. It would have a devastating effect on San Antonio, Baxer County, and six other adjacent jurisdictions, not to name the farmers and ranchers west and in that particular area.

When I start thinking about 10 percent or 20 percent, how do you allocate some of the costs of a decision like that, because there is no alternative source of water to replace the Edwards Aquifer. It is estimated it would take five to ten years for significant amounts of non-aquifer water to become available at a cost of $500 million to $1.5 billion. That is clearly unacceptable.

Furthermore, if you look at some of the initial estimates of trying to maintain water flow at the Comel Springs based on the worst case scenario of a drought, you could have an expense of $9.6 billion annually in spending; $5.2 billion in an annual reduction in total output for the City of San Antonio, a $3.3 billion annual reduction in personal income in San Antonio, a $2.6 billion annual reduction in wages and salaries, a $1.3 annual reduction in retail sales. You can lose 136,000 jobs in San Antonio because of one Federal court decision based on endangered species, a decision that goes to the heart of basic and fundamental water rights in our particular state.

How do you go about allocating all of these costs, whether it is 10 percent or 20 percent? So when some people say it is insignificant and here we are at a late hour on the floor of the House of Representatives trying to suggest that an amendment to ratchet that percentage from 10 to 20 percent does not have an effect, causes no harm, I find that hard to deal with.

I come back to what I said earlier: What do we say to our constituents? I think that is an important question that all of us must answer now, because we are going to have to answer that question when we go before our rotary clubs, our chambers, our town meetings.

Mr. WAMP. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I came to the well today to explain that I had derived my livelihood before I came to Congress in the real estate industry, in the private sale of real estate from one individual to another. And I want to kind of bring this into perspective as we are talking tonight about private property owners and even some talk of developers earlier tonight, because I want to share with you when you are talking about how much property is this debate about.

Well, one acre of land, roughly 42,000 square feet of property, let's say we have one acre of land in Tennessee, 20 percent of one acre of land in Tennessee in my home city is about a building lot, about enough property to get a building permit to build your home on it. Twenty percent of land is a lot of land. We are talking about a building lot out of a simple acre of land in Chattanooga, Tennessee. That is too much. Ten percent in a lot of ways is too much.

So from a private property standpoint, from the little guy who may own a piece of land, a small piece of land, 20 percent is simply too much, and 10 percent is still an awful lot of land that the Federal Government can take before they have to justly compensate that landowner.

That is the private property owner's perspective. I am here tonight to defend the developers who earlier tonight were kind of under fire. I do not know what is wrong with developing property in this country. At one point I think that was a pretty good thing to do. I would like to see it be a good thing to do again.

So from a developer's standpoint, in my home city of Chattanooga, the Austin family, a distinguished family, developing a shopping center, they went and got an option on the property, and I know they had a big supermarket tenant that was coming into this shopping center.

I know the story. They went before the planning commission, they got it all approved. They had a small wetlands, I think it was 4,000 square feet, in some multiacre site, a little small portion of this. I mean, the whole deal, a $1 million land sale, down the tubes because of the Federal Government intervention.

At what point do we say wait a second here? We have got more Federal Government than we need. And I am here to say developing property is a good thing. People who build, who create in this country, we have got to protect private business people in this country, protect the real estate industry.

The great American dream is to own your own property, and we have got to protect the small guy and the landowner. We have to protect business people out there trying to create jobs and help other people in this country as well.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. WAMP. I yield to the gentleman from California.

Mr. POMBO. I would like to ask the gentleman a question. I heard you say you were in the real estate market, you were a realtor. In your travels throughout your business, have you ever known anybody to buy a piece of property, a home, a single-family home, with 10 percent down or 15 percent down? Have you ever run across that at all?

Mr. WAMP. With 15 percent down payment on the property? That is correct.

Mr. POMBO. What would happen if we took 19 percent of their value away?

Mr. WAMP. They would not be able to sell that property, and it would just stymie the industry, and it would be a very inequitable situation we would be agreeing, and I wholeheartedly agree with your argument.

Mr. POMBO. The Federal Government would have in effect taken away their entire equity in the land and the bank would own what was left.

Mr. WAMP. All of their equity, and most of the property in this country is leveraged at a very high level to begin with. So you are cutting into the equity, the savings, and the investment of the citizens of this country.

Mr. POMBO. Do you think that maybe small property owners may be hurt by losing 20 percent of their property?

Mr. WAMP. The little people are going to be hurt. That is why I drew the correlation of one acre of land, a little small property owner, who maybe they want to subdivide that property and sell a building lot off a piece of property they inherited from their parents, and they want to be able to do that. The Federal Government could intervene here and take a small portion, the whole value of their property and all of their equity could be lost because of more Federal Government than our Founding Fathers ever bargained for.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. WAMP. I yield to the gentleman from Idaho.

Mr. CRAPO. Mr. Chairman, I would like to ask the gentleman from Louisiana if he would engage with me in a colloquy.

Earlier today as we were discussing how this bill operates, the question of whether there is going to be a clear requirement that the agencies pay whatever the level is came up. Section 7 entitled ''Limitations'' basically states that this act will be subject to the availability of appropriations. As I understand it, that means that we are not trying to create an entitlement that runs without the oversight of Congress.

The question then comes, does the agency have to pay? I understand that the previous section of the act says the head of the agency may transfer or reprogram appropriated funds, and if insufficient funds exist for payment to satisfy the judgment, it will be the duty of the agency to seek an appropriation.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment, and would observe that we had a debate on a 30-percent threshold, that for some reason did not generate nearly as much resistance as the debate now on the 20-percent threshold. For some reason, the later we go in the evening, the more emotional the debate becomes. But this was thought to be a compromise effort coming down from 30-percent. The resistance seems to be growing the longer that we go on with the discussion.

I want to commend the gentleman from California [Mr. MINETA], because what he has done is very important. It signals the possibility of bipartisan agreement on a very important part of this bill. I would urge that we still consider strong support of the bill.

Mr. DAVIS. Mr. Chairman, will the gentleman yield?

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

Mr. DAVIS. Mr. Chairman, let me just put into perspective to my friends, I think we are all for property rights. My affairs in local government overturned one of the largest downzonings in northern Virginia history that took away property rights. It is the basis of Western civilization, the right to own and enjoy property.

The problem with the bill as it is currently written is any part of a larger parcel that is affected with a 10-percent diminution in value then is in line to get the appraisals and go get paid by the Federal Government. Almost every regulation that comes down that affects a parcel of property is going to affect it 10-percent, because the variance in appraisals is more than 10-percent on any given day when you take it.

That is the problem. That is what we are trying to remedy. Now, is this perfect? No. It is not perfect. But we have seen no resistance on the other side to try to tinker with this and change what right now is going to put every regulation, put property owners affected by every regulation in line, because it does not take much to get a 10-percent change. It just takes two appraisers. That has been my experience year after year.

That is my concern. That is what we are trying to remedy. We are not trying to stop people from developing their property. The 20-percent threshold to me seems reasonable. We had 50 Republicans vote for 30-percent earlier on. I appreciate the efforts to try to bring this to a bipartisan conclusion.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

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

Mr. MINETA. I thank the gentleman for yielding.

Mr. Chairman, we are getting on toward 9:35, and I just wanted to have one last thought here if possible. Everyone who has spoken against the Mineta-Davis amendment voted no on Goss. On the other hand, 210 Members voted aye. Those 210 Members I assume, if they are consistent in their politics, will vote aye tomorrow.

Now, how can Members on the other side of the aisle vote for 30 percent and not for 20 percent? Others who did not vote because they were not here or voted no because of the 30-percent figure have come up to me in support of

our modest effort and this modest change. So it seems to me that tomorrow all of us will have the chance to put us over the top and have the Mineta-Davis amendment accepted.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

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

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding.

It may well be. I would tell the gentleman from California [Mr. MINETA] that some of these Members walked in without hearing the debate, did not know that it was 30 percent of the whole of the property instead of the affected area, and may in fact want to vote against this amendment, too.

□ 2130

Mr. CONYERS. Mr. Chairman, I reclaim my time. That is a possibility, but there are also a lot of other possibilities. I think it is very clear, Mr. Chairman, that a 30-percent threshold would be supported by the same people that would now be asked to support a 20-percent threshold.

Mr. RIGGS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman I intend, for my colleagues' benefit, to engage the gentleman from Florida [Mr. CANADY], the distinguished subcommittee chairman, in a colloquy that does not pertain to the amendment at hand.

Mr. Chairman, I am a strong supporter of the Private Property Protection Act, and very much opposed to the amendment presently pending before the House. I believe this is one of our most important provisions of the Contract With America.

I do, however, have one concern. I think it is important to engage in a colloquy to clarify one aspect of the legislation.

Section 2 of the statute requires payment of compensation to the owner of property when the use of that property has been limited by agency action. Section 6 of the bill then defines ''property'' to include ''the right to use or receive water.''

As the gentleman knows, water is the heart of the West. The needs of a varied group of users, including residents, commercial and industrial interests, farmers, fishermen, and Indian tribes are governed by a complex set of laws and agreements. Often these laws and agreements are managed by the Bureau of Reclamation.

While users are often guaranteed a certain allotment of acre feet of water every year, there is usually a contractual provision anticipating shortage situations. A drought or other circumstance may necessitate of Bureau of Reclamation to reduce a user's allotment. Such a decrease by agency action is expressly not deemed a breach of contract because the action is anticipated by contract, and should not be viewed as a taking requiring compensation.

Mr. Chairman, I take this opportunity to make certain that this legislation is not intended to supersede these existing contractual provisions. Can the distinguished subcommittee chairman and the manager of the bill provide assurance that water allocation actions by the Bureau of Reclamation and other actions by the Bureau of Reclamation and other Federal agencies that are expressly anticipated by contractual or similar legal arrangements will not be considered compensable agency actions under the bill?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, I can assure the gentleman that the intent of the statute is not to provide compensation to water users in such circumstances. Where a user is guaranteed an allotment of water, but that allotment is reduced in a way that is recognized and anticipated by the user's contract with the Government, the reduction would not be a limitation under this bill requiring compensation.

Mr. RIGGS. Mr. Chairman, I thank the gentleman for his clarification and for his hard work on this legislation.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from Idaho.

Mr. CRAPO. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I would say to the gentleman from Louisiana [Mr. TAUZIN], we just got yielded some time. Maybe we can finish that now.

Mr. Chairman, the gentleman knows the provisions I am looking at. I am looking at the provisions in sections 6 and 7 that talk about payment.

My question is, Mr. Chairman, to the gentleman, are we assured in this statute that an agency must pay compensation when a judgment has been rendered or when a claim has been accomplished under the statute?

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, absolutely. In fact, the legislation specifically says that the agency must provide money out of its own appropriated funds for the payment of these claims and give the agency the right to reprogram money within its budget to do that.

If it does not do that, Congress, of course, has the authority to make sure it does the next time it visits this Congress.

Mr. CRAPO. Just to follow up on that, Mr. Chairman, if an agency failed to pay a claim and then stated their reason was they did not have money in their claim fund or whatever part of their budget was allocated to payment of claims, as I read the statute, it says that if there are insufficient funds in the agency's budget, that the agent shall transfer or reprogram any appropriated funds available to the agency to accomplish that.

So, as I read that, Mr. Chairman, that would mean that in the very next budget cycle, when the agency had a full budget, so to speak, that they would be required to reprogram funds out of their budget to satisfy this obligation, is that correct?

Mr. TAUZIN. Mr. Chairman, if the gentleman will continue to yield, as I understand that obligation, it would become the first obligation of the agency in the next fiscal year, and they would be obligated to reprogram money to do that.

Mr. CRAPO. In that context, then, the agency would not be able to continuously, budget cycle after budget cycle, dodge the obligation of payment here by simply programming funds around or saying that the funds were insufficient?

Mr. TAUZIN. I suspect an agency might try, but the law says they cannot, and I suspect that a lawsuit would lie against them for mandamus by some citizens, or perhaps even this Congress might want to do something with an agency that wants to violate the law every year.

Mr. CRAPO. Mr. Chairman, I would ask the gentleman one other question. On section 5, as we have talked earlier today, subsection 2 says, ''No compensation is made under this act with regard to damage to specific property, other than the property whose use is limited.'' We have debated that language here in other contexts, but I wanted to make it clear, Mr. Chairman, that this was not a wide exemption for all kinds of different arguments to be made by the agency that there is some specific property benefited, is that correct?

Mr. TAUZIN. If the gentleman will continue to yield, that is correct, Mr. Chairman. If the gentleman reads the language, it says that the primary purpose of the agency regulations denying the activity was in fact to prevent harm to someone else.

The CHAIRMAN. The time of the gentleman, Mr. RIGGS, has expired.

Mr. CANADY of Florida. Mr. Chairman, I move that the committee do now rise.

The CHAIRMAN. The question is on the motion offered by the gentleman from Florida [Mr. CANADY].

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. MCHUGH) having assumed the chair, Mr. SHUSTER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, had come to no resolution thereon.

PERMISSION FOR CERTAIN COMMITTEES TO SIT TOMORROW, FRIDAY, MARCH 3, 1995, DURING 5-MINUTE RULE

Mr. BONILLA. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the five-minute rule: the Committee on Commerce, the Committee on Economic and Educational Opportunities, the Committee on the Judiciary, and the Committee on Transportation and Infrastructure.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

Mr. WISE. Mr. Speaker, reserving the right to object, the minority simply wants to say it has been consulted in all these cases and does agree.

Mr. Speaker, I withdraw my reservation of objection.

Mr. SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members are recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. WELDON] is recognized for 5 minutes.

[Mr. WELDON of Florida addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 5 minutes.

[Mr. OWENS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. TOWNS] is recognized for 5 minutes.

[Mr. TOWNS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Colorado [Mr. HEFLEY] is recognized for 5 minutes.

[Mr. HEFLEY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. FILNER] is recognized for 5 minutes.

[Mr. FILNER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. SMITH] is recognized for 5 minutes.

[Mr. SMITH of Michigan addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

FEDERAL FOOD ASSISTANCE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized for 60 minutes.

Mrs. CLAYTON. Mr. Speaker, a compelling case can be made against the proposal to convert Federal nutrition programs into block grants.

That case will be made tonight.

Over the next 2 hours, the American public will hear from many of our colleagues about the dangers of certain provisions of H.R. 4, the Personal Responsibility Act.

That is the bill that contains provisions to slash school lunches and breakfasts.

That bill will remove thousands of women, infants and children from the WIC Program. National nutrition standards will be eliminated by the bill. And States will be able to transfer as much as 24 percent of nutrition funds for non-nutrition uses.

But, the impact of this proposed bill goes even deeper.

Retail food sales will decline by $10 billion, farm income will be reduced by as much as $4 billion and unemployment will increase by as many as 138,000.

The security of America's economy is at stake.

From grocery stores, large and small, to the farmer and food service worker—everyone will suffer. Most States will lose money.

But, the case becomes even more compelling when viewed in a broader context.

The House Appropriations Committee is pushing a recession package that, when combined with the proposed cuts in the nutrition programs, will squeeze those most in need in ways we have not seen in America, since the Great Depression of the 1930's.

Nearly $2 billion will be cut from education programs, including money for drug free schools and educational support for the disadvantaged.

Also $3 billion will be cut from programs that move teenagers from school to work, including complete elimination of the Summer Jobs Program.

Our seniors and veterans do not escape this blind axe

Billions will be cut in federally assisted senior citizen housing. The 2 million needy senior citizens who benefit from the Fuel Assistance Program may go cold. That program will be completely eliminated.

That committee's bill cuts $50 million in funds for veterans' medical equipment and facilities.

Billions of the money saved by these cuts will go to the top 3 percent wage earners in the United States in the form of a 50 percent cut in the capital gains tax.

They want capital gains cuts. We want an increase in the minimum wage. They want block grants. We want healthy Americans.

They want a full plate for those with money. We want to restore Federal food assistance programs. And, we will. The nutrition of our citizens should not be left to chance.

Mr. Speaker, all of the nutrition programs are important.

I would like to highlight one of them to demonstrate the poor judgment of those pushing passage of H.R. 4.

That is the WIC Program. WIC works.

It is a program that services low income and at risk women, infants, and children.

Pregnant women, infants 12 months and younger, and children from 1 to 5 years old, are the beneficiaries of the WIC Program.

For every dollar this Nation spends on WIC prenatal care, we save up to $4.21.

The budget cutting efforts we are experiencing are aimed at reducing the deficit.

The deficit is being driven by rising health care costs.

When we put money into WIC, we save money in Medicaid. The equation is simple.

Those who have a genuine interest in deficit reduction can help achieve that goal by investing in WIC.

The WIC Program embraces the unborn; provides nurturing and care; is devoted to maternal health; helps insure life at birth; and promotes the growth and development of millions of our children.

And, it saves us money.

WIC works. Let's keep it working.

The Committee on Economic and Educational Opportunities has proposed radical changes in the school lunch and WIC programs.

If these changes stand, 275,000 women, infants, and children will be removed from the WIC Program. Nutritious meals served in 185,000 family day care centers will be eliminated. School food programs will be reduced by $309 million.

In contrast, the Agriculture Committee has proposed keeping the Food Stamp Program as an entitlement. The committee is to be commended.

It seems inconsistent, however, to retain food stamps as an entitlement, a program that has had some problems with fraud and abuse, while block granting the WIC and school lunch programs.

Mr. Speaker, last year, we spent just $26 per American taxpayer for the AFDC Program.

Child nutrition programs represented just one-half of 1 percent of total Federal outlays in 1994. The average food stamp benefits is 75 cents per person, per meal. Seventy-five cents. Children aren't driving our deficit.

Senior citizens are not the cause of our economic woes. Programs for the poor do not represent pork.

That is why I maintain that H.R. 4, the Personal Responsibility Act of 1995, is irresponsible.

Mr. Speaker, this Nation is strong, not just because of its military might or its technology.

This Nation is strong because of its compassion.

We care about those among us who are weak—the young, the old, the poor, the frail, the disabled. If our citizens are weak, we are weak.

I hope the American people will pay close attention to the statements by our colleagues this evening.

Change for the sake of improvement is good. Change for the sake of change is not. Something different does not necessarily create something better. Most of us support welfare reform because the current system does not serve us well.

However, the nutrition programs do not need the kind of sweeping change as proposed by the proponents of H.R. 4.

A compelling case against that proposal can and will be made tonight.

And, at the end of the presentations, I ask all to judge for themselves who will be helped and who will be hurt by the proposal to block grant our nutrition programs?

□ 2145

CALL FOR A BALANCED BUDGET

The SPEAKER pro tempore (Mr. MCHUGH). Under a previous order of the House, the gentleman from Michigan, (Mr. SMITH) is recognized for 5 minutes.

Mr. SMITH of Michigan. Mr. Speaker, Thomas Jefferson, in a letter to Elbridge Gerry in 1799, wrote:

> I am for a government rigorously frugal and simple, applying all the possible savings of the public revenue to the discharge of the national debt; and not for a multiplication of officer and salaries merely to make partisans, and for increasing by every device, the public debt, on the principle of its being a public blessing.

I agree with Mr. Jefferson wholeheartedly, and I suspect that most other Americans do as well. Today, the Federal debt is in excess of $4.7 trillion and growing at a rate of $200 billion to $300 billion per year. As the CATO institute has pointed out, this is both an economic and a moral problem. The economic problem is that deficit financing is the ultimate form of hidden taxation. Federal borrowing injects a huge prospending bias into the budget process by allowing politicians to hand out a dollar of Government spending to voters, while only imposing 80 cents of taxes. Nobel Laureate James Buchanan in a 1977 book with his colleague Richard Wagner, alerted us to this problem. In their book Democracy in Deficit, Buchanan and Wagner argued strongly for a balanced budget amendment in order to contain the spending bias of a Government able to increase its expansion into the economy without the political restraints of raising taxes.

Unbridled Federal spending will eventually lead to what economists call monetizing of the debt, which in plain English means that the Government pays for its debt by increasing the money supply. That cheats the lenders and causes inflation. This hidden tax, which Adam Smith called the worst form of taxation, strikes most heavily on those who save. As every senior citizen knows, their security can be wiped out in short order by even moderate inflation. At 8 percent inflation, the Government can effectively take away half of the money one has saved over a lifetime of work in about 9 years.

The moral argument for a balanced budget is that federal borrowing is taxation without representation. Recall the words of the Declaration of Independence which refers to the repeated injuries and usurpations of King George because he imposed taxes on us without our consent. Can't our children make this same claim against a Congress that saddles them with interest payments that are already at $339 billion annually? None of our children and grandchildren currently have a say in the political process that is now putting their future at risk.

On January 26, the House of Representatives passed a balanced budget amendment. Today, it was narrowly defeated in the Senate. This amendment would have imposed much-needed fiscal discipline on Congress and it would have taken away our ability to spend recklessly while sending the bills to our children and grandchildren.

Without this amendment, it will be much more difficult to balance the budget, but I for one am willing to make the hard choices. I call on my colleagues to stop deficit spending, and I call on all citizens to commit themselves to do their part, to sacrifice some of the many things they get from government, so we can balance the budget, look our kids in the eye, and tell them that we will no longer force them to pay future taxes to enhance our current standard of living. As a nation of people who look to the future, and care about our children as much as we care about ourselves, we can make the commitment to balance the budget, and keep that commitment.

IN SUPPORT OF FEDERAL NUTRITION PROGRAMS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. BONIOR) is recognized for 5 minutes.

Mr. BONIOR. Mr. Speaker, let me tell you a story about why the Federal nutrition programs are so important.

Let me tell you about a school in my county.

Not long ago I met with some teachers from a grade school.

They told me that before we instituted the Federal breakfast program that kids came to school late, if they came at all, they were disruptive in class, their attention spans were bad, and they weren't learning.

But then we instituted the Federal breakfast program.

Kids actually showed up a half an hour early and lined up just to get into the school for the breakfast.

As a result, the kids settled down, their learning ability went up, and test scores went up.

It was a tremendous success.

That story is repeated every single day in schools all over America. Every time a kid comes to school hungry, Every time a kid needs to be fed, no matter what his background, whether his parents are poor or middle class. This program makes sure they get a good, nutritious meal.

I can't understand why anybody would want to put that at risk.

If we've learned anything the past 50 years, it is simply this: a third grader can't learn if his stomach speaks louder than the teacher leading class. It's just that simple.

But the changes made by Gingrich Republicans last week in committee will put this program at serious risk.

As a result, I'm afraid we're going to see a diminished quality of learning in our school systems.

Let's be clear what the Republicans voted to do last week.

They voted to cut the school lunch and school breakfast program, to put all that money into Federal block grants, and send them to the States.

And here's what that means. As the school lunch program now works, any hungry child who needs a breakfast or lunch gets one.

If tough times come along and more children need to be fed—then they get the food they need.

Since 1946, the program has operated predictably and smoothly—and worked very well. But by putting this money into block grants, and turning complete control over to the States, all that changes.

Under this formula, each State gets a limited amount of money. When the money runs out, kids stop getting fed.

If tough times hit, under the new formula, kids will get turned away.

To make matters worse, by putting this money into block grants, you put them in direct competition with other programs.

And we all know what's going to happen.

Kids don't have a constituency on Capitol Hill. They don't have as many lobbyists working for their funding. We

all know that when push comes to shove, kids are going to be left out in the cold.

Republicans claim this new formula will reduce bureaucracy. But they seem to forget that by turning this program over to the States, you are in effect opening the door to 50 different sets of guidelines—rather than one standard. And that means 50 new bureaucracies.

Mr. Speaker, there's no reason why kids in Michigan should get any less for lunch than kids in Texas.

But by turning this program over to the States, that's exactly what we'll get.

The reason this program was instituted in 1946 was because many recruits to the military were found to have nutrition problems.

But over the past 50 years, this program has helped make our kids healthier and stronger and fed those who would otherwise go without.

I can understand fixing a program if it's broken. But this program is working fine. It's feeding hungry children. And there's no reason why we should put that at risk.

Mr. Speaker, I thank my colleague the gentlewoman from North Carolina for her leadership on this.

Mrs. CLAYTON. Mr. Speaker, will the gentleman yield?

Mr. BONIOR. I yield to the gentlewoman from North Carolina.

Mrs. CLAYTON. I was just wondering, as you say, less kids would be fed. I have records from the U.S. Department of Agriculture, and you will suffer 279 less young people being fed under your program.

I did not know whether you were aware of that, to back up your statement that kids would not be served, the impact of that.

Mr. BONIOR. I know the cuts in dollars to the State of Michigan and as it will affect other States in this country, that there will be hundreds of thousands of youngsters in America who will not get the nutrition they need to perform well in school.

SUPPORT UNRESTRICTED LEGAL IMMIGRATION

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Florida [Ms. ROS-LEHTINEN] is recognized for 5 minutes.

Ms. ROS-LEHTINEN. Mr. Speaker, my parents and I arrived in this country in the early 1960's after escaping the totalitarian dictatorship of Fidel Castro in Cuba with the dream of starting a new life in freedom. Soon after arriving, my family and I were able to learn why this great country was seen around the world as the land of opportunity. After much hard work, my parents were able to settle into their new home and provide us children with the foundations for our future prosperity. That same dream of freedom and democracy that my parents had is still shared by the immigrants who arrive to this country today.

Unfortunately, I am afraid that today, across the Nation and in some of our political leaders, there is a current which runs against this desire. The current, instead, runs in favor of severely restricting and even ending legal immigration. This movement is fed by the incorrect notion that immigrants are attracted to the United States because of our social programs and soon after arriving, they become a burden on the State.

Mr. Speaker, the facts do not back this notion. The reality is that immigrants have made positive contributions to virtually all sectors of American life. In the economic spectrum especially, immigrants have clearly been prominent participants in the growth of the U.S. economy. For example, in my hometown of Miami, the number of businesses, large and small, owned by Cubans has grown from barely 900 in 1967, to over 28,000 in 1990. As a matter of fact, 18 percent of all small businesses are started by immigrants. This is the entrepreneurial spirit and personal initiative we in this country admire, and which the Founding Fathers of the United States tried to instill to future generations.

Moreover, it has been estimated that legal immigrants pay a combined $70.3 billion a year in taxes while receiving $42.9 billion in services. Add to this the immense amount of human capital which legal immigrants bring to this country and there is little doubt that refugees have been an integral part of the U.S. economic success story.

Mr. Speaker, it will be a sad day in U.S. history when we no longer look at immigration as positive for our Nation's prosperity. No other country can share stories like that of Pablo Fonseca, a Cuban who arrived in the 1980 Mariel boatlift and just 2 years later had already graduated from Miami-Dade Community College with high honors. He then proceeded to the University of Florida and later obtained his dentistry degree from the University of Indiana while winning numerous honors and awards. Today, Dr. Fonseca is a practicing dentist, full of admiration and gratefulness for this country. As he himself said, ''This great country is a place of unlimited opportunities. As long as you try hard and you know where you are going, the sky's the limit.''

Or the story of Edith Bolt, a Nicaraguan who arrived in Miami in 1985 as a teen with no knowledge of English. After graduating from Miami Beach Senior High School in 1989 and attending Miami-Dade Community College for 2 years, Edith proceeded to graduate magna cum laude with a bachelor's degree in finance from Florida State University. Today, she works in the action-packed world of finance as a credit analyst for a Miami bank.

Or the story of Winy Joseph, a young woman from Haiti who also knew no English but through ESL courses was able to learn the language. Today, Winy attends Miami-Dade Community College and plans to continue her studies in the field of international relations.

And finally the story of Jorge Sierra, another Cuban who emigrated in 1992 to the United States at the young age of 21 without knowing a word of English. Today he is a fluent English speaker who has successfully obtained a degree in computer science and works as a software developer.

Mr. Speaker, these are just four stories of the thousands which show the determination and hard work of immigrants in their drive to forge a new life of success. More importantly, these are the stories that make America great, that separate this country from all others. Where else can the daughter of Cuban refugees who fled their homeland in search of a new life become a member of the National Government? Only in America.

Mr. Speaker, I dare say that all my colleagues in this body know of many immigrant success stories. Whether it is the small businessowner, or the son or daughter of an immigrant who is now a doctor or a lawyer after much hard work from the parents; all of us know of immigrants who have succeeded through honest, hard work. To turn our backs on these American residents who share the same dreams and hopes as native born Americans would be detrimental to this country and would betray the spirit of freedom and opportunity of which we are so proud.

□ 1000

CHILD NUTRITION PROGRAMS

The SPEAKER pro tempore (Mr. MCHUGH). Under a previous order of the House, the gentlewoman from Connecticut [Ms. DELAURO] is recognized for 5 minutes.

Ms. DELAURO. Mr. Speaker, I have listened to my Republican colleagues over the last several days get up here and tell the American people that by cutting the School Lunch Program that they will be able to feed more children. I think it is time to set the record straight.

In the fantasy world of the Republicans, higher food prices and larger school enrollments simply don't exist. But they do exist in the real world and current law allows funding for child nutrition programs to keep pace automatically, especially during difficult economic times. This is where the Republicans' block grant proposal fails and where our kids would get hurt.

Republicans argue that their proposal would increase child nutrition program funding by 4.5 percent every year. But this is deliberately misleading. Their so-called increases would not keep pace with food price inflation and rising program enrollments. Under the Republicans' plan, according to the Center for Budget Priorities estimates, school-based nutrition programs would be cut by $190 million in 1996 and $2.3

billion over 5 years. Family-based nutrition programs would be cut by $680 million in 1996 and $4.6 billion over 5 years.

The Republicans say their plan frees up more money for food by making the programs less bureaucratic. This is preposterous. The Republicans' proposal would actually make the programs more bureaucratic by creating 50 new bureaucracies to administer 50 new programs. This will only increase administrative costs for the States, and ultimately mean less food for children. The fact is the Republicans would not be cutting Federal bureaucracy, they would simply be cutting Federal funding.

I am especially concerned about the impact this block grant proposal would have on the School Lunch Program—a program that serves free and reduced priced lunches to over 104,000 children in my home State of Connecticut every day.

I met today with two special people who run a program in my district called Boys Village. This program provides community-based and day treatment services for at-risk children. Every day, Boys Village feeds breakfast and lunch to all the children enrolled in its program. To help do this, they receive $30,000 a year from the National School Lunch and Breakfast Programs.

The budget for this remarkably successful program is small. If funding for its nutrition programs was substantially reduced, or eliminated, which is possible under the Republicans' proposal, Boys Village would have to make some tough choices.

Those are not pleasant choices, Mr. Speaker. And they're choices that all School Meal Programs will be forced to make. They will have to either eliminate meals, increase prices, or reduce the quality and quantity of the well-balanced, nutritious meals that kids currently receive.

Newt Gingrich, who spoke so highly of the Boys Town of yesteryear, should wake up and see what the Boys Villages of tomorrow will be like if he has his way. They will not feature the smiling faces of the movie version. It will be more like the Dickens' version, with hungry children holding out their tin cups and begging for more.

Child Nutrition Programs in this country will be a pale imitation of what they are today. Enrollment will decrease, nutritional standards will diminish, and the health of our children will suffer.

It is a vision of hungry kids who are not healthy, alert, and ready to learn—all this so the Republicans can pay for tax breaks for the wealthy. This Republican scheme must be stopped. I urge my colleagues to keep up the fight.

Mrs. CLAYTON. Mr. Speaker, will the gentlewoman yield?

Ms. DELAURO. I yield to the gentlewoman from North Carolina.

Mrs. CLAYTON. Would you just comment on the fact that most of the time when we think about changing things, we want to correct them; do you see anything wrong with the school lunch and the WIC program? Is there fraud or something we know that is going on that it is not effective? Why are we changing the school lunch program? Is there some reason that would help us understand? Are we improving it? Why are we changing it?

Ms. DELAURO. My colleague has put her finger really on the crux of this issue. I say do not listen to all of us tonight, listen to us, but talk to the people in our districts who run these programs. These are successful programs. They work. They are living up to the objectives that they were created for, and it is foolish for us to unravel these very fine programs and create difficult problems for our youngsters and, quite frankly, for our economy in the future.

And once again, I thank the gentlewoman from North Carolina.

REPUBLICAN SCHOOL LUNCH PROGRAM INCREASES FUNDING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. FOX] is recognized for 5 minutes.

Mr. FOX of Pennsylvania. Mr. Speaker, the school lunch program under the Republican majority proposal will actually increase the current $4.5 billion budgeted to $4.7 billion for fiscal year 1996.

The other side of the aisle would have you believe the school lunch program will be eliminated. This is pure fiction.

Republicans propose to actually increase by 4.5 percent more on school lunches in 1996 and 4 percent for each year thereafter for the next 5 years.

They key to delivering more to our local schools is accomplished by eliminating the Federal bureaucrats and their involvement, and directly sending aid to the States for our local students. Through this block grant, the weight of the unnecessary Federal paperwork will be eliminated.

Now, the Federal Government——

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

Mr. FOX of Pennsylvania. I will when I complete my statement.

The SPEAKER pro tempore. The gentleman will not yield at this time.

Mr. POMEROY. The full 5-minute statement or the sentence?

Mr. FOX of Pennsylvania. Now, the Federal Government, Mr. Speaker, wastes 15 percent of the school nutrition money——

Mr. POMEROY. Mr. Speaker——

The SPEAKER pro tempore. The time is controlled by the gentleman from Pennsylvania.

Mr. POMEROY. Mr. Speaker, point of clarification, I am not sure when the gentleman is going to yield to me for my question.

The SPEAKER pro tempore. The gentleman controls the time, and he has declined to yield.

Mr. POMEROY. Does the gentleman yield? He said he would yield.

Mr. FOX of Pennsylvania. Mr. Speaker, I would like to continue my speech.

The SPEAKER pro tempore. The gentleman controls the time.

Mr. POMEROY. The gentleman did not yield.

Mr. FOX of Pennsylvania. Mr. Speaker, it wastes 15 percent——

Mr. Speaker, do I have the floor?

The SPEAKER pro tempore. The gentleman from Pennsylvania controls the time.

Mr. POMEROY. Does the gentleman yield?

The SPEAKER pro tempore. The Chair has repeatedly stated that.

Mr. POMEROY. He said he would yield.

Mr. FOX of Pennsylvania. I did not say that. I said I would yield at the end of my speech.

The SPEAKER pro tempore. The gentleman controls the time and has refused to yield.

Mr. FOX of Pennsylvania. Thank you, Mr. Speaker.

Now, the Federal Government wastes 15 percent of the school nutrition funds for administrative costs alone, and under the majority Republican proposal, more children will be fed, and only the bureaucrats of Washington, DC, will be the ones disappointed.

The successes of our school lunch program at Penn Dale Middle School in Lansdale, Montgomery County, was observed by me firsthand on Monday.

Motivated students are involved in planning menus, dedicated faculty are working closely with home economics classes, and most of all, Dorothy Irvin, as our food service coordinator, is doing an outstanding job working with principal Donald Venema to make the program work.

They have understood that what we have discussed here is more money for the school district, more money for the program.

In summation, Mr. Speaker, we believe the key to the school lunch program and the proposal we have before the Congress now will have more dollars spent on direct services for children and less on the administrative paperwork that helps no one, and I believe, Mr. Speaker, it is in the best interests of everyone.

CHILDHOOD NUTRITION PROGRAMS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California [Ms. ROYBAL-ALLARD] is recognized for 5 minutes.

Ms. ROYBAL-ALLARD. Mr. Speaker, Americans want streamlined and efficient government, but they also expect Congress to be fair and responsible.

They did not ask us to achieve these goals at all costs, especially if it means

jeopardizing the future of our defenseless children.

Republicans claim their proposals to cut crucial nutrition programs are aimed at bureaucrats, but the real victims of these deadly cuts are the children of America.

The pain and suffering of childhood hunger can be seen in each of our 50 States.

Children who pass out on the school playground because of hunger;

Children who have learned the heartbreaking skill of stretching one packet of cheese flavoring for three meals of macaroni and cheese; and

Children who literally sob from the pain of stomach cramps because they have not eaten since the previous day.

These scenarios are not grossly exaggerated fictional accounts concocted to illustrate my point.

They are actual examples of childhood hunger in this country recently documented in the Los Angeles Times of children without the benefit of nutrition programs.

These tragic scenarios will become more frequent and more severe if Republican proposals to block grant vital nutrition programs are approved. For they will limit the money that will be available to feed our children.

Scientific evidence reveals that children are far more susceptible to the harmful effects of nutrient deprivation than previously known and, according to physicians, results in lifelong damage.

Once physical growth and cognitive development have been impaired, the damage is often irreversible.

The highly effective WIC and the national school lunch programs protect children from the physical and mental ravages caused by hunger.

As a direct result of Federal nutrition programs, growth stunting has declined by 65 percent according to the USDA.

The General Accounting Office reports that the WIC program saves $3.50 in special education and Medicaid costs for every prenatal $1 it spends.

In my home State of California, almost 2½ million children participate in these nutrition programs.

The future of these and other children is now endangered by the irresponsible and heartless cuts proposed by the Republican majority.

Teachers in the Los Angeles Unified School District, as in school districts throughout this country, support the school breakfast and school lunch program.

They know first-hand that children who are well-nourished are more alert, more attentive and more eager to learn as contrasted with hungry children who are listless and can barely raise their heads from their desks.

While children will be the first victims of the Republicans' callous and ill-conceived program cuts, all Americans will ultimately pay the price when our young people cannot fulfill their academic potential and cannot grow into productive workers.

As a result, our Nation will no longer be a global competitor.

To deny food to our children is a betrayal of our values and our future as the richest Nation on Earth.

It is imperative that we maintain this safety net of nutrition for America's Children.

How can we in good conscience afford to do less?

Mrs. CLAYTON. You had emphasized the value of nutrition for education. I just wanted you to expand on that in terms of the value of nutrition to reduce the cost of health care. Part of, obviously, why nutrition is valuable is to make sure young people are healthy, and when they are not healthy, the cost of health care goes up.

Ms. ROYBAL-ALLARD. Absolutely. If you talk to teachers throughout this country, they will tell you when children go to school hungry, not only do they not learn, but they are much more susceptible to disease and, therefore, the cost of health care is also increased.

Mrs. CLAYTON. I was thinking in this atmosphere of reduction and deficit reduction, it seems to be pound-foolish and to be penny-wise in trying to cut back on nutrition programs when you put at risk not only kids' learning abilities but also raise the cost of health care. It seems like if we were trying just to reduce the budget, we have chosen the wrong program, the WIC program, to do that or the school lunch program to do that.

□ 2215

Ms. ROYBAL-ALLARD. Absolutely, because in the long run I guess it is going to cost society much, much more.

REPUBLICANS STARVING CHILDREN TO PAY FOR THEIR CONTRACT ON AMERICA

The SPEAKER pro tempore (Mr. MCHUGH). Under a previous order of the House, the gentlewoman from California [Ms. WOOLSEY] is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, first I would like to thank the gentlewoman from North Carolina [Mrs. CLAYTON] for organizing tonight's special orders. She is so appreciated.

Mr. Speaker, I know personally the fear of not having enough money to buy food for my children. Twenty-seven years ago I was a single working mother with three small children forced to rely on Aid For Dependent Children and food stamps in order to give my children the health care, child care and food they needed. That experience never leaves me, Mr. Speaker. It is the basis for my commitment to make sure that every child enters the classroom safe, healthy and ready to learn, and without nutrition programs this will not be possible.

That is why I am shocked that at the same time Republicans are talking about taking school lunches away from almost 7,000 children in my congressional district, Mr. Speaker, they are refusing to cut pork barrel military projects like the F–22 fighter plane.

Health care providers, parents and teachers all know that the school lunch program is crucial to our children's education and to their health. In fact, the school lunch program is the source of more than one-third of the recommended daily allowance for the children it serves. Clearly, Mr. Speaker, eliminating Federal school meal programs, cutting funds and giving what is left over to the States is no way to take care of our children. Rather we should be talking about full funding our school lunch programs and full stomachs for our kids.

In fact, I have only one thing to say to this pea-brain plan. States do not get hungry, children do, and the public is not going to allow the Republicans to starve children just so they can pay for their Contract on America.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts [Mr. FRANK] is recognized for 5 minutes.

[Mr. FRANK of Massachusetts addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

REPUBLICAN PROPOSALS ARE PLACING THE WELL-BEING OF OUR CHILDREN IN JEOPARDY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. BISHOP] is recognized for 5 minutes.

Mr. BISHOP. Mr. Speaker, I would like to express my deep concern over Republican proposals that would excessively cut nutrition programs—proposals which could jeopardize the future of our children and our ability to compete in the global economy.

Our country has had a long-standing, bipartisan commitment to ensuring an adequate nutritious diet for our most vulnerable citizens. Members on both sides of the aisle have always before recognized that the country's strength depends on having a healthy, productive population, and nutrition programs contribute substantially to that goal.

The School Lunch Program was started in 1946 as a national security measure in response to the large number of men enlisting in the armed forces who were found to be malnourished. Other Federal nutrition programs, such as the Food Stamp Program and WIC, were developed in response to findings of widespread hunger in the late 1960's. In 1967, for example, the Field Foundation sponsored a study that was shocking to much of America. It found that hunger and poverty were shortening the lives of many

thousands of young people in parts of the rural south. And if it was happening in the rural south, it was certainly also happening in many urban areas of the country where poverty was prevalent.

Federal nutrition programs have made a big difference in improving the lives of needy children and their families. These programs have given children access to better diets, which, in turn, has led to better health and a greater ability to learn in school and become productive citizens.

I have seen the results of the nutrition programs in my own State. In Georgia, more than 400,000 low-income children per month receive benefit of food stamps which help their families purchase nutritious food. More than 200,000 Georgia children receive help for school breakfasts and more than 450,000 receive help for school lunches.

These programs provide a vital safety net. Last year, for example, the Food Stamp Program provided emergency help for many families who lost their homes and their livelihoods in the flooding which struck parts of the area of Georgia I represent. Countless stories can be told of how nutrition programs have literally saved families during times of emergency.

Some of the untested reform proposals being discussed in Congress would threaten to slash nutrition funding for school children, for mothers and infants, for the elderly. If these programs can be better managed, fine. But simply slashing the level of funding or capping it arbitrarily would inevitably lead to increased hunger and all of the suffering and costs that are associated with poor nutrition. We can ill afford, Mr. Speaker, to place the health and well-being of our children, our economy and the country as a whole in jeopardy by turning back the clock on the gains that have been made over the past half century.

Let us cut short the Republican plans to cut short the nutrition programs so vital to America's women, infants, children and seniors.

Mr. Speaker, I yield to the gentlewoman from North Carolina [Mrs. CLAYTON].

Mrs. CLAYTON. Mr. Speaker, I was just looking at this report from the U.S. Department of Agriculture and looked at the State of Georgia and noted that over 108,000 persons will have less nutrition than they have now. These include school aged children, pre-school children, as well as school children in special programs. That is 108,000 less in Georgia, and I know the gentleman would be concerned about that so I wanted to bring that to his attention.

Mr. BISHOP. Mr. Speaker, I am happy the gentlewoman pointed that out because I come from a district that has some of the poorest counties anywhere in the United States, and we have numerous individuals and families that suffer from malnutrition, and we have low birth weight babies that are born which ultimately has to be paid for by Medicaid, and it is a lot easier and a lot cheaper on society and on our taxpayers if we pay for a $6,000 delivery as opposed to a $150,000 delivery with incubation for that low birth weight baby.

Mrs. CLAYTON. I agree.

THE WIC PROGRAM IS WORKING

The SPEAKER. Under a previous order of the House, the gentleman from Texas [Mr. STENHOLM] is recognized for 5 minutes.

Mr. STENHOLM. Mr. Speaker, I have spent all of my life in the food processing end of the business. I have spent the last 16 years of my life learning more about the consuming side our food industry. In the last few days I have spent a lot of time talking to the school lunch room administrators, school superintendents back home in my district, and they confirmed a belief that I already had, that our school lunch and breakfast programs are not broken, and I am puzzled why some seek to fix them.

But tonight I want to spend a few minutes talking about a program that I have become very supportive of, and that is the WIC Program. When I first heard of it, Mr. Speaker, I was supportive because it did one thing that was sort of important. It fed children. But 4 years ago in the House Committee on the Budget I had an experience of sitting and listening to four CEOs of four of the larger corporations of America who had come before the Committee on the Budget for one purpose that day, and that was to convince us in the Congress to fully fund the WIC Program, not just 40 percent or, at that time, 30 percent, but to fully fund it, and I listened with quite a bit of attention and some considerable interest. I listened to those CEOs first say that they hire tens of thousands of young men and women every year to work for them in their respective businesses, and they had to retain 70 percent of all of those who came to them, and they said, and I paraphrase what they basically told us that morning, but it was that at first we looked at our school system, we looked at our kindergartens, our grade schools, our middle schools, our high schools, our colleges, where we were fumbling the ball, but the more we looked, the more we came to the conclusion that we were really fumbling the ball by not giving every child born in America a healthy start. They came to us that morning and suggested that, if we had to cut anywhere, even in feeding programs, to cut anywhere other than the WIC program because unless a child has a healthy start from the womb through the first 3 or 4 years of its life, that child will be a health problem the rest of its life. With all odds it will be an educational problem. Eventually it will become a crime problem, and we only have to remember the discussions we have had in this body not too long ago about how much we are spending on crime.

Mr. Speaker, those were the words of four CEOs, and those words should be listened to with a great deal of interest as we debate the priority settings that are going to be necessary.

As my colleagues know, I, too, lament the fact that we failed to pass the balanced budget constitutional amendment today. But even if we were spending only that amount of money that we have today provided for us, not borrowing $200 billion, I would still be here tonight saying of the 1,300,000,000 we will spend that we have that the WIC program is one that we should, in fact, be prioritizing, certainly not cutting. We perhaps ought to be looking for ways in which we could increase that program because it is one of the better investments we could make.

We have already heard that every dollar we spend on WIC provides from $1.92 to $4.21 in Medicaid savings. Those are demonstrated factual savings that have been confirmed and reconfirmed by so many who also believe in this program.

So I commend the gentlewoman from North Carolina [Mrs. CLAYTON] for getting us together tonight and talking about the need of taking another look, and I would encourage my colleagues on the other side of the aisle to take another look at the feeding program reductions, particularly though to take a look at the idea or the suggestion that WIC should be cut. I believe that, if my colleagues will look at the facts and not listen to only the whims of the current desires, that they will find, as I have done, and those four CEOs came to the conclusion 4 years ago, the WIC program is a good program, it is working, it needs to be increased in funding if we possibly can find it, but it certainly does not need to be cut.

Mr. Speaker, I yield to the gentleman from Georgia [Mr. KINGSTON].

Mr. KINGSTON. As the gentleman has spent a considerable amount of time trying to balance the budget, he knows that the WIC program in the rescission bill is cut 2 percent, and the money that was cut is money that the WIC program is not using.

Mr. STENHOLM. Well, I do not know that to be a fact. In fact, regardless of the numbers that we might talk about, et cetera, we are still only going to be providing for what percent of the children?

Mr. KINGSTON. Well, 2 percent of the money that is being cut from WIC represents money that the WIC program was not using.

Mr. STENHOLM. But we are only feeding 40 percent of the possible children, so it would seem to me rather than making that cut we ought to be looking for ways to make the program work better and reach out to the other 60 percent of the children that we are not feeding.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon [Mr. DEFAZIO] is recognized for 5 minutes.

[Mr. DEFAZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman form California [Ms. PELOSI] is recognized for 5 minutes.

[Ms. PELOSI addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. PASTOR] is recognized for 5 minutes.

[Mr. PASTOR addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Georgia [Ms. MCKINNEY] is recognized for 5 minutes.

[Ms. MCKINNEY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Florida [Mrs. MEEK] is recognized for 5 minutes.

[Mrs. MEEK of Florida addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

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SCHOOL NUTRITION PROGRAMS

The SPEAKER pro tempore (Mr. MCHUGH). Under a previous order of the House, the gentleman from North Dakota [Mr. POMEROY] is recognized for 5 minutes.

Mr. POMEROY. Mr. Speaker, I am not much of a statistician, but when we are talking about children and nutrition, this is what I think it is all about. The opening statement of the National School Lunch Act of 1946 includes the words, ''It is hereby declared as a matter of national security to safeguard the health and well-being of the Nation's children to provide for the establishment of nonprofit school lunch programs.''

Even in 1946, our Nation realized there was a significant need to invest in the health and diets of its citizens, most particularly its kids.

Since the implementation of the National School Lunch Act and the Food Stamp Act, these and other food assistance programs have received broad support from the people of this country and the results are in. We have gotten our money's worth. Successful health outcomes have resulted. Growth stunting has decreased 65-percent. Low birth weight has plummeted. Iron deficiency anemia among preschoolers has been dramatically reduced. These successes can be seen in the WIC program, the school lunch and breakfast programs, and the child and adult food care programs.

Now, some lawmakers in Washington want to significantly reduce the funds and fundamentally change the way we extend quality nutrition to kids and other deserving Americans. The proposal being debated that we have been discussing this evening would scrap several well-working nutrition programs, cut funding, and send the reduced amount back to the States. They call it block granting. I call it blockheaded.

The designers of this program intend for these block grants to reduce the Federal spending on domestic food aid, give the States more power. States would be allowed to consolidate and target the programs.

I am all for State power and flexibility. I think that is a good idea. But if this block granted proposal becomes law, many nutrition programs that we now have will have to compete against one another for the reduced funds that would be available. Imagine being the State administrator, forced to pick between programs for seniors versus programs for infants, school age children versus day-care kids. These are all worthy nutrition recipients, competing for support that under the proposal would be dramatically below what we have extended presently and for the past several years.

The U.S. Department of Agriculture released numbers just Monday that indicated my State, North Dakota, would alone see a total reduction of $53 million over the next 5 years. Now, this is a cut that goes far below any so-called bureaucratic or paperwork savings that they claim would result. This is taking meals from seniors, lunches from school children, milk from toddlers at day-care centers.

Certainly North Dakota under its block grant authority, like any other State, wants to do well by the nutrition for our citizens. I trust the State officials to look after that. But under this reduced funding level, cuts will be certain, meals will be withdrawn.

You know, at the age of 41 last year I became a father for the first time? I am now the parent of a 16-month-old beautiful little girl, and it has given me in particular an interest in what is available for day-care, because I know all over the country we got parents really worried about quality day-care and affordable day-care.

Last weekend I met about over a dozen parents and day-care providers in North Dakota, and they told me that the access they have to the child and adult food program, one of several, by the way, being eliminated under the block grant program, has been vitally important to them. They have written in fact across the State of North Dakota over 300 letters from day-care providers, and what they tell me says an awful lot about how ill-advised these program changes are.

Let me quote to you from these letters. One woman who provides day-care writes,

> The meals eaten at day-care are the healthiest meals some of our children have each day. I do not feel that the discretionary funding for children's nutrition programs will have a positive effect on our children. In fact, it may harm many. We would be in direct competition with other programs within our State that receive the funding.

A parent writes,

> Without the food program to assist her, my day-care provider, as well as many others, will not be able to keep taking care of the children and still make enough money to make ends meet. She has considered raising her prices to help make up the cost of assistance if the program is no longer available. If she does raise her hourly wage, some families will not be able to afford to pay her the price she requests.

These and other testimonials from those most directly affected show that consolidation of the day-care feeding programs are a terrible idea, they will raise costs for parents, they will reduce the quality of nutrition for our kids, and they must be stopped.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from South Dakota [Mr. JOHNSON] is recognized for 5 minutes.

[Mr. JOHNSON of South Dakota addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

DON'T HURT THE CHILDREN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Louisiana [Mr. FIELDS] is recognized for 5 minutes.

Mr. FIELDS of Louisiana. Mr. Speaker, today I had a very, very important visit from my district. I had a visit from a very, very young kid, whose name is Jonathan Edwards. He is a kindergarten student. He is 6-years of age. He walked into my office and he had some little red buttons, and he pinned a little red sticker on each member of my staff. He walked into my office and he indeed stuck one on me. And it indicated ''Don't hurt the children.'' Don't hurt the kids.

I gave him a big hug and we talked about some of the things that were taking place in Baton Rouge, and we also talked about what is taking place here in Washington. He walked out of the office, Mr. Speaker, and I could not help but think about what is taking place right here in Washington, DC as this little kid tried to make some sense of what is taking place here in the midst of this debate.

I thought about Healthy Start, and I thought about the cut of $10 million in a program that is so important to our young people. I thought about the WIC Program, $25 million will be cut; 50 to 100 thousand expected mothers will be taken away from this program. I

thought about the fact there are so many babies that die, Mr. Speaker, after they are born, because their parents do not have proper prenatal care. And I was looking at little Jonathan, and it made me think what shameful condition in this country when we take money away from mothers who want to have productive children, who want to bring birth to kids who can live and who can survive.

Then I thought about educational cuts, $1.7 billion in educational programs, and I could not help but think about the $500 million that we cut in the program called Drug Free Schools and Communities. And how can we, Mr. Speaker, cut $500 million, totally eliminate drug free schools in communities, when drugs in our schools and communities are going up and not coming down?

What are we saying to our children? Just say no to drugs? Or just say no to drugs is the moron's answer to the drug problems? And it was that simple, we would not even need schools. We would simply tell kids, just say yes to math, just say yes to science. But that is not the answer to the drug problem. We must teach kids drug education.

Then I could not help but think about the fact we are cutting $100 million from elementary and secondary infrastructure, school infrastructure. We have jails and prisons in this country, Mr. Speaker, that are in better condition than our schools. You take a school in my own Parish, Red River Parish, where the ceilings are leaking everyday. Every time it rains, students cannot stay in the classroom because the ceilings are leaking, not to mention the fact that the air conditioner does not work during the summertime and the heat does not work during the wintertime.

This same Congress, just when we took away $100 million of money for infrastructure for schools, we just appropriated $10.5 billion for jails. So if you are a prisoner in this country you have great air condition, the ceilings do not leak, and you have an opportunity to be in a building that is built well and well maintained.

Then I thought about the $28 million from the Dropout Program that was cut. Realizing that 86 percent of the people in this country who are in jail are high school dropouts, there is a serious correlation between education and incarceration. But yet we find the need in this Congress to cut $28 million from the Dropout Program.

Then I thought about the summer jobs program. I guess that irked me almost the most, because I thought the Contract With America was to take people off of the welfare roles, but not to take kids off of the payrolls; to take innocent kids in the summertime who finished school, and all they have to do and look forward to is a summer job, to totally eliminate that program. Now we are going to have kids on the streets, more crime indeed. Kids who go and work during the summer will not be able to do it this summer if this rescission package stays as it is today. These kids take that money and buy their school clothes. Many of them help their parents.

Then I thought about, lastly, but certainly not least, the school lunch program. And I take a moment of personal privilege on the school lunch program because I am indeed a person who went through school and who benefitted from the school lunch program. And to think that this Congress would have the audacity and unmitigated gall to take school lunches away from innocent children, when in jails, when prisoners in jail today get three square meals a day. It is popular to feed a prisoner in this country, but it is not popular and is not correct to feed a child.

Then what really irks me, Mr. Speaker, at the time we take food out of the innocent kids' mouths, we give $1.2 billion in food aid to foreign countries. At the time we take away summer jobs, we give $2.3 billion to economically support other countries.

So I hope that my colleagues defend these children and defend what is right and take this opportunity to defeat this rescission package when it comes to the floor.

PARLIAMENTARY INQUIRY

Mr. KINGSTON. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. KINGSTON. Mr. Speaker, since the other side has obviously a coordinated effort here to really have not just a series of 5-minute special orders, but a number of them, could we please be tight on the time? Because there are folks on this side of the aisle who want to keep in the spirit of the 1 hour here and 1 hour there. I would ask perhaps without a ruling form the Chair that, and I suppose Mrs. CLAYTON is in charge, that you could be a little tighter on your time so we could have the chance to talk, unless you want to yield some time to us?

The SPEAKER pro tempore. In response to the gentleman's parliamentary inquiry, the Chair would state for Members who have spoken this evening on both sides of the aisle, the Chair has attempted to remind them of that 5-minute limit, and will continue to do so.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. MASCARA] is recognized for 5 minutes.

[Mr. MASCARA addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

EFFECT OF CONTRACT WITH AMERICA ON CHILDREN

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York [Mrs. MALONEY] is recognized for 5 minutes.

Mrs. MALONEY. Mr. Speaker, if passed, the Republican contract's war on children will have a devastating impact on New York City.

The Republican contract would cut assistance for children across the board including large reductions in: school lunches and breakfasts, nutrition programs, food stamps, medical care, education, and housing programs.

In the contract's plan to cap the food Stamp Program, New Yorkers would lose $300 million in the first year alone. A food stamp reduction of that magnitude could prevent as many as 190,000 children from receiving assistance.

In the contract's plan to lower child nutrition costs, New York State stands to lose $70 million in assistance by 1996, and $600 million by the year 2000.

This contradicts the overwhelming evidence that child nutrition programs lower the possibility of low birthweight and anemia in children.

In the contract's plan to eliminate the school lunch and school breakfast programs, over 800,000 children in New York City will be forced to pay more for breakfast and lunch.

I would really like to know where are they going to get that money to eat.

Schools will have to choose either to cut back on the quality of food or simply not provide lunches for children who need to eat.

There is even talk that the Summer Meals Program might be eliminated altogether.

Mr. Speaker, even President Richard Nixon supported school nutrition programs when he stated, ''A child ill fed is dulled in curiosity, lower in stamina, distracted from learning.''

These cuts are callous and mean-spirited. They not only affect child nutrition programs, but they also affect many other well deserving programs.

The contract would cut Medicaid and Medicare by $33 billion over the next 7 years.

In an effort to dismantle Federal nutrition programs, the Republicans voted to expand the profits of four U.S. drug corporations of up to $1 billion by elminating a competitive bidding process for infant formula. As a result, these four companies can raise their prices and pad their profits.

What does that say about our family values?

The Republicans voted to cut $1.3 billion in heating assistance to needy families while at the same time voting for a $6.5 million pork-barrel visitor center with a complete heating system for a Republican's district in Oregon.

What does that say about our family values?

The Republicans voted to eliminate 185,000 meals a day for children in family day care homes while at the same time voted to continue spending tens of billions of dollars on the F–22 fighter.

What does that say about our family values?

It has become very clear that the Republicans are forcing children to pay

the heaviest burdens for their pet projects.

Mr. Speaker, the Republican recently proposed budget cuts inflicts even more damage to programs for children. Their plan has proposed:

A $10 million cut for Healthy Start—a program which gives needed pre-natal care to expectant mothers.

A $25 million cut for the Women, Infant, and Children [WIC] program that would knock 100,000 expectant women and newborn children out of a program which provides badly needed nutrition assistance.

A $100 million cut for foster care.

Mr. Speaker, why was there not a single Defense Department or pork barrel project considered?

The petrified pork civilian marksmanship program still wastes $2 million a year for free ammunition and recreational shooting.

What ever happened to America's family values? This plan is headed in the wrong direction.

FOOD FOR AMERICA'S CHILDREN MUST HAVE PRIORITY OVER SUPPORT FOR FOREIGN GOVERNMENTS

The SPEAKER pro tempore (Mr. MCHUGH). Under a previous order of the House, the gentleman from Alabama [Mr. HILLIARD] is recognized for 5 minutes.

Mr. HILLIARD. Mr. Speaker, the children of Alabama, like those of the rest of the Nation, depend on the food programs of the Federal Government. Some come from very needy families who cannot afford to feed their children.

In my district, one of the poorest in the Nation, these food programs for kids make the difference between health and sickness, or between the ability to concentrate or become distracted from their class studies. These programs make the difference between a successful student and one who fails.

In the 7th district of Alabama, nearly two-thirds of students served cannot afford to pay. Even field kids who cannot afford to pay for their breakfast meal under Federal guidelines receive food. Mr. Speaker, this is a catastrophe. We must take care of our kids. We must protect our kids. Cutting food programs will literally take food out of the mouths of young kids. This we cannot afford to do.

Mr. Speaker, we must prepare for the future. Those of us who wish to balance the budget do not wish to balance the budget on the backs of kids. There are so many other ways and methods we could make cuts in order to balance the budget.

Mr. Speaker, last year we spent $4 billion defending Japan. Japan paid the United States $2 billion of that $4 billion we spent. We will spend $2.4 billion over the next five years that will be taken from the food program for the support of Japan.

Mr. Speaker, last year we spent $18 billion defending Europe. We will take $2.4 billion from the food program over the next five years.

Mr. Speaker, one year of defending Germany or defending China or defending the world will support the food program in this country for 5 years. I submit that we should take priorities, and that the number one priority should be our children.

Mr. Speaker, most of us would love to balance the budget. Each one of us, regardless of our party, believe in balancing the budget, but we cannot balance it at the expense of our children. I am opposed to including children's nutrition programs in block grant form. I am opposed, because I realize that, like my State, which is a deficit State, that money will be used for other purposes, directly or indirectly.

Let me say, Mr. Speaker, exactly how that would happen. If the money is sent directly to the State, and it is not earmarked just solely for food programs, but for other indirect costs associated with administering that program, then that money will be spent for highways, it will be spent for roads and bridges, it will be spent for other programs, and it will happen in this manner.

The money will go to the States, earmarked for the administration of the food program. Instead of buying food supplies, that money will be used to pay salaries of workers. At the present time, Mr. Speaker, the Federal program pays for the food supplies, and the State program matches it by paying salaries of the workers.

I am certain that the State will not pay the salaries of the workers. Therefore, the money that ordinarily will go for food supplies will go towards partially paying the salaries of the workers, and the workers' salaries that have been paid by the State, what will happen to that money? Mr. Speaker, you know and I know that it will be used to build highways, to build bridges, to repair roads, or for any other emergency that may occur.

I have been in the State government for 18 years. We have many trust funds in the State of Alabama. I have seen us raid those trust funds for other purposes than those intended by the fund itself, so I know what will happen. I suggest it will happen every day, all across America. There will not be just 50 programs, but every State will have a program. That program, Mr. Speaker, would not be sufficient to feed the children, to feed the kids, to feed the students in our country.

Mr. Speaker, the children, the kids, the students in this country deserve our very best. They deserve to be treated better than we treat them, and they deserve to be treated in terms of priority above the defense of Japan and above the defense of Europe.

IN THE WORLD OF NEWT GINGRICH, WE TURN OUR BACKS ON CHILDREN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts [Mr. OLVER] is recognized for 5 minutes.

Mr. OLVER. Mr. Speaker, first of all, I want to thank the gentlewoman from North Carolina [Mrs. CLAYTON] for organizing this time. We are all indebted to the people of North Carolina for your leadership on issues of equity, such as this.

Mr. Speaker, we cannot protest enough what is really going on right now in this people's House of Representatives. I hope there are some parents out there who have put their children to bed and are listening to tonight's discussion. If your child eats breakfast at school, eats a hot school lunch, eats at day care while you work, or has cereal or milk or orange juice purchased with WIC coupons, or eats any food from a food bank, perhaps at the end of the month when money is tight, or has a meal that is purchased with food stamps, and I know that food stamps do not just help people who receive welfare payments, but also help millions of full-time workers to make ends meet, if your child uses any of these, your child is at risk.

The new Republican majority in this House is waging a full-scale war on America's children. The first goal of this war is to cripple the effort to end hunger among America's children, and that is a cruel move. Thus far, Republicans have staged this battle on two fronts: first, in their welfare reform bill, the Personal Responsibility Act.

That bill turns all Federal child nutrition services into State block grants. I have already said that many of the children who benefit today are not even on welfare, but that does not seem to matter. Now, the idea of block grants is not all bad. We have other block grants for community services and community development that go to the States and work well. But look again. This is not just a shift in who runs the current nutrition services, it is really a dangerous shell game.

The Republicans washed their hands of any responsibility for the welfare of America's children, shifted that responsibility to the States, and at the same time cut billions of dollars needed by those States to adequately feed those children.

The second front of this war is the rescissions bill which was approved by the Committee on Appropriations just today. The Republicans today cut $25 million from the WIC program. WIC provides nutrition to pregnant women that reduces the risk of having low-birthweight babies, thereby saving heartbreak and billions of dollars. WIC helps mothers buy infant formula for their babies, milk and juice for their preschool children.

These are a child's formative years, when good nutrition is crucial. Today's cut is just the beginning. Republicans

expect to cut at least $10 billion from Federal aid for childhood nutrition. It is a total myth that these cuts are being made to reduce the deficit.

The Republicans are willing to hurt children so they can buy fantasy projects like the Star Wars antiballistic missile system and so they can shovel out massive tax breaks to the very wealthiest of Americans. They want to give $55 billion in tax cuts to families with more than $200,000 of income per year.

Mr. Speaker, children cannot vote or make political contributions, so they are being trashed. It is shameful. The health of children should be one of the first priorities of every Member of Congress. We are supposed to be building a better Nation, but in the world of NEWT GINGRICH, we will shamefully throw that responsibility to the States, then cut the dollars that the States need to meet it.

In the world of NEWT GINGRICH, we will turn our backs on children. That is a terrible way to invest in our future.

WE CANNOT BALANCE THE BUDGET ON THE BACK OF THE NATION'S SMALLEST AND WEAKEST CITIZENS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Texas [Ms. JACKSON-LEE] is recognized for 5 minutes.

Ms. JACKSON-LEE. Mr. Speaker, I rise this evening to again raise my voice on behalf of my constituents and in behalf of America's children.

My conscience and the conscience of the Nation tell me that the unprincipled and unreasonable cuts to longstanding child nutrition programs proposed by my Republican colleagues are simply insensitive and yes they are immoral.

Those advocating these cuts are prepared to disregard the very health and nutritional well-being of some of America's poorest children.

While resisting lobby reform that would restrict the ability of high-rolling lobbyists to wine and dine without regulation Members of Congress and their staffs at posh, Washington restaurants, nutrition-cut advocates are prepared to literally snatch food from the mouths of the most vulnerable among us.

Mr. Speaker, included with various assaults on child nutrition contained in title 5 of H.R. 4 is a proposal to eliminate competitive bidding on infant formula purchases under existing programs.

According to the Department of Agriculture, competitive bidding saved the states one-billion-dollars in 1994, helping them feed an additional one-point-five-million infants * * * better fed babies are healthier babies * * * and healthier babies consume far fewer health care resources.

So the cost-benefit analysis is clear * * * Federal infant feeding programs—as currently administered—are a huge success, period.

Now you can bet the GOP proposal has the big formula producers very happy, but what horrible consequences await our Nation's babies born to poor mothers?

And what about cuts to school lunch and breakfast programs?

In my hand, I have a letter I received last month from both the dean of Tufts University Medical School and the President of the American Academy of Pediatrics.

Together, they represent a non-partisan group of medical educators and pediatricians known as the Physicians Committee on Childhood Hunger.

Mr. Speaker, these physicians—who have dedicated their lives to caring for all our Nation's children—share my grave concerns about proposed block-granting of child nutrition programs.

They write, and I quote, ''Proposals to block grant these programs, remove Federal nutrition standards, and reduce available funding, all pose a direct threat to the well-being of American children.''

Cutting the budget deficit they add, ''at the expense of the Nation's children . . . is unacceptable.''

Unacceptable in deed, Mr. Speaker. We can surely do better than that.

In my home State of Texas alone, again according to the Department of Agriculture, these mean-spirited cuts to school and pre-school programs will reduce available funds by more than $65 million in fiscal year 1996.

And Texas' children would suffer more than $671 million worth of cuts through fiscal year 2000.

Nationwide, poor and hungry babies and kids would be forced to go without a whopping $7.3 billion of healthy, nutritious food through fiscal year 2000.

Yes, Government must become more efficient and Members of Congress from both parties must come to terms with a growing national debt that also threatens the futures of our children and grandchildren.

But I for one, Mr. Speaker, refuse to go quietly while some in this body seek to balance the budget on the backs of our Nation's smallest and weakest citizens while tax cuts for the strongest and best fed among us are being considered. Don't Hurt the Kids!

Mr. Speaker, I include the letter for the RECORD.

(The letter referred to follows:)

TUFTS UNIVERSITY,
SCHOOL OF MEDICINE,
February 17, 1995.

Hon. SHEILA JACKSON-LEE,
House of Representatives, Washington, DC.

DEAR CONGRESSWOMAN JACKSON-LEE: We wish to share with you an important message concerning child nutrition from physicians representing every state in the nation.

Deans of medical schools, public health schools, and members and officers of the American Academy of Pediatrics are working together as the ''Physicians Committee on Childhood Hunger,'' the Committee's purpose is to insure that American children do not experience increased hunger and malnutrition as the result of proposed policy changes now before Congress.

The Committee is a nonpartisan medical group, united in the belief that it would be medically unwise for Congress to weaken existing federal food and nutrition programs that have been carefully developed over three decades. Proposals to block grant these programs, remove federal nutrition standards, and reduce available funding, all pose a direct threat to the well-being of American children.

Whatever steps Congress takes to address federal budget deficits, doing so at the expense of the nation's children—many of whom already suffer from preventable insults to their health—is unacceptable. We look forward to working with Congressional leaders from both parties to maintain and strengthen these critical federal food programs.

Sincerely,

MORTON A. MADOFF, M.D.,
Dean, Tufts University School of Medicine
GEORGE COMERCI, M.D.,
President, American Academy of Pediatrics

PHYSICIANS COMMITTEE ON CHILDHOOD HUNGER

WILL CONGRESS PRODUCE MORE HUNGRY CHILDREN?

For nearly fifty years Congress has shown a bipartisan commitment to alleviate the worst of human suffering in our nation, especially hunger. Now radical new proposals could end this commitment. If adopted they would weaken every U.S. nutrition program—jeopardizing school lunches for young children, hot meals for the elderly, and nutritional supplements for infants.

One proposal in the ''Contract with America'' would cut or cripple the very anti-hunger programs that Republicans and Democrats in Congress developed. It would end all federal nutrition programs, replacing them with reduced grants to the states. The problem? Deep cuts in anti-hunger programs at a time when hunger already threatens millions of Americans, especially children. The consequences would be unacceptable.

1. DENYING ADEQUATE FOOD TO CHILDREN CAN PRODUCE LIFELONG DAMAGE

In today's dollars-and-cents climate, everything has a cost. But the costs of a hungry childhood are excessive. Even a period of mild malnutrition can have lifelong effects.

A growing body of scientific evidence reveals that children are far more susceptible to the harmful effects of nutrient deprivation than previously understood. What was once considered relatively mild undernutrition can produce deficits that last a lifetime. And once physical growth and cognitive development are impaired, the damage can be irreversible. Children may carry this damage throughout their schooling and into the workforce. The price of this tragedy is paid by everyone: children who cannot reach their potentials, workers who are not as productive, a nation that is not as competitive.

It makes no sense to let this occur. Hunger is morally offensive and economically unwise.

2. CHILDREN CANNOT FIND FOOD IN SHRINKING PUBLIC BUDGETS

Right now, federal nutrition programs precisely pinpoint people who need help. Kids have to qualify for food, but once they do, they get it. Proposals now before Congress would change this.

Funding cuts and block grants would remove access to federal food programs for millions of poor children. In their place, fifty

different programs would be set up, one in each state. Federal funding would be cut by 12% in the first year alone. Poor children would be lopped off programs in every state. Kids—who cannot lobby or vote—would have to compete for shrinking public funding against powerful special interests. Kids would lose. And health care costs would rise even higher to address the needs of more hungry children, *costs which could be avoided if food programs are not cut.*

3. PROPOSED CHANGES WOULD INCREASE THE NUMBER OF HUNGRY CHILDREN

Children will pay the price of shortsighted deficit reduction. Converting successful federal nutrition programs into reduced state grants will result in deep funding cuts—nearly $31 billion by the year 2000. If the proposed Balanced Budget Amendment also passes, cuts will be even greater. In hard times, when tax revenues fall, there will be more hunger but less help.

Drastic changes in the nation's nutrition programs would make them insensitive to economic needs in a particular year. They would no longer insure that those in need could be protected. In fact, by their very nature proposed changes would not guarantee where assistance goes. And Congress could cut critical food programs further at any time.

''IF IT'S NOT BROKEN, DON'T FIX IT''

The nation's nutrition programs are cost-effective and target the truly needy. According to the General Accounting Office, one program alone (Special Supplemental Food Program for Women, Infants and Children) saves $3.50 in special education and Medicaid costs for every prenatal $1 invested. Other research shows that children who get a school meal perform better academically.

The existing programs work, and they work well. The only problem is that they are not reaching enough of those in need. Proposed changes would mean that they never will.

For the richest nation on earth to deny food to its own children is a shortsighted betrayal of our values and our future. It is also unnecessary. In the name of our nation and its children, we call upon reason to prevail in Congress.

□ 2300

IN SUPPORT OF CHILDRENS NUTRITION PROGRAMS

The SPEAKER pro tempore (Mr. MCHUGH). Under a previous order of the House, the gentlewoman from Florida [Ms. BROWN] is recognized for 5 minutes.

Ms. BROWN of Florida. Mr. Speaker, earlier this week, I spoke with 95 little 3-year-olds in my district. Tonight, I rise on their behalf.

The school lunch program has worked well since 1946—it's not broken. America's children are our most important resource for the future.

Studies show that if a child is hungry, taxpayer dollars for education are wasted because when kids are hungry they can't learn. According to the Children's Defense Fund, millions of children will go hungry by cutting funds for school lunches, food stamps, child care, Head Start meals, and WIC programs. Republican double-talk says ''cuts to school lunches'' aren't ''cuts,'' but block grants to States. That deceives the American people. As a 10-year veteran of the Florida legislature, I can tell you that sending Federal dollars to the States as block grants does not ensure that these funds will go to child nutrition programs.

This school lunch program began after the start of World War II when young men tried to enlist in the military and were rejected because they were malnourished and couldn't pass the physical. President Truman wisely determined that producing healthy youngsters was in the national interest. It still is today.

Congress should not be cutting child nutrition and child care. These cuts take food out of the mouths of hungry children. No big federally subsidized defense contractor has seen a dime threatened. No wealthy individual has seen his special tax breaks cut. In fact, the reason they're making all these cuts is so that the wealthy can get additional capital gains benefits on the backs of suffering children.

Republicans seem to think they can fool some of the people, some of the time. But you can't fool all of the people all of the time. The Contract on America is a contract on children, the elderly, veterans and the hardest working Americans.

The school lunch program works, it feeds hungry children. As the saying goes, ''If it's not broke, don't fix it.''

IN SUPPORT OF FEDERAL NUTRITION PROGRAMS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey [Mr. PAYNE] is recognized for 5 minutes.

Mr. PAYNE of New Jersey. Mr. Speaker, first I would like to commend the gentlewoman from North Carolina for the special order.

Mr. Speaker, tonight I rise in support of America's children because the Contract With America is an all-out assault on America's children.

Last week, in this Chamber's Committee on Economic and Educational Opportunities, the former Education and Labor Committee, I offered two key amendments which will would have protected the most vulnerable members of our society.

One of my amendments would continue to guarantee free meals to children who are under 130 percent of poverty which was repealed in H.R. 999, the Welfare Reform Consolidation Act. My amendment was unilaterally defeated by the Republican supporters of the so-called ''contract''.

Restoring free meals for children at or below 130 percent of poverty would have continued a policy set in 1974 to help protect the health and well-being of low-income children. The Republican plan as detailed in H.R. 999 will curtail access to the main source of nutrition for some youngsters. Overall funding for the school-based block grant will be capped at a 4.5 percent rate of increase per year.

Under the current law, the rate of increase for fiscal year 1996 would be 5.2 percent, which is still not enough to meet current needs. It is unbelievable that we would risk letting children go hungry in this country under the cloak of fiscal responsibility. And I do not think that most Americans want to shred a critical safety net for children and infants.

If this proposal becomes law, it will be left up to the States or school district to decide whether or not to provide any free meals at all; States will not be required to serve meals to children who cannot afford to pay for them we know that hungry children cannot learn, because hunger impairs their ability to learn.

At a time when much lip service is given to improving education through the use of high-technology learning along the information superhighway, it seems very contradictory to take away such basics as the school lunch program.

I think every American should have deep concerns about what the termination of funding for feeding programs for children says about the direction this Nation is heading.

These are children who did not choose or ask to be born into a situation of poverty. These are children who cannot approach the legislators and legislatures, to let the folks who are making the decisions know that these policies are harmful and damaging to them. And these policies punish them for circumstances over which they have no control. Americans have always been proud of our spirit of concern for one another and compassion for people who are less fortunate than we are.

Has that been wiped out by the Contract With America?

Mr. Speaker, I yield to the gentlewoman from North Carolina [Mrs. CLAYTON].

Mrs. CLAYTON. I thank the gentleman for yielding.

Just to remind the audience, these are faces of real people. Mr. Speaker, I believe tonight the case has been made against H.R. 4, particularly the case of the provision to eliminate nutritional programs. We are more than Members of Congress, Mr. Speaker. We are actually public servants and we must remember that our first responsibility is not to the parties that we are members of but to the people we represent.

At the end of each day, Mr. Speaker, we must be honest with the facts, who have we helped and who have we harmed. Have we helped the few or have we helped the many?

I think President Kennedy had it right 34 years ago when he stated, ''A country that cannot help the many who are poor cannot protect the few who are rich.'' No party or no person has an exclusive on family values and personal responsibility. Those are standards that each of us hold absolutely dear.

□ 2310

And if we do, we care about children.

Mr. Speaker, thank you for the time. I thank the gentleman for yielding to me, and I thank him for his participation.

Mr. SABO. Mr. Speaker, I rise today to express my strong opposition to the welfare provisions contained in the Contract With America, and to express the fears my constituents have communicated to me about cuts to nutrition assistance programs. I would also like to thank Congresswoman CLAYTON for organizing this debate.

The Contract With America would transfer control over Federal programs which provide a safety net to poor children to the States, while at the same time transferring only a portion of the money needed to provide these vital services. Many programs would suffer under this proposal, including those which provide protective services to abused children, those which provide child care assistance to the working poor, and those which provide nutrition assistance to the undernourished.

Approximately 13 percent of the children in Minnesota live below the poverty line, and it is estimated that 160,000 children go hungry as a result. Children who do not receive nutritious meals suffer from poor health and diminished performance in school. I have fought to support successful programs like the National School Lunch Program and the Supplemental Food Program for Women Infants and Children [WIC] which were created to combat childhood hunger and give young people the opportunity to succeed.

One woman living in Minneapolis recently wrote me that the National School Lunch Program has served as a last line of defense for her family against hunger. Since her husband left, she has had difficulty making ends meet. Nevertheless, she can be confident that her two young daughters will receive at least one carton of milk and one nutritious meal a day when we cannot afford to purchase these items.

This family's experience demonstrates the need for a reliable safety net. Nutrition assistance programs like these have represented our nation's acceptance of the basic responsibility we have to care for our children.

The welfare provisions contained in the Contract With America represent a fundamental shift in our Nation's policy toward young people. The contract asserts that we, as a nation, should abdicate responsibility for providing basic protective services, basic support services, and basic nutrition to children in need.

Those who support the contract would have us believe these proposals were crafted in the name of reducing bureaucracy. I am not deceived by such rhetoric. One Federal bureaucracy would be replaced by 50 State bureaucracies. The only thing that would really be reduced is a child's access to a healthy meal.

My home State, Minnesota, is expected to lose $18 million in Federal nutrition funding under the welfare provisions included in the Contract With America. This is a daunting sum of money for a State which already faces a hunger problem. Currently, 1 in every 16 Minnesotans seeks help from food shelves, receiving an annual total of 4 million pounds of food. For example, Minnesota FoodShare, an organization which provides food to needy families throughout the State, would have to dramatically increase their efforts. They would have to generate 17.6 million more pounds of food, or six times the amount of current contributions, to compensate for these lost Federal funds. Clearly, Minnesotans would suffer if these welfare provisions are adopted.

True welfare reform does not destroy a child's safety net. Rather, it makes it possible for families to become self-sufficient. Full-time workers should be able to provide food, shelter, and the basic necessities for their families without being forced to turn to the Federal Government. I have proposed raising the minimum wage by 50 percent to $6.50 an hour. Individuals can only move away from public assistance programs once they are empowered to help themselves. I believe increasing the minimum wage is a key element of any welfare reform.

I strongly urge my colleagues to reject the welfare provisions contained in the Contract With America.

Mr. MOAKLEY. Mr. Speaker, I rise today to express my strong opposition to the Republican proposal to end the Supplemental Nutrition Program for Women, Infants and Children, better known as WIC.

Since its inception, WIC has been a model nutrition and food program. For infants, WIC reduces low-birth weights and lowers infant mortality rates by 25–66 percent among Medicaid beneficiaries. For children, WIC increases readiness to learn, improves diets and increases rates of immunization against childhood disease. For women, it significantly increases access to adequate prenatal care and improves their dietary intake.

Study after study has proven that WIC is not only successful in achieving its goals of good nutrition and health for children, but is also cost-effective. Every dollar spent on pregnant women in WIC saves up to $4 in Medicaid for newborns and their mothers. For every very low birthweight prevented, Medicaid costs were reduced on average from $12,000 to $15,000. The only problem WIC has faced over the years is that it has always been underfunded. Doesn't it make more sense to invest in preventive programs to keep women and their kids healthy than to spend thousands later to keep a premature baby alive because it lacked the care it needed early on?

If WIC is block granted, my own State stands to lose $2.7 million in Federal funding for WIC—which translates into approximately 5,200 women and children being denied WIC services. This will mean local WIC programs will be forced to turn away nutritionally at-risk children and postpartum women. More children will be denied food and health care so that our wealthiest Americans can get a tax break. It's becoming clearer to me who the Republicans made their contract with and where their priorities are.

In my own district, I know first hand how successful WIC has been and how it has helped countless families stay healthy. I know of a young mother of five in Taunton, MA, named Dorothy who is not on welfare, receives WIC so that she can feed her family. If this small investment is denied, she and her family will suffer immeasurably.

Mr. Speaker, I am well aware of the need to get our Nation's finances in order and I intend to work with our new leadership to try to achieve this noble goal. But, I would respectfully suggest that keeping our kids and young mothers well fed and healthy is an infinitely wiser investment for our country than this star wars weapons fantasy—which unfortunately seems to be making an expensive comeback.

I would urge my colleagues to show a little forethought and little heart, as we decide the fate of our country's most precious resource—our children.

GENERAL LEAVE

Mrs. CLAYTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order.

The SPEAKER pro tempore (Mr. MCHUGH). Is there objection to the request of the gentlewoman from North Carolina?

There is no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 5 minutes.

[Mr. MOAKLEY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio [Ms. Kaptur] is recognized for 5 minutes.

[Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

THE REPUBLICAN NUTRITION PLAN

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Georgia [Mr. CHAMBLISS] is recognized for 30 minutes as the designee of the majority leader.

Mr. CHAMBLISS. Mr. Speaker, I have with me today, tonight, my colleague from the 10th District of Georgia, Mr. NORWOOD, and also my distinguished colleague from the First District of Georgia, Mr. KINGSTON.

I yield to the gentleman from Georgia [Mr. KINGSTON].

Mr. KINGSTON. I thank the gentleman. You know, it is too bad, after listening to all the last hour, the people of America had to listen to, and I am sure no one is watching C–SPAN right now, and we cannot respond. I also will point out to the viewers back home that we had a room full of Democrats in here about 30 minutes ago, now they are all gone, now that we have some floor time to talk about some of their ridiculous and absurd bellyaching about protecting bureaucrats.

All we know is that we are going to cut programs to cut out bureaucracy, and all the whining and gnashing of teeth over here to protect bureaucracies, and you know, as you listen to it, everything works. Every program is a good one, and everyone is efficient, and it is saving America, and it is doing this, it is doing that. Why, if we

did not have these programs that, you know, America would just cease to exist. It is funny.

Because there are thousands and thousands of programs in America, and I'll be doggoned if the Democrat side of the aisle cannot defend every single one of them.

You two are new up here. You came for change. You came because of the failed promises of more government, more taxes, more regulations did not work.

And is that the message? I would ask of maybe our friend from the 10th District, from the Augusta area, is that what the folks in the 10th District want, more government?

Mr. NORWOOD. I thank the gentleman. I know we gathered here tonight because we were going to talk a little bit about our first 57 days in Congress, and, of course, we have to change what we were going to talk about because we realize everybody on C–SPAN that has been watching for the last hour has been inundated with a great deal of information.

Mr. KINGSTON. If the gentleman will yield, I can promise you nobody was watching that for an hour. They have gone on back down. We have got to win back some people.

Mr. NORWOOD. Presuming there are one or two, I have to tell you, I wondered tonight, as I listened, has any country, any nation on Earth ever, ever spent more money for the poor than the United States of America? And in doing that, what we basically do is we take money from one human being and give it to another which there is nothing in our Constitution that suggests that we have to do that. We do that because, I think, we all do care about those that are less fortunate.

Now, let me just make one other comment about the information. One of the things we could do in Congress that would really help us is that we could get factual information, or perhaps make the Members be responsible for what they say and make sure that what they say is the truth.

But so much of the information that we have heard tonight comes from the U.S. Department of Agriculture and their report that they have put out on the nutritional programs is a report put out by a lot of people who know that they are going to be out of work.

Mr. KINGSTON. Absolutely. If the gentleman would yield, and those, many of those appointees, are Clinton administration big government bureaucrats, political appointees, who are making $70,000–$80,000 a year, and your committees are cutting that out. The USDA, everybody complains about the USDA. They are one of the biggest misinformation bureaus I have ever seen on this school lunch thing. It is absolutely irresponsible what they are doing. You have got a School Lunch Program that is going to go up 4½ percent each year. It is going to cut out bureaucrats. It is going to consolidate programs. It is going to streamline the system so you can feed more hungry children.

And who but the Government would complain about that?

Mr. CHAMBLISS. You know, a revolution occurred in this country November 8, 1994, and the reason that revolution occurred is because the American people are sick and tired of the bureaucrats in Washington running their lives on a daily basis from a personal and a business standpoint.

You know, I am somewhat appalled that the folks on the other side of the aisle who spent the last, and it was not an hour, gentlemen, it was an hour and a half, that we had to listen to this berating of starving children and starving mothers, which is simply misinformation that is being put out from the other side. But those folks represented a total, if I counted correctly, somewhere between 15 and 20 States.

You know, what we, as Republicans, are trying to do is we promised the American people that if you elect a majority of Republicans to the House of Representatives on November 8, 1994, we are going to return your government back to you, and that is exactly what we are doing. We are doing that with this program. We are taking the bureaucrats from Washington out of the picture, and we are returning the program to the States.

I have the confidence in the States that were represented here tonight. I have the confidence in the counties that were represented here tonight on the other side of the aisle that those folks are much more capable of determining what is best for North Carolina, for California, and in our case, for Georgia. They know what is best in their local States and their local counties than the bureaucrats in Washington do.

I was interested, in coming up here on Monday of this week, and looking at the Atlanta Constitution. Our Governor of the State of Georgia, who is a Democrat, came out in wholehearted support of our plan to modernize the School Lunch Program.

Mr. KINGSTON. And he has said that, ''Give me the money. I will do a better job than those bureaucrats in Washington.''

Mr. NORWOOD. Because he knows he will. Our school superintendent realized that there are 110 Federal employees sitting in Atlanta, GA, directing the food program in Georgia, the lunch program, and she realizes full well that if we will block grant this money back to the States, we are going to cut some bureaucrats out of that group.

Let me mention to the gentlemen, you were talking about earlier, a lot of countries call what was going on as propaganda. It is spreading misinformation. For example, when they were talking about, they keep saying that we are going to cut the money that goes to feed the children as if this is a contest over who is most compassionate, who cares most about the WIC Program, who cares most about the School Lunch Program. But, you know, we are spending $5.9 billion this year on our food programs, not including, not including food stamps, and it is going to rise next year. It is going to rise to $6.1 billion. It is rising 4.5 percent.

Mr. CHAMBLISS. I would like you to reemphasize that, because as I recall, the School Lunch Program came through your committee, did it not?

Mr. NORWOOD. It did.

Mr. CHAMBLISS. We listened to an hour and a half discussion from folks on the other side of the aisle tonight, and anybody who watched that would remember, I hope, that not one single dollar figure was mentioned. They never mentioned how much money was being spent. All they talked about was cuts. Would you just talk about again what you said about the money that is being spent this year and the amount of money that is going to be spent next year on the very program they are complaining about?

Mr. NORWOOD. I will be very happy to. I want to make it very clear we are going to spend in 1995 $5.9 billion. We are going to increase that spending next year to $6.1 billion, and we have also made absolutely sure that 80 percent of this money goes to feed low-income families.

Mr. KINGSTON. If the gentleman will yield, I also found it ironic, serving on the Committee on Appropriations and the subcommittee that oversees USDA, not one of the people, not one of the speakers who was whining about some of these cuts have appeared to our committee to protest it where the work was being done. Now, there were television cameras on. I think that I have got to say that, but where the work was being done, not one of them showed up to the committee and came up with an alternative. But suddenly, you know, after the fact, they are jumping up there.

I also wanted to point out to you guys, because you talked about some things, campaign promises that you made and so forth; it is interesting to note of the previous speakers, I just pulled a list of who voted for the balanced budget amendment. It just so happened that nine of the speakers over here, the last ones, and I do not remember all the speakers, not one of them voted for a balanced budget amendment, and, you now, you can say what you want, but I think that basically tells a major philosophical difference here.

Mr. NORWOOD. Well, probably the big difference is that we care more about the WIC Program than they do, because the greatest threat in the world to the WIC Program is this county going bankrupt. I mean, I have wondered for a long time why we have not been able to balance our budget, and you cannot really tell that from C–SPAN. But sitting on this floor tonight, I see why in the last 25 years the party in control of the budget who

writes the checks, the Democratic Party, has not balanced the budget one time, and I can clearly see tonight why they will not. That is all we are trying to do so we can save the WIC Program.

Mr. KINGSTON. How many kids are you going to feed when you are bankrupt?

Mr. NORWOOD. I do not think any.

Mr. KINGSTON. You cannot do that. That is why we always have to bail out Somalia, Rwanda, and all the other countries in the world, because they mismanaged their resources. America has managed it. We have some food.

□ 2320

America has managed it, and we have some food. You are talking about cutting, you are talking about spending the cutting. One of the things that is amazing to me is, out of the thousands of programs, they are all efficient, they are all critical, and every one of those programs has a defender in the U.S. Congress, and, yes, it is bipartisan, it is Republicans and Democrats. But the thing that we have got to do is say no.

Now today, as my colleagues all know, the U.S. Senate voted down the balanced budget amendment. I believe it is a very sad day for America, because of that, because if we cannot say yes to the balanced budget amendment, I can promise my colleagues they cannot say no to voluntary fiscal restraint.

Mr. CHAMBLISS. Exactly right, Mr. KINGSTON, and I could not help while listening to this looking at these photographs of those children that they were parading up here for the sole purpose of trying to arouse the emotion of the people that they are trying to appeal to, but really those pictures were very appropriate to be here. We should have had pictures of children here because it is the children of this country that we need to look out for, and, if we continue to spend money the way we have spent it for the last 25 years, we are going to leave a bankrupt country for our children and our grandchildren.

That is what the balanced budget amendment is all about. That is what we kept hearing during the course of our campaign over the last 2 years. The people in this country are simply tired of the bureaucrats in Washington spending their money unwisely, and that is what we have got to stop.

And I agree with the gentleman. One of the greatest moments I have ever lived was on January 25 in this very Chamber, and I believe it was about this time of night when we watched the 300 votes add up on the wall over here that voted for the balanced budget amendment. That was a great victory for the American people. Today it was a very sad day when the Senate failed to vote for the balanced budget amendment, and I certainly hope that we are going to get that amendment called back up on the Senate side and a very much of a wrong rectified there.

Mr. NORWOOD. Even if they do not call it back up, it is going to tell the American people who to vote out of the Senate in 1996.

I mean I know the message sent to me was that we want to stop the spending. The American people know we owe $5 trillion. They know we are borrowing over $250 billion every year, and they know that math does not work.

These children in the pictures are in trouble all right, but it is not because we are not funding WIC, and it is not because they are not going to get their school lunch program. It is because in 20 years they are not going to have a way to make a living because we are broke.

Mr. KINGSTON. Well, it is amazing to me that people who say, ''I don't want to monkey with the Constitution''; the Constitution is so sacred that to them it seems to preempt the fact that the country is going bankrupt, and that does not make sense because that kind of thinking will not work.

Now the balanced budget amendment, welfare reform, is part of the Contract With America. The other thing which I know both of my colleagues have been leaders on is deregulation of business because, if we really want to help the economically disadvantaged, we are going to create an atmosphere for entrepreneurs because the businessowners create the jobs, the small mom and pops, and I know my colleagues have been leaders in getting business deregulation, and we passed that bill last week.

Can the gentleman tell us something?

Mr. NORWOOD. That is in my Committee on Commerce, and I want make very clear that when we hear some Members here talking, talking about business, they are talking about Amoco, and they are talking about G.M. When I talk about business, I am talking about the mom and pops, the 5 employees, the 3 employees or 10 employees. The small business people are the ones that have been killed with the rules and regulations that just continue to grow.

I mean I think the stack now is about 14 feet tall with all the rules and regulations, and what we are basically doing is we are saying to Federal Government, ''No longer can you run roughshod over us with people not elected to office, meaning bureaucrats,'' and they are going to have to do a risk analysis, and they are going to have to do a cost-benefit analysis on each rule and regulation before they pass them down to us.

But, Mr. KINGSTON, the really exciting part about that is that people will now have a way to voice their concern with this Government because there will be a process of petition, there will be a process of peer review, where we can say, ''Wait a minute, that rule makes no sense, that rule is not smart, and it ruins my business,'' and if they do not listen to that, then we will have legal standing, and I am excited about that because we are going to get this crowd of bureaucrats inside the Beltway to listen to us unless we do have——

Mr. KINGSTON. Well, the gentleman from Georgia [Mr. NORWOOD] on the subject of Government regulations and Government knows best. I know that as a dentist he practices dentistry, and I asked my dentist the last time I was there how many rubber gloves his office used today. One hundred, and he said they never did a cost-benefit analysis on it.

Mr. NORWOOD. That is a hundred for each hand.

Mr. KINGSTON. But he says, ''You know, we would not deny that it's good, but there's never been a proven case of a dentist giving somebody a disease from the hand.''

Mr. NORWOOD. Of course, thanks to the Federal Government, we cannot ask anybody if they have AIDS. If the gentleman can make sense out of that, tell me after the program. But I will tell the gentleman the dentists in this country are paying now somewhere in the neighborhood of $30,000 a year in extra costs thanks to OSHA.

Mr. KINGSTON. And the dentists have to pass on to their consumers.

I know the gentleman from Georgia [Mr. CHAMBLISS] is a small businessman in Moultrie, GA, and I know, running a small business as he does down there, the Government is all over him even though he is not a Fortune 500 that I know of.

Mr. CHAMBLISS. There is no question about it. I happen to be part owner of a motel in Moultrie, GA, and unfortunately my motel has to comply with exactly the same rules and regulations as General Motors does. We are not nearly as equipped to do that as General Motors, but OSHA demands the same from us that they demand from General Motors.

As the gentleman knows, one thing about my district is it is primarily rural, primarily agricultural, and there is no group of individuals in this country or no segment of the business of this country that is more overregulated than our farmers. Those guys have to spend more time in ASCS offices today complying with rules and regulations that come down from Washington than they do on their tractors, and unfortunately they are not allowed to do what they do best for the most part, and that is produce the world's finest crops and agricultural products.

So we have got to put some common sense back into regulations that are issued out of Washington, and that is exactly what we did last week and this week. We have been dealing with regulatory reform, and we are putting common sense back into the daily lives of folks from a regulatory standpoint.

Mr. NORWOOD. I am afraid—I do not want us to miss a couple of more details about the nutritional programs before we get off that. But one of the things that will make this work is that the amount of increase is 4.5 percent a

year for the next 5 years which gives the school lunch program more money to work with, but the administrative costs will come down. In fact we capped them at 2 percent. That is all of that money that they can spend for administrative costs, and what we really truly believe is that we are going to have more food for the children and their lunch programs, and that is what it is all about, that is what the whole purpose of the program is, not to pay bureaucrats.

And I want to talk about WIC one more time because I have had a visit with a lot of people in my hometown who worked within the WIC programs, and they are absolutely excited about the possibility of them deciding a little bit how their program might work best, but, as my colleagues know, there were about 80 programs in this country for nutrition, and we have block granted them and brought them down, and the WIC program, the money that we have got for the family nutrition block grant, we have guaranteed that 80 percent of that goes to WIC.

And I think the gentleman told me just today that WIC is not using all the money we are sending them now. Did I hear the gentleman say that?

Mr. KINGSTON. That is correct. What actually is happening on WIC, there is $25 million in the budget that is a carryover. They are not using that. It is money left over. It represents 2 percent.

Now we got a deficit of over $200 billion. Each year we spend $200 billion more than we bring in. Under the President's recently introduced budget just 3 weeks ago that deficit goes on for 5 years and increases the debt another $1 trillion, and our national debt is about $4.8 trillion right now.

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So here is a 2-percent cut in a program on money that they are not using, and you would think that the sky is falling.

Mr. NORWOOD. Are we being bad because we are cutting money that they cannot spend because they have got so much they are spending it all up? What is going on with that?

Mr. CHAMBLISS. Isn't that what November 8 was all about? Didn't the American people tell us on November 8 that we want you doing a better job of spending our tax money? Make cuts where cuts are necessary; where cuts aren't necessary, don't make the cuts. But please do a better job of spending our tax money wisely. I think that is a classic example.

Mr. KINGSTON. Let me ask you this. You are both freshmen, closer to the people than people that have been here a long time.

Mr. NORWOOD. I have been working with the people for the last 30 years. I am a lot closer.

Mr. KINGSTON. You already made the statement one of your surprises was the propaganda you get, and we have to admit it comes from both sides of the aisle. Do you feel that way too, Mr. CHAMBLISS?

Mr. CHAMBLISS. Absolutely. I will tell you about one other interesting fact that occurred to me shortly after I got here, and it was somewhat of a surprise. I was somewhat idealistic when I came here. I thought coming in with 72 other freshmen Republicans, that we would be able to have a real impact upon what is done in this very Chamber. And I think we are having an impact. But the problem that I saw very quickly is that the bureaucracy in Washington is layer after layer after layer of bureaucracy. And exactly what we are doing by block granting money back to the States is doing away with that bureaucracy. That is the way you cut spending. That is way you cut Government intervention. And we are making those inroads in cutting that bureaucracy.

Mr. NORWOOD. It is called cutting bureaucrats and cutting paperwork and spending our money on what we are trying to do, which is to feed children.

Mr. KINGSTON. I think the gentleman raises a good point. Let me ask you this: Balanced budget amendment, you both support it; line item veto, you both support it; strengthening America's military, and a very difficult decision on cutting the military budget some, you both support it. We are going to have a tax bill coming up today, another $17 billion cut. It will have to be probably passed on the backs of freshmen like you because we will not get any support from the more liberal Members who want to defend every program.

That is going to be hard on you, because you are going to have your constituents coming up and saying don't cut this or that. Are you ready for it? Is that what you heard that your mission is from the people back home?

Mr. NORWOOD. It is going to be a lot harder on us if we don't. I know they told me in that election that they want this budget balanced, they want us to deal with this debt, and they want it done by cutting spending. The important thing I believe is that we do it fairly. You have to take a little bit from everywhere across the board. Yes, you are right we do gets visits, you know that, every 15 minutes all day long, with somebody saying you got to balance that budget, but leave my program alone.

Well, that will not work, and everybody knows that will not work. But we must do this very, very fairly and intelligently and across the board. Again, I point out in the nutritional programs, feeding the children, we didn't cut. We increased it 4.5 percent.

Mr. CHAMBLISS. The gentleman makes a very good point, that everybody who comes to talk to us about their program has a good program. There are a lot of good programs up here. But those same people will also tell you that we understand you got to balance the budget, and we want you to treat us fairly.

That is the message that we were given on November 8, the message being that look, we know there are good programs out there. We know you have got to continue spending in some of those programs. But we know also that unless wholesale cuts are made, and those cuts go to reduce the deficit, we are never going to balance the budget in this country, and we are never going to get rid of that $4.5 trillion. What we have been assigned to do by the people of this country is to not single out any segment of the country or industry or any segment of people. We have got to be equal in our cuts, we have got to treat everybody fairly, and, most importantly, the cuts that we make have got to go toward reduction of the deficit and not toward funding other social programs out there.

Mr. NORWOOD. Earlier today when we were listening to this litany of half-truths, one of the statements that kept coming up is that well, we want a capital gains tax so we can give it to our rich friends, and that will keep us from funding the nutritional programs. Well, first, I think we have already decided that we are funding the nutritional programs.

But I think it is pretty important to understand that a cut in capital gains very well will help reduce the deficit, not add to the deficit. But our friends from the other side who have been there so long, I think 40 years or so, they have been there so long they do not realize that a cut in capital gains tax is not for the rich, it is for many, many average Americans.

Mr. KINGSTON. I think it is important to point out that the last round of serious tax cuts took place in the early 1980's under the Reagan administration. As a result of that, 18 million new jobs were created, we had the longest peacetime prosperity that America has ever had, and revenues doubled from 1980 to 1990. Now, unfortunately, revenues were outpaced by spending.

Mr. NORWOOD. By a Democratic Congress who had control of the checkbook.

Mr. KINGSTON. The Democrats did have the Congress, but the Republicans had the Senate for a while and the Republicans had the White House. So I think that we can take the blame equally. Both parties are to be blamed. But the fact is if we know it is going to happen, shame on us to let it happen again. We know we are going to get increased tax revenues because of capital gains tax, because less regulations on business will create more jobs, but it will also create more revenues. Shame on us for not holding the line on spending.

Mr. CHAMBLISS. The gentleman makes a very good point, that every time we have had a tax cut in this country, tax revenues have gone up. That is what tax cuts are all about. When we make tax cuts, we give tax incentives to the business community to expand their businesses. And when

they expand their businesses, they create jobs. When they create jobs, they add taxpayers to the roles. Those taxpayers are new sources of revenue for this country that we have never had before. And when we increase those revenues, that more than offsets the tax cuts that are given out there.

Mr. NORWOOD. You would sort of think that the other side, after 40 years, would catch on that you sort of got to take care of the goose that lays the golden egg, and the goose is free enterprise, people that work out there using their own money, not sending it up here to Washington.

Mr. KINGSTON. Let me ask you something now. I know both of you guys started out your morning at least at 9 o'clock, because that is when I saw you at your first meeting, although you probably had three more by then. Many mornings by 9 o'clock we have been to two or three different meetings. It is now 11:30 and we need to wrap it up. We have folks still waiting to talk.

Was one of your surprises the long hours, how many hours you work? Speaking as newcomers, what have been your surprises? Then I think we better say good-night before we get run out of here.

Mr. CHAMBLISS. I was used to working long hours practicing law in south Georgia.

Mr. KINGSTON. He ain't going to tell the truth. I got a lawyer and doctor telling me how hard they work.

Mr. NORWOOD. One of the things I have been thinking about doing, Mr. KINGSTON, is see if you drop a bill to get us paid by the hour up here.

Mr. CHAMBLISS. Minimum wage.

Mr. NORWOOD. I start my day everyday at 6:30, and generally it ends at midnight. I think that is wonderful, because I was sent here to do a job, and I was sent here to win, and there is just not too many hours in the day I am not willing to give to it, particularly as long as we are winning. I have never seen Americans with as big a smile as on their faces as I have in the last 6 weeks going home.

Mr. CHAMBLISS. Absolutely. Let me just say, Mr. KINGSTON, I started my morning at the prayer breakfast on the House side, and you weren't there. We missed you this morning.

Mr. NORWOOD. We prayed for you.

Mr. KINGSTON. You prayed for me. I appreciate it.

Mr. CHAMBLISS. I just want to echo what my good colleague, Dr. NORWOOD, says there, that the people in my district are really excited about what is going on up here right now. We took an unprecedented step on September 27, 1994, when we signed the Contract With America. Never before had a political party promised in writing what it was going to deliver to the American people.

We have lived up to what we said we were going to do in that contract. The people in my district are excited about what is going on up here. They are telling me every time I go home ''keep it up. Keep doing what you are doing.'' That is what we are going to do. We are going to do what we said we were going to do in that contract, and we are going to do it within that 100 days.

Mr. NORWOOD. I think we are going to do what we were told do. The Contract With America is not NEWT GINGRICH's contract, it is a contract taken from the people of this country when they told us last summer what they wanted to do. We are going to do it, too.

Mr. KINGSTON. I think you are right, I think this is not about NEWT GINGRICH, it is not even about the Contract With America, or the Republican majority. It is about a change and challenge in the status quo.

We, the American people, want less Government, less regulations, more personal freedom. We want a Government that works. I think that has a momentum all by itself right now.

Mr. Speaker, I have enjoyed being with the gentleman.

Mr. CHAMBLISS. I enjoyed this colloquy, Mr. Speaker.

LOOKING FORWARD TO A SOCIETY WHERE ALL CARRY THEIR OWN WEIGHT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut [Mr. FRANKS] is recognized for 5 minutes.

Mr. FRANKS of Connecticut. Mr. Speaker, I look forward to the day when we as Members of Congress are not debating the virtues or faults of block grants and entitlements for food and nutrition programs, housing, or child care programs. Mr. Speaker, I look forward to the day when people and their families and/or their extended families are carrying their own weight totally.

I look forward to living in a society, Mr. Speaker, where no one receives something that they have not earned, a society where people work for money and people support their children. I think our Founding Fathers would be amazed that we would be discussing concepts so basic for able-bodied men and women. For most Americans, if we do not work, we do not get paid.

The Bible says ''You will reap what you sow.'' The Bible also says ''God helps those that help themselves.'' However, thanks to our current welfare system, these statements are not true.

Mr. Speaker, I look forward to the day that if one is given something without working or paying for it, it would be deemed as a loan that would be paid back, not a bottomless pit of money distributed with no strings attached.

I realize, Mr. Speaker, that everyone hits bumps in the road, and there should be ways to assist people at such times. However, when this happens, people should be willing or forced to take a job, work for the State temporarily, or get a welfare loan that would be paid back or worked off.

Block grants or entitlements, people should be merely entitled to an opportunity to succeed. Yes, Mr. Speaker, I look forward to the day when the word ''welfare'' is used as frequently as the word ''dinosaur.''

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. WISE) to revise and extend their remarks and include extraneous material:)

Mr. OWENS, for 5 minutes, today.
Mr. TOWNS, for 5 minutes, today.
Mr. FILNER, for 5 minutes, today.
Mrs. CLAYTON, for 5 minutes, today.
Mr. BONIOR, for 5 minutes, today.
Ms. DELAURO, for 5 minutes, today.
Ms. ROYBAL-ALLARD, for 5 minutes, today.
Mr. FRANK of Massachusetts, for 5 minutes, today.
Mr. BISHOP, for 5 minutes, today.
Mr. STENHOLM, for 5 minutes, today.
Mr. DEFAZIO, for 5 minutes, today.
Ms. PELOSI, for 5 minutes, today.
Mr. PASTOR, for 5 minutes, today.
Ms. MCKINNEY, for 5 minutes, today.
Mrs. MEEK of Florida, for 5 minutes, today.
Mr. POMEROY, for 5 minutes, today.
Mr. JOHNSON of South Dakota, for 5 minutes, today.
Mr. FIELDS of Louisiana, for 5 minutes, today.
Mr. MASCARA, for 5 minutes, today.
Mrs. MALONEY, for 5 minutes, today.
Mr. HILLIARD, for 5 minutes, today.
Mr. OLVER, for 5 minutes, today.
Ms. JACKSON-LEE, for 5 minutes, today.
Ms. BROWN of Florida, for 5 minutes, today.
Mr. MOAKLEY, for 5 minutes, today.
Ms. KAPTUR, for 5 minutes, today.

(The following Member (at the request of Mr. BONILLA) to revise and extend his remarks and include extraneous material:)

Mr. WHITFIELD, for 5 minutes, on March 3.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. WISE) and to include extraneous matter:)

Mrs. MEEK of Florida.
Mr. POMEROY.
Mr. BARCIA.
Mr. BONIOR.
Mr. ACKERMAN.
Mr. MONTGOMERY.
Ms. MCCARTHY.
Mr. VISCLOSKY.
Mr. SCHUMER.
Mr. HAMILTON.
Mr. NADLER.

Mr. KLINK.
Mr. FILNER.
Mr. HILLIARD.
Mr. FAZIO.
Mr. WARD.
Mr. MINGE.

(The following Members (at the request of Mr. BONILLA) and to include extraneous matter:)

Mr. COMBEST.
Mr. SOLOMON, in two instances.
Mr. ZELIFF.
Mr. SMITH of New Jersey, in two instances.
Mr. QUINN, in two instances.
Mr. MCINTOSH.
Mr. GILMAN.
Mr. HASTERT.
Mr. BONILLA.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. FOX of Pennsylvania, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. FRANKS of Connecticut, for 5 minutes, today.

ADJOURNMENT

Mr. FRANKS of Connecticut. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 44 minutes p.m.), the House adjourned until tomorrow, Friday, March 3, 1995, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

430. A letter from the Director, Standards of Conduct Office, Department of Defense, transmitting a report of individuals who filed DD Form 1787, Report of DOD and Defense Related Employment, for fiscal year 1993, pursuant to 10 U.S.C. 2397(e); to the Committee on National Security.

431. A letter from the Deputy Under Secretary of Defense (Environmental Security), transmitting a letter concerning the annual report on the progress DOD has made concerning environmental compliance at military installations; to the Committee on National Security.

432. A letter from the President, Export-Import Bank, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Banking and Financial Services.

433. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving U.S. exports to various countries, pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Banking and Financial Services.

434. A letter from the Chairman of the Board, National Credit Union Administration, transmitting the office's pay structure for fiscal year 1994 and fiscal year 1995, pursuant to Public Law 101–73, section 1206 (103 Stat. 523); to the Committee on Banking and Financial Services.

435. A letter from the Secretary of Housing and Urban Development, transmitting a report entitled, ''Effect of the 1990 Census on CDBG Program Funding''; to the Committee on Banking and Financial Services.

436. A letter from the Executive Director, Thrift Depositor Protection Oversight Board, transmitting a report on the status of various savings associations, pursuant to 12 U.S.C. 1441a(k); to the Committee on Banking and Financial Services.

437. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the 1995 international narcotics control strategy report, pursaunt to 22 U.S.C. 2291(b)(2); to the Committee on International Relations.

438. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the President's certification of the 29 major illicit narcotics producing and transit countries pursuant to section 490 of the Foreign Assistance Act; to the Committee on International Relations.

439. A communication from the President of the United States, transmitting a report regarding United States Armed Forces in Somalia (H. Doc. No. 104–42); to the Committee on International Relations and ordered to be printed.

440. A letter from the Director, U.S. Information Agency, transmitting a draft of proposed legislation to authorize appropriations for fiscal years 1996 and 1997 for the U.S. Information Agency, and for other purposes, pursuant to 31 U.S.C. 1110; to the Committee on International Relations.

441. A letter from the Comptroller General of the United States, transmitting a report on independence of legal services provided to inspectors general appointed by the President; to the Committee on Government Reform and Oversight.

442. A letter from the Special Assistant for Management and Administration, Executive Office of the President, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

443. A letter from the Chairman, Merit Systems Protection Board, transmitting the 16th annual report on the activities of the Board during fiscal year 1994, pursuant to 5 U.S.C. 1209(b); to the Committee on Government Reform and Oversight.

444. A letter from the Chairman, National Endowment for the Arts, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

445. A letter from the Executive Secretary, National Security Council, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

446. A letter from the Director, Peace Corps, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

447. A letter from the Chairman, Railroad Retirement Board, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

448. A letter from the Chairman, Securities and Exchange Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

449. A letter from the Executive Director, Thrift Depositor Protection Oversight Board, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

450. A letter from the Director, U.S. Trade and Development Agency, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

451. A letter from the Director, U.S. Information Agency, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

452. A letter from the Secretary of the Interior, transmitting the Department's views to H.R. 925; to the Committee on Government Reform and Oversight.

453. A letter from the Secretary, Department of Transportation, transmitting a report on tanker safety and liability, pursuant to Public Law 102–241, section 32 (105 Stat. 2222); to the Committee on Transportation and infrastructure.

454. A letter from the Secretary, Department of Veterans Affairs, transmitting the 1994 annual report, pursuant to 38 U.S.C. 214, 221(c), 664; to the Committee on Veterans' Affairs.

455. A letter from the Chairman, Prospective Payment Assessment Commission, transmitting the annual report on the Prospective Payment Assessment Commission, pursuant to 42 U.S.C. 1395ww(e)(6)(G)(i); to the Committee on Ways and Means.

456. A letter from the U.S. Trade Representative, transmitting a draft of proposed legislation to authorize appropriations for fiscal years 1996 and 1997 for the Office of the U.S. Trade Representative; to the Committee on Ways and Means.

457. A letter from the Under Secretary of Defense, transmitting the DOD implementation plan of matching of disbursements to obligations before payment, pursuant to Public Law 103–335, section 8137; jointly, to the Committees on National Security and Appropriations.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. HYDE: Committee on the Judiciary. H.R. 956. A bill to establish legal standards and procedures for product liability litigation, and for other purposes, with an amendment; referred to the Committee on Commerce for a period ending not later than March 7, 1995, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(e), rule X (Rept. 104–64, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. THORNTON:

H.R. 1109. A bill to improve budgetary information by requiring that the unified budget presented by the President contain information which facilitates consideration

of choices between spending which is consumption oriented, spending which is of a development character, and spending which is in the nature of a capital investment, and for other purposes; to the Committee on Government Reform and Oversight.

By Mr. ALLARD (for himself, Mr. HERGER, Mr. CRANE, and Mr. DUNCAN):

H.R. 1110. A bill to amend the Congressional Budget Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985 to limit the rate of growth of Federal outlays to 2 percent per year; to the Committee on the Budget, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DORNAN (for himself, Mr. HYDE, and Mr. FUNDERBURK):

H.R. 1111. A bill to clarify the war powers of Congress and the President in the post-cold war period; to the Committee on International Relations, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BREWSTER (for himself, Mr. YOUNG of Alaska, Mr. COBURN, Mr. ISTOOK, Mr. LARGENT, Mr. LUCAS, Mr. WATTS of Oklahoma, Mr. ABERCROMBIE, Mr. BAESLER, Mr. BAKER of California, Mr. BALLENGER, Mr. BARCIA, Mr. BARRETT of Nebraska, Mr. BONILLA, Mr. BROWDER, Mr. CAMP, Mrs. CHENOWETH, Mr. COBLE, Mr. CONDIT, Mr. CRAMER, Mr. CRAPO, Ms. DANNER, Mr. DEAL of Georgia, Mr. DELAY, Mr. DICKEY, Mr. DOOLEY, Mr. EDWARDS, Mr. FIELDS of Texas, Mr. GANSKE, Mr. PETE GEREN of Texas, Mr. GENE GREEN of Texas, Mr. HALL of Texas, Mr. HANCOCK, Mr. HAYES, Mr. HERGER, Mr. HOBSON, Mr. LAUGHLIN, Mr. LIPINSKI, Mr. MCINNIS, Mr. MONTGOMERY, Mr. NEY, Mr. ORTON, Mr. ORTIZ, Mr. PARKER, Mr. PETERSON of Minnesota, Mr. POSHARD, Mr. ROBERTS, Mr. ROSE, Mr. SCHAEFER, Mr. SCHUMER, Mr. SMITH of Michigan, Mr. STENHOLM, Mr. TANNER, Mr. TAUZIN, Mr. THORNTON, Mrs. THURMAN, Mr. VOLKMER, and Mr. ZELIFF):

H.R. 1112. A bill to transfer management of the Tishomingo National Wildlife Refuge in Oklahoma to the State of Oklahoma; to the Committee on Resources.

By Mr. BURTON of Indiana:

H.R. 1113. A bill to suspend until January 1, 1998, the duty on Fluridone aquatic herbicide; to the Committee on Ways and Means.

By Mr. EWING (for himself, Mr. COMBEST, Mr. KLINK, Mr. HOEKSTRA, Mr. MARTINEZ, Mr. PASTOR, Mr. FAWELL, and Mr. BONILLA):

H.R. 1114. A bill to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compacters that meet appropriate American National Standards Institute design safety standards; to the Committee on Economic and Educational Opportunities.

By Mrs. LOWEY (for herself, Mrs. MORELLA, Mrs. CLAYTON, Ms. MCKINNEY, Ms. LOFGREN, Mr. FROST, Mr. BEILENSON, Ms. PELOSI, Ms. WATERS, and Mr. SERRANO):

H.R. 1115. A bill to amend title IV of the Social Security Act to reduce teenage pregnancy, to encourage parental responsibility, and for other purposes; to the Committee on Ways and Means.

By Mr. MONTGOMERY (for himself, Mr. STUMP, Mr. BUYER, Ms. WATERS, Mr. EVANS, Mr. CLYBURN, and Mr. MASCARA):

H.R. 1116. A bill to amend title 10, United States Code, to increase the educational assistance allowance with respect to skills or specialties for which there is a critical shortage of personnel; to the Committee on National Security.

By Mr. PARKER:

H.R. 1117. A bill to provide for the establishment of the Margaret Walker Alexander National African-American Research Center; to the Committee on Economic and Educational Opportunities.

By Mr. POMBO (for himself and Mr. DOOLITTLE):

H.R. 1118. A bill to amend title 10, United States Code, to prohibit any Federal grant or contract from being awarded to any institution of higher education that does not allow the Secretary of Defense to maintain or establish Senior Reserve Officers' Training Corps units at that institution; to the Committee on National Security.

By Mr. RAMSTAD:

H.R. 1119. A bill to amend the Internal Revenue Code of 1986 to revise the treatment of deferred compensation plans of State and local governments and tax-exempt organizations; to the Committee on Ways and Means.

By Mr. ZELIFF (for himself, Mr. KASICH, Mr. MICA, Mr. MCCOLLUM, Mr. SHAYS, Mr. ZIMMER, Mr. INGLIS of South Carolina, Mr. GILCHREST, Mr. HOKE, Mr. RAMSTAD, Mr. TALENT, Mr. COX, Mr. SOLOMON, Mr. SMITH of Michigan, Mr. HANCOCK, Mr. BLUTE, Mr. HERGER, Mr. BASS, Mr. DOOLITTLE, Mr. BURR, Mr. JONES, Mr. FUNDERBURK, Mr. RADANOVICH, Mr. DORNAN, Mrs. SEASTRAND, and Mr. STEARNS):

H.R. 1120. A bill to provide for the consolidation of Federal employment assistance programs, to provide increased notice of the availability of the earned income tax credit, and to repeal the temporary FUTA surtax; to the Committee on Economic and Educational Opportunities, and in addition to the Committees on Ways and Means, Agriculture, and Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MCCOLLUM:

H.J. Res. 73. Joint resolution proposing an amendment to the Constitution of the United States with respect to the number of terms of office of Members of the Senate and the House of Representatives; to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

19. By the SPEAKER: Memorial of the Legislature of the State of Wyoming, relative to repealing the Gun-Free Schools Act of 1994; to the Committee on Economic and Educational Opportunities.

20. By the SPEAKER: Memorial of the House of Representatives of the State of New Mexico, relative to block grants; to the Committee on Economic and Educational Opportunities.

21. By the SPEAKER: Memorial of the Legislature of the State of Wyoming, relative to the Conference of the States; to the Committee on the Judiciary.

22. By the SPEAKER: Memorial of the Legislature of the State of Wyoming, relative to health reform matters; jointly, to the Committees on Ways and Means, Commerce, and Economic and Educational Opportunities.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 24: Mr. LOBIONDO.

H.R. 44: Mr. MCDADE, Mr. LIPINSKI, Mr. DOYLE, Mr. SAXTON, Mr. GEJDENSON, Mr. RIGGS, Mr. WELLER, Mr. CRAMER, Mr. MURTHA, and Mr. KILDEE.

H.R. 70: Mr. CLEMENT.

H.R. 127: Mr. BONIOR, Mr. WELDON of Florida, Mr. WARD, and Ms. KAPTUR.

H.R. 195: Mr. EMERSON, Mr. BARRETT of Wisconsin, Mr. ZIMMER, and Mr. FROST.

H.R. 218: Mr. STEARNS.

H.R. 303: Mr. BEREUTER.

H.R. 312: Mr. ROYCE.

H.R. 326: Mr. BAKER of Louisiana and Mr. HERGER.

H.R. 330: Mr. KLUG.

H.R. 371: Mr. MONTGOMERY and Mr. LEWIS of California.

H.R. 373: Mr. PACKARD.

H.R. 438: Mrs. CHENOWETH and Ms. LOWEY.

H.R. 493: Ms. MCKINNEY and Mr. JOHNSTON of Florida.

H.R. 530: Mr. BOEHNER, Mr. FAWELL, Mr. HUTCHINSON, Mr. BURTON of Indiana, Mr. BAKER of Louisiana, Mr. KLUG, Mr. FIELDS of Texas, Mr. GILLMOR, Mr. FORBES, Mr. SOLOMON, Mr. MCINTOSH, Mr. TRAFICANT, Mr. BALLENGER, Mrs. MEYERS of Kansas, Mr. REGULA, Mr. HASTINGS of Florida, Mr. CALVERT, Mr. MONTGOMERY, Mr. BUYER, Mr. JACOBS, and Mr. LAHOOD.

H.R. 539: Mr. MCCRERY and Mr. MONTGOMERY.

H.R. 582: Mr. FOX and Mr. LUCAS.

H.R. 607: Mr. FRANK of Massachusetts, Mr. CHRYSLER, Mr. SOLOMON, and Mr. EHRLICH.

H.R. 674: Mr. SERRANO.

H.R. 682: Mr. JONES, Mr. HUTCHINSON, Mr. HAYES, Mr. UPTON, Mr. CALVERT, and Mr. NETHERCUTT.

H.R. 753: Mr. ROHRABACHER, Mr. BURR, Mr. BAKER of Louisiana, Mr. GUTKNECHT, Mr. BARCIA of Michigan, and Mr. FORBES.

H.R. 762: Mr. KLINK.

H.R. 783: Mr. CRAPO, Mr. WELLER, Mr. EVERETT, and Mr. BOUCHER.

H.R. 809: Mr. LIPINSKI.

H.R. 840: Mr. JONES.

H.R. 852: Mr. SMITH of New Jersey, Ms. PELOSI, Mr. LIPINSKI, Mr. FRAZER, and Mr. BEILENSON.

H.R. 860: Mr. STOCKMAN.

H.R. 873: Mr. PETERSON of Minnesota, Mr. REED, Mr. MOORHEAD, Mr. SOLOMON, Mr. MINGE, and Mr. CLEMENT.

H.R. 881: Mrs. CLAYTON, Mr. EVANS, and Mr. NADLER.

H.R. 936: Mr. RANGEL and Mr. OWENS.

H.R. 939: Mrs. ROUKEMA.

H.R. 969: Mr. UNDERWOOD and Mr. HANSEN.

H.R. 982: Mr. PAYNE of Virginia, Mr. BAESLER, and Mr. TAUZIN.

H.R. 1066: Mr. VISCLOSKY, Mr. ZIMMER, and Mr. UNDERWOOD.

H. Con. Res. 10: Mr. SOUDER, Mr. TORRES, Mr. BACHUS, Mr. FILNER, Mr. PACKARD, Ms. WOOLSEY, and Mr. DICKS.

H. Con. Res. 12: Mr. MONTGOMERY, Mr. FALEOMAVAEGA, and Mr. ROYCE.

H. Res. 45: Ms. WOOLSEY, Mr. LIPINSKI, Mr. JOHNSON of South Dakota, and Mr. DEFAZIO.

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PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, THURSDAY, MARCH 2, 1995 No. 39

Senate

(Legislative day of Wednesday, February 22, 1995)

The Senate met at 12 noon, on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Our prayer will be delivered by Father Paul Lavin, pastor of St. Joseph Catholic Church on Capitol Hill in Washington, DC.

PRAYER

The guest Chaplain, the Reverend Paul Lavin, offered the following prayer:

Lord God, by the mouth of Your prophet Amos You tell us:

I hate and despise your feasts, I want no more of your burnt offerings, Let me have no more of the din of your chanting, no more of the strumming of your harps. But let justice flow like water, and integrity like an unfailing stream.

Help us understand that our only feast acceptable in Your sight will be our assistance to the poor and support of the oppressed. Let the practice of justice be the song of our Nation and let each of us offer a contrite and humble heart. Then when we lift up our voices in song to You our hearts will be clean and You will love our song.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished majority leader is recognized.

SCHEDULE

Mr. DOLE. Mr. President, at 2 o'clock, leader time having been reserved, the leaders will each have 10 minutes, followed by a vote on the balanced budget amendment.

RECESS UNTIL 2 P.M.

Mr. DOLE. I now move that the Senate stand in recess until 2 p.m. today.

The motion was agreed to, and at 12:02 p.m., the Senate recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ASHCROFT).

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The Senate resumed consideration of the joint resolution.

The PRESIDING OFFICER. Under the previous order, the Democratic leader is recognized.

Mr. DASCHLE. Mr. President, this debate has now continued for more than a month. There have been many conflicting statements and some misunderstandings, but no one should misinterpret this vote. It is not a vote on balancing the budget or reducing the deficit. Democrats have been committed to that for a long time, and our record is very, very clear. We demonstrated that in 1990 on a very tough vote. And, without any help from Republicans, we again demonstrated that in 1993; $600 billion of deficit reduction later, we find ourselves here this afternoon. We are prepared to continue that commitment for as long as it takes to put this debt behind us for good.

So no one should be misled by the political rhetoric about our position. We will do what we have already done. We will work to bring down the debt with or without a constitutional amendment.

This debate really should not even have to be about the need for a constitutional amendment. By my count, there are over 70 Senators who favor one. More than two-thirds of this body favor writing a balanced budget requirement into the U.S. Constitution, and I am one of them.

What this debate is all about is what that amendment should say. And what our Republican colleagues have said is that it has to be this version, this amendment, or no amendment at all. That is what this debate has been about.

Can we improve upon this amendment? Can we make sure that it is our best effort? We have made a number of suggestions that, in our view, would have vastly improved the language that we are about to vote on today. We proposed that we lay out just how we achieve our goal before we begin doing so, as any other undertaking of this importance and magnitude would require. The majority said, ''No, we'll do that later. Trust us. Somehow it will all work out.''

We proposed changes that deal with national emergencies. The majority said, ''No, we'll do that later.''

We proposed changes to put the Federal Government on the same level as other governments as we make important budgetary decisions. The majority said, ''No. We'll probably have to do that later.''

We proposed changes to give the Federal Government the ability to deal with recessions. The majority said, ''No.''

Most importantly, we proposed that Social Security not be used to pay off the debt. We have argued that we have not solved anything if we create one debt to erase another. If we go further into debt to senior citizens, even more than we have already, to bring down the debt to all taxpayers, then what have we accomplished? And, more importantly, perhaps, what have we lost?

I believe we will have lost our credibility. We will have lost our commitment to working people who are counting on us this afternoon. We will have lost our only real hope of balancing the budget correctly.

So let me make it very clear. The vast majority of Democrats support a balanced budget. Many support a constitutional amendment to require one. But virtually no Democrat supports

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

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using the Social Security funds that we now have to do so. It is wrong. We all know it is wrong. Republicans know it, and Democrats know it.

Originally, Republicans said it was wrong, but they just did not want to put it in writing. They wanted the certainty of a constitutional amendment to balance the budget, but they were unwilling to provide the same constitutional certainty for Social Security. Given that unwillingness, a significant number of my colleagues were left with no choice. In spite of our best efforts to find a provision that Republicans could accept, we were left with no choice but to vote against this version of an amendment. So this was their choice. This amendment could have passed by more than 70 votes.

All we ask is that we not rob the bank to pay the debt; that we not take Social Security funds away to do something that we know we must do. Too many people have put too much money into the bank for anyone to do that now. That has been our message—protect current and future Americans who are dependent upon Social Security, and we will find the votes to pass this amendment. We will do it today. The Republicans said, ''No. No, it is this amendment or no amendment at all.''

Already there is talk about using this amendment for political purposes. Frankly, I am disappointed to hear that. It makes me wonder whether this was just another political ploy, another bumper sticker creation, courtesy of the Republican National Committee, or something real, something which merits being added to the Constitution of the United States.

If it is politics—as I suspect this threat to bring the amendment back right before the next election may be—then I say, let us do it, let us have it out then, too.

The one thing the American people really understand when they see it is politics. And they do not like it, not when it comes to amending our Constitution, not when it is something this important. And they will not want to see us rob Social Security then any more than they do right now.

So, Mr. President, let me emphasize, let me make sure no one misunderstands, Democrats want to work to find a meaningful way to reduce the deficit. We all understand the critical nature of this vote, no matter how many times we will be called upon to cast it. We stand ready to work to reduce the debt to zero, just as we have already done. We have done it before. We will do it again.

But we also stand ready to keep our commitments to all working Americans. We will do that today, too, and we will do it again. As we cast our vote, future generations are counting upon all of us to do no less.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. First, let me announce that, after the vote, the Armed Services Committee will meet in the President's room to report out some nominations.

Mr. President, let me just be brief, because I think we have said about all we can say about the balanced budget amendment. We will vote today. There have been a couple of matters arise since Tuesday and I think a few points bear repeating.

I have said many times before that the Senate cannot operate if there is any lack of trust between the majority and minority leaders. And I have had such relationships with Senator MITCHELL, Senator BYRD, and with Senator DASCHLE.

The distinguished Democratic leader did say, however, that he thought maybe not having the vote on Tuesday may have damaged that relationship. I believe that is not the case. As the Democratic leader knows, Senator HATCH and Senator SIMON spent much of Tuesday in discussions, which ultimately led to the amendment by the Senator from Georgia, Senator NUNN. And we even had discussions since that time. In fact, as late as 5 o'clock last night, there was some kind of a suggestion put forward by a number of Democrats who had voted for a balanced budget amendment before and now are in opposition.

So I think the point is that we did use that time and did try to come together, as the Democratic leader has just suggested. But I think now we have reached a firm decision and it is time for a vote. The time for a vote has arrived.

I must say, I have been a little bit amused, I guess you would say, about all this talk on the other side about Social Security, particularly after most every Democrat in 1993 voted to increase taxes on Social Security recipients to the tune of about $25 billion, affecting millions and millions of retired people. So I must say I was a bit amused when I saw all the gnashing of the teeth.

I also would put in the RECORD at this point this year's budget resolution, the one that many of my colleagues voted for and are now voting against. The only difference is we changed the date of 2001 that Senators voted for last year. It is now 2002. And we also added the Nunn language.

I ask unanimous consent that both of these resolutions be made a part of the RECORD. If anybody wants the facts, the facts are there.

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

SENATE JOINT RESOLUTION 41, BALANCED BUDGET AMENDMENT TO CONSTITUTION AS VOTED ON BY THE U.S. SENATE, MARCH 1, 1994

SECTION 1: Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

SECTION 2: The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the number of each House shall provide by law for such an increase by a rollcall vote.

SECTION 3: Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

SECTION 4: No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

SECTION 5: The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

SECTION 6: The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts. The power of any court to order relief pursuant to any case or controversy arising under this Article shall not extend to ordering any remedies other than a declaratory judgment or such remedies as specifically authorized in implementing legislation pursuant to this section.

SECTION 7: Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except those for repayment of debt principal.

SECTION 8: This article shall take effect beginning with fiscal year 2001 or with the second fiscal year beginning after its ratification, whichever is later.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION AS AMENDED BY SENATOR NUNN

ARTICLE —

SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

SECTION 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

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SECTION 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts. The judicial power of the United States shall not extend to any case of controversy arising under this Article except as may be specifically authorized by legislation adopted pursuant to this section.

SECTION 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

SECTION 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.

Mr. DOLE. And there was nothing in the resolution last year that protected Social Security. All this talk about protecting Social Security is a cover for the taxes that were increased on Social Security benefits by the very people who are announcing, ''Oh, no; we cannot touch Social Security.'' We want the record to be clear on that issue, as people look at it in the next few months. There will be ample time to look at it in the next few months.

On January 26, the Senate voted 83 to 16 to adopt a sense-of-the-Senate amendment stating we should not raise Social Security taxes or cut Social Security benefits in order to balance the budget. On February 9, the Senate adopted a motion reaffirming that commitment by a vote of 87 to 10. The House had done the same by a vote of 412 to 8. No doubt about it, there is clearly strong, bipartisan support to protect Social Security.

So all these other machinations and all the games that have been played in the last few days was an effort. I do not know what the effort was all about. I guess maybe to tell people, ''Well, I voted one way last year, but this is a different year, and things have changed.'' Well, nothing has changed in the amendment. That is why I want the amendments put in the RECORD, so the American people know precisely that some people voted for one thing, and against the same thing the next year. That is fine. We have a right to change our mind.

It seems to me that if we increase taxes on Social Security beneficiaries $24.6 billion that probably is a cause for some concern. And not a single Republican in either the House or the Senate joined in that new tax on senior citizens. Not a single Republican.

Let me again state for the RECORD that later this year, Republicans will put forward a detailed 5-year plan to put the budget on the path of balance by the year 2002. Our plan will not raise taxes and our plan will not—will not—touch Social Security. I do not know what other assurances some people need. Maybe they do not really want assurances.

Make no mistake about it, everything else—every other spending program—will be on the table. If this amendment fails, you are still going to get the tough votes. We will offer the plan that we would have offered if this amendment had passed, and then we will see where everybody falls out, see how strongly they feel about spending cuts—not tax increases, but spending cuts.

When all is said and done, it all comes down to one question: Does the Senate of the United States trust the American people? Well, 98 percent of Republicans do, and less than 30 percent of Democrats do. That is how it adds up: 14 out of 47, and 52 out of 53. So we trust the American people by almost 98 percent.

We are not changing the Constitution if we pass this amendment. The Founding Fathers did not give Congress that power. Instead, they reserved that power to the States and to the people, and by passing this amendment, we are in effect authorizing a national debate on the merits of a balanced budget amendment to the Constitution. That is all we do. And, over the years, we will have the pros and cons because all 50 States chosen by people in our States are going to make that determination—Democrats and Republicans and State legislatures in 50 States.

There is a word for that process. It is called democracy. It is called democracy. Nobody is going to predict with any certainty what the final outcome will be. Republicans control both Chambers in 19 States, Democrats control both Chambers in 18 States, and in 12 States each party controls one Chamber. Nebraska has a nonpartisan legislature.

It will be tough to get 38 out of 50 States to approve this amendment. I will do my best if it passes to convince the Kansas Legislature to adopt the amendment. I know the President will do his best to sway the people the other way. Even though 80 percent of the American people want this, President Clinton knows best. ''This is not what you want,'' he is saying to the American people. ''You want something else: Higher taxes, higher debt.''

Thomas Jefferson himself envisioned such a process when he wrote:

> I know no safe depository of the ultimate power of society but people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education.

If there is one man who knows as much about the Constitution as Thomas Jefferson, it is probably Senator ROBERT BYRD. On August 4, 1982, in announcing his support for the balanced budget amendment, Senator BYRD said:

> Under our democratic system, to put a question of this magnitude directly to the people is a wise and proper action. Therefore I will vote for this amendment—and thus vote to put this question directly to the American people. I cannot doubt that their ultimate decision will be the right one.

Nothing has changed since, except the debt has gotten bigger. We have not exercised the will of the Congress. It has gotten bigger. I think the American people are enlightened enough to make this decision. I happen to believe what some still think about this revolutionary principle—revolutionary principle—''Trust the people.'' We do not want to trust the people—98 percent of us do. I am willing to trust the American people to make the right decision. Those who oppose the amendment are not.

That is what this debate is all about. Returning power to the people, returning power to the States. That is what the American people say they want. They want to make decisions. We are not going to give them that opportunity. We will take that away from them if we do not adopt this amendment. What we are saying is, in effect, if the amendment fails, ''Washington knows best. This is business as usual; we know what you want. Don't tell us you know what you want, because we know better. Eighty percent of the people don't have any idea what they are talking about.'' That is the attitude that spurred last November's revolution.

Finally, I ask my colleagues to listen to the words Thomas Jefferson spoke in his first inaugural address:

> Sometimes it is said that man cannot be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the forms of kings to govern him? Let history answer this question.

Mr. President, history will remember how we respond to that question today. As for me, and as for a lot of our colleagues on both sides of the aisle, the answer is ''democracy, democracy.'' The answer is, ''Trust the people; trust the people.'' We trusted them when they voted for us. But the election is over now. Promises that were made are in the ashcan. They do not mean anything now, because I have been elected, we have been elected.

I just suggest we ought to pass this amendment; we ought to send it to the States. And we ought to say to the State legislatures, ''Make the decision.'' And if 38 ratify the amendment, it becomes part of the Constitution. If 38 do not, it fails. So I urge my colleagues, there is still time to repent. There is still time.

The PRESIDING OFFICER. The clerk will report the joint resolution.

The assistant legislative clerk read as follows:

> A joint resolution (H.J.Res. 1) proposing a balanced budget amendment to the Constitution of the United States.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient.

The yeas and nays were ordered.

Mr. DOLE. I ask that Senators remain at their desks, and vote from their desks.

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

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the joint resolution to be read a third time.

The joint resolution was read a third time.

The PRESIDING OFFICER. The joint resolution, having been read the third

time, the question is, Shall the joint resolution pass?

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 65, nays 35, as follows:

[Rollcall Vote No. 98 Leg.]

YEAS—65

Abraham	Frist	McConnell
Ashcroft	Gorton	Moseley-Braun
Baucus	Graham	Murkowski
Bennett	Gramm	Nickles
Biden	Grams	Nunn
Bond	Grassley	Packwood
Breaux	Gregg	Pressler
Brown	Harkin	Robb
Bryan	Hatch	Roth
Burns	Heflin	Santorum
Campbell	Helms	Shelby
Chafee	Hutchison	Simon
Coats	Inhofe	Simpson
Cochran	Jeffords	Smith
Cohen	Kassebaum	Snowe
Coverdell	Kempthorne	Specter
Craig	Kohl	Stevens
D'Amato	Kyl	Thomas
DeWine	Lott	Thompson
Domenici	Lugar	Thurmond
Exon	Mack	Warner
Faircloth	McCain	

NAYS—35

Akaka	Feinstein	Levin
Bingaman	Ford	Lieberman
Boxer	Glenn	Mikulski
Bradley	Hatfield	Moynihan
Bumpers	Hollings	Murray
Byrd	Inouye	Pell
Conrad	Johnston	Pryor
Daschle	Kennedy	Reid
Dodd	Kerrey	Rockefeller
Dole	Kerry	Sarbanes
Dorgan	Lautenberg	Wellstone
Feingold	Leahy	

The PRESIDING OFFICER. On this vote, the yeas are 65, the nays are 35. Two-thirds of the Senators voting not having voted in the affirmative, the joint resolution is not passed.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. I enter a motion to reconsider the vote by which the constitutional amendment was defeated.

The PRESIDING OFFICER. The motion will be received.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

MORNING BUSINESS

Mr. DOLE. I ask unanimous consent that there now be a period for the transaction of morning business until 3:15 p.m., with Senators allowed to speak for not more than 5 minutes each.

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

BASE CLOSURE COMMISSION

Mr. COHEN. Mr. President, as if in executive session, I ask unanimous consent that at 4:15 p.m. the Senate go into executive session to consider the Defense Base Closure and Realignment Commission, Executive Calendar Nos. 12 through 17, and the nomination of Major General Robles, en bloc under the following time limitation: 30 minutes equally divided between the majority leader and Senator NUNN; further, that at the conclusion or yielding back of time, with no intervening debate or action, the Senate immediately vote on the confirmation of the nominations en bloc.

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

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I would ask for order.

The PRESIDING OFFICER. The Senate will be in order.

Senators will please remove their conversations to the Cloakroom.

The Senator from Illinois.

Mr. SIMON. Thank you, Mr. President.

BREAKING THE SPENDING ADDICTION

Mr. SIMON. Mr. President, I wish to thank several people, and then I would like to take a couple of minutes for a brief comment on what has just taken place.

I wish to thank Senator HATCH, who has been great to work with, who has been a real leader on this. Senator CRAIG came over from the House and was like a breath of fresh air working on all of this. Senator THURMOND through the years provided leadership.

On our side, Senator HEFLIN was very helpful. I have to acknowledge a former Senator who helped prior to this time, Senator DeConcini; my colleague from Illinois, Senator CAROL MOSELEY-BRAUN has been superb; Senator CAMPBELL; Senator ROBB. And I also want to pay tribute to the leader of the opposition, with whom I sincerely differ on this, Senator BYRD. He is a powerful and highly respected opponent.

I also want to thank Congressman CHARLIE STENHOLM and the House Members for all the work they did, and very specifically Aaron Rappaport from my staff, and all the other staff members on my staff and the other staffs who spent so much time on this.

Mr. President, this is a sad day in the history of our Nation. We have narrowly missed the opportunity to give generations to come a brighter future. Presented the chance to break our addiction to economic gluttony, by the narrowest of margins, we have determined that we do not have the will to kick the habit. Like a pregnant woman whose child to be will suffer from a cocaine addiction, we cannot summon the will to break our debt addiction even though we know it will harm our children.

We will break our addiction sometime in the future, the Senate said in 1986, when it also failed to pass the balanced budget amendment by one vote. The national debt then was $2 trillion. We can solve our problem without a constitutional amendment, voices on the Senate floor urged then and, of course, we have not. Now the debt is $4.8 trillion instead of $2 trillion, and the attractive siren song of the opposition is the same.

It would have been easier to break the habit in 1986 than in 1995, and it is easier in 1995 than it will be in 1999. Each year, the grip of the addiction grows, and each year we spend more and more on interest and less and less in ways that help the most vulnerable in our society.

We are headed toward monetizing our debt and devaluing our currency, the steps nations take historically as they pile up too much debt. No nation has come close to accumulating the amount of peacetime debt that we have. When and if monetizing our debt occurs, everyone in our society will suffer.

Ironically, among those who will suffer the most are those on Social Security, because of the devaluation of the U.S. Treasury bonds which secure the Social Security retirement trust funds. I say ironically because much of the opposition to the balanced budget amendment has been mounted in the name of Social Security. The threat to Social Security is the debt, and the real way to protect Social Security is this balanced budget amendment. Instead of giving our economy a lift with lower interest rates that come with the reduced deficit, the Senate has made a decision to stumble along and have higher interest rates.

There are at least two proposals to move us on a glidepath toward a balanced budget by the year 2002 without a constitutional amendment. I probably will support one of them, though it is unlikely the goal will be achieved without the discipline of the constitutional amendment. But even if the goal is achieved, because there is not the long-term assurance to the financial markets that a constitutional amendment offers, interest rates will not be reduced as much. The Nation will pay a staggering interest penalty for which we will get nothing other than higher interest rates. Those who purchase bonds combine the need for a small profit margin plus a hedge against inflation. We have just increased the cost of the hedge against inflation.

Because the trade deficit is tied into the budget deficit, we will continue to export more American jobs, and our standard of living, that could rise significantly, will at best move up modestly, perhaps decline. With higher interest rates there will be less investment that would create more industrial and construction jobs.

Is it impossible to kick the debt habit? No. But each year that goes by it becomes more difficult and at some point it becomes politically impossible. I do not know where that point is nor does anyone else. We have done today what most addicts do—postpone the tough decision. Future generations will not look upon this day with pride.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I associate myself with the excellent remarks of the distinguished Senator from Illinois. I do not think anybody could have said it better. I do not think anybody could have said it more clearly. I personally feel he has done us a great honor in making these remarks and in pointing out the future of our country—what we are going to go through if we do not ultimately pass this balanced budget amendment—I would say within the near future.

I also want to pay tribute to him for his stalwart steadfastness in standing up for this balanced budget amendment. It has not been easy for him on his side of the floor, with only 13 other of his 47 Democrat colleagues. I know what he has gone through. I pay tremendous tribute to him as one of our great leaders for this cause at this time.

Mr. President, I also would like to pay tribute to my colleague Senator CRAIG for the long hours and efforts he has made as the leader of our rapid response team. He has worked tirelessly his whole congressional career, both in the House and here in the Senate, to try to pass a balanced budget constitutional amendment.

There are many others who are too numerous to mention. The distinguished senior Senator from South Carolina, Senator THURMOND, has been our leader on the balanced budget amendment ever since I got here. Senator HEFLIN on the other side of the floor, Senator EXON, who worked so hard, and many, many others. I do not want to leave anybody out, but let me leave it at that.

I want to pay tribute to my colleague from West Virginia. Unlike, I think, a number of others—a number of others—he has sincerely believed in his position and he has advocated it with force and with strength and, frankly, deserves credit for winning this battle. I want to pay tribute to him as a floor leader and an acknowledged master of floor debate and as somebody for whom I have a great deal of respect. I do so because of the way he has conducted himself and the way he has handled his side of the debate in this matter. You have to have respect for opponents who believe in what they are doing.

But having said that, if there is something I feel particularly badly about, it is that a handful of Senators and the President have won this battle and the American people have lost. That is my opinion and I acknowledge that. Everybody knows how sincerely I feel about this issue as well. The people have lost this skirmish today. But this battle is not over.

I just want the American people to understand that one of the things I feel worst about in this whole debate is that some have tried to bring Social Security into the debate to frighten our senior citizens, as though that was really a part of this debate. I do not think there is a senior citizen in this country, not one that I know of who cares for his or her country, who does not understand that when you are talking about a balanced budget amendment to the Constitution, you can have no mere statutory programs exempted from or referred to in the text of the basic governing document of our country. It has never been done, and it is not right. If you attempt to carve out a special exception to the basic law of the land for a specific group of statutory beneficiaries, you will divide the country and hurt everybody else who does not belong to that special interest group. Ironically, in this case, you would hurt those beneficiaries too. The biggest threat to Social Security is our Government's profligacy. And an exemption for Social Security would lead some to try to use the trust fund to pay for other popular programs or create a loophole to keep deficit-spending. And it would keep the debt going up, which would ultimately harm those on fixed incomes and risk the viability of the trust funds.

Having said that, I do not think there is a senior citizen in this country presently on Social Security, who understands the importance of our country and how to keep it great, who would not be willing to sacrifice to keep it great if they were so called upon. And I believe they would not want to have a specific carve-out of any statutory programs—no matter how important—in the text of the Constitution. We just don't do that in the Constitution. To make Social Security part of this debate in the way it was by some, I felt, was beneath the dignity of the Senate. Some were sincere, I will acknowledge that. But let us be clear, for three or four decades now we have taken Social Security funds and counted them as receipts to the Federal Government in the budget system, we certainly have since President Johnson established the unified budget system—under both Democrat and Republican Senates and Presidents. For people to make Social Security and the unified budget a political football I think was just plain, downright wrong. To frighten our senior citizens for mere political purposes is despicable.

Having said that, just so everybody in this country understands, this is only battle No. 1. This is not over. We lost today, 66 to 34. We had 99 percent of all Republicans in both Houses voting for the balanced budget amendment. One percent did not. Less than 33 percent of the Democrats voted for it. So we have a clear delineation, as far as I am concerned. But I praise the 14 Democrats who did vote for it here today because they are heroes, in my eyes.

The reason the vote was 65 to 35 is because our distinguished majority leader, knowing that this war is not over, over the balanced budget amendment, he had to switch his vote and vote ''no'' so that he could make the procedural motion to reconsider the vote so that the amendment can come back again—perhaps before the end of this year, certainly before the end of next year.

This is just vote one on the balanced budget amendment. There definitely will be another vote. And if the American people understand this issue and they really want to do something about it, they should start letting those who voted against the amendment know how they feel. They should start letting them know now. I call on all senior citizens to start telling their representatives and the special interest lobbyists, ''Quit playing games with Social Security, and do what is right for the country,'' and if they do so and we pass the balanced budget amendment, Social Security, as the distinguished Senator from Illinois has wisely spoken, will then be secure.

The only way to make Social Security secure—it seems to me the only way—is to keep a strong economy. And with business as usual—without the balanced budget amendment—we are not going to be doing that.

Mr. President, an effort such as the one we have been involved in over the past month requires the time, talent, and commitment of a large number of people. While I cannot name them all, I would like at this time to extend my gratitude to the Senators and staff who were so instrumental on this.

Let me first thank our majority leader for his pivotal role.

Senators SIMON, CRAIG, and THURMOND, of course, have my admiration and my thanks.

I am also especially proud of all of our new Senators who have graciously and effectively played a major role: Senators LOTT, DOMENICI, COVERDELL, and SMITH, and all 11 of our new Senators, Senators ABRAHAM, ASHCROFT, DEWINE, FRIST, GRAMS, INHOFE, KYL, SANTORUM, SNOWE, THOMAS, and THOMPSON have also joined in leading our effort over this past month. And Senator NUNN has been, as always, a studious and effective proponent.

Finally, I would like to single out some of the staff members who worked so long and hard on this matter: David Taylor (Dole); Aaron Rappaport and Susan Kaplan (Simon); Damon Tobias and Alan Kay (Craig); Thad Strom (Thurmond); Andrew Effron (Nunn); Bill Hoagland and Austin Smythe (Domenici), and David Hoppe and Alison Carroll (Lott).

Lastly, Mr. President, I would like to thank the very special people who have worked with me on this issue: Shawn Bentley; Larry Block; Sharon Prost; Mark Disler; Manus Cooney; Steve Tepp; Jason Adams, and Steven Schlesinger. They have all worked long and hard hours in the most dedicated fashion, and I love them for their devotion to duty and our country.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I will not detain the Senate. Mr. President, I do not expect to take 7 minutes. However, I ask unanimous consent that, in the event I should need an additional 2 minutes, I not be interrupted and that I have them.

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

Mr. BYRD. Mr. President, I thank the Chair. I thank my colleagues.

Mr. President,

The way a crow
Shook down on me
The dust of snow
From a hemlock tree
Has given my heart
A change of mood
And saved some part
Of a day I had rued.

I congratulate the Senate today. The debate has been constructive, the occasion has been historic, and the issue has been decided in favor of the sanctity of the Constitution of the United States of America.

The debate has been full and extensive, in the best tradition of the Senate, and such debates have become more infrequent in recent years. I believe the outcome is the right result because of the thoroughness and length of the debate. I hope that this indicates a return to the long tradition of real debate on great national issues.

There was no way to cure the ills of this amendment. It was fatally flawed from the outset. There is virtually no way such an amendment can be written without rearranging the carefully constructed balance of powers hammered out by the giant intellect and wisdom of the Framers over 200 years ago, or jeopardizing our Nation's economic or national security in times of crisis or peril.

There are no statutory fixes that can solve the Social Security trust fund problem or any of the other many difficulties inherent in the language of this constitutional amendment. Statutes can never cure a constitutional amendment's flaws. The Constitution supersedes all legislation that is inconsistent therewith. It is the final arbiter, regardless of what promises are made or what legislation is enacted.

So, this unwise and dangerous proposal has been rejected, as it should have been. The proposal has never been well understood by the people. It seems simple, and espouses a worthy goal, but it neither guarantees a balanced budget nor tells the people how one will be achieved.

We hear claims that 80 percent of the American people want this amendment. But the proponents conveniently ignore the deeper probing of those polls, which show that the 80 percent figure is a hollow number, which dissolves when questions about how the amendment would actually be applied are posed. People do not want the Social Security trust fund to be raided. And it has become clear that the trust fund would be looted, should this amendment ever scar the Constitution. The amendment was and is a seductive, but false and dangerous promise—nothing more.

We have before us, now, both a responsibility and an opportunity with the defeat of this constitutional amendment. We have a responsibility not to delay serious progress on deficit reduction, as the amendment would have allowed us to do. We also have an opportunity to put partisan bickering aside and begin to take steps to get our fiscal house in order. That is what the American people truly want to see. They want us to put the posturing and bickering aside and get down to business together.

So, I eagerly await the majority's plan for deficit reduction. And, I trust that every Senator on this side of the aisle is ready to play a cooperative and constructive role in developing a plan that can become a reality. This has been a bruising debate, but it is time to let the fires cool, and come together for the Nation. Let us begin.

Before I close, I want to commend Senator HATCH for his fair and judicious handling of this matter.

I also wish to again express my admiration for the statesmanlike leadership of Senator TOM DASCHLE. His is a bright and courageous spirit. And, Senator MARK HATFIELD has written his own ''profile in courage,'' as have Senators DORGAN, CONRAD, BINGAMAN, HOLLINGS, FEINSTEIN, and FORD. Senators DODD, SARBANES, MOYNIHAN, BOXER, KENNEDY, REID, LEVIN, BUMPERS, and JOHNSTON have helped greatly to clarify and enlighten the debate on this side of the aisle, as have many others.

But, a special word should go to Senator PAUL SIMON. A more sincere proponent of this proposal is not to be found. Today's outcome was not a loss for the distinguished senior Senator from Illinois. His belief in this solution, his absolute commitment to his cause, and his gentle and fair deportment throughout this debate have added nothing but additional lustre to the fine legacy he leaves here in the Senate. I thank him for being the man that he is. I am proud to serve with him, and deeply honored to call him my friend.

I shall be telling this with a sigh
Somewhere ages and ages hence;
Two roads diverged in a wood, and I—
I took the one less traveled by,
And that has made all the difference.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished Chair.

Mr. President, I ask unanimous consent to include in the RECORD a letter dated March 1, 1995, to the distinguished majority leader along with an accompanying compromise proposal concerning Social Security which I and four of my colleagues delivered to the distinguished leader yesterday afternoon at 5 o'clock. Had we voted on this proposal, we could have passed the balanced budget amendment in a flash.

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

U.S. SENATE,
Washington, DC, March 1, 1995.

Hon. ROBERT J. DOLE,
Majority Leader,
U.S. Senate, Washington, DC.

DEAR MR. LEADER: We have received from Senator Domenici's office a proposal to address our concerns about using the Social Security trust funds to balance the Federal budget. We have reviewed this proposal, and after consultations with legal counsel, believe that this statutory approach does not adequately protect Social Security. Specifically, Constitutional experts from the Congressional Research Service advise us that the Constitutional language of the amendment will supersede any statutory constraint.

We want you to know that all of us have voted for, and are prepared to vote for again, a balanced budget amendment. In that spirit, we have attached a version of the balanced budget amendment that we believe can resolve the impasse over the Social Security issue.

To us, the fundamental question is whether the Federal Government will be able to raid the Social Security trust funds. Our proposal modifies those put forth by Senators Reid and Feinstein to address objections raised by some Members of the Majority. Specifically, our proposal prevents the Social Security trust funds from being used for deficit reduction, while still allowing Congress to make any warranted changes to protect the solvency of the funds. The prior language of the Reid and Feinstein amendments was not explicit that adjustments could be made to ensure the soundness of the trust funds.

If the Majority Party can support this solution, then we are confident that the Senate can pass the balanced budget amendment with more than 70 votes. If not, then we see no reason to delay further the vote on final passage for the amendment.

Sincerely,

BYRON L. DORGAN.
ERNEST F. HOLLINGS.
WENDELL H. FORD.
HARRY M. REID.
DIANNE FEINSTEIN.

ARTICLE —

SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

SECTION 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year in which total outlays do not exceed total receipts.

SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

SECTION 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which

causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

SECTION 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

SECTION 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal. The receipts (including attributable interest) and outlays of the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds (as and if modified to preserve the solvency of the Funds) used to provide old age, survivors, and disabilities benefits shall not be counted as receipts or outlays for purposes of this article.

SECTION 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.

Mr. HOLLINGS. Mr. President, I have included this information at this point because it marks the first opportunity that we have had to clear the record. I would like to clarify what I think were misleading statements made earlier by some of my colleagues on the other side of the aisle. Mr. President, in 1982 I worked with the distinguished Senator from Utah and voted for a balanced budget amendment that time. It was not identical to the balanced budget amendment voted on today.

Mr. President, I am a senior citizen as is my colleague, Senator THURMOND. We, at age 72, have to take the benefits. And I can tell you, our contemporaries are not worried about receiving our benefits, because the books show almost one-half trillion dollar surplus in Social Security reserves. Indeed, seniors are more concerned about the fight to come on Medicare. So let us put to rest the notion that we are trying to frighten senior citizens. Rather, what we are attempting to do is to try and keep a solemn trust with middle America. Everybody says we need to do something for middle America. It is middle America that is paying for me to receive Social Security benefits now, and it is middle America who, come their time in the next century, will be taxed again when they become eligible to receive benefits.

The issue here should be about stopping government deficits and not simply moving the general fund deficit over to the Social Security deficit. Some of my colleagues on the other side of the aisle have specifically articulated the latter idea. Indeed, my friend, the Senator from Mississippi said on ''Face the Nation'' on February 5:

> Nobody—Republican, Democrat, conservative, liberal, moderate—is even thinking about using Social Security to balance the budget.

Mr. President, I agree with the Senator from Mississippi. But the actions of some of my Republican friends seem to indicate otherwise. Like John Mitchell, the former Attorney General, used to say, ''Watch what we do, not what we say.'' Just last evening on ''Larry King Live,'' the distinguished Senator from Texas, Senator GRAMM, said:

> I think we ought to balance the budget counting Social Security first, and then if we want to balance it without counting it, do it second.

Clearly, this statement reflects an intent to use Social Security surpluses.

In addition, the chairman of the Senate Budget Committee, Senator DOMENICI, has said: ''You can't leave the biggest American program off budget.'' However, my friend, the distinguished Senator from New Mexico, voted to leave it off budget both in committee in July 1990 and later on the floor in reference to the Hollings-Heinz amendment which passed 98 to 2, and was signed into law by President Bush.

I ask unanimous consent that the law be printed in the RECORD at this point.

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

BUDGET ENFORCEMENT ACT

Subtitle C—Social Security

SEC. 13301. OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

(a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following: ''The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.

Mr. HOLLINGS. Next, Mr. President, I refer to Senator GRASSLEY of Iowa who said:

> The leadership of the House of Representatives and the Senate have promised not to touch the Social Security retirement program for at least 5 years.

Do they have it in mind after 5 years? On March 1, my distinguished colleague, Senator CRAIG said:

> Without access to the Social Security surpluses, you would create a much higher hurdle in trying to balance the budget.

That is true, but not requiring that higher hurdle means that you are going to use Social Security funds.

Finally, on February 5, 1995, the distinguished majority leader, Senator DOLE said:

> I also believe that we can't keep Social Security off the table forever.

Mr. President, that is not the promise we made in 1983. When this Senator and others raised Social Security FICA taxes, we promised otherwise. We must keep the contract made by President Roosevelt in 1935; we must keep the promise made back in 1983 that these taxes would not be used to pay for foreign aid, welfare, or any other Government program; and we must continue in our resolve to keep our commitment to middle America intact.

I thank the Chair.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I will be brief because several other Senators want to speak this afternoon. I did want to comment and thank a variety of people who have worked so closely with myself and Senator HATCH of Utah and Senator PAUL SIMON of Illinois, in attempting to pass this important amendment, so that we can propose it to the citizens of our country for their consideration.

Let me, first of all, recognize Damon Tobias on my staff, who literally has become ''Mr. Constitutional Amendment on the Balanced Budget'' as he has worked for me over a good number of years and is recognized for his authority and expertise in the area. Throughout all of these efforts for the last good number of months, he has been assisted by Alan Kay on my staff, and recently by a legislative fellow Roy Fairchild, and an intern, Dean Sorensen, who have done a tremendously masterful job in cooperation with all the rest of my staff, in being able to supply to the Senate a vast array of information and facts that deal with this most important issue, and to assemble them in a way that was readily usable so we could debate this, now for nearly 5 full weeks, without breaks in the debate and with ample material to supply the RECORD and to hopefully have given the citizens of our country ample information in making a choice that I had hoped we would have the wisdom to give them.

But the vote turned out otherwise today. So we will be back again to revisit this issue—next week or next month or next year. And we will, for a very simple reason, Mr. President: There is not a Senator on this floor who has the right to deny the American people an opportunity to change their law—not our law but their law—the Constitution, the organic act that governs our country and, most importantly, Mr. President, the very law that governs us.

I will have to admit there has been a display of knowledge here that verges on all knowledge and all knowing, that this is the seat of wisdom, and from this seat, all decisions for America and Americans will be made.

I suggest to those who serve here that that will be denied. There will come a day—and it will be very soon—when Americans will speak again to those who deny them the opportunity

to change their Nation in a way they see fit to change it, to protect the Social Security system, to assure that the Government governs properly but, most importantly, to look to the future and to honor the future.

Today we saw a Senate that looked backward. We saw a Senate that said that the past is better than the future. Are we going to be guardians of the past, or are we truly going to be the visionaries of the future? I suggest that the American people, in November, were talking of our future. They were most assuredly not talking of our past—for the past is $4.8 trillion of debt.

This body—all of us, all Senators alike—has to take the responsibility for that debt. And today and for the last 5 weeks, we have struggled to give one moment of time in history to the American people. So they could choose how we would handle that debt. Yet, the central power and the central wisdom prevailed today. I suggest that it is not the wisdom of the American people, nor was it their wish.

So ORRIN HATCH, LARRY CRAIG and, hopefully, PAUL SIMON, before he retires, will have an opportunity to come to the floor of the Senate again, once the American people have recognized that President Clinton denied them that opportunity today, that he once again backtracked away from his pledge to the American people that he would progressively and in a positive sense bring down the deficit. This year, in his budget resolution, he walked away and denied what was once a promise and a pledge.

I suggest that the American people will not be denied, and they will have the opportunity to change the organic law like other Congresses in the past have seen the wisdom to allow them that choice.

I am amazed, Mr. President; I am absolutely amazed that even one Senator would not allow the citizens of his or her State the right to make a choice. But that was denied today—falsely denied, wrongly denied. I suggest that those citizens, in the long-term, will not be denied.

It has been a tremendous opportunity for me and for all of those colleagues who have joined with me in this issue and in this debate. And I would agree with the Senator from West Virginia, it has been a positive debate. It has been most constructive, and all ramifications of the issue have been thoroughly brought to this floor, some falsely, some under improper clothing or dress, some presented in ways that were illusionary and not fact.

But the reality is that in the end this is an issue that will not go away and it will ultimately prevail.

Mr. President, I want to thank all of those who have joined with me, and most assuredly my staff, for their tremendous dedication as we brought this issue to the floor.

And I wish to thank the majority leader of the U.S. Senate, BOB DOLE, for offering the tremendous leadership and taking the kinds of risks that must be taken as a leader to allow the American people their right to govern us.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

EXTENDING MORNING BUSINESS UNTIL 4:15 P.M.

Mr. LOTT. Mr. President, I ask unanimous consent that the period for morning business be extended until 4:15 p.m. today, under the same terms and conditions as previously ordered.

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

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I yield 1 minute to the distinguished Senator from Delaware.

PARLIAMENTARY INQUIRY

Mr. BIDEN. Mr. President, I have a parliamentary inquiry.

I am a supporter of this amendment. I voted for the amendment, and I will vote for it again if it comes up in a similar form that it came up now.

But I have a parliamentary inquiry. When the majority leader changed his vote from ''yes'' to ''no'' and did not make the motion to reconsider, is it within the province of the majority leader at any time at any place as long as the Senate is in session to move without debate to the motion to reconsider?

The PRESIDING OFFICER. Yes, it is.

Mr. BIDEN. Mr. President, may I have another 60 seconds?

Mr. DASCHLE. I yield the Senator an additional 60 seconds.

Mr. BIDEN. Mr. President, I am for this amendment. There has been a little bit of blood that has been spilled on the floor here in the last couple of days, especially when the unanimous consent to vote at a certain time was obviated by our being pushed into a recess, a legitimate parliamentary move, but one that sort of violated the spirit of what everyone thought was going to happen.

I hope and I plead with the majority leader that when he moves to reconsider—and I will be with him; I will be for this under the following circumstance: as long as we all know it is going to be done and everyone is here. If the majority leader called for a motion to reconsider knowing that there were absences that would affect the outcome of this vote, I would, on a matter of procedure, change my vote to prevent that happening. I do not think that is the majority leader's intention, but I do not want to mislead anybody. I think this is so important that this has to be dealt with straight up, with all 100 Senators, unless they are ill, in the hospital and cannot make it, that every consideration should be given to every Senator to be able to vote.

I yield the floor.

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

BALANCED BUDGET CONSTITUTIONAL AMENDMENT

Mr. DASCHLE. Mr. President, a number of people have spoken, and I know others are waiting to speak. I do not want to be long.

Let me just say what I have said on several occasions, that we owe the American people our best effort. Before this amendment was to go out to be voted upon by the American people, we owed it our best effort. The amendment that was pending prior to the last vote is not our best effort. Accordingly, the Senate has acted wisely in refusing to endorse this particular proposal to amend our Constitution.

Those who stood against it did so for good reasons. Supporters refused to guarantee that Social Security would be protected.

The prospects for this amendment were entirely in the hands of the majority. It was their choice.

Until 2 days ago, Senators were asked to bet on the chance that a new and different Senate 7 years from now would honor promises made by Members of this Senate.

Two days ago, for the first time, the majority conceded that they indeed intend to do exactly what we and seniors feared—use the Social Security trust funds to balance the budget. In a last-minute attempt to secure one more vote for this proposal, they offered to stop raiding the trust funds in 2012. The offer was later modified to 2010 and, finally, to 2008.

They missed the point. Those of us fighting to protect Social Security believe the retirement funds Americans have paid into the Social Security trust funds should be left untouched, period. Every American who has paid into the system has a right to expect those funds to stay there and be available to them when it is their turn to collect them.

For the majority to agree to stop using those funds to buy down the debt after virtually all those funds are gone reflects a cynicism that is solely disappointing. As the Senator from north Dakota has stated so well, balancing the budget by depleting the Social Security trust funds is not balancing the budget at all.

During this debate, 43 motions and amendments were offered, many of which would have substantially improved the proposals. Forty-two were rejected, essentially along partisan lines.

We offered language to guarantee the future of the Social Security System. Several Democratic Senators stated explicitly they would support the amendment if Social Security were protected.

We offered language to protect against unconstitutional Presidential impoundments; language to give States

a right to know what this amendment would mean to them; language to protect veterans' health and pension benefits; language to preserve our ability to respond to economic and national security emergencies. All of those proposals were rejected.

This is no ordinary debate because it is our Constitution we are being asked to amend. When the stakes are so high, the substance so serious, the proposed changes well-tested, the out-of-hand rejection of those amendments is extremely disappointing. That is the reason the amendment failed.

Finally, supporters of this amendment refused, for the full 4 weeks that it has been debated, to come forward and offer any realistic outline of a plan by which a balanced budget could be credibly produced in 2002.

Yet, outside this Chamber, supporters of the balanced budget amendment have been willing to say that passing the balanced budget amendment will not balance the budget at all.

That is right. It will not.

Recently, when he was asked whether the Congress would approve the balanced budget amendment, Speaker GINGRICH said, ''For as long as I'm allowed to serve as Speaker, whether we do or not, the House will make decisions based on achieving a balanced budget in 2002 with or without the balanced budget amendment.''

The majority leader restated his intention to do that today.

The Speaker's words reflect the fact that the ability to balance or unbalance the budget remains unchanged: it is in the hands of the majority in the Congress.

Indeed, a failure to act as he has promised will serve to confirm that the purpose of this debate was to create a rationale for not moving to balance the budget any time soon; that the debate's purpose was to be able to say, we're waiting for the States to ratify.

One month from today, on April 1, the Budget Committee is required by law to report a budget resolution to the Senate. Two weeks later, by April 15, the Congress is required, by law, to give final approval to a budget resolution for the coming year.

In 44 days, Congress must have debated, conferenced, and given final approval to a budget for fiscal year 1996. That is an obligation of this Congress, not the 107th.

That is a responsibility for all of us serving now, not people who will serve in the year 2002. It is what our job is this year, not some other person's job in some future time.

Nothing has changed the magnitude of the job ahead of us.

I have said consistently since the beginning of this debate and the beginning of this session that it is our desire to work cooperatively, particularly in getting the deficit under control.

The Republican majority is in control of the Congress. I hope the Republican majority will adhere to the time requirements of the Budget Act, which are a matter of law. The budget resolution must be written, and action completed soon. Committees need to know their authorized allocations for programs. We should be getting down to work on the budget now, because we do not have much time.

We have 44 days.

The budget is not going to be balanced in 2002 unless the responsible people in 1995 start to focus on their share of the work.

It is time we stopped worrying about the responsibilities of future Congresses and started to discharge the responsibilities that belong to each of us as Members of this Congress this year.

I yield the floor.

Mr. LOTT. Mr. President, I ask that I have 2 minutes following the distinguished Democratic leader to respond to a number of things that have been put in the RECORD in the last few minutes that should not be left unanswered.

The PRESIDING OFFICER (Mr. INHOFE). Is there objection? Without objection, it is so ordered.

Mr. LOTT. Mr. President, I beg the indulgence of my colleagues who have been here on the floor waiting to speak. I would like to take this opportunity to respond, for just a few minutes, to a few things that have been said.

First, the Senator from Delaware raised some concerns about the distinguished majority leader's intention for the motion to reconsider.

He said he would be inclined to support that, but it was essential that there be notice given before that vote could occur. Frankly, I think it is out of order to even imply that the majority leader would do anything other than give ample notice. That is just what he did today. We had the vote shortly after 2 o'clock. It was agreed to. Notification was given.

I want to assure my colleagues that the distinguished majority leader does not participate in sneak tactics. He will notify the Chamber when there will be a vote on a motion to reconsider the balanced budget amendment to the Constitution.

But I do warn my colleagues, that vote will come again. Today the American people lost. The liberals who want to keep on spending just the way they have for the 22 years I have been watching them here in the Congress, the same old tax-and-spend liberals, won today. But there will be another day for the people to try again with the balanced budget amendment. Under this motion to reconsider, they will have that opportunity sometime during the remainder of this 104th Congress.

Now, with regard to what the distinguished Democratic leader just had to say, some Senators continue to imply that there is some difference between this year's balanced budget amendment and the one we voted on last year. They are the same. Some Senators now say they opposed the amendment because they were worried about Social Security. Where were they last year? They supported the same amendment.

So I would like to ask unanimous consent that the statements of Senator DASCHLE, Senator FORD, Senator HOLLINGS, Senator DORGAN, and Senator FEINSTEIN from last year—what they had to say last year about this very same language—be placed into the RECORD at this point.

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

In this debate on a balanced budget amendment, we are being forced to face the consequences of our inaction. Quite simply, we are building a legacy of debt for our children and grandchildren and hamstringing our ability to address pressing national priorities * * * To remedy our fiscal situation, we must stop spending beyond our means. This will not require the emasculation of important domestic priorities, as some suggest.—Senator Thomas Daschle, (D–SD), Cong. Rec., S–1981, February 28, 1994.

I hear so much about if 40-some-odd Governors can operate a balanced budget, why can't the Federal Government * * * I operated under it. It worked * * * I think implementation of this amendment will work. I think we can make it work * * * I do not understand why it takes a brain surgeon to understand how you operate a budget the way the States do * * * This is an opportunity to pass a balanced budget amendment that will work and will give us a financially sound future, not only for ourselves but for our children and our grandchildren.—Senator Wendell Ford, D–KY, Cong. Rec., S–2058, March 1, 1994.

I could offer my colleagues 3.5 trillion reasons for a balanced budget amendment to the Constitution; that is the number of deficit dollars added to the national debt since 1981. But I will rest my case with one simple reason: It ought to be a minimal moral obligation of our national government to match its income with its expenditures on an annual basis * * * so that additional debt is not passed on to future generations.—Senator Ernest Hollings, D–SC, Cong. Rec., S–2075, March 1, 1994.

This deficit is not about some unusual investment that is going to yield enormous potential rewards. This is a structural operating budget deficit that represents a permanent, continual imbalance between what we raise and what we spend, and the Congress and the American people have conspired together in a way in our political system that prevents us from dealing with it. This constitutional amendment, no matter what one thinks of it, will add to the pressure that we reconcile what we spend with what we raise, and that we begin to assure a better economic future with economic growth and hope and opportunity for our children once again.—Senator Byron Dorgan (D–ND), Cong. Rec., S–2068, March 1, 1994.

If in their heart of hearts they believe we are not going to be able to balance the budget under the current process, then I believe they should support the balanced budget amendment. At least that is the conclusion to which I have come. Without a constitutional amendment, a balanced budget just is not going to be achieved.—Senator Dianne Feinstein, D–CA, Cong. Rec., S–1831, February 24, 1994.

Mr. LOTT. Yet those Senators today voted against the balanced budget amendment.

Now, Mr. President, what has happened during this debate? What will

happen when we get to the serious budget votes? Will some Senators say, ''Oh, yes, we want a balanced budget, but we have a right to know what will happen for years into the future,'' which is what they said a week ago. Will they say again, ''We must have some further guarantees on Social Security,'' or else they won't even vote for deficit reduction now.

I will venture a prediction. I predict that they will say, ''Exempt this group from any cuts, and exempt that group.'' And when we get to the budget resolution, they will say, ''Oh, yes, by all means cut spending, but not here. Not there. Somewhere else.''

Where will their votes be when we get to the real deficit reduction effort? Will they be saying, ''Exempt my State, or exempt my region, or exempt this special interest''? Or will they be willing to cast the tough votes so that we can stop the $200 billion-a-year deficits that President Clinton has proposed, not just for this year, but for as far as the eye can see?

Today advocates of the balanced budget amendment lost. But within 2 months, the Senate will have to face tough choices about spending, tough choices about specific programs. The Nation will be watching to see the votes that will then be cast by those who today profess devotion to a balanced budget, while voting against the amendment that would have achieved it.

Mr. JEFFORDS. Mr. President, I thank the Chair.

(The remarks of Mr. JEFFORDS and Mr. LEAHY pertaining to the introduction of S. J. Res. 28 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

PEACE AND FREEDOM

Mr. COHEN. Mr. President, yesterday the majority leader gave a very important speech at the Nixon Center for Peace and Freedom and outlined what he called the five global realities that affect our vital interest and dictate what it will take to maintain leadership throughout the world.

First, the golden age of capitalism. From India and Latin America to China and Russia, 4 billion people formerly under some form of socialism are striving to establish market economies. This offers great opportunities for America and American business, but requires American leadership to protect our interests and ensure adherence to the rules of the international trading system.

Second, the new world energy order. Senator DOLE correctly noted that the security of the world's oil and gas supplies will remain a vital national interest. At the same time, Iran and Iraq remain hostile threats in the oil-rich gulf, while other energy rich areas in Eurasia are subject to disorder. He makes the insightful observation that ''in this new energy order, many of the most important geopolitical decisions—ones on which a nation's sovereignty can depend—will deal with the location and routes for oil and gas pipelines.'' I would add that we are already seeing in the case of Azerbaijan, over which Moscow is trying to regain effective control in order to determine the route through which Azeri oil will flow. Senator DOLE concluded that ''our strategy, our diplomacy and our forward military presence need readjusting'' to meet this reality.

Third, the spread of weapons of mass destruction. The majority leader issued a clarion call yesterday that ''we must prepare now for the future,'' in which weapons of mass destruction will become more widespread, greatly affecting our vital security interests. He wisely asked ''what would we have done—or not done—if Iraq had one or two nuclear weapons in 1990? A chilling question and one which we could face in just a few years as a real, not a hypothetical question, with regard to Iran or North Korea. In response to this threat, Senator DOLE quite rightly focused on the possibility of preventive military action and the need for missile defenses to protect America and our allies.

Fourth, increase in extremist religious and ethnic movements. The majority leader highlighted the many areas in which religious or ethnic passions have led to conflicts and identified those that pose a threat to American interests. America cannot become complacent he wisely warned his audience.

Fifth, rivalry with Russia. In perhaps in most important observations, Senator DOLE warned that ''geopolitical rivalry with Russia did not end with the demise of Soviet communism.'' Quoting Henry Kissinger, he noted that the Soviet threat was one of both communism and imperialism, and while communism was defeated the trend toward imperialism remains. While an early supporter of President Yeltsin, Senator DOLE warned against ''the Clinton administration's misguided devotion to a ''Russia First'' policy, which has turned into a ''Yeltsin First'' policy, and he quoted President Nixon who told the Duma ''when we have differences, we should not assume they will be overcome by a good personal relationship even at the highest level.'' To buttress his case, the majority leader listed numerous examples of how Moscow has taken actions in recent months that are in conflict with U.S. interests.

To address this situation, Senator DOLE prescribed a ''new realism'' about Russia. This would not mean a return to the cold war past, he noted, but would require ''developing a more honest relationship, one that does not paper over important policy differences with an appeal to personal ties.''

In conclusion, Senator DOLE reaffirmed the need for American leadership to secure peace and freedom for future generations of Americans.

In an article just published in the current issue of Foreign Affairs, Senator DOLE builds on these themes and defines his vision for the future American role in the world and 10 principles to guide our international relations. He also provides an incisive critique of the Clinton administration's foreign policy and how and why it has, in Senator DOLE's view, failed in various respects.

I will merely quote the final paragraph of his article:

> As the United States approaches the next century, two principles should remain constant: protecting American interests and providing American leadership. The end of the Cold War has provided us with a historic opportunity. Such an opportunity should not be forfeited in favor of the pursuit of utopian multilateralism or abandoned through intentional isolationism. We have seen the danger to America's interests, prestige, and influence posed by both of these approaches. Instead, we must look to the lessons of the Cold War to guide our future foreign policy: Put American interests first and lead the way. The future will not wait for America, but it can be shaped by an America second to none.

Mr. President, I think that in yesterday's speech and this new article with the majority leader has provided us with a clear vision and practical proposals for guiding American foreign policy. I would urge my colleagues to give the most careful attention to both these documents, and I would ask unanimous consent to insert them in the RECORD.

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

(See exhibit 1.)

Mr. COHEN. In his speech yesterday, President Clinton also reaffirmed that he gives very high priority to ratification of the Chemical Weapons Convention.

Mr. President, there have been many supporters on this side of the aisle for efforts to control and ban chemical weapons—Senator DOLE, Senator KASSEBAUM, Senator HATFIELD, Senator MCCAIN and others come to mind, and I have been pleased to work with them on different measures to achieve that goal.

During the 1980's, I supported replacement of our aging chemical stocks with binary weapons, a necessary step to get Moscow to negotiate seriously.

EXHIBIT 1

FOREIGN POLICY—WINNING THE PEACE: AMERICAN LEADERSHIP AND COMMITMENT

(By Senate Majority Leader Bob Dole)

I can't help but think back to the day in January of 1994, when President Nixon made his last visit to the United States Capitol.

The occasion was the 25th anniversary of his inauguration as President. And over 100 past and present Senators and Congressmen—Republicans and Democrats alike—attended a lunch honoring President Nixon that Bob Michel and I hosted.

At the conclusion of the lunch, President Nixon stood—and without a note in his hand—delivered one of the most compelling speeches many of us could remember.

As always, he talked politics, and he also shared some personal reflections on his life and career. But the majority of his remarks

were devoted to his life's passion—foreign policy.

President Nixon served as our guide, leading us on an around-the-world tour, offering his unique perspective on the strengths and weaknesses of our allies and adversaries, and on the future as he saw it.

In his remarks, he repeated a statement that he made again and again during the last year of his life. He said, ''The Soviets have lost the Cold War, but the United States has not yet won it.''

Those words were true then—and are just as true today. And while the title of this conference—''After Victory''—has a nice ring to it, I believe the declaration may be a bit premature. It is, after all, possible to win the war and lose the peace—as the years between World War I and World War II demonstrate.

WORLD STILL UNCERTAIN

Don't get me wrong. The stage is set. We are the world's only superpower. And the words spoken by Nikita Khrushchev in that famous ''kitchen debate'' were dead wrong. Not only will America's children never live under communism—neither will Russia's children. Still, there are far too many gains to consolidate, and far too many uncertainties in the world to say that a final peace has been won.

For example, there is a resurgent Russia, asserting its position around the globe. China has international ambitions of its own, and is in the midst of a leadership transition. There are international terrorists—often state-supported. There are global crime syndicates. There are extremist movements based on religion or ethnic origin. While none of these compare to the challenge of the Soviet empire, each of these can pose threats to important American interests.

FIVE GLOBAL REALITIES AFFECT AMERICA'S INTERESTS

It seems to me these multifaceted threats should be viewed in the context of five clear global realities which affect America's fundamental interests. Only by recognizing these realities—and dealing with them with the same commitment which led to the defeat of Soviet Communism—will America truly be able to claim victory.

REALITY NO. 1: THE ''GOLDEN AGE OF CAPITALISM''

The first new reality is that the whole world is plunging headlong into what David Hale of the Kemper Organization in Chicago has termed a ''new golden age of capitalism.''

I remember when Lech Walesa told me that the definition of a communist economy was ''100 workers standing around one shovel.'' Now, in places like Poland, Russia, India, Latin America, and even China—four billion people formerly under some form of socialism are now fighting with everything they can lay hands on to not just grab a shovel—but to build shovel factories.

There are now more than 30 stock markets in the developing world, and capitalization of the four-year-old Shanghai securities exchange has reached $30 billion. Deng Xiaoping himself has said that no one cares any more what color the cat is, as long as it catches mice. The bottom line is that everyone wants to trade, and everyone wants to create and use capital on a world-wide basis.

While this new ''golden age of capitalism'' offers great opportunity for America, we must remember that many of the countries so eager to enjoy the benefits of membership in the world trading system may not fully understand or accept the rules and discipline that go with it.

A trade war was averted with China, but other threats to U.S. commercial interests will surely arise in the coming months and years, and our continued vigilance and leadership will be required.

REALITY NO. 2: THE ''NEW WORLD ENERGY ORDER''

The second inescapable reality of the post-20th century world is that the security of the world's oil and gas supplies will remain a vital national interest of the United States and of the other industrial powers.

The Persian Gulf—the heartland of world energy for half a century—is still a region of many uncertainties. Saudi Arabia has been weakened financially. Iran and Iraq continue to exhibit great hostility to the West and pose threats to their neighbors. And the boundaries of the oil and gas heartland are being redrawn to the north, to include the great hydrocarbon deposits of the Caucasus, Siberia, and Kazakhstan.

In this ''new energy order,'' many of the most important geopolitical decisions—ones on which a nation's sovereignty can depend—will deal with the location and routes for oil and gas pipelines. In response, our strategy, our diplomacy and our forward military presence need readjusting.

REALITY NO. 3: SPREAD OF WEAPONS OF MASS DESTRUCTION

The third inevitable reality for America—and for the world—is the fact that while the Berlin Wall may have crumbled, weapons of mass destruction haven't.

Listen to just a partial roll call of countries and groups that already possess nuclear, biological or chemical weapons: North Korea. Iraq. Iran. Libya.

Have any of these nations earned our trust? And given their past behavior, is it any surprise that there are startling signs that a world wide black market in nuclear weapons has emerged?

All this is taking place as talks to review the global treaty limiting the spread of nuclear weapons will soon begin. Even if the Nuclear Non Proliferation Treaty is extended indefinitely, however, we must avoid falling into a false sense of security. We must prepare now for the future.

Iraq, Iran, and North Korea all illustrate the failures of traditional non-proliferation efforts, which depend largely on the cooperation of other states.

Only after Desert Storm did the West learn just how far Iraqi nuclear ambitions had progressed. And instead of announcing that the United States will veto any efforts to ease or end U.N. sanctions on Iraq, the administration dispatches an envoy to plead with the Europeans for cooperation. Where would such timidity have gotten us in the Cold War?

Iran also appears poised for a great leap forward in its nuclear program—thanks to a cash-hungry Russia doing for Iran what the Clinton Administration has done for North Korea.

And make no mistake about it, the Agreed Framework with North Korea has little prospect of successfully addressing the North Korean threat, and apparently, has already been violated by Pyongyang.

American leadership in addressing these non-proliferation challenges is essential if additional states are not to choose the nuclear option. It's worth asking: What would we have done—or not done—if Iraq had one or two nuclear weapons in 1990? Preventive military action as a non-proliferation policy tool cannot be ruled out.

There are defensive options, however, that could provide the United States and our allies with protection against accidental and limited ballistic missile strikes. Pursuing an effective ballistic missile defense capability should be a top priority for U.S. defense policy now and for the foreseeable future.

REALITY NO. 4: INCREASE IN EXTREMIST RELIGIOUS AND ETHNIC MOVEMENTS

The fourth new global reality is the increase in violence due to extremist religious and ethnic movements in many parts of the globe.

Some of these movements, like the tribal warfare in Rwanda, or conflicts in Burma or West Africa have little direct impact on American interests.

However, some of the instability and turmoil due to ethnic and religious violence *is* important for American interests—and could lead to the disintegration of key states. Serbian genocidal aggression in the Balkans, for example, threatens to spill over to Macedonia, Albania, and beyond. American and European inaction in the face of that aggression cannot help but embolden other radical ''ethno-nationalists'' by giving them a green light for ethnic cleansing.

The Indian rebellion in Mexico coupled with financial uncertainty has resulted in genuine security concerns on our southern border—and make no mistake that illegal immigration is a security threat.

A key NATO ally in Turkey faces Islamic extremism and a separatist ethnic movement. Violent Islamic fundamentalists threaten the government in Algeria, and have launched an assault on Egypt. How long would the Camp David Treaty be honored if fundamentalists took power in Egypt?

Islamic terrorists seek to destroy the peace process between Israel and the PLO—and may be having some success. With support from Iran and others, Islamic terrorists also demonstrated at the World Trade Center that America is not immune from attack.

And ethnic turmoil in the former Soviet Union cannot be ignored, as warfare has occurred in five former republics. And the Chechens may be just one of many ethnic groups willing to use violence to alter boundaries originally set by Joseph Stalin.

In short, the list of world ''hot spots'' is far too lengthy for anyone to conclude that America can become complacent.

REALITY NO. 5: RIVALRY WITH RUSSIA

And this leads to the fifth global reality we must face: the fact that geopolitical rivalry with Russia did not end with the demise of Soviet Communism.

On his last trip abroad, President Nixon spoke before the Russian State Duma, and he foreshadowed a change in Russian-American relations, saying: ''Russia is a great power, and Russia as a great power must chart its own course in foreign policy * * * When we have differences, we should not assume they will be overcome by a good personal relationship even at the highest level.''

And as we have seen time and time again, the foreign policy course that Russia is charting, is one that is often in conflict with American interests.

For example:

Russia stepped in the middle of the North Korea agreement by offering to provide nuclear reactors—which would have the clear effect of killing the U.S. brokered deal.

Russia continues to threaten prospective NATO members over alliance expansion, thereby confirming the need to enlarge NATO sooner rather than later.

In December 1994, Russia vetoed a sanctions resolution on Serbia in the U.N. Security Council, its first substantive veto since the height of the Cold War in 1985.

Russia persists in supplying weapons and nuclear technology to the rogue regime in Iran.

Russia continues to maintain an intelligence facility and support personnel in Cuba, thereby prolonging Castro's oppression.

Russian pressure, subversion and intimidation of the sovereign states in the ''Near Abroad'' follows a historical pattern set long before the Bolsheviks took power in 1917.

As Dr. Kissinger said last month before the Senate Armed Services Committee, ''* * * what we dealt with in the Cold War was both communism and imperialism, and while communism was defeated, the trend toward imperialism still exists.''

Let me be clear in saying that no one has been more supportive of President Yeltsin than I. In June 1991, I went to Andrews Air Force Base to meet President Yeltsin virtually alone, since the United States State Department believed Gorvachev was the ''only game in town.''

But just as it was wrong to place too much focus on Gorbachev in 1991, it is wrong in 1995 to ignore that fact that President Yeltsin has made serious errors, has moved toward authoritarian rule, and has lost the political support of virtually all reform-minded Russians.

The Clinton Administration's misguided devotion to a ''Russia First'' policy—which has turned into a ''Yeltsin first'' policy—resulted in the loss of a tremendous opportunity to state American concerns forcefully *before* thousands were slaughtered in Chechnya.

NEW REALISM ABOUT RUSSIA

A ''new realism'' about Russia and its prospects for the future does not mean a return to the Cold War past. It does mean developing a more honest relationship, one that does not paper over important policy differences with an appeal to personal ties.

New realism means emphasizing the significance of Russia's 1996 elections, and of the pivotal importance of a peaceful, democratic transition of power.

And new realism means that developments like arms sales to Iran, violence in Chechnya, and U.N. vetoes on behalf of aggressors should not be excused, ignored and minimized. Our differences with Russia should be identified—they should be negotiated when possible and condemned when necessary. Such an approach would ultimately serve both the Russian and the American people better than defending, denying and rationalizing Russian misdeeds.

TESTS FOR AMERICAN LEADERSHIP

Let me conclude by sharing with you words that Richard Nixon spoke at the announcement of the creation of the Center for Peace and Freedom in January 1994.

''Some are tired of leadership. They say (America) carried that burden long enough. But if we do not provide leadership, who will? The Germans? The Japanese? The Russians? The Chinese? Only the United States has the potential . . . to lead in the era beyond peace. It is a great challenge for a great people.''

Ladies and gentlemen, President Nixon was right. Leadership does come with a price tag. But it is a price worth paying.

Dealing with the five realities I have outlined will test America's resolve and her leadership. If we fail those tests—if we refuse the mantle of leadership—any declaration of victory will be a long time coming.

But I am an optimist. Like Richard Nixon, I believe in America and In American leadership. I believe we will pass our tests, and in doing so, we can claim the biggest victory of all—we will have secured the future of our great republic, and of peace and freedom, for generations to come.

SHAPING AMERICA'S GLOBAL FUTURE

(By Bob Dole)

It is now a cliché that America is the world's only superpower. But Americans would do well to reflect on how we got to this point—and on how unprecedented our status is in American history. America has always been blessed with security, protected by two oceans, our two land borders safe from invasion since the mid-nineteenth century. Never before, however, has America been so alone at the pinnacle of global leadership.

It was not always this way. America fought three major wars in this century-World War I in Europe; World War II in Europe, Africa, and Asia; and the Cold War across the globe. In each of these conflicts, Americans were asked to give their blood and treasure in support of U.S. interests and ideals overseas. Three times this century, America rose to the occasion.

It is sometimes said that Americans win the war and lose the peace. Clearly that was true after World War I, when Wilsonian idealist ambitions overran American interests, and when protectionism, isolationism, and decline were the result. Yet after the defeat in 1945 of Nazism in Europe and Japanese militarism in Asia, we rose to the challenge of winning the peace through American leadership. New multilateral institutions were established: the United Nations, the World Bank, and the International Monetary Fund. They were important, but they were insufficient. What made the difference was American will and power as reflected in the Marshall Plan, the Truman Doctrine, and the establishment of the North Atlantic Treaty Organization (NATO). These and other related actions cemented the American commitment to Europe and signaled America's determination to oppose Soviet expansionism.

It was American leadership and commitment—supported by our allies throughout the world—that led to the overwhelming victories in the Cold War: the crumbling of the Berlin Wall in 1989 and the breakup of the Soviet Union in 1991. For more than four decades, the central purpose and chief objective of American national security policy was the containment of Soviet communism. Who can doubt that U.S. policy played a central role in the disintegration of Soviet communism? The great success of America and its democratic allies in the Cold War is something to be proud of, and the costs of the victory should not be forgotten. While historic event occurred barely three years ago, myths contradicting the facts of why and how the Cold War was won have already surfaced.

Myth #1: Foreign policy was easier during the Cold War. While a common enemy often did serve to unite the United States and its allies during the Cold War, it is difficult to argue that security policy was easier when the Soviet Union was ready, willing, and able to oppose American interests. A nuclear-armed superpower committed to undermining the West created more difficult and demanding foreign policy challenges than any faced since 1991. No current challenge, for example, rivals the magnitude of the Cuban Missile Crisis of 1962 or the Yom Kippur War of 1973—either of which could have escalated to thermonuclear war.

Myth #2: The Cold War was supported by a great bipartisan consensus. In large part because of the historic partnership between President Harry Truman and Senator Arthur Vandenberg, the late 1940s saw considerable bipartisan cooperation in creating a new international security system. But ''politics stopping at the water's edge'' lasted only for two decades—until the Vietnam War. While there were partisan disagreements in the 1950s, for example over ''who lost China,'' it was the war in Southeast Asia that shattered the bipartisan consensus on waging the Cold War. In the 1970s, even Republicans were divided over the wisdom of pursuing the Nixon-Kissinger policy of détente. Moreover, in the later years of the Cold War, debates over the nuclear freeze, the Strategic Defense Initiative (SDI), opposing communist aggression in Central America, or using force to defend U.S. interests reflected very little bipartisanship. Despite the broad bipartisan agreement at the beginning of the Cold War, precious few ''Scoop Jackson Democrats'' were around by its end.

Myth #3: The doves were right. Unlike the revisionist history written by some in the Clinton administration, the ''doves'' were wrong all along in the Cold War. Why?

The doves advocated spending less on defense and doing less with American armed forces. In the end, as former Soviet leaders now reveal, American defense spending and activism in Afghanistan, Poland, and elsewhere were critical to the Soviet demise.

The doves argued for toning down anti-Soviet rhetoric no matter how accurate it was (remember the shock at President Ronald Reagan's proper characterization of the Soviet Union as the ''Evil Empire''?). More significantly, they preferred the resignation of U.S. policy to the permanent existence of the Soviet Union. Fortunately, the doves' self-fulfilling prophecy was not heeded.

The doves opposed SDI and supported the nuclear freeze and other arms control measures, arguing that weapons, not ideology and intentions, posed the threat to the United States.

The doves opposed the Reagan Doctrine of supporting freedom fighters opposing communist regimes around the world.

The breakup of the Soviet empire in 1991 came faster and happened more completed than virtually anyone envisioned. If the doves' policies had prevailed, however, that day would have been delayed for years, if not decades—and may never have come. The fall of the Soviet empire was not inevitable, nor was it foreordained by impersonal forces of history; rather, it was the leadership, actions, and sacrifices of the West that brought victory in the Cold War.

Debunking the mythologies of the Cold War does not automatically lead to prescriptions for a post-Cold War foreign policy. Our Cold War victory allows the United States to be more selective in its involvement around the world, but it is not a license for America to withdraw from the world. Exhaustion after a great conflict is natural, but American withdrawal would jeopardize the gains of the last 40 years, and it would inevitably mean less prosperity and less security for the American people.

Nevertheless, in the wake of the Soviet Union's defeat, numerous observers have suggested America should withdraw from the world. First, some claim America cannot be involved in the world because we do not have the resources—the ''declinist'' school. We won the Cold War and remain the only global power but, in the perverse logic of the declinists, this adds up to weakness.

The declinists have multilateralist cousins who promote a view that America must work with and within international organizations because we do not have the resources to act on our own. Other multilaterialists believe America does not have the legal or moral authority to act without the sanction of international organizations. The declinists—and their multilateralist kin—ignore the strength of America and underrate the power of American leadership. It is true that America must be strong domestically to be strong abroad, but America has the ability to do both if resources are used wisely and decisions are made soundly.

This is not necessarily the view in the current administration. The declinists and multilateralists are alive and well in the Clinton administration. First came the

''Tarnoff Doctrine'' of May 1993, when the State Department's undersecretary for political affairs, Peter Tarnoff, argued for retrenchment because the United States lacked the resources, inclination, and will to lead. Then there was the ''Halperin Doctrine'' expressed in these pages in the Summer of 1993, in which a current National Security Council staff member, Morton Halperin, argued that the United States should use force to defend its interests in cases like Grenada and Panama only with prior multilateral approval.

There are also protectionists who argue that America should engage in trade with the world only on a one-way basis—shutting our doors to foreign products in the vain hope that foreign doors will remain open to American products. American industries do not need protection, they need competition. Where there is truly free trade, U.S. businesses have prospered and the U.S. economy has grown.

Finally, some argue that America should not get involved in the world. Historically, the isolationists have had adherents on the Left who believe America will corrupt the world, and on the Right who believe the world will corrupt America. There are no serious and immediate threats to vital American interests, the isolationists say. While that may be true now, retreat from the world is the surest way to invite the emergence of such threats in the future. The fact is that America must remain firmly engaged in the world. If we do not protect our interests, no one else—neither other countries nor international organizations—will do the job for us. The various approaches of the declinists, multilateralists, protectionists, and isolationists all would make a dangerous world even more so.

TWO FAILURES OF VISION

We have witnessed two efforts to ''reinvent'' American foreign policy since the end of the Cold War: President George Bush's New World Order and the Assertive Multilateralism, or Engagement and Enlargement, of President Bill Clinton. Unfortunately, neither effort has been successful.

The New World Order—whatever it was meant to be—rapidly became a new world disorder; instead of strengthened collective security, enhanced international organizations, and a new partnership of nations, there was expansion of violent ethnic and religious unrest, proliferation of weapons of mass destruction, international aggression, and civil war. The flaw of the New World Order approach was its assumption that the end of the Cold War meant the end of international tension that could lead to hot war. President Bush and his advisers may be excused for over-optimism in the wake of the stunning multilateral coalition they built—under the United Nations auspices—to defeat Saddam Hussein's aggression. In retrospect, however, Operation Desert Shield/Desert Storm may have been the high point of post-Cold War U.N. collective security efforts. Just as United Nations action in Korea in 1950 was possible only because the Soviet Union was absent for the crucial authorizing vote, United Nations action in the Persian Gulf was possible only because the Soviet Union was inclined to cooperate with the West in the final months of 1990. Such cooperation is rapidly becoming a thing of the past as Russia pursues its traditional objectives in the ''near abroad'' and around the globe. In this regard, the first substantive United Nations Security Council veto exercised by Russia since 1984 (during the height of the Cold War) came in December 1994 on the issue of tougher sanctions against Serbia and may be the beginning of a trend.

Despite the conceptual flaws of the New World Order, to hear the current administration complain about its foreign policy inheritance is surprising and often merely an excuse for poor performance. In my view, no administration has ever received a stronger foreign policy inheritance. The legacy of 12 years of Reagan-Bush foreign policy included millions liberated in Central and Eastern Europe, finally closing the book on the post-World War II era after four decades; 15 independent states to replace the Soviet empire, and no near-term threat from Russia; a defeated Iraq in the Persian Gulf, and a newly invigorated peace process in the Middle East; the dramatic expansion of democratic governments around the world—best illustrated in the Western Hemisphere (where only Cuba and Haiti were exceptions to the democratic tidal wave); free trade agreements negotiated with Canada and Mexico (the North American Free Trade Agreement), nearly negotiated with the world (the Uruguay Round of the General Agreement on Tariffs and Trade), and outlined for the Western Hemisphere (Enterprise for the Americas); and a growing Asia-Pacific Economic Cooperation (APEC) forum for U.S. relations with Asia and the Pacific Basin. All added up to an America more secure and stronger than at any time in our history, and the only global power on earth.

In the two years since the end of the Bush administration, much has changed. In the minds of many, U.S. foreign policy has been marked by inconsistency, incoherence, lack of purpose, and a reluctance to lead. American lives have been risked, and lost, in places with little or no connection to American interests. From Bosnia to China, from North Korea to Poland, our allies and our adversaries doubt our resolve and question our commitments.

FIRM PRINCIPLES

The failures of Assertive Multilateralism/Enlargement lie not just in its execution or communication—they lie in its very conception. The following 10 principles, which should guide American foreign policy, have been ignored or misapplied by the Clinton administration.

WHILE MUCH HAS CHANGED, MUCH REMAINS THE SAME

The successful end of the Cold War has not changed the core interests of America:

Preventing the domination of Europe by a single power,

Maintaining a balance of power in East Asia,

Promoting security and stability in our hemisphere,

Preserving access to natural resources, especially in the energy heartland of the Persian Gulf,

Strengthening international free trade and expanding U.S. access to global markets, and

Protecting American citizens and property overseas.

These interests cannot be protected without American involvement in the world. Many states and many movements opposed to American interests are awaiting American withdrawal.

In addition to our interests, America has core ideals that we have supported throughout our history: freedom, democracy, the rule of law, observance of human rights, and deterring and responding to aggression. Too much has been made of the tensions between American interests and American ideals. Some went so far as to suggest that we should set aside our values during the Cold War to follow a policy of moral relativism. Nothing would have been more ill-conceived. The Cold War was won precisely because of the convergence of our interests and ideals. By preventing Soviet expansion into Europe, we stopped the domination of the continent by a hostile power and prevented the enslavement of millions more Europeans under communist rule.

Our interests and ideals converge in support for free-market economies and democratic pluralism as well. Capitalist democracies tend to make better trading partners and stronger allies, and also treat their own people and their neighbors better than authoritarian, closed societies. To retain the support of the American people and to protect the future of our children, American foreign policy must continue to combine the protection of American interests and the promotion of American ideals. That is our tradition.

AMERICAN LEADERSHIP IS ESSENTIAL

The United States, as the only global power, must lead. Europe—as individual states or as a collective—cannot. China, Russia, India, Brazil, and Japan are important regional powers, and some may be potential regional threats. But only the United States can lead on the full range of political, diplomatic, economic, and military issues confronting the world.

Leadership does not consist of posing questions for international debate; leadership consists of proposing and achieving solutions. The American attempt in May 1993 to discuss lifting the Bosnian arms embargo with NATO allies, for example, was simply wrong: It was a discussion, not a U.S. initiative, and was readily perceived by the Europeans as a half-hearted attempt lacking President Clinton's commitment. By comparison, if President Bush had followed a similar course after Iraq's invasion of Kuwait in 1990, Saddam Hussein would still be in Kuwait today—if not in Saudi Arabia—and he would very possibly be armed with nuclear weapons.

Leadership is also saying what you mean, meaning what you say, and sticking to it. That includes a willingness to use American force when required. To state that North Korea ''cannot be allowed to develop a nuclear bomb'' and then one year later to sign an agreement that ignores the issue of the existing arsenal is confusing to the American people and to our allies. To threaten to withdraw most-favored-nation trading status from China because of human rights violations and then to extend such status months later—despite no change in Chinese human rights practices—makes the world wonder why the linkage was made in the first place. To introduce a resolution in the U.N. Security Council to lift the arms embargo on Bosnia-Herzegovina, while top administration officials claim the war is over and the Serbs have won, severs any link between the words of U.S. policymakers and their deeds.

U.S. SOVEREIGNTY MUST BE DEFENDED, NOT DELEGATED

International organizations—whether the United Nations, the World Trade Organization, or any others—will not protect American interests. Only America can do that. International organizations will, at best, practice policymaking at the lowest common denominator—finding a course that is the least objectionable to the most members. Too often, they reflect a consensus that opposes American interests or does not reflect American principles and ideals. Even gaining support for an American position can involve deals or tradeoffs that are not in America's long-term interests. Acquiescence in Russian activities in Georgia and other border states, for example, may be too high a price for Russian acceptance of U.S. positions.

The choices facing America are not, as some in the administration would like to portray, doing something multilaterally, doing it alone, or doing nothing. These are

false choices. The real choice is whether to allow international organizations to call the shots—as in Somalia or Bosnia—or to make multilateral groupings work for American interests—as in Operation Desert Storm. Subcontracting American foreign policy and subordinating American sovereignty encourage and strengthen isolationist forces at home—and embolden our adversaries abroad.

INTERNATIONAL BUREAUCRATS ARE NO SUBSTITUTE FOR ALLIES

The United States should not look to the United Nations first, but to itself and its allies—preserving alliances inherited from the Cold War and leading to create new ones where necessary. Who could doubt that NATO has the power to address the tragic aggression against Bosnia? Instead, a misnamed ''United Nations Protection Force'' provides convenient ''hostages'' to the aggressors, thereby protecting them from NATO power. Substituting the judgment of international civil servants for NATO military professionals has severely damaged the credibility of the Atlantic Alliance.

Allies will not simply do our bidding in one area and ignore our policies in another. It was folly to pursue a policy of economic sanctions against North Korea while publicly criticizing China on human rights concerns and Japan on trade issues. And after proposing sanctions and gaining support from South Korea and Japan, allowing a freelance mission by a former president to reverse the policy suggests that America is not to be taken at its word. Alliances and allies require careful attention, not just episodic engagement.

DO NOT CONFUSE U.S. HOPES AND DESIRES WITH U.S. INTERESTS

The core interests outlined above have been played down, and sometimes superseded, by the desires of Clinton administration policymakers. Pollution or overpopulation in West Africa or South Asia are problems, but their effect on American interests is peripheral, at best. Famine and disease in Somalia or Rwanda are tragic. America should help in humanitarian disasters, consistent with our resources, and in a manner that does not undermine our military readiness. But events in Rwanda or Somalia have a marginal—at most—impact on American interests.

The promotion of free markets and fostering of democratic institutions are in America's interest, but they are not absolute goals. When democratic institutions are manipulated by enemies of America—as in the case of radical Islamic fundamentalists in Algeria—our long-term interests must take precedence over the short-term ideal of enlarging democracy. Likewise, when deviations from free-market trading principles threaten a key strategic alliance in the Western Pacific, such a trade dispute must be handled more carefully than one with a trading partner that is not also a strategic ally.

ALLOCATE RESOURCES BASED ON INTERESTS

Just as hopes and desires about the world have clouded American attention, American resources have been misallocated. Sometimes dollars speak louder than words. For example, nearly $2 billion will be spent on occupation and nation-building in Haiti, where American interests are marginal; yet only a small fraction of that amount has been spent supporting a free market and democratic transition in the strategically critical country of Ukraine. And defense dollars are spent on environmental projects and defense ''conversion,'' while military readiness, modernization, and personnel lack sufficient funding. Foreign aid and defense dollars should be instruments of national policy to enhance American security; they should not be squandered on nonessential programs.

USE ALL THE TOOLS OF STATECRAFT

Diplomacy without force is empty, and force without diplomacy is irresponsible. The fundamental relationship between diplomacy and force is not understood by the current administration. In Somalia and in Haiti (until saved by the Carter-Powell-Nunn mission), we saw force without diplomacy. In Bosnia, we see a clear example of diplomacy without force: Hollow threats are followed by countless concessions to the aggressor.

This administration has displayed a basic discomfort with American military power—unless that power is exercised pursuant to United Nations authorization. In Haiti, the 1823 Monroe Doctrine has been replaced with the Halperin Doctrine—unilateral action only after multilateral approval. An unfortunate precedent has been set in seeking prior United Nations support for what an American president proclaimed was in America's interests—interests that should not be second-guessed, modified, or subject to the approval of international organizations.

Failure by the administration to appreciate military assistance as a tool of diplomacy has resulted in dramatic reductions in such programs. Despite presidential doctrines from Truman to Nixon to Reagan advocating help for victims of aggression who are willing to help themselves, and despite campaign promises to the contrary, President Clinton refuses to lift the illegal and immoral arms embargo on Bosnia. One need only contrast this refusal to the significant military and political impact of providing Stinger antiaircraft missiles to the anti-Soviet resistance in Afghanistan. Finally, covert and overt political action can also further U.S. interests, providing important options between diplomacy and sending to the Marines.

REBUILD AMERICAN MILITARY POWER

America does not need the same defense posture in 1995 that it had in 1985. But just because American defense spending is a bargain does not mean that defending America is free. U.S. defense spending has been cut too far, too fast. The current administration initially planned to cut $60 billion in defense—but then added plans to slash $127 billion over 5 years. Despite these deep cuts—and a recent conversion to supporting higher levels of defense spending—the Clinton administration's thirst to commit U.S. military forces abroad has not declined. As a result, for the first time since the ''hollow Army'' of the 1970s, three American divisions were not ready for combat in late 1994. Soldiers who expect and deserve 12 months in between overseas tours are given half that. My old unit from World War II, for example, the 10th Mountain Division, has spent three straight Christmases overseas: deployed to Somalia in December 1992 (only weeks after cleaning up from Hurricane Andrew), and deployed again in September 1994 to Haiti—just six short months after returning from their tragic encounter in Somalia.

Furthermore, we cannot keep asking our men and women in uniform to do more with less. It is nothing short of scandalous when American enlisted soldiers have to work second jobs or receive food stamps to meet the needs of their families. And we cannot keep undermining our military force posture for ''humanitarian operations'' that do nothing to enhance American security.

America must take both a short-term and a long-term view of its military readiness. Not only must we have the ability to fight and win today, we must constantly prepare to fight and win future wars. The Clinton cuts to the defense budget create the grave risk that we will not make the investment necessary to re-equip and reorient our forces toward tomorrow's challenges. During the Cold War, we concentrated on blocking a Warsaw Pact invasion of Europe and deterring a nuclear attack on America, which meant that our doctrine, training, and equipment all were based on those threats.

In the future we will face new threats in places and under circumstances we cannot easily predict. To deal with them we will need unprecedented flexibility, agility, and mobility: no more gearing up for the central front in Europe with lavish prepositioning of equipment and a large permanent troop presence. In the future we will have to get to remote theaters of conflict quickly and with the most effective systems our technological prowess will enable us to field.

But the transition to a smaller, quicker, and more effective force will require a solid industrial base and will cost money: for a robust and well-targeted research and development program; for new weapons systems capable of breathtaking accuracy; for the capability to ''stand off'' and fire from safe distances, beyond the reach of enemy forces; and for training American troops to be the most powerful and best protected in history. If the money is not there, we will be forced to make do with what remains of our old Cold War force, even though it is the wrong force for the future.

Finally, we need to rely on our capabilities and not place our trust solely in multilateral regimes to ensure our security. For example, effective ballistic missile defenses would do more to enhance American and allied security by providing real protection against limited and accidental strikes than would nonproliferation policies, which rely on the goodwill and cooperation of others to halt the spread of nuclear technology and weapons of mass destruction to rogue states.

AMERICANS LIVES SHOULD BE RISKED ONLY FOR AMERICAN INTERESTS

Placing American soldiers, sailors, airmen, and marines in harm's way is the gravest decision a president can make. After the disaster in Mogadishu on October 3–4, 1993, some observers concluded the American public will no longer tolerate casualties. In fact, the ''Somalia syndrome'' stems from the shock of seeing American bodies dragged through the dust when the American people thought that Operation Restore Hope was about feeding the hungry—not about nation-building or enforcing U.N. arrest warrants. American lives should not be risked—and lost—in places like Somalia, Haiti, and Rwanda with marginal or no American interests at stake. Such actions make it more difficult to convince American mothers and fathers to send their sons and daughters to battle when vital interests are at stake. The American people will not tolerate American casualties for irresponsible internationalism. And like overreliance on the United Nations, such adventures ironically end up reinforcing isolationism and retreat.

BE CREATIVE: DO NOT CLING TO THE CONVENTIONAL WISDOM

In June 1991, I went to Andrews Air Force base to meet a Russian opposition politician arriving for an informal visit. The only ''official'' representative of the U.S. government there was a mid-level State Department official. The view of the foreign policy establishment and the Bush administration was that Mikhail Gorbachev was the ''only game in town.'' That Russian politician, Boris Yeltsin, later told me that he never forgot my willingness to see him.

Especially now that the certainties of the Cold War are gone, traditional views about foreign policy should be reexamined; some will remain valid while others may not. The conventional view of foreign aid, for example, is that it must be maintained in about

the same amounts in about the same programs to demonstrate that America is not retreating from the world. But it is hard to see how the billions of dollars of international aid spent in Rwanda or Somalia before their civil wars, for example, advanced any U.S. interest. Support for the peace process in the Middle East has paid great dividends, but much of the rest of the foreign aid program simply feathers the nests of old-boy contractors and further discredits ''development'' theories. Foreign aid should be transitional, to help an ally through a crisis or to help a developing country develop; it should not lead to a permanent state of dependency. Reform and reductions in the U.S. aid program are the overseas equivalent of welfare reform at home.

The world of 1995 and beyond is still a dangerous place. There are many new and emerging threats as we approach the millennium. A resurgent Russia filling a vacuum in Central Europe or looking for a foreign diversion from internal secessionist struggles; a revitalized Iraq threatening the oil fields of Saudi Arabia; a fundamentalist Iran seeking to dominate the Persian Gulf; a nuclear-armed North Korea threatening South Korea and Japan with ballistic missiles—all are scenarios that the United States could face in the near and medium terms. Islamic fundamentalism sweeping across North Africa could overwhelm the successes to date in achieving peace in the Middle East. A fourth conflict between India and Pakistan could escalate into the world's first nuclear war. Nuclear-armed terrorist states like Libya or Iran, emboldened by the North Korean example and armed with missiles from Pyongyang, could threaten allies in the Middle East or Europe. Economic competition between Japan and China could take a military turn. Radical ''ethno-nationalists,'' religious militants, terrorists, narcotics traffickers, and international organized crime networks all pose threats to states in regions of the world where America has core interests. While the collapse of Somalia or Rwanda may not affect those interests, the disintegration of states like Egypt, Indonesia, Mexico, or Pakistan would.

American leadership, however, can overcome the challenges of building a just and durable peace after the Cold War. The words of President Dwight Eisenhower's first inaugural address are as true today as they were in 1953:

To meet the challenge of our time, destiny has laid upon our country the responsibility of the free world's leadership. So it is proper that we assure our friends once again that, in the discharge of this responsibility, we Americans know and we observe the difference between world leadership and imperialism; between firmness and truculence; between a thoughtfully calculated goal and spasmodic reaction to the stimulus of emergencies.

As the United States approaches the next century, two principles should remain constant: protecting American interests and providing American leadership. The end of the Cold War has provided us with a historic opportunity. Such an opportunity should not be forfeited in favor of the pursuit of utopian multilateralism or abandoned through intentional isolationism. We have seen the danger to America's interests, prestige, and influence posed by both of these approaches. Instead, we must look to the lessons of the Cold War to guide our future foreign policy: Put American interests first and lead the way. The future will not wait for America, but it can be shaped by an America second to none.

THE BALANCED BUDGET AMENDMENT

PROTECTION FROM BIG SPENDERS? THE PEOPLE LOST BY ONE VOTE

Mr. HELMS. Mr. President, there are two disappointing things to mention today. The first is my regular daily report on the latest available disclosure of the total Federal debt, this time as of the close of business yesterday, Wednesday, March 1, stood at $4,848,389,816.26.

If this debt were to be paid off today, with every man, woman, and child in the country paying his or her proportionate share, each of us would have to fork over $18,404.57. Of course, since millions of Americans pay no taxes at all, the average share of the Federal debt would be far greater than the per capita amount referred to above.

The other sad thing? It is, of course, the Senate's failure today to approve a constitutional amendment requiring Congress to balance the Federal budget. If just one more Senator had voted today in favor of the amendment, it would have been approved by 67 Senators, exactly enough to pass the amendment and send it to the 50 States for ratification.

Don't look for a balanced Federal budget anytime soon. But one day it will come. The American people will demand it.

REDUCE THE DEFICIT WITHOUT AMENDING THE CONSTITUTION

Mr. WELLSTONE. Mr. President, over the course of the last 3 weeks, we have heard many arguments for and against the proposed balanced budget amendment to the Constitution. Those arguments were made in good faith, and I know they reflect a broad commitment by those on both sides of this question to bringing the deficit down to reasonable levels. But the balanced budget amendment is an empty promise, not a policy. It has little immediate political cost and very high poll ratings—hence its popularity. But enacting it would be a serious mistake. We should reject it in favor of a real, long-term deficit reduction program.

Since 1936, when Minnesota's own Harold Knutson revived the idea of a balanced budget constitutional amendment that has been originally rejected by the Constitution's Framers, Congress has debated various versions. The real question before us today, as it was 50 years ago, is whether we should weld onto the Founding document of our democracy, the U.S. Constitution, a budget gimmick that would do more harm than good to the economic well-being of our Nation, and our citizens.

As I have consistently argued, in my judgment we do not need to amend the U.S. Constitution to balance the Federal budget. Instead, we must continue to make tough choices on actual legislative proposals, as I have done, to cut wasteful and unnecessary post-cold-war defense spending, to continue to reduce low priority domestic spending, to completely restructure the way we finance and deliver health care in this country—in both the public and private sector—and to scale back special tax breaks for very wealthy interests in our society who have for a long time not been required to pay their fair share. That approach is the only responsible, fair way to bring our annual Federal deficits, and the much larger Federal debt, under control.

For the last 15 years or so, that is what the Congress has been unwilling to do, and that is the source of a lot of frustration in the country. Congress has been unable to muster and sustain a majority to make difficult budget choices. We have seen illustrated here in the Senate over and over again a central problem: The political gap between the promise to cut spending, and actual followthrough on that promise. I make this point because I want to underscore that many of those who have been beating their chests the hardest about a balanced budget amendment have often been among those who have consistently voted against these actual deficit reduction proposals. We cannot give over our budget-balancing responsibilities to a machine, a mechanism. That responsibility is ours.

Of course, I support balancing the Federal budget in a responsible, fair way. Despite all of the rhetoric today, we all at least agree on that basic goal. That's why some of us have voted consistently to reduce actual Federal spending when we've had the chance over the last few years on this floor. Not gimmicks, not smoke and mirrors, not deficit reduction formulas that never identify precise cuts, but actual reductions in Federal spending contained in actual amendments to appropriations bills. Votes on those proposed cuts have been important indicators of our willingness to make tough choices. This is where the budget rubber has met the road.

The President's $500 billion deficit reduction package in the 103d Congress, which I supported and which was approved without a single Republican vote, was a major downpayment toward balancing the budget. But Democrats had to do it alone. When we cut, the Republicans ran. While we acted, they talked. Still, much more must be done.

But now, instead of real budget choices we are presented with a gimmick that I do not believe will work to balance the budget, and that if it does work as it's designed, could do serious harm to the U.S. economy. It will also serve to reduce pressure in the next few years to actually reduce the deficit further, allowing Members of Congress to declare a temporary victory without cutting significantly from the Federal deficit. And then the reckoning will come, when we are up against the wall at the end of this century and have to balance the budget in just a few short years with massive spending cuts in all Federal spending, including Social Security and Medicare.

If that's true, then why is the amendment so popular, at least in the abstract? In recent years, the borrow-and-spend policies of the 1980's and early 1990's have come home to roost, rekindling public support for drastic measures. But just so that we don't lose our historical perspective in this debate, I think it's important to recognize that the problem of huge Federal budget deficits is a relatively recent one, going back only to the early 1980's. It's just not true, as some amendment proponents imply, that the Federal Government has been spending way beyond its means for decades.

The Reagan and Bush administrations gave America by far its 10 largest budget deficits in our history. The huge tax cuts and large defense increases of that era are still costing us. Whatever your party affiliation or perspective on enacting this amendment, that is indisputable. If it were not for the interest costs on the debt accumulated during the 1981–92 period, the Federal budget would be in balance in 1996 and headed toward surplus thereafter.

I am not trying to explain away large deficits over the last decade or so, but simply to point out that they are, more than anything else, a direct result of the misguided and now thoroughly discredited fiscal policy called supply side economics. Despite the urgings of some of our colleagues in the new House leadership, and some of the provisions of the Republican Contract for America, we must not turn down that supply-side road again.

Opposing the amendment has not been easy, or politically popular. But since I have spoken several times on various amendments that have been proposed over the course of the last few weeks, let me try to summarize one last time my major reasons for voting against this amendment.

AMERICANS HAVE A RIGHT TO KNOW HOW THE AMENDMENT WILL AFFECT THEM

Throughout this debate, I've argued that the people of Minnesota—and all Americans—have an enormous stake in the outcome of this debate, and that they have a right to know how the spending cuts required by the amendment could affect them and their families. I offered an amendment to one of the first bills before the Senate this year urging proponents of the constitutional amendment to detail the over a trillion dollars in cuts they would make to balance the budget by 2002, before it is sent to the States for ratification. This is simple ''truth-in-budgeting;'' it's the least we could have expected from proponents.

Indeed, the Minnesota State Legislature and Governor Carlson agree. And they sent a Minnesota mandate to Washington to prove the point. The legislature recently passed overwhelmingly a resolution, signed by the Governor, urging those of us here in Congress to continue our efforts to reduce the Federal budget deficit, and requesting financial information on the impact the balanced budget amendment would have on our State. By rejecting the amendment, which I introduced to provide the information to all the States that the Minnesota Legislature was seeking, the Senate sent States a chilling message.

Another major right-to-know amendment, offered by Senator DASCHLE, was also defeated. Despite the straightforward logic of this approach, these amendments were rejected on virtual party-line votes.

And so if we pass this constitutional amendment today, we would be sending it to the State legislatures for ratification without giving them, or the millions of American families whom they represent in each State, any idea of how we intend to cut over a trillion dollars from the Federal budget between now and the year 2002, or how it will affect their lives and the lives of their children and grandchildren. Families will not be told how deep the Medicare, Medicaid, school lunch, higher education, or Social Security cuts will be; at least not before we vote on the amendment.

That is, I think, a gross abdication of our sworn responsibility to serve those we represent, and a slap in the face to those who count on us for truth-in-budgeting. Recent polls show that over 80 percent of Americans believe we should be straight with them about how we intend to balance the budget under this amendment before we act on it. Even so, balanced budget proponents have rejected the right-to-know and instead offered Americans a ruse, an exercise in budget deception. In so doing, they have seriously breached the standard of public accountability that Americans should be able to expect from their leaders. In addition, there are a number of sound fiscal policy arguments against the amendment; I will raise just two examples.

AMENDMENT WOULD DEEPEN ECONOMIC RECESSIONS AND WORSEN DISASTERS

Consider the potential risk that the spending cuts required by the amendment could push soft economy into a recession, or in a worse case, deepen an existing recession and push us into a depression. Now when the economy slips into recession, Federal spending helps to cushion the fall by increasing unemployment insurance and other assistance programs for low- and moderate-income people. At the same time, income tax collections drop because people and businesses are making less money in a recession.

But under the amendment, Congress would be forced, perversely, to do the opposite: raise taxes, cut spending, and push the economy into an economic freefall. The so-called automatic economic stabilizers like unemployment insurance that have proven so useful in recent decades would be gone, and we would instead effectively enshrine in the constitution the economic policies of Herbert Hoover. With fiscal policy enjoined by the amendment, sole responsibility for stabilizing the economy would rest with the Federal Reserve. And with their almost exclusive focus on fighting inflation these days, more often than not they end up protecting Wall Street investors—not average working families.

As I have suggested, the amendment is an attempt to enshrine an economic dogma which would cripple our ability to offer pragmatic responses to changing economic conditions. Because our efforts to change the balanced budget amendment to take this problem into account also failed, this serious flaw remains.

Coupled with the absence of any exception for emergency disaster spending, that was included in a proposed amendment defeated last week, the lack of economic foresight this reflects is almost breathtaking to me. In just a few days, we will consider an emergency spending bill to help pay the Federal share of the California earthquake last year. The cost of this disaster is now up to $15 billion.

In the last two decades, the Federal Government has spent $134 billion in Federal disaster relief, including $33 billion in the last 5 years alone. Under a balanced budget requirement, what would we do in the face of a huge flood, earthquake, or other disaster that cost scores of billions of dollars in relief aid? How long would it take to garner the three-fifths votes necessary in both Houses to pay for it? And what special legislative prizes would opponents require for their votes? Those are all open to questions.

AMENDMENT COULD PUT FEDERAL DEPOSIT INSURANCE AT RISK

Another open question is the impact of the amendment on bank deposits. I am sure balanced budget amendment supporters don't intend to put the life savings of American families at risk, or to threaten the stability of the banking system. And yet that is precisely what this amendment would do. Since the Depression, the FDIC has insured depositors against bank failures. That limit is now up to $100,000 per account. And right now those guarantees cover private savings of about $2.7 trillion—that's a whole lot of money that's guaranteed by the U.S. Government. Some have observed that the balanced budget amendment could put the full faith and credit of the United States embodied in such guarantees at risk.

AMENDMENT DOES NOT SEPARATE DAY-TO-DAY EXPENSES FROM INVESTMENTS

Most Americans believe that a balanced budget, like a balanced checkbook, is a good idea. They argue that America, like a family, should always balance its budget. But this overlooks a key fact: The household budgets of most middle class Americans have substantial debt, either for a car, a home, or a college education for their kids.

This reflects a central problem with the amendment. It ignores the difference between two different types of spending: investments for the future,

and ''operating,'' or day-to-day, spending. Taking out a mortgage on a home is investing in your family's future; taking one out to pay for next year's vacation is not. This is acknowledged by most State governments, many of whom are required to balance their operating budgets—but not their investment budgets.

American business agrees; incurring debt to invest and expand a business has long been a hallmark of business strategies for sustained growth. With governments, as with families or businesses, borrowing isn't inherently bad; it depends what you're borrowing for. With families, businesses or State governments, the central question is: Will the debt we incur improve our long-term economic prospects? If this principle applies to household or business budgets, why shouldn't it apply to the Federal budget? Nonetheless, an amendment to address this problem was rejected.

NO PROTECTIONS FOR THE SOCIAL SECURITY TRUST FUNDS

This balanced budget amendment fails to protect the Social Security trust funds from being raided to balance the Federal budget. We tried to make sure that for the purpose of calculating the deficit under the balanced budget amendment, the huge surpluses in the Social Security trust fund would not be counted. In that effort, too, we failed; our proposed Social Security amendment was defeated. Make no mistake what this means: Despite the promises of the proponents that they will not balance the budget on the backs of Social Security recipients, they have refused to explicitly protect this program in the language of the constitutional amendment itself. In fact, they fought hard to defeat our Social Security amendment. That is as good an indication of their future intentions regarding Social Security as anything we have seen.

A SHELL GAME THAT WILL REQUIRE STATES TO RAISE TAXES

There is another problem with this constitutional amendment. For many in Minnesota, it will likely mean an increase in personal income, sales, and property taxes needed to offset the loss in Federal aid from crime control to higher education, roads and bridges to farm programs, rural economic development to Medicare. This shell game, in which costs are simply shifted from the Federal Government onto the States, would force Minnesota to fund these efforts on its own. A recent Treasury Department study concluded that an increase of between 9 and 13 percent in Minnesota taxes would be required to make up the difference. In reality, a vote for the balanced budget amendment is really a vote for a trickle-down tax increase.

A STANDARD OF FAIRNESS

I think it's a simple question of fairness. If this constitutional amendment passes, in the next 7 years we are going to have to make $1.48 trillion in spending cuts and other policy changes—assuming that we enact Republican-proposed tax cuts for the wealthy and defense increases. If we don't, we'll still have to make about $1.2 trillion in cuts. If we make these cuts to meet the balanced budget amendment requirement and timetable, then we should make sure that wealthy interests in our society, those who have political clout, those who hire lobbyists to make their case every day here in Washington, will be asked to pay their fair share. At least they should bear as much of the burden as regular middle class folks that we represent, who receive Social Security or Medicare or Veterans benefits, or who receive student loans to send their kids to college and offer them a better future.

That's just common sense, and I had hoped that during this debate we would signal that we would apply such a standard of fairness. For example, too often in discussions about low-priority Federal spending which ought to be cut, one set of expenditures has been notoriously absent. That is tax breaks for wealthy and well-positioned special interests. But that, too, was rejected by the constitutional amendment's proponents when I offered an amendment urging simply that we make sure such special tax breaks are on the table as we move forward in our deficit reduction efforts. Tax subsidies are heavily skewed to corporations and the relatively few people with very high incomes, while Government benefits and services go in far larger proportions to the middle class and the poor.

In the last few weeks, this issue of fairness has emerged more and more clearly to me, more by its absence than by its presence. It looks to me as though the current standard, at least as it has been applied so far in the published plans of balanced budget proponents, will not require much, if any, sacrifice from special interests in our society who have enjoyed certain tax breaks, benefits, preferences, deductions and credits that most regular middle-class taxpayers don't enjoy.

EFFORTS TO SCRUTINIZE TAX BREAKS FOR WEALTHY BLOCKED

But while the constitutional amendment's proponents don't seem to mind that it could require States to raise State taxes by large margins, they are adamantly opposed to making sure that wealthy corporations and others pay their fair share of the deficit reduction burden.

It is a fact, often overlooked, that we can spend money just as easily through the Tax Code, through what are called ''tax expenditures,'' as we can through the normal appropriations process. Spending is spending, whether it comes in the form of a government check or in the form of a tax break for some special purpose, like a subsidy, a credit, a deduction, or accelerated depreciation for this type of investment or that. These tax expenditures—in some cases they are tax loopholes—allow some taxpayers to escape paying their fair share, and thus make everyone else pay at higher rates. These arcane tax breaks are simply special exceptions to the normal rules, rules that oblige all of us to share the burdens of citizenship by paying our taxes.

The General Accounting Office issued a report last year titled, ''Tax Policy: Tax Expenditures Deserve More Scrutiny.'' It makes a compelling case for subjecting these tax expenditures to greater congressional and administration scrutiny, just as direct spending is scrutinized. The GAO noted that most of these tax expenditures currently in the Tax Code are not subject to any annual reauthorization or other kind of systematic periodic review. They observed that many of these special tax breaks were enacted in response to economic conditions that no longer exist. In fact, they found that of the 124 tax expenditures identified by the committee in 1993, about half were enacted before 1950. Now that does not automatically call them into question. It just illustrates the problem of their not being very carefully looked at in any systematic way over very long periods of time. Many of these industry-specific breaks get embedded in the Tax Code, and are not looked at again for years. And yet we refused by roll call vote to even commit to consider them as we move forward in our efforts to balance the Federal books.

When we begin to weigh, for example, scaling back the special treatment for percentage depletion allowances for the oil and gas industry against cutting food and nutrition programs for hungry children, we may come out with quite different answers than we have in the past about whether we can still afford to subsidize this industry. The nonpartisan Congressional Budget Office estimates that eliminating this particular tax break would save $4.9 billion in Federal revenues over 5 years.

And this is not an isolated example. The Congressional Joint Tax Committee has estimated that tax expenditures cost the U.S. Treasury over $420 billion every single year. And they estimate that if we don't hold them in check, that amount will grow by $60 billion to over $485 billion by 1999. Now some tax expenditures serve important public purposes, like supporting charitable organizations, and should be retained. But many of these must be on the table along with other spending as we look for places to cut the deficit.

I could not find any hint of interest in cutting corporate tax breaks in the Republican contract, I think because many of the benefits of these tax breaks go to very high-income people with wealth and power and clout in our society, and to corporations with high-powered lobbyists. They're the ones for whom the contract provides an estimated $169 billion windfall that would resurrect the tax-shelter industry and effectively slash corporate rates.

At a time when we are talking about potentially huge spending cuts in meat inspections designed to insure against

outbreaks of disease; or in higher education aid for middle class families; or in protection for our air, our lakes, and our land; or in highways; or in community development programs for States and localities; or in sewer and water projects for our big cities; or in safety net programs for vulnerable children, we should be willing to weigh these cuts against special tax loopholes on which we spend billions each year. And yet we could not even agree to put these on the table along with everything else as we move forward in our efforts to reduce the deficit.

ENSHRINES MINORITY RULE

Constitutional and congressional scholars have observed that the balanced budget amendment gives a veto power to a small minority of either the House or the Senate in key budget decisions, a profoundly antidemocratic shift away from our proud, 200-year-old tradition of majority rule. The need to win approval from three-fifths of both Houses to waive the balanced budget requirement in a recession would give added power to members whose votes might be needed to avoid plunging the country into a deeper downturn.

Thus, the price of an agreement to let the Government run even a modest deficit during a recession, and to provide recession-related unemployment benefits, might be a capital gains cut or other tax break touted by its backers as a ''growth incentive.'' As we saw in the 1980's, these tax breaks usually prove to lose revenues and increase the deficit over the long term, which in turn could lead to additional program cuts in subsequent years to bring the budget back into balance.

WEAKENS OUR ABILITY TO INVEST

As I have observed, the balanced budget amendment would largely deny to the Federal government a basic practice that most businesses, families, and States and local governments use—borrowing to finance investments with a long-term payoff. Borrowing to finance new investments is standard business practice. A business that failed to modernize because it could not borrow would soon be left behind.

We must continue to invest in our people. Our economy is creating new jobs at a near-record pace—over 5 million in the last 2 years alone—yet it doesn't give much help to those ordinary working families who are at the bottom, or in the struggling middle class. As one Iron Ranger in Minnesota recently told me, ''All these jobs being created doesn't do me much good if I have to hold three of them to keep my family together.'' His comment reflects the anger and economic insecurity many Americans feel because their personal economic experience doesn't jibe with what Government statistics tell them—that unemployment is down, inflation is in check, and economic growth and productivity are booming. Despite these statistics, standards of living and real wages of workers remain flat, or in slight decline; many are just one downsizing away from layoff, and feel less secure. We must invest in the skills and futures of our people if we are going to turn this situation around.

The amendment would force a scaling back of Government investment in areas where economists stress more investment is needed: infrastructure, education and training, early intervention programs for children, research and development. There is growing evidence we invest too little in these areas and that such under-investment has contributed to our Nation's weak economic performance in recent years.

It is true that for too long the Federal Government has been undisciplined in its borrowing, and that is what threatens our fiscal future. We have a responsibility to future generations to get our fiscal house in order, and to do it the Federal Government has to reprioritize spending in relation to this central question of investment, by re-examining programs across the board and eliminating or scaling back those that are wasteful and unnecessary. We must redesign cumbersome Federal structures to meet the challenges of the information age, of rapidly changing demographics, of our decaying inner cities. We should do this in a way that's fair, open and accountable, without the budget smoke and mirrors that have too often fogged the real choices facing voters.

Let me say a word about the impact that systematic disinvestment would have on working families, children and the elderly in my State, because ultimately that is what this whole debate is about.

THE IMPACT OF THE AMENDMENT ON MINNESOTA FAMILIES

Throughout this debate, I have tried to ask myself basic questions about the impact of this balanced budget amendment on the families in Minnesota whom I represent. I think it would inflict on Minnesotans serious harm, and that is why I cannot in good conscience support it. That is ultimately the deciding factor for me.

I've already talked about the shell game that this amendment would require by shifting the costs of government from the Federal to the State level, and forcing States to raise income, property and sales taxes—in Minnesota's case by about 13 percent, according to the Treasury Department. But what about the actual spending cuts? How would they be distributed? Who would have to sacrifice, and who would benefit?

Over 7 years, under the balanced budget amendment and accompanying Republican proposals, Minnesota would lose nearly $5.9 billion in Federal Medicare funds, Medicaid cuts would total nearly $3.7 billion, elementary and secondary education would lose $1.5 billion, and Federal law enforcement would lose $143.7 million. Minnesota farmers also would likely lose billions in farm payments, causing a serious decrease in family farm income. And it's not just rural areas that would be hit. The two largest urban counties in my State, Hennepin and Ramsey Counties, would alone lose about $10.3 billion in total Federal aid over 7 years.

In addition, despite Republican promises to temporarily protect this program, large cuts in Social Security benefits to Minnesotans—an estimated $2,000 annually per beneficiary—should also be expected if this program is slated for across-the-board cuts.

These are very large cuts, and they will have a major impact on the people of my State. I have heard from elderly couples in Minnesota on fixed incomes, terrified about the impact of the amendment on their Medicare funding. And they have reason to be fearful. I have sat with homeless men and women, Medicaid recipients, who are threatened with going without even the most basic health care under the amendment. Instead of this approach, we owe it to these people to do real comprehensive health care reform.

Despite the claims of some that opponents of the amendment are exaggerating the threat posed by these huge spending cuts, this is for real. I am not making this up. In fact, just the other day, Finance Committee Chairman PACKWOOD said that he thought we would have to make up to $550 billion in cuts in Medicare alone to meet its requirements—not to mention the huge cuts in Medicaid he acknowledged would be necessary. And it could go much higher than that, depending on budget decisions made in other areas.

Finally, let me say a word about the process by which this amendment has been considered. In recent weeks, balanced budget amendment proponents have rejected virtually every single good faith effort to improve the constitutional amendment. Amendments to prevent a raid of the Social Security trust funds, to exempt earned veteran's benefits, to strike the majority requirements, to prevent harm to hungry and homeless children, to separate investment from day-to-day operating budgets, to provide for exceptions for major disasters and economic recessions—and many others—were defeated.

I believe that if the Senate passes this amendment today, as we look back on this debate from the midst of a serious recession, major disaster, or even undeclared national security emergency, this unwillingness by proponents to accept even modest, reasonable changes in the amendment will prove seriously misguided.

While at first look this amendment appears to make sense and is widely popular, amending our Constitution in this way would be a mistake with potentially serious fiscal, economic, and social consequences and would seriously alter our democratic process. We can and should balance the budget without gimmicks and without changing the Constitution. I intend to continue to vote to do that. I urge my colleagues to join me in that effort, and to

vote no on the balanced budget amendment. I yield the floor.

Mr. LEVIN. Mr. President, I want deficit reduction and I am willing to work for it. That is why I supported the President's deficit reduction package in the last Congress. But while I have stood up for real deficit reduction, what I am not prepared to do is to write into the Constitution language that is more likely to lead to disillusionment and constitutional crisis than to a balanced budget.

I see five flaws in the proposed amendment. First, the proposed amendment would not balance the budget, it would just say that a future Congress has to pass a law to enforce a balanced budget. Why wait? Unless and until we make the tough choices needed to cut spending or raise revenues, we will not have a balanced budget, whether or not we pass the proposed constitutional amendment and whether or not the States ratify it. We will instead have passed what could turn out to be a cynicism-deepening illusion.

The proposed constitutional amendment says that starting no earlier than 2002, Congress has to have a law enacted which enforces a balanced budget. Why wait? Why wait to do the hard work of passing implementing laws and doing the actual budgeting? That's a dodge which allows some to say we are cured before we have taken the medicine. It puts a giant loophole in the Constitution to cover over congressional weakness.

In May 1992, Robert Reischauer, the Director of the nonpartisan Congressional Budget Office, testified before the House Budget Committee that a balanced budget amendment is not a solution; it is ''only a repetition in an even louder voice of an intention that has been stated over and over again during the course of the last 50 years.'' Dr. Reischauer stated:

> It would be a cruel hoax to suggest to the American public that one more procedural promise in the form of a constitutional amendment is going to get the job done. The deficit cannot be brought down without making painful decisions to cut specific programs and raise particular taxes. A balanced budget amendment in and of itself will neither produce a plan nor allocate responsibility for producing one.

Dr. Reischauer further stated:

> Without credible legislation for the transition that embodies an effective mechanism for enforcement, government borrowing is not going to be cut. But the transitional legislation and the enforcement mechanism are 95 percent of the battle. If we could get agreement on those, we would not need a constitutional amendment.

The public understands this. They know the difference between promises and action. Let me tell you what some of the commentators are saying about the balanced budget amendment back in my home State. Here is what the Detroit Free Press said on January 15:

> You wouldn't take seriously any politician who promised to be faithful to his spouse, beginning in 2002, so why do so many people take seriously the proposed balanced-budget amendment?
>
> It's the same kind of empty promise to be good—not now, but later. Putting it in the Constitution isn't likely to confer on Congress the spine or the wisdom to fulfill it.
>
> * * * [T]he way to cut the budget is to cut the budget, not to promise to do it sometime in the future. * * * Gluing a balanced budget amendment onto the Constitution only postpones the moment of truth.

And here is what the Battle Creek Enquirer said on January 29:

> If a balanced budget is such a good idea, we say to Congress: ''Just do it!'' After all, waiting until a constitutional amendment mandates it will just delay a balanced budget—perhaps by years.
>
> This Congress isn't likely to give the nation a balanced budget, that's for certain. But, by touting the need for this amendment, it sure can talk like a Congress that already has * * * [I]t's all an illusion.

''Just do it!'' That's what the American people want, Mr. President. They know the difference between promises and action, and they want the latter. A constitutional amendment can promise a balanced budget, but it cannot deliver a balanced budget. Only concrete action by the Congress can do that.

Put another way, Mr. President, the proposed constitutional amendment has no effective enforcement mechanism. The amendment relies on a future Congress to act to implement and enforce it. That is the bottom line. This is the same reed that proved so weak in the 1980's when the President and the Congress quadrupled the national debt from $1 trillion to $4 trillion.

The argument has been made that we have tried everything else, why not a constitutional amendment. We can't depend on legislation, the argument goes, so let's try a constitutional amendment.

So what does this amendment do? It depends on the same kind of legislation to be enacted which its sponsors say has not previously been effective.

When we were debating this amendment in 1986, Senator HATCH acknowledged the following:

> [T]here is no question that Congress would have to pass implementing legislation to make it effective. * * * It would be the obligation of Congress, after the amendment is passed by both Houses and ratified by three-quarters of the states to * * * enact legislation that would cause this to come about.

And again, CBO Director Reischauer pointed out that:

> Without credible legislation for the transition that embodies an effective mechanism for enforcement, government borrowing is not going to be cut. But the transitional legislation and the enforcement mechanism are 95 percent of the battle. If we could get agreement on those, we would not need a constitutional amendment.

Just a few weeks ago, on January 30, Senator HATCH stated:

> ''* * * [U]nder section 6 of the amendment, Congress must—and I emphasize must—mandate exactly what type of enforcement mechanism it wants, whether it be sequestration, rescission, or the establishment of a contingency fund.

In fact, the committee report accompanying this constitutional amendment itself states that it ''* * * must be supplemented with implementing legislation''.

Mr. President, I have offered an amendment to the constitutional amendment to require this Congress to address this issue by adopting legislation to implement and enforce a balanced budget requirement now. Without my amendment, there are no real teeth in the promise of a balanced budget contained in the proposed amendment.

Alexander Hamilton states in Federalist Paper No. 15, ''If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation.''

If congressional weakness is the reason for this amendment—and it is—then Congress will use the loopholes in this amendment to evade the responsibility which it sets forth. My fear is that this amendment will give us an excuse to duck the hard choices, as Congress has often chosen to do, until it would become effective in 2002—at the earliest. I am afraid that upcoming Congresses will say ''the balanced budget amendment will take care of our problems, so we don't need to address them now.''

Dr. Reischauer, in his 1992 testimony, listed a number of loopholes that Congress could use to get around an apparently rigid balanced budget rule:

Using timing mechanisms and other budget gimmicks to achieve short-run budget targets, including such actions as shifting pay dates between fiscal years, accelerating or delaying tax collections, delaying needed spending until future fiscal years, and selling government assets;

Basing the budget on overly optimistic economic and technical assumptions; and

Creating off-budget agencies that would have authority to borrow and spend but whose transactions would not be directly recorded in the budget.

That is what we did in the 1980's. We used optimistic estimates or ''rosy scenarios''. Here are some of those estimates. In 1981, our estimates were off by $58 billion. In 1982, our estimates were off by $73 billion. In 1983, our estimates were off by $91 billion, and on and on. In 1991, they were off by $119 billion—$119 billion in 1 year. You talk about a loophole. This one is big enough to drive a $119 billion deficit through. That is how big this loophole is.

The sponsors of the amendment say that the real enforcement mechanism is in section 2. That section provides that it will take 60 percent of the votes, a supermajority, to increase the debt ceiling. So if our estimates are too rosy—if, for instance, we follow the 1980's model of estimates in order to evade the constitutional requirement, then, we are told, we can fall back on

the requirement that the debt limit can only be increased by a 60 percent vote in each House.

As Senator GRAHAM of Florida has pointed out, however, the so-called debt limitation provision in the proposed amendment would allow us to run deficits in the first decade and a half of the next century of as much as $120 billion a year, masked by taking that money from the Social Security trust fund, without that counting toward the deficit. The proposed amendment applies the 60-vote requirement to ''the limit on the debt of the United States held by the public''. So the debt held by the Social Security Administration isn't covered and the usual majority rule would apply to raising that debt limit.

In any case, history has proven the debt limit is a weak reed to rely on, because when you vote on whether or not to increase the debt limit, you are voting whether or not to bring down the Government of the United States. We have to pay our legitimate debts, however many votes it may take. If we don't do that, we are finished economically. To make that point, let me quote from a July 8, 1987 letter from Secretary of the Treasury James A. Baker III to the Chairman of the Senate Finance Committee:

> I cannot overemphasize the damage that would be done to the United States' credit standing in the world if the Government were to default on its obligations, nor the unprecedented and catastrophic repercussions that would ensue. Market chaos, financial institution failures, higher interest rates, flight from the dollar and loss of confidence in the certainty of all United States Government obligations would produce a global economic and financial calamity. Future generations of Americans would have to pay dearly for this grave breach of a 200-year-old trust.

Mr. President, we are not going to achieve a balanced budget by threatening not to raise the debt ceiling, because that is a nuclear weapon aimed at the economy of this country. You don't balance the budget by threatening suicide, and that is what a failure to pay our debts would be. If we do not pay our debts, this country's economy is finished. So whether it takes the usual majority or 61 votes, it doesn't matter. We will have to increase the debt ceiling, because after the debts have been incurred, we won't have any choice.

Mr. President, my second problem with the amendment is that if a later Congress does adopt effective enforcement legislation, it would be putting in the hands of a minority of Senators, representing as little as 15 percent of the population, critical decision-making power over the economy of this Nation. Under the proposed amendment, it is intended that outlays not exceed receipts, and the debt limit not be increased, unless three-fifths of both Houses of the Congress agreed. The economic future of our country should not be put in the hands of a minority by a constitutional amendment which would be so difficult to change if it went awry.

My third problem with the amendment is that it would put the Social Security trust fund at risk. By my count, during this debate the Senate has rejected at least three amendments to protect the Social Security trust fund. As the senior Senator from Florida explained, Mr. President, that means that we will continue running deficits of at least $120 billion a year for more than a decade after this amendment would go into effect, and will conceal these deficits by taking the money from the Social Security trust fund. The money in that trust fund is exactly that—money that we have collected in trust. I cannot vote for a constitutional amendment which allows the use of that money to cover up huge deficit spending. That's simply wrong.

My fourth problem with the amendment is that, if effectively implemented, it would preclude the use of deficit spending to cushion the impact of a recession. A balanced budget amendment would force the Federal Government to raise taxes and cut spending in recessions, to offset the loss of revenue caused by declining income. These policies would deepen the impact of a recession and could even turn a mild recession into a depression.

Indeed, the Treasury Department has done a study showing that, were it not for countercyclical deficit spending, roughly one and a half million more people would have been unemployed in the 1991–92 recession. Mr. President, we should not ignore the real world hardships caused by recessions and we should not act in a way which could cause millions of Americans to lose their jobs.

Finally, Mr. President, I am troubled by the fact that the proposed amendment is intentionally ambiguous on the role of the President in carrying out the amendment. The resolution of this crucial issue will determine how the amendment will affect the checks and balances placed in the Constitution by our Founding Fathers.

With regard to Presidential impoundment, the Senator from Utah, Senator HATCH, says the President would have no power to impound funds unless expressly granted by Congress, but the sponsors refuse to make this explicit in the amendment itself.

There are some, including Members of this Senate, who already believe that the President has inherent impoundment powers under article II of the Constitution. Would not that argument be reinforced by a constitutional amendment prohibiting outlays from exceeding receipts, in view of the President's duty to preserve, protect, and defend the Constitution?

Former Reagan administration Solicitor General Charles Fried has testified that such a power would exist. He stated:

> Now, the command of section 1 is very unqualified. Total outlays shall not exceed total receipts unless you have the three-fifths vote. It seems to me that command would give the President—any President—a far better claim to impound funds than that which was asserted some years ago by President Nixon, because the President's warrant would not be drawn from, as President Nixon said it was, inherent powers of the Presidency. He could point to the Constitution itself. He would say that they shall not exceed, and he swears an oath to see that the laws are faithfully executed, and I would think his claim to impound would be very strong. Not only his claim, but he would argue with considerable plausibility his duty to do so.

So again, the record is, at best, unclear.

The question whether the President could enforce the amendment by impoundment would not be an insurmountable problem, had the majority not chosen to make it so. For instance, when we approved a balanced budget amendment in the Senate in 1982, we included language proposed by the Senator from New Mexico, Mr. DOMENICI, to ensure that the amendment could not be construed to grant the President impoundment powers.

This year, however, the sponsors of the amendment decided to remain silent on this issue. That is not the way we should address the question of amending the Constitution. This is the Constitution we are talking about, and we need to know what the amendment we are considering means in this critical area.

In conclusion, Mr. President, the proposed amendment provides too easy an excuse for Congress not to act now to reduce the deficit and it doesn't force congressional action later either.

It lets us off the hook now, and there is no hook later.

It's based on the argument that a constitutional amendment is needed because previous laws calling for a balanced budget didn't work. But its success, by its own terms in section 6, is dependent upon a future Congress enacting a similar law.

The amendment before us, in other words, is unlikely to reduce the deficit, but is likely to increase public cynicism about the willpower of Congress to act.

We can and we should adopt enforcement legislation to achieve a balanced budget now, with or without a constitutional amendment.

There is only one way to balance the budget now, or in 2002—and that is with the willpower to make the tough choices. I hope we will defeat this constitutional amendment and instead show the will power to make the tough choices and enact enforcement legislation actually needed to balance the budget.

Mrs. MURRAY. Mr. President, I voted against House Joint Resolution 1, the so-called balanced budget amendment.

I voted no because this amendment is a 10-second political sound bite with decades of economic implications. It will handcuff future generations to an

economic blueprint this Congress dictates in 1995. And, worst of all, it makes a mockery of the most important document this country has ever produced.

I am a member of the Budget Committee. When I came to the Congress 2 years ago, I faced the largest debt ever amassed by any country in the history of civilization. More debt was created during the 12 years of Republican administrations in the 1980's and early 1990's than in the entire 200 years preceding them.

I strongly support putting this country's economic house in order. Mr. President, I support a balanced Federal budget. The people of this Nation deserve nothing less. But this amendment does not get us there. Words on a piece of paper cannot balance the budget, only legislators like you and I can.

We have to make tough choices as we correct the fiscal mismanagement of the 1980's. We have to balance the budget with surgical cuts; with a scalpel, not a meat cleaver.

Mr. President, we have made some very tough decisions. I was one Member of this body who voted for a plan—a plan with specific cuts and common sense—which reduces the deficit by $505 billion over 5 years. Program-by-program, cut-by-cut. Most of the Members of the Senate who voted against the deficit reduction plan now support this constitutional amendment.

Mr. President, where are the specifics? What will they cut? Which taxes will they raise? Who will be hurt? The American people have a right to know. Under this amendment, we have no idea.

For example, will they cut out funding for the Federal Government's obligation to clean-up the Hanford Nuclear Reservation in my home State of Washington? Will they eliminate the home mortgage deduction? Will they cut Head Start, or WIC, or Ryan White? Will they stop guaranteeing student loans? Will they block further assistance to our depressed timber communities, or job training for laid-off aerospace workers?

Mr. President, just this week, we have seen some examples of how careless cuts can be when they are made with a meat cleaver. The rescissions package coming before the Senate soon is a mean-spirited and irrational piece of legislation. As nasty as those cuts are, they still do not get us to a balanced budget. Instead, they damage those we can least afford to harm: our children.

If this body is serious about deficit reduction, we should resume the debate on health care reform. Even cutting every discretionary program will not get us to a balanced budget. We must control the growth of health care costs. I find it ironic that many of the same Senators who opposed the health care reform bill last year now support this constitutional amendment.

This so-called balanced budget amendment is dangerous. It will remove all our flexibility in dealing with emergencies—economic troubles like recessions, or even natural disasters like volcanic eruptions, earthquakes, flooding, hurricanes, and massive fires. My home State has experienced many such disasters recently. If this amendment had been part of the Constitution, how would my friends and neighbors have coped?

Mr. President, I believe many of our colleagues would want to help in these emergency situations. That is why the Congress is the proper venue for deciding these issues—our Founding Fathers thought so, too.

This constitutional amendment throws our responsibility to the courts. The courts will decide if funding is appropriate. Supreme Court justices are not responsible to the people of my home State; they are not elected by anyone. They are not sent to the Nation's capital to tend to the needs of my constituents.

Mr. President, we have amended the Constitution only 17 times since we adopted the Bill of Rights. We have never changed the Constitution lightly. With each previous amendment, the American people voted to expand rights and outline responsibilities—we have never inserted an economic plan into the Constitution. This amendment sets a terrible precedent.

I voted in favor of several amendments to the House Joint Resolution 1. I could see that the resolution had considerable support, and I wanted to make sure that if it did indeed pass, we protected our most vulnerable populations; that we maintained the integrity of the Social Security trust fund; that we continued our fight against violent crime; that we respected our veterans; and that we exempt natural disasters from cuts.

I also believe that we should display common sense and work to reduce the massive deficit before we enacted sweeping, across-the-board tax cuts.

These safeguards all failed—every one of them. All attempts at tempering the resolution, or placing some sensible priorities into the legislation, were killed.

Mr. President, this is bad policy, and I cannot support any measure that will handcuff our country's economic policy. When I stand in this Chamber, I remember that I am not only a U.S. Senator but also a mother.

It might be popular to vote yes, but I won't worry about my own personal popularity until I know my children's economic future is safe. I do not believe we should trivialize our Constitution in order to give politicians a reason to make the kind of choices they should be making anyway.

This resolution will hurt our country and handcuff future generations. Amending the U.S. Constitution is not worth the gamble. For these reasons, Mr. President, I did not support House Joint Resolution 1.

Mr. PRESSLER. Mr. President, since 1981, there have been eight balanced budget amendment measures that have been approved by the Senate Judiciary Committee and reported to the Senate. Three of these measures have received floor consideration.

In 1982, the Senate passed Senate Joint Resolution 58 by a 69-to-31 vote. This marked the first time either House of Congress had approved such a measure. Although a substantial majority of the House of Representatives voted in favor of a counterpart of Senate Joint Resolution 58, the 236-to-187 margin fell short of the necessary two-thirds vote.

In 1986, the Senate rejected a balanced budget amendment (S.J. Res. 225) by a vote of 66-to-34, thus failing to achieve the necessary two-thirds majority by a single vote.

Then during 1994, the Senate defeated Senate Joint Resolution 41 by a vote of 63-to-37, 4 votes short of the two-thirds necessary for adoption.

Since coming to the Senate in 1979, I consistently have cosponsored and supported balanced budget amendment measures, and have voted for adoption of these measures at each and every opportunity. I strongly support the proposed amendment before us which was approved by the House of Representatives. With our vote today, the Senate will choose between a failed status quo or a new road toward true fiscal accountability.

Mr. President, there is compelling need for a balanced budget amendment to the Constitution. The Federal Government has run deficits for 23 years in a row and for 54 of the last 62 years. As a result, our national debt has spiraled to more than $4.8 trillion. The gross annual interest on the debt exceeds $300 billion.

Moreover, if we maintain the status quo—as reflected in the President's budget request for fiscal year 1996—the national debt would increase to more than $6.7 trillion in 2000. Mr. President, is this the kind of legacy we want to impose upon our children and grandchildren?

The harsh fact is that up until now we have tried every legislative means possible to lower deficit spending and achieve tax revenues in excess of outlays. In the past 10 years, we have seen Gramm-Rudman, Gramm-Rudman II, the 1990 budget amendment, and the failed 1993 budget plan. These well-intended measures have failed to move us closer to a balanced budget. Even if it were to succeed for one budgetary cycle, what assurances are there for continued balanced budgets and surpluses sufficient to eliminate our national debt?

There must be a measure beyond Federal statute and outside the present legislative process that would require continued balanced Federal budgets. That is why a constitutional measure is necessary.

The constitutional amendment before the Senate today would prohibit deficit spending except during any fiscal year in which a declaration of war

is in effect or when the country is engaged in an urgent national security crisis. Also, the limit on deficit spending and the limit on the national debt may be waived by a recorded vote of three-fifths of the whole number of each House.

It seems that if the limits on deficit spending and the national debt could be waived by a simple majority vote of the House and the Senate, the purpose of the constitutional amendment would be nullified. It is clear more than a majority should be required to waive the amendment. Year after year huge deficits have been incurred by simple majority votes.

Requiring a supermajority vote is not unique. The Constitution currently has nine supermajority requirements on specific actions or measures. These supermajorities include: ratification of treaties; veto overrides; expulsion of a Member of the Senate or the House; impeachment of the President, Vice President, and other Federal civil officers and judges; waiver of disability of certain persons who engaged in rebellion against the United States; election of a Vice President by the Senate; and amendment of the Constitution. Also, supermajorities are provided for in each House under its constitutional right to determine the rules of its proceedings.

Measures such as a declaration of war or an amendment to the Constitution were rightly considered by the framers to be the most serious of policy commitments. They believed a broader consensus was needed for these beyond a simple majority. The framers also imposed supermajority requirements to ensure that the fundamental rights of individuals were not overrun by the tyranny of a majority. Mr. President, we have reached a point in our history that any serious thought of further mortgaging the future of our children and grandchildren should require a broader consensus than a simple majority. It is for them that we must get our fiscal house in order. It is for them that we must pass this balanced budget amendment.

The proposed amendment would take effect within 2 years after ratification by three-fourths of the States, or by 2002, whichever comes later. It is significant that 48 States, including my home State of South Dakota, have constitutional provisions limiting their ability to incur budget deficits. Such constraints have proven workable in the States.

It is not surprising that a large majority of persons throughout the country who have been polled on this issue support a balanced budget amendment. Certainly, a large majority of South Dakotans from whom I have heard and with whom I have met urge that this resolution be adopted. They know it is the only way to achieve balanced Federal budgets and reduction of the national debt. I hope, Mr. President, our colleagues will bring that about.

Mr. LEAHY. Mr. President, during the past few days, I have been dismayed at the attempts of the proponents of this constitutional amendment to find a fix to pick up a vote or two in order to obtain passage. It may make for high drama, but it also makes for bad law. This is the United States Constitution that they are seeking to amend and its provisions should be carefully crafted, studied and considered. Back rooms and political dealmaking have no place in amending the Constitution.

At the center of these desperate negotiations has apparently been a belated effort to jerryrig some type of budget resolution or implementing legislation to protect the Social Security trust fund from being used to balance the budget under this so-called balanced budget amendment. This is absurd.

The language of House Joint Resolution 1 is very clear. Section 1 states: ''Total outlays for any fiscal year shall not exceed total receipts for that fiscal year.* * *'' And section 7 states: ''Total receipts shall include all receipts of the U.S. Government except those derived from borrowing. Total outlays shall include all outlays of the U.S. Government except for those for repayment of debt principal.'' The undisputed reading of this language is that the Social Security trust fund will be covered by this constitutional amendment.

In addition to the unambiguous language of the constitutional amendment itself, the legislative history of House Joint Resolution 1 makes it clear that the Social Security trust fund is not protected. In fact, the proponents have fought back all efforts in the Senate Judiciary Committee to amend the same language in Senate Joint Resolution 1 and all amendments offered here on the Senate floor over the past month.

During Senate Judiciary Committee consideration of this constitutional amendment, Senator FEINSTEIN offered an amendment to exclude funds going in and out of the Social Security trust fund from the definition of total receipts and total outlays. Unfortunately, a majority of members of the Senate Judiciary Committee tabled Senator FEINSTEIN's amendment by a vote of 10 to 8 on January 18, 1995.

During the Senate debate on House Joint Resolution 1, Democrats offered two separate amendments to take Social Security off the table. Senator REID offered an amendment to this constitutional amendment that would have legally protected the Social Security trust fund by excluding it from the definitions of total outlays and total receipts in section 7 of House Joint Resolution 1. But that amendment was tabled by a vote of 57 to 41 on February 14, 1995.

Just a few days ago, Senator FEINSTEIN offered a substitute balanced budget amendment that again would have legally protected the Social Security trust fund by excluding it from the definitions of total outlays and total receipts in the substitute amendment. Again, the proponents of this constitutional amendment tabled the Feinstein substitute amendment by a vote of 60 to 39. Whether the Tennessee Valley Authority is exempted and placed ''off budget'' may be in doubt, but there is no doubt that the Social Security trust fund is included by the proponents of this constitutional amendment.

Trying to craft some type of subsequent, legislative fix is folly. No court in the country would enforce a statute that tries to overrule the clear language of a constitutional amendment and the clear legislative history supporting that language. The only way to protect the Social Security trust fund from this so-called balanced budget amendment is to write that protection into the text of House Joint Resolution 1 itself. There is no other legally sound or enforceable way.

Moreover, any follow-up legislative effort to protect Social Security could be changed at any time by subsequent legislation and would offer no permanent protection. Unlike an amendment to the Constitution of the United States, a simple majority of Senators, or in the case of legislation changing the Budget Act 61 Senators, could change legislation trying to take Social Security off the tale. The legislation would fall far short of the protection of having something enshrined in the Constitution, which the Founding Fathers purposely made difficult to amend.

If proponents are finally willing to offer real protection for Social Security, why do it with only a budget resolution or statute? And if that is good enough for Social Security, why not cut the deficit through the same mechanism?

Let us be honest with the American people. The real reason the proponents of this so-called balanced budget amendment refuse to protect Social Security in the constitutional amendment itself is that they have no intention of protecting Social Security. Proponents of this constitutional amendment plan to use the annual surpluses in the Social Security trust fund to mask the true deficit. To make it easier to thump their chests that the budget is balanced, the supporters of this constitutional amendment hope to raid the $705 billion in annual surpluses in the Social Security trust fund that will accumulate between now and 2002.

It was most revealing that their recent offer to compromise with Senators CONRAD and DORGAN on this point was to stop counting the surpluses in the Social Security trust fund in 2012, or about the time that those surpluses are projected to dry up.

Let us put an end to this foolishness. Either protect Social Security in the language of House Joint Resolution 1 or not, but quit playing games with the Constitution of the United States. I have argued since this measure began

being considered that we needed to tackle the important questions of implementing legislation first. But the proponents of this measure have refused. They remain prepared to leave every concern and serious problem for later.

But their mantra, that fundamental flaws in the constitutional amendment itself can be fixed in implementing legislation, rings hollow. Even if we believed their sudden change of heart on these mattes signalled a real change in philosophy, some problems created by the amendment cannot be corrected in mere implementing legislation. The Constitution defines the ground rules, and the Constitution overrules any contradictory implementing legislation.

Let us bring this sorry spectacle to an end. Let us vote to defeat the so-called balanced budget amendment. Maybe then the Senate could get past this slogan of an amendment and let us get on with real business, making the tough choices needed to take real action to reduce the deficit.

Mr. BIDEN. Mr. President, last week I announced my decision to support the balanced budget amendment.

I rise today to explain my choice.

Considering amendments to our Constitution is one of the Senate's most profound responsibilities. Our Nation has made only 17 such changes since the Bill of Rights was ratified over 200 years ago.

But in recent decades a structural imbalance has occurred in the way the Federal Government finances its operations. Each year, we find ourselves deeper and deeper in debt, with no reasonable prospect for constraining either the deficit or the debt.

We cannot balance our budget. Or, more precisely, we will not.

As I considered the balanced budget amendment as a possible solution to this problem, I had to first answer an important question—Is this an issue worthy of constitutional consideration?

From the point over 10 years ago when I offered my own constitutional amendment to balance the Federal budget, up to my vote for Senator REID's balanced budget amendment last year, I have held that this is an issue worthy of constitutional consideration.

The decision to encumber future generations with financial obligations is one that can rightly be considered among the fundamental choices addressed in the Constitution.

If this issue meets the test of constitutional significance, Mr. President, then is House Joint Resolution 1 the way to address it?

Mr. President, many of my colleagues, whose very valid concerns I have shared, have honored this Chamber with an eloquent presentation of the problems this particular amendment could cause.

I will respond to some of those arguments later.

But none of their arguments has overcome my concern for the future of our Nation's economy—for the country we will pass on to our children.

After so many years of seeking alternative solutions, I can see no other reasonable prospect for sharply curtailing the debt than the adoption of this amendment into our Constitution.

Mr. President, it is one thing to have deficits of $20 to $40 billion per year, which we could live with for the foreseeable future. But it is quite another thing to have deficits of $200 to $400 billion. And just 6 years from now, Mr. President, $400 billion is just what our deficit will be, not counting the surplus in the Social Security trust fund.

Under these extraordinary circumstances, it seems reasonable to me to require an extraordinary majority of Congress to continue deficit spending.

Even if this amendment passes and is ratified by the States, I know that we will continue to have some deficits. It is the potential size of deficits that bothers me; there is nothing sacred about a balanced budget.

But if we do decide to add to our national debt, it should be for important reasons, such as managing recessions or natural disasters—or securing the future well-being of our children—for reasons that can command the support of three-fifths of both Houses.

Over a decade ago, Mr. President, we strayed from the course that had, since the end of World War II, shrunk the national debt as a share of our economy. Since the early 1980's, we have foolishly, and significantly, increased our national debt year after year.

In 1980, Federal debt held by the public totalled $710 billion, and the interest we paid on the debt was $52 billion. This year, that debt has reached $3.6 trillion, and our interest payments will be $234 billion.

Recognizing the folly of this course, in 1984 I proposed a freeze on every program of the Federal Government—across the board. Although I wrote the plan with two Republican Senators, we received little support for the proposal, from either side of the aisle.

By the way, I am convinced, Mr. President, that had we acted then, the harm to many of the programs that I hold dear, responsibilities that moved me to enter public life, would have been softened.

As it is, without the freeze—that we were warned would harm so-called liberal programs—I have had to watch as those programs have gone through the wringer.

In 1981, when we lost control of the deficit, human services programs were 8.6 percent of Federal outlays. A decade later, they were 6.9 percent, a 20-percent reduction in their share of spending.

In 1981, education, training, employment and social services were 3.7 percent of Federal outlays. Over the next decade, as deficits and interest payments grew, they shrank to 2.3 percent, a 40-percent cut in their share of Federal spending.

After failing to pass the freeze, in the hope of restoring some discipline to our finances and reducing the deficit, I supported the Gramm-Rudman process, that put caps on the amount of deficit allowed, and required a balanced budget.

But the requirements changed every year; the only constant in the process was the annual increase in the national debt, and the guarantee of annual deficits.

And in 1993, we passed an historic budget agreement at the beginning of the Clinton administration, that will cut $500 billion from our deficits over 5 years. The healthy economy that followed passage of that plan has meant even more deficit savings.

If I thought that we could sustain this trend, Mr. President, I would withhold my support for this amendment.

But, what was the political response to that serious deficit reduction plan? It was denounced by those who now claim they want to attack the deficit.

That plan was passed by a single vote in both Houses, without one Republican vote. Moreover, that plan has been used by so-called deficit hawks to defeat the very Members of Congress who had the courage to vote for it.

And now we see again a plan by the new majority for tax cuts, defense increases—including star wars—and, of course, the promise of a balanced budget.

Mr. President, I've read this story before. We are all living out the consequences of the first time we tried that program.

It is clear now that there are no options left before us to turn the short-term success of the 1993 budget plan into a longer-term program to bring down future deficits.

And there are no other options to force those who voted against deficit reduction back then to face the consequences—requiring them to look at everything including revenues rather than continue the charade that the only thing we need to do to balance the budget is to cut foreign aid and AFDC.

Because they—and we—have been so successful in misleading the American people about the problem, those aspects of the Government's responsibilities that I entered public life to support have already been badly harmed as a consequence of these gigantic deficits: children, education, fighting crime and drugs, supporting organizations that promote international stability.

And those areas of the budget that need help the least—tax loopholes for the privileged, exotic weapons systems, people who aren't middle class or poor but who make money off of their programs—those have done the best.

I offer as evidence the recent votes in the House. Now, without the balanced budget amendment, our fiscal disarray is the pretext for cuts in school

lunches, infant nutrition, the successful and effective Head Start Program, and educational programs that our future depends on. Do my friends who share my values—who share my indignation at this disregard for those least able to help themselves, this short-sighted slighting of the future—do they really believe that if we were to vote down the balanced budget amendment that those legislative priorities would change?

I am convinced—reluctantly—that unless we use this opportunity to try to restore control over our finances, we will not be able to re-establish our priorities.

Our fight is not—or should not be—against making deficit spending a more difficult choice.

Our fight, with or without a balanced budget amendment, is against those who would walk away from Government's responsibilities and who will sacrifice the future for short-term political advantage.

Despite the shrinkage in those programs in recent years, we still face a future of increasing national debt, and rising annual deficits, and those programs and responsibilities I feel most strongly about will continue to take the hits.

This year alone, we will pay $234 billion in interest on the debt. By 1997, interest will be $270 billion—more than either our defense or domestic spending.

If this trend is unsustainable—and it is—and if the hard choices we make are turned against us—and they are—What, then can we do?

I have concluded, Mr. President, that there is nothing left to try except the balanced budget amendment, forcing everything onto the table, and requiring us to justify why some areas have escaped the budget ax so far.

But what of the many arguments against this amendment—concerns that I have shared in the past. Let me explain my thoughts on some of those concerns today.

Mr. President, one of the strongest practical arguments raised against the balanced budget amendment is that it will cost us our ability to respond to recessions.

There are two points that I want to make in regard to that serious charge. First, the sad fact is that we have already lost that flexibility—by making deficits the norm in good times and in recessions. Until we regain control of our finances, deficits will remain an unintended consequence of our budget process, not a selective policy choice.

Second, Mr. President, even under the constraints of this amendment, it is possible to provide that flexibility. In Delaware, we have built a two percent surplus into each year's budget, to assure that we can cover unforeseen events that could raise spending or reduce revenues.

We could do that with the Federal budget, and restore its important stabilizing role, a role that is now lost in the annual red ink. This is not something that appears to be a realistic option in the near term, but if that is the only way to restore the effect of automatic stabilizers in the Federal budget, we will be able to choose that option.

This amendment will make automatic stabilization more difficult, but it will remain our choice to restore that function of the Federal budget to its former effectiveness.

There are other concerns that I share with my colleagues who oppose this amendment.

Together, we tried to make this a better proposal. I believe that this amendment could be improved by changes I have supported here on the floor and in the Judiciary Committee.

We tried to keep the Social Security trust fund off budget, where it is now, and where it should stay. We failed to pass that amendment, and this will allow us to continue to mask the current deficit with funds that are needed to meet future obligations.

I believe that this failure takes us further from the truth about our real deficit problems, and further from the truth about the very real problems in the Social Security system itself.

But let me stress for those who are concerned about the effect of this amendment on the Social Security system—this change in our Constitution does not, by itself, cut a dime from current benefits.

Under current rules, Social Security is now off budget, but by law its surpluses still go to purchase the accumulating pile Treasury bonds that we will have to pay off in the future.

Taking Social Security out of the balanced budget amendment would not change that aspect of the system, or prevent tampering with the commitments we have made in the past.

My concern, in addition to the ways in which that accumulating surplus will distort our definition of the budget, is that this amendment will increase the temptation to use the Social Security system to make the rest of the budget appear more balanced.

This is a valid reason to try to insulate Social Security from that temptation—but not reason to renounce what I have concluded is our last chance to restore control over our country's financial future.

We also tried, Mr. President, to assure that the real costs of a balanced budget amendment, and not just its surface allure, are apparent to the citizens who will be asked to ratify it in the coming months.

And we tried to provide a capital budget—to treat public investments the way families, businesses, and States treat their investments. And we failed.

But I want the record to show that we are not prohibited by this amendment from devising a capital budget. I predict that events and experience will show us that a capital budget is essential to setting priorities, and that we will find a way to fit such a process into our budget system.

We tried to avoid a potential shift in the constitutional balance of powers by ensuring that only the Congress would enforce a balanced budget, Mr. President, and we tried to avoid tying up the courts with constitutional questions about the President's role in enforcing a balanced budget.

Mr. President, I believe that these constitutional issues remain the greatest risk we will take when we add this amendment to our Constitution.

Now, with the acceptance of Senator Nunn's amendment, Mr. President, some of my concern on that issue has been relieved.

So where do we stand?

We can vote for this less than perfect amendment, that requires 60 percent majorities to permit deficits—and I predict that we will choose to permit those deficits, but smaller deficits, and less frequently, than before.

Or, Mr. President, we can continue to add every year to the debt burden of future generations.

We will steal today from the next generation, squeezing out the savings and investment that could increase future wealth.

We will continue to tie our own hands, to restrict our own ability—indeed, our responsibility—to set priorities in our annual budget process.

This year, interest on the national debt will cost the United States $234 billion; the entire domestic discretionary budget will be $253 billion.

By the time this amendment is intended to become law, in the year 2002, interest on the debt will be $344 billion, larger than every other category in the budget except for Social Security.

Given that prospect, Mr. President, I choose to take a chance on the balanced budget amendment.

I hope that reverence for the Constitution and the procedural roadblocks in the amendment will establish an ethic of budget balance and a new, responsible, tradition will grow from the action we take here today.

But only history will tell.

But I have sufficient confidence in our citizens and in our political institutions that we will learn from any flaws that remain in this amendment, and will make the best of its virtues.

Two hundred years of American history tells me it is right to have that confidence.

But at the end of the day, Mr. President, I am willing to take the first step today down this new path. I will vote for the balanced budget amendment, but I will do so with my eyes open.

It is not the panacea some of its proponents have advertised, but neither is it the plague its opponents have portrayed.

For me, it as a reluctantly chosen opportunity to regain responsible control over our affairs.

And I hope that the record of my words and actions on this amendment will help my fellow citizens, both in my

State of Delaware and in the other States, as they consider its ratification.

I hope that they consider fully the record of debate we have worked to establish here in the Congress. That record should make us all, on both sides of this profound issue, proud.

Mr. NUNN. Mr. President, on Wednesday, March 1, a story in the Washington Post discussing my judicial review amendment to the balanced budget amendment referred to the views of Prof. Kathleen Sullivan of the Stanford Law School. The views of Professor Sullivan, as reported in the Post, could be viewed as critical of my amendment limiting judicial review. That would not be an accurate reflection of Professor Sullivan's views.

I received a letter from Professor Sullivan yesterday in which she notes:

> I have had the opportunity to read your remarks in the floor proceedings yesterday, and agree with you completely that it would be imprudent to pass the [Balanced Budget] Amendment in the mere unfounded hope that courts would not entertain lawsuits arising under it. Addressing the judicial review issue squarely, as you did, is plainly a step in the right direction.

I ask unanimous consent that the text of the letter from Professor Sullivan and the article in the Post be printed in the RECORD.

Mr. President, I am pleased that the Senate overwhelmingly adopted the amendment to limit judicial review under the balanced budget amendment. My amendment will ensure that no court interjects itself into the balanced budget process except as specifically authorized by Congress.

I look forward to working with the chairman of the Judiciary Committee, Senator HATCH, in drafting implementing legislation, including implementing legislation on the subject of judicial review. To the extent that Congress exercises the authority in the amendment to regulate the judicial role, there are ample precedents for statutory provisions to ensure that judicial review does not interfere with the taxing and spending powers of Congress. These could include, for example, providing exclusive jurisdiction in the Federal courts or in a designated Federal court; removal to Federal court of any case filed in a State court; and restriction of the remedies, if any, that a court could grant.

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

STANFORD LAW SCHOOL,
March 1, 1995.

Senator SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: Congratulations on your success yesterday in persuading your colleagues of the danger that the Balanced Budget Amendment, in its unamended form, would unwisely transfer constitutional authority from the Congress to the courts. I have had the opportunity to read your remarks in the floor proceedings yesterday, and agree with you completely that it would be imprudent to pass the Amendment in the mere unfounded hope that courts would not entertain lawsuits arising under it. Addressing the judicial review issue squarely, as you did, is plainly a step in the right direction. I am glad that you found my letter useful in addressing this issue.

You may have read me quoted in the Washington Post this morning as saying that your amendment renders the Balanced Budget Amendment more an ''exhoration'' than an ''enforceable requirement'' along the lines of many other constitutional provisions. While this quote is accurate, it leaves out my further comment to the reporter that the Balanced Budget Amendment is, for that very reason, better with the Nunn Amendment than without it. While I continue to believe that there are strong reasons not to tamper with the existing constitutional machinery in this area at all, I believe that any measure that reduces the net transfer of power from the legislative to the judicial and executive branches is desirable.

Very truly yours,

KATHLEEN M. SULLIVAN.

[From the Washington Post, Mar. 1, 1995]

DOLE DELAYS BUDGET AMENDMENT VOTE

ONE SUPPORTER SHORT OF PASSAGE, GOP PRESSED HOLDOUT DEMOCRATS

(By Eric Pianin and Helen Dewar)

Senate Majority Leader Robert J. Dole (R–Kan.) last night abruptly put off a final vote on the proposed balanced budget amendment after GOP leaders failed in a desperate daylong bid to pluck the critical 67th vote from among wavering Democrats.

Faced with almost certain defeat, Dole delayed the vote—until today or perhaps later in the week—to buy time while Republicans stepped up efforts to win over one of a handful of Democrats, particularly North Dakota Sens. Kent Conrad and Byron L. Dorgan, who have demanded changes in the measure to protect Social Security as well as other safeguards.

Sen. Robert C. Byrd (D–W.Va.), a leading opponent of the measure and a senior figure in the Senate, lashed out at Dole for postponing the vote, charging that Republicans appeared to be engaging in ''a sleazy, tawdry effort to win a victory at the cost of amending the Constitution of the United States.'' Byrd charged that Dole's action flouted a unanimous agreement to hold the critical vote yesterday, following more than a month of intense debate.

''This is a sad spectacle,'' Byrd said.

''I think the sad spectacle is that we may lose this vote,'' Dole retorted.

Dole refused to back down, saying there was still a chance Republicans could recruit at least one more senator to help pass the amendment by the two-thirds majority required. He said that in the wake of last fall's elections, when Republicans swept to control of Congress pledging to balance the budget and make dramatic changes in the face of government, the Senate owed it to the American people to make one more try.

''We still think there's some chance of getting this resolved by tomorrow and getting 67 votes,'' Dole said. ''If we fail, we fail.''

Dole's decision came after an extraordinary day of back-room dealing in which Dole, Senate Judiciary Committee Chairman Orrin G. Hatch (R–Utah) and other leaders pleaded with and cajoled every Democrat they could collar.

Republican leaders had assumed until early yesterday that the key to winning passage of the amendment was appeasing Sen. Sam Nunn (Ga.), a highly influential Democrat who had threatened to oppose the measure unless it was changed to prohibit the courts from intervening in future congressional tax and budget matters.

But even after Dole and other GOP leaders relented and the amendment was revised to satisfy Nunn and one other waffling Democrat, Sen. John Breaux (La.), Republican vote counters still came up one vote shy of the two-thirds majority.

In the end, it came down to whether Republicans could win the support of one or both of the Democrats from North Dakota. While the packed Senate chamber buzzed with anticipation during a half hour quorum call last evening, Conrad moved back and forth between the Republican and Democratic cloakrooms, conferring with each side.

Conrad had vowed to oppose the constitutional amendment unless it were rewritten to guarantee that the budget would not be balanced by using the Social Security trust fund. He also has advocated other changes, including language to ensure that Congress has some flexibility in responding to economic crises.

At one point, Conrad, Dorgan, Sen. Wendell H. Ford (Ky.) and other Democratic holdouts rejected a pledge from Dole and House Speaker Newt Gingrich (R–Ga.) that Congress would pass the Social Security guarantee in later legislation. But Republicans said they were still discussing ways of trying to guarantee passage of the bill protecting Social Security.

Hatch said last night that for a while it appeared Republicans could reach agreement with Conrad on the Social Security issue, but talks broke down when Conrad said he also wanted an exclusion for economic emergencies. Republicans said they hoped to pick up Dorgan's support if Conrad agreed to back the amendment.

Last night's dramatic developments capped five weeks of heated debate and political maneuvering over the amendment, which requires a three-fifths majority of both houses before Congress could spend in excess of projected revenue, except in times of war.

The House approved the amendment in late January, 300 to 132. While the overwhelming support in the House reflected the broad popular appeal of the measure in the abstract, Senate Democrats, who hold the balance of power in passing or defeating it, have played on voter concerns that Social Security, Medicare and other politically sensitive programs would become vulnerable if the amendment were adopted.

Others warned that it would dangerously alter the balance of power in Washington, hamstringing Congress in times of economic crisis and giving the president the upper hand in controlling spending.

''The amendment is so full of flaws, so reflective of flabby thinking, so arrogant in its disregard for the traditional checks and balances and separation of powers that its consequences could be nothing short of calamity,'' Byrd said. Senate Minority Leader Thomas A. Daschle (D–S.D.) described it as a ''shoot-now, ask-later approach'' that Congress will regret.

Nunn's provision was the only change that Democrats succeeded in making in the amendment; Republicans said they agreed to it after getting assurances that the House will accept it.

The provision would be unique in the Constitution. By removing the balanced budget requirement from the jurisdiction of federal courts, it would enable only Congress to enforce the amendment's provisions.

''This is like tying yourself to the mast but ensuring that you can untie yourself any time,'' said Stanford University law professor Kathleen M. Sullivan. Laws ''only work when there is pressure. [The Nunn amendment] renders the balanced budget amendment an exhortation to the Congress to be

good, rather than an enforceable requirement.''

The tension-filled day began with an early morning meeting in which Hatch and Sen. Paul Simon (D–Ill.), a major proponent of the measure, told Nunn they would accept his proposal, reflecting a decision reached by Dole the night before that this was the only way to win passage of the amendment.

On the floor, Breaux, another of the Democrats who had been uncommitted, announced he would vote for the constitutional amendment as long as it was changed to include Nunn's proposal. In a soft voice, Hatch then said he would be willing to accept Nunn's proposal. The night before, Hatch had fervently vowed to oppose any change in the amendment's language, even if that meant its defeat. Nunn thanked Hatch and said he would now vote for the amendment.

But Nunn had hardly sat down before Dorgan was on the floor, saying he could not vote for the amendment unless Congress made clear in advance that it was not going to tap the Social Security trust fund for revenue to balance the budget.

While Democrats were resisting Republican entreaties, Senate GOP freshmen trooped into the chamber, sitting in a group in the back two rows, a visible reminder of the political earthquake that brought them to Congress and the balanced budget amendment to the forefront of the agenda of the new GOP majority.

Sen. Rick Santorium (R–Pa.) got right to the heart of their political message: ''The people who will stand in the way of this balanced budget amendment today will not be around long to stand in the way next time. It will pass. It is just a matter of when.''

Mr. CRAIG. Mr. President, I rise in support of House Joint Resolution 1, the bipartisan, bicameral, consensus balanced budget amendment to the Constitution.

There are many individuals who deserve special recognition for their efforts on behalf of this amendment—more than it is possible to include here at one time.

I want to begin by commending the former chairman of the Judiciary Subcommittee on the Constitution, the senior Senator from Illinois [Mr. SIMON]. He has toiled for many years in this vineyard. In this area, and in many others, Congress will miss his courage and leadership—and we all will miss his warmth—when he retires at the end of the 104th Congress. His staff, particularly Aaron Rappaport on the Judiciary Committee, have always been professional, hardworking, and invaluable to this effort.

It would not have been a debate on the balanced budget amendment without the able leadership of the President pro tempore of the Senate, Senator THURMOND of South Carolina. He has always been ahead of his time, as he was some 40 years ago when he first arrived in this body and became a principal sponsor of the balanced budget amendment.

I also want to recognized the chairman of the Judiciary Committee, Senator HATCH of Utah, and his skilled and helpful staff. Senator HATCH is an estimable constitutional lawyer, a skilled floor manager, and a long-time leader in this effort.

On the committee, on the floor, and at every step, the Senators from Alabama [Mr. HEFLIN] and Illinois [Mrs. MOSELEY-BRAUN] have poured much time and dedication into this effort for years.

Many more Senators deserve recognition. I think almost every one who votes ''aye'' today on final passage has done a lot of additional work on behalf of this amendment. I don't know when I've seen so many give so much for so worthy a cause.

Finally, I must recognize our distinguished majority leader, Senator DOLE of Kansas, the principal sponsor of Senate Joint Resolution 1, this measure as introduced and reported in this body. Without his guidance and leadership, the movement to pass this amendment would have faded long ago. I also appreciate the long hours and capable work put in by this staff over these recent, arduous weeks.

This extraordinary accomplishment, a bicameral, bipartisan, consensus version of the most important legislation, never could have come this far without the leadership and courage of my former colleagues in the other body, Representatives CHARLIE STENHOLM of Texas and DAN SCHAEFER of Colorado. When the House made history last month by passing this amendment for the first time in its history, it could not have happened without the blood, sweat, and dedication of these two statesmen.

Representative STENHOLM was my cofounder, 11 years ago, of CLUBB—Congressional Leaders United for a Balanced Budget, an informal bicameral group formed to keep this amendment alive after a decisive House defeat in 1982. Pete Wilson of California was our first Senate cochair. Former House CLUBB cochair JIM INHOFE of Oklahoma is now a Member of this body, as are other veteran House leaders, including Senators SNOWE of Maine and KYL of Arizona.

In language as well as congressional support, the language before us today has a long and distinguished pedigree.

Outside Congress, this amendment is supported by a great groundswell of public support and grass roots activism.

Otherwise the balanced budget amendment would not have come back after losing in the House in 1982 and the Senate in 1986. Otherwise it would not have come to the floor of one Chamber or the other a combined total of seven times in the last 5 years—in 1990 in the House, in 1992 in both bodies, in 1994 in both bodies, and this year in both.

While a great many citizens, taxpayer groups, public interest organizations, and trade associations have supported this movement over the years, particular emphasis should be given to the work of the National Taxpayers Union and, particularly, within that organization, to Mr. Al Cors, the chairman of the nationwide Balanced Budget Amendment Coalition.

I ask unanimous consent that, Mr. President, that at the end of my statement I may include correspondence from that Coalition supporting House Joint Resolution 1, as well as from other organizations.

THIS IS THE VOTE THAT COUNTS; DO WE TRUST THE PEOPLE?

Mr. President, when the 55 delegates to the Philadelphia Convention of 1787 convened at Independence Hall, they came with 55 perfect Constitutions for the young republic. They emerged with one version that, from any one of their points of view, was less than perfect.

But more than 200 years of history have shown that imperfect version, full of compromise and an occasional complication, has been eminently workable, has endured, and has remained a model for the world.

No matter how any of my colleagues may have voted on any amendment earlier, you now have a chance to pass an amendment that unites the underlying principle of virtually all versions of the balanced budget amendment.

No matter what any one of my colleagues would have wanted in your perfect version of such an amendment, we now have just one balanced budget amendment remaining before us.

The only effective balanced budget amendment is the one that passes.

Your constituents will understand, and I know you understand: Vote no, and you kill the only chance for an amendment, here and now.

Vote yes, and you will carry forward one of the great debates of our age. This amendment will go back to the House of Representatives, and from there to every State capital.

That's what this vote is really about—engaging the American people in the most sweeping public debate about the appropriate size, scope, and role of the Federal Government since the original Bill of Rights was sent to the States by the First Congress.

The question is clear: Do we trust the people with that debate? Do we trust the 80 percent of the people who demand this amendment? Do we trust the voters who demanded last November that the Federal Government change its ways?

This Senator does trust the American People.

That's why we have this process of amending the Constitution—because the Constitution is the people's law, not the government's law, and because the people have a right to take part in such a momentous debate.

FUNDAMENTAL RIGHTS, LIMITS ON GOVERNMENT

Before I start responding to points made in debate over the last few days, I want to refocus us on why we are here considering this amendment, in the first place.

A constitution is a document that enumerates and limits the powers of the government to protect the basic

rights of the people. Within that framework, it sets forth just enough procedures to safeguard its essential operations. It deals with the most fundamental responsibilities of the government and the broadest principles of governance.

Our balanced budget amendment, House Joint Resolution 1, fits squarely within that constitutional tradition.

The case for the balanced budget amendment can be summed up best as follows:

The ability of the Federal Government to borrow money from future generations involves decisions of such magnitude that they should not be left to the judgements of transient majorities.

The right at stake is the right of the people—today and in future generations—to be protected from the burdens and harms created when a profligate government amasses an intolerable debt.

The Framers of the Constitution recognized that fundamental right. I return once more to the words of Thomas Jefferson, who explicitly elevated balanced budgets to this level of morality and fundamental rights when he said:

> The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves.

Woodrow Wilson said, ''Money being spent without new taxation . . . is as bad as taxation without representation.''

Mr. President, deficit spending is taxation without representation. Americans are told that deficit are Uncle Sam's way of giving them a free lunch, providing $1.18 worth of government for just $1.00 in taxes. In reality, taking gross interest into account, the government has to spend $1.19 for every $1.00 of benefits, goods, services, and overhead in the budget.

THE DEBT IS THE THREAT

Even as we speak, we are adding to the Federal debt: $829,440,000 a day, 34,560,000 an hour, 576,000 a minute, and 9,600 a second.

In its January baseline, the Congressional Budget Office projects that annual Federal deficits will grow from $176 billion this year to more than double that amount, $351 billion, in fiscal year 2003, and to $421 billion by fiscal year 2005.

Deficits are really the cruellest tax of all, since they never stop taking the taxpayers' money. Americans are paying now, with a sluggish economy, for the Government's past addiction to debt. According to the Federal Reserve Bank of New York, the deficits of the 1980's already have depressed our standard of living by 5 percent. Unless things change, the next generation will pay even more dearly.

According to the National Taxpayers Union, for each year with a $200 billion deficit, a child born today will pay $5,000 in additional taxes over his or her lifetime.

The President's own fiscal year 1995 Budget, in its ''Analytical Perspectives'' volume, projects that future generations will pay as much as 82 percent of their lifetime incomes in taxes, under the current policies of borrow-and-spend.

In 1992, the nonpartisan General Accounting Office issued its report, ''Budget Policy: Prompt Action Necessary to Avert Long-Term Damage to the Economy.'' At that time, GAO projected that failure to take action on the deficit and the growing debt would produce a stagnant—even slightly declining—standard of living for Americans in the year 2020. In contrast, GAO said that simply balancing the Federal budget by 2001, and keeping it balanced, would raise our children's standard of living by 36 percent.

GAO and the Congressional Budget Office now project lower deficits, as a result of their scoring of last year's budget plan. However, the intermediate- and long-term deficit outlook has done no better than decline form cataclysmic to intolerable.

The current CBO baseline looks a great deal like—indeed, a little worse than—GAO's muddling through scenario report, in which the deficit is held at 3 percent of gross domestic product.

Under this muddling through scenario, our children's standard of living in 2020 would be 7 percent lower and the Federal debt would be 3 times larger than if the budget is balanced by 2001.

Our national economic policy should not be one of muddling through.

Even that scenario is based on somewhat optimistic assumptions. Interest rates are now near a 30-year low. If they bounce back upward some, the cost of interest payments on the debt will explode. Senator MURKOWSKI had a chart out here on the floor during this debate that displayed that graphically.

So, we must keep in mind that small changes for the worse in our economic picture over the next few years will make the deficit picture far worse.

Today, Federal budget deficits are the single biggest threat to our economic security. The Federal debt now totals $4.8 trillion, or about $18,500 for every man, woman, and child in America, and is growing.

As deficits grow, as the national debt mounts, so do the interest payments made to service that debt. Besides crowding out other fiscal priorities, these amount to a highly regressive transfer of wealth. About 20 percent of these payments go overseas.

Interest on the Federal debt is largely a transfer from middle-income taxpayers to large institutions, banks, corporations, wealthy individuals and foreign investors.

In fact, interest payments to wealthy foreigners make up the largest foreign aid program in history. According to the President's budget, in fiscal year 1994, the U.S. Government sent $44.5 billion overseas in interest payments. That's more than twice as much as all spending on actual international programs, including foreign aid and operating our embassies abroad, which totalled about $21 billion. Also in fiscal year 1994, 33.9 percent—$62.6 billion—of the dollars borrowed from the public came from overseas.

Annual gross interest on the debt now runs about $300 billion, making it now the second largest item of Federal spending, and equal to about half of all personal income taxes.

THE FRAMERS' ASSUMPTIONS

The Framers thought that the limited size and enumerated powers of Government, the limits on the money supply created by a gold standard, the moral imperative of the unwritten constitution, and the House's exclusive power to originate bills raising revenue all would protect this right. Jefferson would have preferred to put this protection in the Constitution. But others at the time viewed the idea that a restraint on indebtedness would be needed as being beyond belief.

Times have changed, as have the nature of government, monetary policy, and politics. The original constraints that protected the people from a profligate government, all of which had constitutional status, have all but dissolved. It's now about 60 years past time to replace them.

POLITICAL WILL

Critics of the balanced budget amendment argue that all we need is the political will, the leadership to balance the budget. That argument ignores the reality that the way the Federal Government makes its economic and political decisions has changed fundamentally over the last two generations.

The system is broken. The Government has spent more than it has taken in for 57 of the last 65 years. The budget was last balanced in 1969, and in 1960 before that. We are not talking here about some short-term failure of will that was cured with the last election or will be cured with the next one.

The impetus to borrow and spend has become a structural one in our system of government. It is a constitution-class crisis that demands a constitution-class solution.

NOT NARROW POLICY, BUT PERFECTING DEMOCRACY

The balanced budget is not narrow economic or fiscal policy. It is structural, systemic change that would help perfect representative democracy.

Over the last two generations, the political and budget processes have evolved in such a way that virtually all of the political rewards are for spending more and borrowing more. Narrow, highly organized, interest groups mobilize to reward spending increases for specific constituencies. The more general, public interest in restraining the size and fiscal appetite of government

has been put at a systematic disadvantage.

The only way to put the general public interest back on a level playing field with the special interests is to make it harder to borrow and spend.

That's what our amendment does. For the first time, it creates accountability by requiring that deficits occur only when Members of Congress cast an identifiable vote to run a deficit.

By providing for accountability and by restoring the general public interest to a stronger representative voice, our amendment actually perfects our democratic process.

The essence of this reform is that we finally restore the principle that the government should grow no larger than the people are willing to pay for and we should pay for all the government we demand.

It's often said that Congress underestimates the wisdom of the people. Well, the people have spoken once again, and it's time for Senators to realize that, today, as is usually the case, good policy is good politics. The American people understand the balanced budget amendment, they want Congress to pass it, and they are right.

MAJORITY RULE

One of the curious objections raised against the balanced budget amendment is that it would threaten majority rule.

Those that dwell on the difficulty of getting three-fifths majorities to unbalance the budget or raise the debt limit are missing the point: They are still thinking, ''What do we need to do in order to keep deficit spending?''

That's why we put supermajorities in the amendment—not just to make it harder to deficit spend and increase the debt, but to deter Congress from deficit spending in all but legitimate and extraordinary circumstances. Under our amendment, when you balance the budget, you don't have to worry about mustering a supermajority.

Such a requirement is consistent with other provisions in the Constitution. Freedom of speech is protected by a supermajority requirement. So is freedom of religion. So is the right to keep and bear arms and every other right in the Constitution.

Because it takes supermajorities to amend the Constitution, every right protected in the Constitution by limiting the power of government is protected by supermajorities.

In addition, as has been noted by both sides in this debate, specific supermajorities are written into several procedures in the Constitution, including treaty ratification and overriding vetoes.

In our amendment, we create procedural restraints on the Federal Government to protect the right of the people to be free from excessive government debt. We use 60 percent supermajorities instead of two-thirds or absolute prohibitions because we foresee that the process will need to be flexible on occasion.

The Framers wanted to protect majority rule for the transaction of most of the Government's business. But sometimes, to protect fundamental rights or the integrity of specific process, they employed supermajority requirements to protect against, in the words of the Federalist Papers, a tyranny of the majority.

Let's look at the will of the majority from one more angle.

Two-thirds to four-fifths of the American people want the balanced budget amendment. Clear majorities of Congress want it. If it doesn't pass today, if it doesn't go the American people for a full public debate, it will be because a minority has blocked it here.

DISASTER ASSISTANCE

Some are concerned about whether requiring a three-fifths vote to deficit spend would thwart efforts to deal with natural disasters. From 1978–94, supplemental disaster appropriations topped $7 billion in only 1 year, 1992. We generally are talking about a very small portion of the Federal budget.

As Senator SIMON and others have suggested, creating a small disaster revolving fund, or for that matter, just planning to run small surpluses, would be sufficient to meet such needs.

On the other hand, Congress also has a history of dealing promptly and compassionately in such situations. Only one time over the last 15 years did a disaster bill fail to clear either body with less than a 60 percent majority. That was in 1992, in the House, amid much contention over the Budget Enforcement Act firewalls, the balanced budget amendment and other issues. And that bill fell only one vote short of 60 percent.

Congress is not going to turn its back on natural disaster victims under this amendment. To suggest it will is to ignore reality and history.

SEPARATION OF POWERS

Perhaps the most curious concern I have heard raised about the Simon-Hatch-Craig amendment is that it would transfer powers from the legislative branch to the Executive or the courts.

Let's look at the amendment. That doesn't occur in section 6, which begins with the words, ''The Congress shall enforce and implement this article * * *.''

This transfer doesn't appear later in section 6, which recognizes the need of Congress to use estimates in implementing legislation, obviously foreclosing some of the more inventive scenarios that might tempt Executive or court action.

It certainly doesn't appear in the clarifying language that the amendment's authors have added to section 6 to make sure that no one thinks the courts can raise taxes or construct equitable remedies.

There's no lint-item veto in here. There's no delegation of Congress' legislative power, implied or explicit, to anyone else.

In the same way that the first amendment begins with the words, ''Congress shall make no law * * *,'' this amendment restricts the power of the entire Government by making it harder to enact something into law.

The balanced budget amendment does not change in any way the balance of power among the branches of government. It is absolutely consistent with the spirit, the style, and the operations of the rest of the Constitution.

SLASH-AND-BURN SCENARIOS FOR PRIORITY PROGRAMS

During the course of this debate, as seems to happen every time a balanced budget amendment comes to the floor, the Treasury Department and various special interest groups did a disservice to serious public debate by releasing so-called studies that they tried to make look legitimate by attaching tables of numbers.

In reality, they were scare tactics, using dubious assumptions, and filled with manufactured numbers.

Such studies rely on sometimes questionable economic assumptions. But in every case, they did not look to the long-range benefits of balanced budgets. And in every case, they assumed a mindless, across-the-board, meat-ax approach to budget changes.

One of the chief benefits of the balanced budget amendment is that it will make Congress and the President set priorities. You don't have to set priorities when you don't have a credit limit. In an effort to scare as many people as possible, and attract as much attention as possible, these studies, including one issued by the Treasury Department, imply that the President and Congress have no priorities and would not select or change priorities under the amendment.

To this Senator, what their arguments really say is, these opponents are afraid that the amendment will work and that, when the Government must set priorities, the American people may not agree with their priorities.

Balanced budgets will produce a stronger economy, better able to sustain its defense capabilities while meeting its other needs. And I am confident that the people will demand, and willing to risk that Congress will deliver, an adequate defense budget.

DRI/McGraw-Hill, which is one of the world's leading nonpartisan economic analysis and forecasting firm has called on Congress to approve the balanced budget amendment.

DRI believes BBA is the path to the benefits of a balanced Federal budget. Their report, released just a few weeks ago, said, in part:

> A major argument for the Constitutional amendment is the credibility it may lend to the process. This credibility may permit a sharper drop in bond yields and thus an earlier boost in the economy.

The firm strongly endorsed the balanced budget amendment during a recent news conference on Capitol Hill.

They predicted that 2.5 million new jobs could be created by 2002 as more

resources are freed up for private investment, interest rates drop, and businesses can afford to expand, buying more equipment and training.

The firm says the amendment should lower borrowing costs for businesses, encouraging private investment. Real nonresidential investment could grow by 4 to 5 percent by 2002, absent the $200 billion in Federal deficits which currently soak up capital.

The balanced budget amendment is the best friend of those who rely on essential Government programs, and of all other Americans. Interest payments on the Federal debt are already crowding out discretionary spending. As DRI said:

> The current generation does not need to sacrifice its living standard to protect that of future generations from an unbearable federal debt. Budget balance demands neither recessions nor the dismantling of the federal government.

The amendment would relieve, rather then intensify, budget pressures in part through lower interest rates, according to DRI:

> A ''virtuous cycle'' of lower structural deficits, lower federal debt, and lower interest rates can create half the required long-term deficit reduction through lower federal interest payments.
>
> The lower interest rates and reduced borrowing would cut interest costs for the federal government; in fact, by 2002 half the savings in our budget simulations come from lower interest costs.

Lower interest rates mean the real glide path to a balanced budget will involve less short-term pain than some have warned. Even the Treasury Department, for example, in its study, which did not take into account the positive economic impact of balancing the budget, assumed interest cuts would provide less than a quarter of total savings in fiscal year 2002.

DRI/McGraw-Hill predicts that in the course of creating 2.5 million new jobs following passage of the BBA, increased business activity will allow the Federal budget to be balanced 2 years ahead of schedule. This could also provide the opportunity for an even more gradual glide path to a balanced budget, moderating spending slow-downs.

> Cutting federal spending and balancing the budget will greatly benefit the U.S. economy in the long run. Shifting spending from personal and government consumption toward private investment raises the national capital stock, our proportionate domestic (rather than foreign) ownership of wealth, and thus our standard of living. (Source: DRI/McGraw-Hill Special Report, February 1995).

Finally, DRI/McGraw-Hill is convinced that balancing the Federal budget is in the best economic interest of the United States. They put it in concrete terms:

> Balancing the budget clearly helps the U.S. economy. By the end of the 10 year forecast, real DGP is up $170 billion, or 2.5% from its baseline level. This is far from trivial and translates to about $1000 per household at today's prices.

THOMAS JEFFERSON—REVISITED

I turn one more time to the words and works of Thomas Jefferson.

Jefferson balanced the budget in all 8 of his years in the White House. He reduced the national debt by half during his first term and set policies in motion that resulted in a national debt of a mere $38,000—that's 38 thousand—in 1834 and 1855.

Jefferson's Louisiana Purchase has been tossed about as an example of how going into debt can be beneficial. But let's look at what we can learn from his experience.

It's true that the Louisiana Purchase was twice the size of the Federal budget in 1803, as noted by the Senator from West Virginia [Mr. BYRD]. But the Federal budget was only 1.63 percent of gross national product at the time.

Relative to the size of the gross domestic product, the Louisiana Purchase would translate into just under $225 billion in today's dollars probably because the Federal deficit last year was $203 billion.

Jefferson and his successors sold the land acquired from France and made a profit for the Federal Government.

Every year the Federal Government is borrowing the equivalent of a Louisiana Purchase. And what are we getting for it? Nothing except a higher bill for interest costs and a legacy of crushing debt to leave behind for our children.

OTHER ISSUES, CONCLUSION

There are many other issues relating to this amendment, too numerous to discuss in the time allotted. To address those as a matter of legislative history, I ask unanimous consent to insert various other materials in the RECORD.

As for those additional facets of the debate, I want to note that, with our approximately 4,000 pages of legislative history over the last 15 years, every question has been answered, every objection has been dealt with.

This amendment has a history, it has a pedigree. It is the bipartisan, bicameral, consensus that has been looked at by constitutional scholars, economists, public interest groups, and members of both bodies.

This is our one chance to vote, up or down, to send a balanced budget amendment to the House and then to the people.

I'll turn one last time to the words of Thomas Jefferson, when he wrote, in a 1798 letter to John Taylor:

> * * * constitution. I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of its constitution; I mean an additional article, taking from the federal government the power of borrowing.

And again, in 1798, he wrote:

> If there is one omission I fear in the document called the Constitution, it is that we did not restrict the power of government to borrow money.

Just 3 years ago, 38 states ratified the 27th amendment, concerning variations in congressional pay, as proposed by James Madison 200 years ago.

It just goes to prove that occasionally it's time to turn to a new idea, and sometimes the answer is to turn to a classic.

Today, Mr. President, my colleagues, it's time to add Mr. Jefferson's amendment to the Constitution, right behind that of his friend, Mr. Madison. We could hardly be in better company, we could hardly seek wiser guidance, in contemplating this addition to our Constitution.

Thomas Jefferson also said:

> I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of the their barbarous ancestors.

If you want to ignore the lessons of the last 35 years of excessive debt, vote no on this amendment.

If you are willing to leave our children a stagnant or declining standard of living, vote no on this amendment.

If you want to continue the failed status quo, vote no on this amendment.

If you agree with Jefferson that, ''as new discoveries are then vote yes on the balanced budget amendment.

If you trust the American People, and understand their demand that government change its ways, then vote yes on the balanced budget amendment.

If you want today to be the first day of new hope and opportunity for our Nation, our economy, and our children, then vote yes on the balanced budget amendment.

I ask unanimous consent that I may have printed in the RECORD numerous supporting materials, including letters and statements of endorsement from citizens' groups, information on public support of the balanced budget amendment, substantive analyses prepared by outside groups, and supporters here within Congress, fact sheets, and newspaper articles.

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

THE BALANCED BUDGET AMENDMENT COALITION,

Washington, DC, February 6, 1995.

DEAR SENATOR: The undersigned organizations strongly urge you to vote for and support the Balanced Budget Amendment, S.J. Res. 1, introduced by Senators Dole, Hatch, Simon, Thurmond, Heflin, Craig, Moseley-Braun and others. This bipartisan proposal (over 40 total Senate cosponsors) has already passed the Senate Judiciary Committee on a 15 to 3 vote and is now being considered on the Senate floor.

The framers of the U.S. Constitution assumed each generation of Americans would pay its own bills—and that the federal budget would, over time, remain roughly in balance. According to Thomas Jefferson, ''we should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves.''

In today's era of mass media, special interest politics, and expensive and sophisticated election campaigns, the checks and balances established 200 years ago are not up to the job of controlling the federal deficit. Recent

Congresses and presidents have proven themselves incapable of acting in the broader national interest on fiscal matters. Whenever Congress considers spending cuts that could help balance the budget, only a few Americans are aware of it, and fewer still express their views about it. By contrast, those who stand to lose from budget restraint—typically the beneficiaries and administrators of spending programs—are well aware of what they stand to lose. They mount intensive lobbying campaigns to stop fiscal restraint.

This pro-spending and pro-debt bias has led to 25 straight unbalanced budgets. It took our nation 205 years—from 1776 to 1981—to reach a $1 trillion debt. Now, just 14 years later, the debt is $4.8 trillion. Each year, interest payments rise as the overall debt grows. These payments have been one of the fastest-rising items in the federal budget—they now account for the entire deficit, all by themselves. A succession of statutory remedies has failed to stem this historic and highly dangerous turn of events.

S.J. Res. 1 is a sound amendment that has evolved through years of work by the principal sponsors. It provides the constitutional discipline needed to make balanced federal budgets the norm, rather than the rare exception (once in the past 34 years), and it offers the proper flexibility to deal with national emergencies.

In addition to requiring a three-fifths majority vote to deficit spend or increase the federal debt limit, S.J. Res. 1 is designed to make raising federal taxes more difficult. It would require the approval of a majority of the whole number of both the House and Senate—by roll call votes—in order to pass any tax increase. This adds much-needed accountability.

Unless action is taken now, higher federal spending and debt will continue to cripple our economy and mortgage our children's future. We urge you to support S.J. Res. 1, the Balanced Budget Amendment.

Sincerely,

National Taxpayers Union; International Food Service Distributors Association; National Association of Wholesale-Distributors; American Legislative Exchange Council; National Association of Manufacturers; National Association of Home Builders; The Seniors Coalition; Financial Executives Institute; Concerned Women for America; The Business Roundtable; American Farm Bureau Federation; American Furniture Manufacturers Association; United We Stand America; United Seniors Association, Inc.; Howard Jarvis Taxpayers Association; Independent Bakers Association; Citizens for a Sound Economy; Council for Citizens Against Government Waste; Traditional Values Coalition; Automotive Service Association; National Retail Federation; National Truck Equipment Association; Truck Renting and Leasing Association.

National-American Wholesale Grocer's Association; U.S. Chamber of Commerce; National Cattlemen's Association; Associated Builders and Contractors, Inc.; National Ready Mixed Concrete Association; U.S. Business and Industrial Council; National Federation of Independent Business; National Association of Realtors; Small Business Survival Committee; Christian Coalition; The Concord Coalition; Printing Industries of America; International Council of Shopping Centers; Motorcycle Industry Council, Inc.; American Tax Reduction Movement; International Mass Retail Association; Texaco, Inc.; U.S. Federation of Small Business; American Machine Tool Distributors Assn.; Union Pacific; Common Sense for America; Americans for Tax Reform; American Bakers Association.

[IRET—Congressional Advisory, Feb. 27, 1995]

KEYNES IS ALIVE, BUT NOT WELL, IN WASHINGTON

(By Norman B. Ture, President)

Opponents of a Balanced Budget Amendment assert that recessions will be deeper and more prolonged if the amendment prohibits the federal government from running budget deficits. According to this Keynesian article of faith, increases in federal spending relative to federal tax revenues expand total—government, household, and business—spending and thereby produce increases in total production, employment, and income.

Much of this increase in government spending and decrease in government tax revenues occurs automatically as the economy moves into recession. With falling output, employment, and income, payroll and income taxes decrease, while government outlays for such things as unemployment compensation and food stamps go up. These so-called ''automatic stabilizers'' allegedly cushion the decline in households' and businesses' disposable incomes, allowing them to maintain higher spending levels than they otherwise would be able to undertake. Moreover, according to this argument, the federal government should take action to increase other spending and/or to reduce taxes to fortify the automatic bolstering of disposable income.

The argument is wrong analytically. It is also rejected by history. It should be rejected by the Senate as the basis for deciding the fate of the Balanced Budget Amendment.

It is certainly true that the government's revenues automatically decline and certain of its outlays automatically increase during a recession. These automatic fiscal changes, however, don't—can't—increase total real spending. The resulting gap between government spending and government revenues has to be financed, either by the government's borrowing the difference or by resorting to the monetary printing press. If the government borrows the money to finance the deficit, the lenders' disposable incomes—the amount of their current after-tax incomes available to purchase consumption products or business assets—is reduced by the amount they lend the government—the same amount as the increase in the disposable incomes of other people. No net increase in income available for spending occurs.

The same thing is true if the government takes discretionary actions to increase its spending and/or to cut taxes. The government's borrowing to make up the difference between its additional outlays and reduced revenues cancels any increase in disposable income that allegedly would be produced by running a deficit.

Of course, the government might resort to the money printing press to finance the deficit. This might lead to an increase in nominal aggregate demand but only at the cost of pushing up the price level. Real disposable income and spending would increase only if people were fooled and failed to spot the inflationary erosion of their actual incomes and purchasing power.

Public policy makers should not disregard Abe Lincoln's famous homily in making their policy decisions. They should, instead, rely on some homely, basic truths. Increases in the nation's income can't be produced by fiscal sleight of hand. Increases in real income depend on increases in real output. Increases in real output depend on increases in production inputs and/or in the efficiency of their use. Increases in production inputs depend on increases in the real rewards for supplying them.

Budget deficits will not maintain, let alone increase, real disposable income unless they result from fiscal actions that increase incentives for people to work, save, invest, innovate, start new businesses or expand existing enterprises.

History is no kinder to the Keynesian fiscalism than analysis. The record of the economy's aggregate performance reveals no evidence that budget deficits, *per se*, allay or moderate recessionary developments, or, indeed, that they exert any expansionary influence. Even the least demanding statistical tests of a relationship between federal budget outcomes and gross domestic product reject the notion that budget deficits are significant in moderating recessionary forces.

In this era of heightened concern about the federal government's preempting too much of the nation's production capability and misdirecting its use, opposition to curbing the growth in government spending and federal deficits by imposing a budget-balancing constitutional requirement is truly bizarre. Basing that opposition on the Keynesian fiscal mythology is even weirder. It is to be hoped that the U.S. Senate will base its decision about a Balanced Budget Amendment on consideration of the really relevant concern about how most effectively to discipline fiscal and budget policy decision making.

[American Legislative Exchange Council, Feb. 24, 1995]

MORE THAN 200 ECONOMISTS PUBLICLY SUPPORT BALANCED BUDGET AMENDMENT

(By Kerry Jackson and Ian Calkins)

Washington, DC., February 24, 1995—By endorsing a letter outlining their support for the Balanced Budget Amendment (BBA), 219 economists from across the country have publicly recognized the threat federal deficit spending poses to America's future.

Included in the list are such prominent economists as Dr. Richard Vedder of Ohio University, Dr. William Niskanen of the CATO Institute, and Dr. Gordon Tullock of the University of Arizona. The list was solicited by the American Legislative Exchange Council (ALEC) in response to news reports that many economists are opposed to the BBA. ALEC, the nation's largest bipartisan membership organization of state legislators, instead believes economists recognize the harm in an annual spending deficit that has hit $200 billion and is growing. With support from roughly 3,000 member state legislators, ALEC has been at the forefront of the Balanced Budget Amendment issue for 20 years.

''This list represents the most respected and brilliant minds in the field of economics'' said ALEC Executive Director Samuel A. Brunelli. ''What that tells us is simply this: the Balanced Budget Amendment is sound economic policy.''

Brunelli presented the letter and list Monday morning to Senator Paul Coverdell (R-Ga.) during a BBA Coalition meeting, where he reported the list was still growing as he left his office.

''There is a strong intellectual foundation in support of the Balanced Budget Amendment,'' Brunelli told Coverdell. ''This is just a representative group of scholars who realize the danger reckless deficit spending has on our present and future economy.''

By endorsing the letter, the economists are saying ''there is no rational argument against the Balanced Budget Amendment. Simple observation of the fiscal record of recent years tell us that the procedures through which fiscal choices are made are

not working.'' And they understand the ''immorality of the intergenerational transfer that deficit financing represents cries out for correction.''

They also acknowledge the BBA would produce an ''increase in investor and business confidence, both domestic and foreign.''

One of the primary arguments against the BBA is the prospect that states will be forced to bear an inequitable financial burden if costs are shifted in balancing the budget, making them unwilling to ratify the measure. ALEC, however, has addressed that problem in its recently published Issue Analysis: Up to the Challenge: Why State and Local Governments Can Flourish Under the Balanced Budget Amendment. The paper exposes the cost-shifting argument as groundless and goes on to outline a number of ways states can actually save money if the BBA were enacted. As a membership organization that is closely associated with state lawmakers, ALEC believes there is enough support among the states to ratify the BBA.

''Already 29 states have passed a resolution calling for a limited Constitutional Convention to write a BBA,'' Brunelli said. ''That's more politically difficult legislation to pass than ratification, and it's only nine states shy of the number of states required to amend the Constitution.''

BALANCED BUDGET AMENDMENT—AN OPEN LETTER TO CONGRESS, FEBRUARY 1995

It is time to acknowledge that mere statutes that purport to control federal spending or deficits have failed. It is time to adopt constitutional control through a Balanced Budget Amendment. In supporting such an amendment, Congress can control its spending proclivities by setting up control machinery external to its own internal operations, machinery that will not be so easily neglected and abandoned.

Why do we need the Balanced Budget Amendment now, when no such constitutional provision existed for two centuries? The answer is clear. Up until recent decades, the principle that government should balance its budget in peacetime was, indeed, a part of our effective constitution, even if not formally written down. Before the Keynesian-inspired shift in thinking about fiscal matters, it was universally considered immoral to incur debts, except in periods of emergency (wars or major depressions). We have lost the moral sense of fiscal responsibility that served to make formal constitutional constraints unnecessary. We cannot legislate a change in political morality, we can put formal constitutional constraints into place.

The effects of the Balanced Budget Amendment would be both real and symbolic. Elected policitians would be required to make fiscal choices within meaningfully-constructed boundaries; they would be required to weigh predicted benefits against predicted tax costs. They would be forced to behave ''responsibly,'' as this word is understood by the citizenry, and knowledge of this fact would do much to restore the confidence of citizens in governmental processes.

It is important to recognize that the Balanced Budget Amendment imposes procedural constraints on the making of budgetary choices. It does not take away the power of the Congress to spend or tax. The amendment requires only that the Congress and the Executive spend no more than what they collect in taxes. In its simplest terms, such an amendment amounts to little more than ''honesty in budgeting.''

Of course, we always pay for what we spend through government, as anywhere else. But those who pay for the government spending that is financed by borrowing are taxpayers in future years, those who must pay taxes to meet the ever-mounting interest obligations that are already far too large an item in the federal budget. The immorality of the intergenerational transfer that deficit financing represents cries out for correction.

Some opponents of the Balanced Budget Amendment argue that the interest burden should be measured in terms of percentage of national product, and, so long as this ratio does not increase, all is well. This argument is totally untenable because it ignores the effects of both inflation and real economic growth. So long as government debt is denominated in dollars, sufficiently rapid inflation can, for a short period, reduce the interest burden substantially, in terms of the ratio to product. But surely default by way of inflation is the worst of all possible ways of dealing with the fiscal crisis that the deficit regime represents.

Opponents also often suggest that Congress and the Executive must maintain the budgetary flexibility to respond to emergency needs for expanding rates of spending. This prospect is fully recognized, and the Balanced Budget Amendment includes a provision that allows for approval of debt or deficits by a three-fifths vote of those elected to each house of Congress.

When all is said and done, there is no rational argument against the Balanced Budget Amendment. Simple observation of the fiscal record of recent years tells us that the procedures through which fiscal choices are made are not working. The problem is not one that involves the wrong political leaders or the wrong parties. The problem is one where those whom we elect are required to function under the wrong set of rules, the wrong procedures. It is high time to get our fiscal house in order.

We can only imagine the increase in investor and business confidence, both domestic and foreign, that enactment of a Balanced Budget Amendment would produce. Perhaps even more importantly, we could all regain confidence in ourselves, as a free people under responsible constitutional government.

Dr. Burton A. Abrams, University of Delaware.
Dr. Ogden Allsbrook Jr., University of Georgia.
Dr. Robert Andelson (Ret), Auburn University.
Dr. Annelise Anderson, Stanford University.
Dr. Terry L. Anderson, Political Economy Research Center.
Dr. Richard Ault, Auburn University.
Dr. Charles Baird, California State University-Hayward.
Dr. Charles Baker, Northeastern University.
Dr. Doug Bandow, Cato Institute.
Dr. Eric C. Banfield, Lake Forest Graduate School of Management.
Dr. Andy Barnett, Auburn University.
Dr. Carl P. Bauer, Harper College.
Dr. Joe Bell, SW Missouri State.
Dr. James Bennett, George Mason University.
Dr. Bruce L. Benson, Florida State University.
Dr. John Berthound, National Taxpayers Union.
Dr. Michael Block, University of Ariziona.
Dr. David Boaz, Cato Institute.
Dr. Peter J. Boettke, New York University.
Dr. Jeffrey Boeyink, Tax Education Foundation.
Dr. Cecil Bohanon, Ball State University.
Dr. Donald J. Boudreaux, Clemson University.
Dr. Samuel Bostaph, University of Dallas.
Dr. Dennis Brennen, Harper College.
Dr. Charles Britton, University of Arkansas.
Dr. Eric Brodin, Foundation for International Studies.
Dr. Richard C.K. Burdekin, Claremont McKenna College.
Prof. M.L. Burnstein, York University.
Dr. Henry Butler, University of Kansas.
Mr. Ian Calkins, American Legislative Exchange Council.
Dr. W. Glenn Campbell, Hoover Institute.
Dr. Keith W. Chauvin, University of Kansas.
Dr. Betty Chu, San Jose State University.
Dr. Will Clark, University of Oklahoma.
Dr. J.R. Clarkson, University of Tennessee.
Dr. Kenneth Clarkson, University of Miami.
Dr. J. Paul Combs, Appalachian State University.
Dr. John Conant, Indiana State University.
Dr. John F. Cooper, Rhodes College.
Mr. Wendell Cox, American Legislative Exchange Council.
Dr. Mark Crain, George Mason University.
Dr. Ward Curran, Trinity College.
Dr. Coldwell Daniel II, Memphis State University.
Dr. Michael R. Darby, U.C.L.A.
Dr. Otto A. Davis, Carnegie Mellon University.
Dr. Ted E. Day, University of Texas-Dallas.
Dr. Louis De Alessi, University of Miami.
Prof. Andrew R. Dick, U.C.L.A.
Dr. Tom Dilorenzo, Loyola College (MD).
Mr. James A. Dorn, Cato Institue.
Dr. Aubrey Drewry, Birmingham Southern College.
Dr. Gerald P. Dwyer Jr., Clemson University.
Dr. Robert B. Ekelund Jr., Auburn University.
Dr. Peter S. Elek, Villanova University.
Dr. Jerry Ellig, George Mason University.
Dr. John M. Ellis, University of California.
Dr. Kenneth G. Elzinga, University of Virginia.
Dr. David Emanuel, University of Texas-Dallas.
Dr. David J. Faulds, University of Louisville.
Mr. Richard A. Ford, Free Market Foundation.
Dr. Andrew W. Foshee, McNeese University.
Dr. William J Frazer, University of Florida.
Dr. Eirik G Furuboth, University of Texas-Arlington.
Dr. Lowell Galloway, Ohio State University.
Dr. David E.R. Gay, University of Arkansas.
Dr. Martin S Geisel, Vanderbilt University.
Dr. Fred R Glahe, University of Colorado.
Dr. Paul Goelz, St. Mary's University.
Dr. Robert Gnell, Indiana State University.
Mr. John C Goodman, National Center for Policy Analysis.
Dr. Kenneth V Greene, S.U.N.Y.—Binghamton.
Dr. Paul Gregory, University of Houston.
Dr. Gerald Gunderson, Trinity College.
Dr. James Gwartney, Florida State University.
Dr. Claire H Hammond, Wake Forest University.
Dr. Daniel J Hammond, Wake Forest University.
Dr. Ronald W Hanson, University of Rochester.
Dr. David R Henderson, Hoover Institution.
Dr. Robert Herbert, Auburn University.
Dr. A James Heins, University of Illinois.
Dr. John Heinke, Santa Clara University.
Dr. Alan Heslop, Claremont McKenna College.
Dr. Robert Higgs, Independent Institute.
Dr. P.J. Hill, Wheaton College.

Dr. Mark Hirschey, University of Kansas.
Dr. Bradley K Hobbs, Bellarmine College.
Dr. Randall Holcombe, Florida State University.
Dr. Steven Horwitz, St. Lawrence University.
Dr. Doug Houston, University of Kansas.
Dr. David A Huettner, University of Oklahoma.
Dr. William J Hunter, Marquette University.
Dr. Thomas Ireland, University of Missouri.
Dr. Jesse M Jackson Jr, San Jose State University.
Dr. Gregg A Jarrell, University of Rochester.
Dr. Thomas Johnson, North Carolina State University.
Dr. David L Kaserman, Auburn University.
Dr. Robert Kleiman, Oakland University.
Dr. David Klingaman, Ohio University.
Dr. W F Kiesner, Loyola Marymount University.
Dr. David Kreutzer, James Madison University.
Dr. Michael Kurth, McNeese State University.
Dr. David N Laband, Auburn University.
Dr. Everett Ladd, University of Connecticut.
Dr. Harry Landreth, Centre College.
Dr. Stanley Leibowitz, University of Texas—Dallas.
Dr. Dwight Lee, University of Georgia.
Dr. David Levy, George Mason University.
Dr. Dennis Logue, Dartmouth College.
Dr. Robert F Lusch, University of Oklahoma.
Dr. R Ashley Lyman, University of Idaho.
Dr. Jonathon Macey, Cornell University.
Dr. Yuri Maltsev, Carthage College.
Dr. Alan B Mandelstamm, Roanoke, Virginia.
Dr. George Marotta, Hoover Institute.
Dr. J Stanley Marshall, The James Madison Institute.
Dr. Merrill Mathews Jr, National Center for Policy Analysis.
Dr. Richard B Mauke, Tufts University.
Dr. Margaret N Maxey, University of Texas—Austin.
Dr. Thomas H Mayor, University of Houston.
Dr. Paul W McAvoy, Yale University School of Management.
Dr. Robert McCormick, Clemson University.
Dr. Paul McCracken, University of Michigan.
Dr. Myra J McCrickard, Bellarmine College.
Dr. J Houston McCulloch, Ohio State University.
Dr. Robert W McGee, Seton Hall University.
Dr. Mark Meador, Loyola College (MD).
Dr. Roger Meiners, Clemson University.
Dr. Lloyd J Mercer, University of California.
Dr. Richard Milam, Appalachian State University.
Dr. Dennis D Miller, Baldwin Wallace College.
Dr. Stephen Moore, Cato Institute.
Dr. John Moore, George Mason University.
Dr. John Moorhouse, Wake Forest University.
Dr. Laurence Moss, Babson College.
Mr. Bob Morrison, Tax Education Support Organization.
Dr. Timothy Muris, George Mason University.
Dr. J Carter Murphy, Southern Methodist University.
Dr. Gerald Musgrove, Economics America.
Dr. Ramon Myers, Stanford University.
Dr. Michael Nelson, Illinois State University.
Dr. William A Niskanen, Cato Institute.
Dr. Geoffrey Nunn, San Jose State University.
Dr. M Barry O'Brien, Francis Marion University.
Dr. David Olson, Olson Research Company.
Dr. Dale K Osborne, University of Texas—Dallas.
Dr. Allen M Parkman, University of Mexico.
Dr. E C Pasour Jr, North Carolina State University.
Dr. Timothy Patton, Ambassador University.
Dr. Judd W Patton, Bellevue College.
Dr. Sam Peltzman, University of Chicago Graduate School.
Dr. Garry Petersen, Tax Research Analysis Center.
Dr. Manfred O Petersen, University of Nebraska.
Dr. Steve Pejovich, Texas A&M University.
Dr. Timothy Perri, Appalachian State University.
Dr. William S Pierce, Case Western Reserve University.
Dr. Sally Pipes, Pacific Research Institute.
Dr. Yeury-Nan Phiph, San Jose State University.
Dr. Rulon Pope, Brigham Young University.
Dr. Robert Premus, Wright State University.
Dr. Jan S Prybyla, Pennsylvania State University.
Dr. Alvin Rabushka, Stanford University.
Dr. Don Racheter, Central College.
Dr. Ed Rauchutt, Bellevue University.
Dr. Robert Reed, University of Oklahoma.
Dr. John Reid, Memphis State University.
Dr. Barrie Richardson, Centenary College.
Dr. H Joseph Reitz, University of Kansas.
Dr. James Rinehart, Francis Marion University.
Dr. Mario Rizzo, New York University.
Dr. Jerry Rohacek, University of Alaska.
Dr. Simon Rottenberg, University of Massachusetts.
Dr. Roy J Ruffin, University of Houston.
Mr. John Rutledge, Rutledge & Company Inc.
Dr. Anandi P Sahu, Oakland University.
Dr. Thomas R. Saving, Texas A&M University.
Dr. Craig T Schulman, University of Arkansas.
Dr. Richard T Seldon, University of Virginia.
Dr. Gerry Shelley, Appalachian State University.
Dr. William Shughart II, University of Mississippi.
Mr. William E Simon, William E Simon & Sons.
Dr. Randy Simmons, Utah State University.
Dr. Daniel T. Slesnick, University of Tedas—Austin.
Dr. Frank Slesnick, Bellarmine College.
Dr. Daniel Slottje, Southern Methodist University.
Dr. Gene Smiley, Marquette University.
Dr. Barton Smith, University of Houston.
Dr. Lowell Smith, Nichols College.
Mr. Robert Solt, Iowans for Tax Relief.
Dr. John Soper, John Caroll University.
Dr. Michael Sproul, U.C.L.A.
Dr. Richard Stroup, Montana State University.
Dr. Michael P Sweeney, Bellarmine College.
Prof. Ronald Teeples, Claremont McKenna College.
Dr. Clifford Thies, University of Georgia.
Dr. Roy Thoman, West Texas State University.
Dr. Henry Thompson, Auburn University.
Dr. Mark Thornton, Auburn University.
Dr. Walter Thurman, North Carolina State University.
Dr. Richard Timberlake, University of Georgia.
Dr. Robert Tollison, George Mason University.
Prof. George W Trivoli, Jacksonville State University.
Dr. Leo Troy, Rutgers University.
Dr. Gordon Tullock, University of Arizona.
Dr. Norman Ture, Institute for Research on the Economics of Taxation.
Dr. Jon G. Udell, University of Wisconsin.
Dr. Hendrik Van den Berg, University of Nebraska.
Dr. T. Norman Van Cott, Ball State University.
Dr. Charles D Van Eaton, Hillside College.
Dr. Richard Vedder, Ohio University.
Dr. George Viksnins, Georgetown University.
Dr. Richard Wagner, George Mason University.
Dr. Stephen J K Walters, Loyola College (MD).
Dr. Alan R Waters, California State University.
Dr. John T Wenders, University of Idaho.
Mr. Brian S Wesbury, Joint Economic Committee.
Dr. Allen J Wilkins, Marshall University.
Dr. James F Willis, San Jose State University.
Dr. Gene Wunder, Washburn University.
Dr. Bruce Yandle, Clemson University.
Dr. Jerrold Zimmerman, University of Rochester.

[National Taxpayers Union, Dec. 29, 1994]

FACTS ABOUT THE NATIONAL DEBT

In FY 1995, interest payments on the National Debt are expected to be $310.0 billion. This is: the second largest item in the budget. (20% of all Federal spending); more than the total revenues of the Federal government in 1976; 92% of Social Security payments; $4,628 per family of three; $5,979 million per week, $854 million per day, $593,151 per minute, or $9,886 per second; 23% of all Federal revenues; and 52% of all individual income tax revenues.

The National Debt has now topped $4.75 trillion.

The Federal government has run deficits 56 out of the last 64 years and 33 out of the last 34 years.

The national debt has increased 1536% since 1960, 777% since 1975, 423% since 1980, 162% since 1985 and 49% since 1990.

During the 1960's deficits averaged $6 billion per year.

During the 1970's deficits averaged $35 billion per year.

During the 1980's deficits averaged $156 billion per year.

During the 1990's deficits averaged $248 billion per year.

It took over 200 years to accumulate our first trillion dollars in national debt. In the next four years, we will accumulate well over $1 trillion in additional debt.

[Congressional Leaders United for a Balanced Budget, Jan. 30, 1995]

THE REGRESSIVE EFFECT OF DEFICIT SPENDING—INTEREST PAYMENTS

While we hoard the crumbs, the whole loaf is being taken away from us.—Joe Kennedy, in testimony before the House Budget Committee.

Until we control our deficit problem, interest payments will continue to devour increasingly larger portions of the budget. Interest payments have increased from 6% of the budget in 1960 to more than 14% of the

budget today. After adjusting for inflation, gross interest payments have increased by 97% since 1980. This explosion in debt payments has forced a corresponding reduction in the goods and services the government can provide. Until we bring the budget under control, interest payments will continue to devour a increasingly larger portion of the budget.

Interest payments will cripple the ability of future generations to make necessary investments in health care, education, and other programs. Interest payments will continue to crowd out funding for discretionary programs. GAO has estimated that interest payments will reach $400 billion dollars by the year 2020 if we fail to bring the deficit under control. The growth of interest payments and entitlement spending will force a half a trillion dollars of deficit reduction each year just to maintain a deficit path of three percent of GDP by the year 2020. All government programs would be subject to severe cuts every year under this scenario.

Interest payments already are crowding out worthy programs. Net interest will be over $235 billion this year. This money will not be available for federal investment, social programs or defense. Interest payments are: 8 times higher than expenditures on education; 50 times higher than expenditures on job training; 55 times higher than expenditures on Head Start; 140 times higher than expenditures on childhood immunizations.

Interest payments represent a transfer of wealth from middle-class taxpayers to upper-income individuals and foreign investors. Interest is paid to individuals who own Treasury Bills—primary the wealthiest 10% of citizens and institutional investors. Nearly 20% of interest payments are sent overseas to foreign investors. In 1993, the Treasury sent $41 billion overseas in interest payments.

[Congressional Leaders United for a Balanced Budget, Jan. 30, 1995]

FACTS ABOUT OUR NATIONAL DEBT AND INTEREST PAYMENTS

Our national debt currently exceeds $4.7 trillion—about $18,500 for every man, woman and child in the United States. (Source: Department of Treasury, Monthly Treasury Statement.)

The national debt has increased by $3.6 trillion since the Senate last passed (but the House defeated) the Balanced Budget Amendment in 1982. The debt has also increased by more than $160 billion since the House voted on the BBA in March 1994. (Sources: Department of Treasury, Monthly Treasury Statement; FT '95 Budget of the United States, Historical Tables.)

Under current policies, future generations are projected to face a lifetime net tax rate of 82% in order to pay the bills that we are leaving them. (Source: FY '95 Budget of the United States, Analytical Perspectives.)

If we continue current policies into the next century, we may be forced to enact half-a-trillion dollars in deficit reduction each year just to restrain the deficit to three percent of GDP. (Source: General Accounting Office, Budget Policy: Prompt Action Necessary to Avert Long-Term Damage to the Economy)

In 1994, gross interest payments exceeded $296 billion. This is greater than the total outlays of the federal government in 1974. (Source: FY '95 Budget of the United States, Historical Tables.)

In 1994, gross interest payments consumed about half of all personal income taxes. (Source: National Taxpayers Union)

In FY '94 we spent an average of $811.7 million a day on gross interest payments. That's $33.8 million an hour, and $564,000 per minute. (Source: Congressional Budget Office, The Economic and Budget Outlook: Fiscal Years 1995–1999.

In 1993, the U.S. government sent $41 billion overseas in interest payments on Treasury bills held by foreign investors. This represents more than twice the amount of spending on all international programs. (Source: FY '95 Budget of the United States, Analytical Perspectives.)

Net interest payments in 1994 were five and a half times as much as outlays for all education, job training and employment programs combined. (Source: FY '95 Budget of the United States, Historical Tables.)

The drain on national savings caused by the deficit during the 1980's resulted in a loss of 5% growth in our national income. This translates into roughly three and a quarter million jobs lost. (Source: The New York Federal Resource Board, CBO)

[Congressional Leaders United for a Balanced Budget, Jan. 30, 1995]

THE ECONOMIC CONSEQUENCES OF MAINTAINING THE STATUS QUO

According to the Congressional Budget Office, under current policies the deficit will bottom out at $176 billion in FY 1995 before increasing again, reaching $284 billion in 2000 and $421 billion in 2004. In 1995, the year in which the deficit is the lowest, the deficit will equal 2.5 percent of Gross Domestic Product. The deficit will rise as a percentage of GDP, reaching 3.1 percent of GDP in 2000 and continuing to increase to 3.6 percent of GDP by 2005.

In June of 1992, the General Accounting Office released a study entitled *Prompt Action Necessary to Avert Long-Term Damage to the Economy,* which set out several scenarios for budget policy, including one that is remarkably similar to current budget projections—reducing the deficit enough to hold annual deficits to approximately 3 percent of GDP. The GAO found that this scenario, which it called the ''muddling through option'' would not be sufficient to avoid the severe economic consequences of deficit spending. Among the conclusions that GAO reached:

A failure to reverse current trends in fiscal policy ''will doom future generations to a stagnating standard of living, damage U.S. competitiveness and influence in the world, and hamper our ability to address pressing national needs.''

Simply maintaining a deficit at three percent of GDP ''offers no escape either from progressively harder decisions or from an unacceptable economic future. It only postpones the date of a full confrontation with the underlying problem.''

If we continue on the current ''muddling through'' path, by 2005 ''the amount of deficit reduction that will be required to limit the deficit to three percent of GDP will increase exponentially. By the year 2020, it will require *a half a trillion dollars of additional deficit reduction each year* just to maintain a deficit path of three percent of GDP.''

''The muddling through path requires one to make harder and harder decisions just to stay in place, partly just to offset the growing interest costs that compound with the deficit. . . . To select this path is to fend off the disaster of inaction, but it would lock the nation into many years of unpleasant and relatively unproductive deficit debates rather than debates about what government ought to do and should be done. It is death by a thousand cuts.''

[From Government Waste Watch, Winter 1994]

THE BALANCED BUDGET AMENDMENT:—OUR ECONOMIC SECURITY IN THE BALANCE

(By Larry Craig and Paul Simon)

''The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, morally bound to pay them ourselves.''

That statement, as relevant as today's headlines, was made almost 200 years ago by Thomas Jefferson. This perspective, once at the very foundation of our political system, urgently needs to be reasserted.

It should be, as early as February, when Congress takes up our Balanced Budget Amendment to the Constitution, S.J. Res. 41.

Our nation's founders saw a balanced budget and prompt repayment of debt not merely as issues of fiscal policy, but as a moral imperative. Failure to meet these goals was considered not simply economic folly, but a violation of the basic right of the people to be free from a profligate government.

Yet today, federal budget deficits are the single biggest threat to our economic security. The government has spent more than it has taken in for 55 of the last 63 years. The budget was last balanced in 1969. The result is a federal debt totaling $4.4 trillion, or more than $17,000 for every man, woman, and child in America, and growing.

WHAT ARE THE HARMS OF BUDGET DEFICITS?

Like every family and business, when the government borrows, it must make interest payments. Annual gross interest on the debt now runs about $300 billion, making it the second largest item of federal spending next to Social Security. This equals an incredible 57 percent of all personal income taxes.

Now in a sluggish economy, Americans are paying for the government's past addiction to debt. Unless things change, the next generation will pay even more dearly.

Last year, Congress's nonpartisan General Accounting Office (GAO) said that, under current trends, our children's standard of living in the year 2020 would stagnate at today's levels—extinguishing the prospect that each generation of Americans would be able to leave the next a legacy of greater opportunity. In contrast, GAO found that balancing the budget by 2001 would produce a 36 percent improvement in the nation's standard of living by 2020.

An added danger exists because the national government has a power that families and business don't: It can put the Treasury's printing presses in high gear, devalue the currency, and monetize the debt. Of course, the resulting inflation would depress the worth of people's incomes and assets and produce the same outcome: a lower standard of living.

WHY HAS IT BEEN SO HARD TO BALANCE THE BUDGET?

Our system of government has changed fundamentally: While almost all Americans want a balanced budget, there's no way to put this general public interest on a level playing field with the specific demands of mobilized, organized interest groups.

The unlimited ability to borrow naturally leads to unlimited demands to spend beyond our means. Every American belongs to at least one group that benefits from federal spending. And everyone would like to see his or her taxes held down. If they don't have to say ''no,'' many elected officials see political peril in doing so.

That is, there's no way to make it a fair fight until we put a rule in place that the government can't break or amend with impunity, that guarantees we get no more government than we are willing to pay for, and calls on us to pay for all the government we demand.

HOW THE BALANCED BUDGET AMENDMENT WORKS

The amendment would prohibit federal outlays from exceeding receipts unless three-fifths of both houses of Congress specifically vote to run a deficit. Similarly, the limit on the national debt could be increased only with a 60-percent super majority vote. A ''constitutional,'' or absolute majority on a roll call vote would be required to raise taxes, contrasted with the current requirement for only a simple majority of those present and voting—or even just a voice vote. The president would be required to balance the budget he or she submits to Congress.

By making it more difficult to continue deficit spending and by requiring specific recorded votes, the amendment would make Congress more accountable to the public. The difficulty in obtaining ''super majorities'' to increase borrowing or raise taxes would force the president and congressional leaders to find ways to live within the confines of the amendment.

WHAT DO THE AMENDMENT'S OPPONENTS HAVE TO SAY?

We have spent years working with colleagues, legal scholars, economists, and public policy groups like the Council for Citizens Against Government Waste to refine our amendment and find out how it would work. We have become more committed to passing the amendment, more certain of the need for it, and more confident of its appropriateness to become part of the Constitution, as we have seen every question answered and every criticism solidly rebutted. For example:

IT'S NOT NEEDED

Opponents argue that ''political will'' and budget process reforms should be sufficient to balance the budget. Perhaps they should be; in reality, they haven't been.

In 1978, 1979, 1982, 1985, 1987, and 1990, Congress enacted and presidents signed laws requiring balanced budgets. Every one was amended or ignored when push came to shove. After all, it is as easy to amend a law or waive a rule as it is to pass it. Amending the Constitution requires two-thirds majorities in Congress and ratification by three-fourths (38) of the states, formidable hurdles that have allowed the enactment of only 17 amendments since the original Bill of Rights in 1789.

IT WON'T WORK

Skeptics contend that presidents and congresses would evade the amendment by using accounting gimmicks, such as putting items off-budget. Our amendment is carefully drafted to avoid this kind of danger. For example, precise definitions ensure that no category of outlays or receipts can be placed outside the scope of the amendment.

IT WOULD WORK TOO WELL

Forgetting that they also said the amendment wouldn't work at all, opponents argue that it would put a ''straitjacket'' on the economy by preventing Congress from using fiscal policy to counteract economic downturns.

Our amendment anticipates the need for flexibility that could arise in the long term. During a true emergency, Congress should be able to muster the three-fifths vote needed to stimulate the economy through temporary deficit spending. Our amendment would ensure that such spending is the exception rather than the rule.

Years of unbalanced budgets, in good times and bad, have made deficits the greatest danger to our economic well-being. Keep in mind that most of the deficit spending this year went simply to pay interest on the debt. To the extent that deficits can stimulate the economy, today there's almost nothing left over to do so after making interest payments.

IT WOULD THWART THE WILL OF THE MAJORITY

The Constitution's framers wrote that one of the purposes of a constitution is to protect certain rights deserved by all Americans by placing these rights beyond the reach of a ''tyranny of the majority.''

The rights enshrined in the Constitution, such as freedom of speech and religion, represent absolute prohibitions on government action. Jefferson favored an absolute prohibition on government borrowing. Our amendment does not go that far. But it does recognize that to protect our children from a tyranny of debt, deficit spending should require more than a simply majority vote.

Moreover, our amendment requires a 60-percent majority in exactly one circumstance: when spending in the budget would exceed revenues. The amendment in no way affects the majority's ability to set budget priorities within a balanced budget. Therefore, the amendment would restore our system to working the way the framers of the Constitution intended.

GOOD PROGRAMS MIGHT GET CUT

Every dollar borrowed incurs interest costs which already result in significantly fewer dollars for high-priority programs and in higher taxes. In fact, if no federal debt ever had been accumulated in the first place, the government would run a $200 billion surplus over the 1995–1999 period.

Some worry, if the budget must be balanced, it will be done fairly. However, the government's escalating interest payments—with gross interest totaling $294 billion in 1993—are blatantly regressive. These represent a transfer of funds from the working middle class—who pay the bulk of federal taxes—to the large banks, corporations, and wealthy individuals who hold Treasury securities. About 15 percent of these payments go to rich investors of governments overseas.

The greatest unfairness is for the government to live off a giant credit card today and send the bill to the next generation amounting to a massive taxation without representation.

CONCLUSION

The best way to ensure the continued soundness of essential programs, stabilize the economy and pass on a legacy of economic opportunity to our children is to reverse the growth in the federal debt. Without a balanced budget amendment to the Constitution, it is unlikely we will ever find the discipline to restore this rationality to our budget decisions.

[From the Washington Times, October 1993]

ECONOMIC SECURITY IN THE BALANCE

(By Larry Craig and Paul Simon)

''Once the budget is balanced and the debts paid off, our population will be relieved from a considerable portion of its present burdens and will find out new motives to patriotic affection, (and) additional means for the display of individual enterprise.''

That statement, as relevant as today's news, was made more than 150 years ago by President Andrew Jackson. This perspective on the federal government and the economic well-being of the people, once at the very foundation of our political system, urgently needs to be reasserted.

It should be, early in November when Congress takes up our Balanced Budget Amendment to the Constitution, S.J. Res. 41.

Federal budget deficits are not an abstract problem; they are now the single biggest threat to our nation's economic security. When the economy is unstable, seniors on fixed incomes suffer the most.

The government has spend more than it has taken in for 55 of the last 63 years; the budget was last balanced in 1969. The result is a federal debt totaling $4.3 trillion, or about $17,000 for every man, woman and child in America, and growing.

Like every family and business, when the government borrows, it must make interest payments. Annual gross interest on the debt now runs about $300 billion, making it the second-largest item of federal spending, next to Social Security. This amount equals an incredible 57 percent of all personal income taxes.

Every dollar borrowed incurs interest costs that result in significantly fewer dollars for high-priority programs and in higher taxes. With a growing population depending on Social Security, the best way to ensure its continued soundness is to stabilize the economy and reverse the growth in interest costs—which compete with Social Security for dollars—by balancing the budget.

The fiscal costs and economic drag of the federal debt imperil both seniors today and their children. Last year, Congress' nonpartisan General Accounting Office said that, if nothing changes, our children's standard of living in the year 2020 will stagnate at today's levels—putting an end to the American dream of each generation leaving the next a legacy of opportunity. In contrast, balancing the budget by 2001 would produce a 36 percent improvement in the nation's standard of living by 2020.

Who collects interest payments on the federal debt? About 15 percent goes overseas. Almost all of the rest goes to large banks, corporations, state and local governments, and wealthy investors. Thomas Jefferson objected to any federal indebtedness, fearing that taxes on farmers, laborers, merchants and their families would escalate forever to pay the interest on a growing debt.

Why has it been so hard to balance the budget? The unlimited ability to borrow leads naturally to unlimited demands to spend. Every American belongs to at least one group that benefits from federal spending. And everyone would like to see his or her taxes held down. If you don't have to say ''no,'' then many elected officials see only political peril in doing so.

Our system of government has changed fundamentally: While almost all Americans want a balanced budget, there's no way to put this general, public interest on a level playing field with the specific demands of mobilized, organized interest groups.

That is, there's no way to make it a fair fight until we add to the Constitution a rule the government can't break, that guarantees we get no more government than we are willing to pay for and calls on us to pay for all the government we demand.

Fifty years before Jackson, Jefferson said, ''We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves.... I wish it were possible to obtain a single amendment to our Constitution...an additional article, taking from the government the power of borrowing.''

It's time to live up to Mr. Jefferson's vision.

[From CLUBB—Congressional Leaders United for a Balanced Budget, Revised January 30, 1995]

FACTSHEET: ALARMIST ATTACKS ON THE BALANCED BUDGET AMENDMENT

Yesterday, the Treasury Department released a study projecting several ''horror story'' scenarios of the kinds of policy decisions the Administration foresees might be

necessary if the Balanced Budget Amendment, is added to the Constitution. The ''results'' of these studies were broken down by state. Other studies have been released by other organizations purporting to demonstrate the impact that a balanced budget amendment will have.

These studies actually send four messages: (1) Opponents fear the amendment will work; (2) The case against the amendment is so weak that opponents must resort to scare tactics; (3) The methodology used assumes arbitrary, across-the-board approaches; and (4) The study represents a failure to face up to long-term responsibilities and consequences.

(1) Opponents fear the amendment will work: Critics raise the specter of what budget policy options might be considered if Congress and the President must comply with a Balanced Budget Amendment. However, their arguments are directed against the deficit reduction that will be required to balance the budget.

The study ignores the impact on government services, program beneficiaries, and taxpayers from remaining on a course that will result in the federal debt increasing 90% over the next ten years, and annual spending on interest payments increasing by two-thirds. As Senator Paul Simon has pointed out, every dollar spent on interest payments is a dollar that can not go to valued programs.

Forcing the government to live within its means will require setting priorities and making some difficult decisions. This will not happen without the Amendment and it must happen to safeguard our future economic security.

(2) Scare tactics: As Rep. Olympia Snowe said in a 1994 Budget Committee hearing, people start pounding the table when they're losing the argument. Arguments like those in the Treasury and Wharton studies rely on alarming individuals and groups about how severely they might be impacted. However, even if federal spending continued to increase 3.1% a year, it would fall into balance with revenues (as projected in CBO's January baseline) by the year 2002. Currently, spending is projected to grow an average of 5% a year through 2001.

If we act promptly, reasonable restraint, not massive spending cuts or tax increases, will take us to a balanced budget. However, CBO projects deficits again increasing rapidly after 1996. The longer we wait, the greater the pain of deficit reduction will become.

(3) Arbitrary, unrealistic methodology: The study assumes that Congress will abdicate its responsibility to set priorities and that the deficit reduction will occur in an across-the-board manner. This approach, which is common in such ''horror story'' reports regarding a BBA, implies that the President and Congress have no priorities and assumes they would not set priorities within a balanced budget framework. The Treasury Department study manufactures per-program and per-state numbers that likely bear no resemblance to the decisions Congress and the President eventually will make.

This very lack of priority-setting is at the root of the $4.7 trillion national debt; today, marginal programs are funded because they never have to compete with essential programs. Under the amendment, Congress and the President would be faced with a fiscal and political imperative to set priorities. Government could promise no more than the people were willing to pay for and we would pay for all the government we demand.

Treasury acknowledges that its ''estimates are static in nature and reflect no macroeconomic feedback.'' Thus, the study does not discuss the long-term economic security, growth, and higher living standards that will result from balanced budgets and are at the core of the case for the amendment. In 1992, the non-partisan General Accounting Office compared the economic effects of balancing the budget by the year 2002 with a ''muddling through'' scenario that assumed policies to maintain deficits of 3% of GDP. GAO found that balancing the budget by the year 2000 would promote significantly greater economic growth than the muddling through option.

(4) Failure to take responsibility for the long term: CBO's preliminary budget projections found that the deficit will leap back upward to $421 billion by FY 2005. The deficit as a share of gross domestic product (GDP) would pass the 3% mark before the next century.

The preliminary CBO baseline resembles the ''Muddling Through'' scenario set out in GAO's 1992 report, Budget Policy: Prompt Action Necessary to Avert Long-Term Damage to the Economy. Under that scenario, by 2020, per capita GDP would be 7% lower and the federal debt three times larger than if the budget were balanced from the year 2001 on. Moreover, the annual deficit reduction required to maintain the deficit at 3% of GDP (''muddling through'') would give rise to more than $500 billion a year by FY 2020.

Approaches like those taken by Treasury imply that Americans will find each and every federal program so indispensable, so sacred, that protecting every single program, every interest today, outweighs our children's standard of living and the government's ability to continue providing priority services and benefits in the coming years.

(Prepared by the Offices of Senator Larry Craig (202) 224–2752 Congressman Nathan Deal (202) 225–5211.)

[CLUBB—Congressional Leaders United for a Balanced Budget]

FACTSHEET: BALANCED BUDGET REQUIREMENTS IN THE STATES

Debate on a proposed Balanced Budget Amendment to the U.S. Constitution highlights the status of the states as ''laboratories of democracy.'' While the supporters of H.J. Res. 1 do not argue that the federal Constitution should have a balanced budget requirement *because* the states have such restraints, the experiences of the states are instructive.

While they vary widely in form, 49 of the 50 states have significant balanced budget requirements.

It is also true that, while, standing alone, many of the state provisions appear to be less restrictive than H.J. 1 for the federal government, there are important institutional differences which dictate the terms of the federal proposal.

In 35 of the states, balanced budget requirements are written into constitutions. In 13 others they are statutory. Nine of those have constitutional debt limits that are usually interpreted as constitutional balanced budget requirements. In one (Wyoming), the unwritten imperative is strong enough that it is regarded as having ''constitutional status.''

But that's only a glimpse into the rich diversity through which states control indebtedness.

In 43 or more states, balanced budget requirements are supplemented by special executive branch budget powers. Twenty-one states have spending limits, 7 have revenue limits, and 3 have both. Fifteen require more than a simple majority to pass any budget.

Noteworthy differences include whether capital, trust fund, or other budgets are included under state balanced budget requirements.

There's a lot we can learn from specific state balanced budget initiatives and apply to the federal proposal.

The states can afford to exempt portions of their budgets because state bond ratings—generally applying to capital investments—serve as the ultimate disciplinarian. There are no bond rating services for the federal government in part because foreigners and others line up to bank on the full faith and credit of the U.S. government. In addition, some bond issues are subject to public referenda.

States sometimes mislead when defining a ''deficit.'' That led to the language before Congress now, ''Total outlays for any fiscal year shall not exceed total receipts for that fiscal year . . .''

The processes of defining and amortizing ''capital investments'' can be abused. For example, New York City, prior to its financial crisis in the s, wrote off spending for school textbooks by declaring their ''useful life'' to be 30 years.

Some states can use revenue and borrowing to meet balanced budget requirements. Under H.J. Res. 1, raising the debt limit requires a ⅗ majority to counter this state-proven tendency.

The imposition of budget discipline on states whether from balanced budget requirements or bond ratings has led to establishment of ''rainy day'' funds. Many states now set aside excess revenues in good times requiring less indebtedness during recessions.

Despite such diversity, the experience of the states shows that balanced budget requirements have had a salutary effect.

From 1980 to 1992, the states' outstanding long-term debt rose from $120 billion to $369 billion, a 208 percent increase; total state spending growth was about 4 percent greater than revenue growth. During the same period, federal debt grew from $905 billion to $4.002 trillion, a 340 percent increase; federal spending growth was about 38 percent greater than revenue growth.

The similarities between state and federal budget experiences support adoption of a federal balanced budget amendment; the differences demonstrate why H.J. Res. 1 is the approach best suited to the federal level.

That variance and relative complexity of state provisions contributed to the development of the one-page simplicity of the Stenholm/Smith federal amendment. An amendment to the U.S. Constitution should state a broad, fundamental principle and provide the bare bones of process necessary to enforce that principle.

The states' experiences demonstrate that exempting any portion of federal spending from a balanced budget amendment would create potential loopholes. The ''higher authorities'' that generally check abuses at the state level do not exist at the federal level. ''Pet programs'' could easily be pushed into whatever funding category was not covered by a BBA. Debt would continue to soar, and the Constitution would be affronted.

The federal government has no line item veto and a relatively weak rescission process. The lack of such supplementary means for imposing discipline is among the reasons why the federal BBA needs to be more restrictive than state counterparts. At the same time, a BBA is the single most important mechanism, and the most constitutionally elegant, for enforcing the fundamental principle that the people should be protected from the abuses of profiligate government borrowing.

SILVER SPRING, MD, *February 15, 1994.*

Hon. PAUL SIMON,
U.S. Senate,
Washington, DC.

DEAR SENATOR SIMON: I am pleased to have this opportunity to express my support for the Balanced Budget Amendment.

For 37 years I worked for the Social Security Administration, serving as Chief Actuary in 1947–70, and as Deputy Commissioner in 1981–82. In 1982–83, I served as Executive Director of the National Commission on Social Security Reform. And I continue to do all that I can to assure that Social Security continues to fulfill its promises.

The Social Security trust funds are one of the great social successes of this century. The program is fully self-sustaining, and is currently running significant excesses of income over outgo. The trust funds will continue to help the elderly for generations to come—so long as the rest of the federal government acts with fiscal prudence. Unfortunately, that is a big ''if.''

In my opinion, the most serious threat to Social Security is the federal government's fiscal irresponsibility. If we continue to run federal deficits year after year, and if interest payments continue to rise at an alarming rate, we will face two dangerous possibilities. Either we will raid the trust funds to pay for our current profligacy, or we will print money, dishonestly inflating our way out of indebtedness. Both cases would devastate the real value of the Social Security trust funds.

Regaining control of our fiscal affairs is the most important step that we can take to protect the soundness of the Social Security trust funds. I urge the Congress to make that goal a reality—and to pass the Balanced Budget Amendment without delay.

Sincerely,

ROBERT J. MYERS.

CLUBB—CONGRESSIONAL LEADERS UNITED FOR A BALANCED BUDGET

The following quotes are from a News Conference held by Senators Craig, Simon and Robb joined by former Senator Tsongas, and Robert Myers on February 7, 1995.

Concord Coalition co-chair and former Democratic Senator Paul Tsongas responded to President Clinton's budget proposal released Monday, which, as reported in the media, breaks Clinton's campaign ledge to cut deficits in half during his first term.

''The budget which came from the President yesterday said, I've given up; that as long as I am President of the United States there will never be a balanced budget. That is an astonishing statement.''

Paul Tsongas, talking about Social Security and the BBA:

''It is embarrassing to be a Democrat and watch a Democratic President raise the scare tactics of Social Security.''

''It pains me that the Democratic party should be the party that turns its back on the young.''

Paul Tsongas talked about those who've supported BBA in the past, but who now say they will vote against a BBA without a Social Security exemption.

''It's flushing out those who never meant it, those whose cynicism I think is now going to be on display.''

''The calculation is quite explicit, how do I somehow kill the Balanced Budget Amendment without having my fingerprints on the deed. And the use of Social Security is the chosen weapon.''

''The question is, where is the cover? And the cover is the Social Security subterfuge.''

''Those who vote to exclude Social Security are voting to kill the Balanced Budget Amendment. It is that simple, it is that clean and should be stated.''

Senator Paul Simon (D–IL):

''Every time we have a deficit, we're borrowing from your six year-old. And what we're saying is let's stop borrowing from six year-olds.''

Tsongas, responding to Simon:

''Eventually the six year-old will rebel, having been given massive debt by you and I.''

Paul Tsongas' general comments on BBA and balancing the budget:

''Without the Balanced Budget Amendment the budget will never be balanced—that's a given. There is simply not the discipline and self will in this place to do it.''

''This is not rocket science. It's not what is in your head or in your heart. It's what is in the lower part of your regions that is in question.''

Tsongas responded to a question about how much budget cuts to balance the budget would hurt people across the country.

''If you don't do it now; if you let those numbers run themselves out for ten years, then you are looking at far more draconian measures.''

THE SENIORS COALITION,
Fairfax, VA, March 1, 1995.

Hon. LARRY CRAIG,
U.S. Senate,
Washington, DC.

DEAR SENATOR CRAIG: I wanted to take just a moment to thank you for your dedication and extraordinary effort to get a Balanced Budget Amendment passed. We believe very strongly that a bankrupted country cannot care for its elderly, its young or its poor, and that a Balanced Budget Amendment is desperately needed at this time.

The Seniors Coalition commissioned The Luntz Research Companies to conduct a poll late last week to determine if public support for the Balanced Budget Amendment was still as strong as it had been at the end of January. I would like to share some of the results with you.

As far as we have been able to determine, this nationwide poll contains the most recent data available on the public's opinion of the Balanced Budget Amendment. The questions were asked as part of an omnibus national survey conducted of 1,000 registered voters from February 22nd to 23rd. The survey has a margin of error of ±3.1% at the 95% confidence level.

When people were asked if they supported the Senate passing the same Balanced Budget Amendment passed by the House of Representatives, an overwhelming 79% of respondents supported Senate passage of this measure. This figure is identical to the results of a Wirthlin poll conducted January 25th to 28th. Public support for the Balanced Budget Amendment has not fallen over this past month.

Of those supporting the Balanced Budget Amendment, 61% were strongly supporting the BBA and 18% were somewhat supportive of the BBA. Compared to the Wirthlin poll: 52% strongly favored and 27% somewhat favored a BBA at the end of January. This suggests that not only do people still support a BBA, but they do so with a stronger conviction.

When senior citizens were asked how they felt about the Balanced Budget Amendment, 80% of those age 55–64 and a strong 71% of those age 65+ supported the BBA. By geographic region, people in the Northeast support the BBA at 80%, those in the South by 79%, those in the Midwest by 76%, in the West by 78% and along the Pacific by 81%.

We were also curious to know how people would feel about their Senator if the Balanced Budget Amendment failed. Respondents were asked if they would vote for or against their Senator in the next election if he or she were the one to cause the BBA to fail by one vote. Nearly half, 46%, said they would vote against their Senator if this were the case. These were evenly split, 23% each, along the lines of definitely against or probably against. Comparatively, of the 34% who answered they would vote for their Senator, only 11% were firm in their conviction.

Senior citizens were consistent with this trend and 45% of those age 55–64 and 41% of those age 65+ indicated they would vote against their Senator if they blocked passage of the Balanced Budget Amendment. Of interest in these numbers is that seniors were lower than the general average of 34% in stating they would vote for their Senator under this scenario. Of those age 55–64, only 30% would vote in the affirmative and 31% of those age 65+ would vote to re-elect their Senator.

By geographic region, those that would vote against their Senator if they were responsible for the failure of the Balanced Budget Amendment was as follows: Northeast—43%; South—50%; Midwest—46%; West—45%; and Pacific—48%.

The respondents were also asked if they felt that those Senators who have claimed they want to learn more about the Balanced Budget Amendment were correct in opposing the BBA, or were they putting politics ahead of the national interest. An astounding 60% of the voters surveyed thought that politics was being put ahead of the national interest. This number held strong among seniors of all ages at 59% in both the 55–64 and 65+ categories.

In geographic regions, 58% of those in the Northeast, 65% of those in the South, 56% of those in the Midwest, 60% of the West and 58% of the Pacific thought that politics were taking precedence over the national interest.

The results of this poll clearly show that despite all the rhetoric and debate over the past month on what a Balanced Budget Amendment would mean for America, seniors—and voters in general—are still strongly committed to forcing Congress to balance its budget, and they want their Senators to do the right thing.

Sincerely,

JAKE HANSEN,
Vice President for Government Affairs.

THE SENIORS COALITION,
Fairfax, VA, March 2, 1995.

MEMORANDUM

Re The American Association of Retired Persons and the Balanced Budget Amendment.
To: All Interested Parties.
From: Kimberly Schuld, Legislative Analyst.

The AARP commissioned The Wirthlin Group to conduct a survey for them January 25–28, 1995 on a variety of questions pertaining to the BBA. Since then, the AARP and the National Council of Senior Citizens have been twisting the poll's results and methodology to claim that public support for a BBA is low—once Americans are told what the BBA will mean to them.

The key word here is TOLD. The poll utilizes a series of questions designed to lead people to a mis-informed and generally incorrect impression of what the BBA will do. Namely, the line of questioning implies that Social Security and Medicare will face drastic cuts, and state and local taxes will skyrocket as the federal faucet is turned off.

An AARP Press Release announcing the poll results states, ''. . . most Americans do not understand the potential impact of the Balanced Budget Amendment and are adamantly opposed to using Social Security and Medicare to reduce the federal deficit.''

Quite bluntly, the AARP has effectively provided a political scare campaign for those members of Congress wishing to avoid facing

their constituents with the news that they want to vote against the BBA. We all know the arguments against excluding Social Security from the constitutional amendment, but the AARP has electrified the ''third rail'' to the political benefit (is it really?) of the White House.

ANALYSIS OF THE AARP/WIRTHLIN POLL

The poll consisted of sixteen questions to 1,000 adults, with a 200 oversample to adults 50 and older. The margin of error is ±2.8% at a 95% confidence level. A copy of the questions is attached.

The poll starts off with a question about the direction of the country and then asks: ''Do you favor or oppose a balanced budget amendment to the U.S. Constitution that would require the federal government to balance its budget by the year 2002?'' Favor: 79%. Oppose: 16%.

The next question tests how people perceive the budget can be balanced: spending cuts, taxes or both. This is followed by a question on equal percentage across-the-board cuts in every federal program.

The next two questions ask specifically if Social Security and Medicare should be included in across-the-board cuts. As could be expected, the respondents would favor exemptions for both programs. A key element to these two questions (#5 and #6) is the use of the word ''exempt''. The word ''exempt'' is not used anywhere in the poll except in relation to Social Security and/or Medicare. This sets up a connection in people's minds that these programs may be in graver danger than other government programs.

Question #7 sets up the respondent for the ''truth in budgeting'' excuse the Administration has been spinning. When offering people the choice between passing the BBA first, or identifying cuts first, the poll throws in ''consequences'' associated with cuts. The connotation is that there are going to be dire ''consequences'' to balancing the budget. This sets up the respondent to answer question #15 (open-ended) with a negative response on how they think the BBA will affect them personally.

Questions #8, #9 and #10 ask about whether respondents think it is necessary to cut Defense. Social Security and Medicare to balance the budget, or whether the budget could be balanced without these programs. As could be expected, the response for cutting Defense is overwhelming compared to SS and Medicare. The group of questions sets up a ''good cop/bad cop'' scenario in the mind of the respondent whereby they identify Defense as the ''bad guy'' as well as being reminded which party tends to support Defense. It is also important to remember that at the time this poll was taken the newspapers and network news broadcasts were full of stories about the Republicans wanting to increase Defense spending in the Contract With America.

Questions #11 and #12 address taxes; their role in the budget balancing process and reform ideas. This also serves to set up negative responses to question #15. In #11, 48% of the people believe there will have to be tax increases to balance the budget. Then the next question, they are asked to declare a preference for one of a variety of tax cuts. This conflict sets up a negative impression that tax cuts are good and the BBA is bad because there must be tax increases to accomplish its goal.

Question #13 throws together ''programs for the poor, foreign aid, and congressional salaries and pensions''. Respondents are asked how far these programs COMBINED would go toward balancing the budget if they were cut. By throwing these widely divergent programs together, the pollsters are setting up the respondent to believe that balancing the budget will mean higher taxes and cuts in taxpayer-financed programs.

Question #14 is the keeper. Respondents are asked if they still support a BBA with the following choices: Social Security should be kept separate from the rest of the budget and exempted from a BBA because it is a self-financed by a payroll tax or Social Security is part of the overall government spending and taxing scenario, thus should be subject to cuts along with the rest of the budget.

The results of this questions dramatically flip the BBA support from question #2: BBA with SS Exempt: 85%. BBA that cuts SS: 13%.

Question #16 now asks: ''Do you favor or oppose the balanced budget amendment, even if it means that your state income taxes and local property taxes would have to be raised to make up for monies the federal government no longer transfers to your state?'' Favor: 38%. Oppose: 60%.

This question ends the phone call on a gross mis-interpretation that dire consequences of doom and gloom are on the horizon, all at the voter's expense. This is exactly the type of question that re-reinforces the ''angry voter'' complex of the middle class family.

These anti-BBA results are achieved by planting the seed of doubt slowly but surely that:

1. It is the intention of BBA supporters to cut Social Security and Medicare.
2. It is the intention of BBA supporters to beef up Defense spending at the expense of everything else.
3. Taxes will inevitably go up with a BBA.
4. A BBA will have a negative direct impact on families ''beyond the beltway.''

Any time a Senator, Congressman, reporter or lobbyist starts to talk about poll results showing 85% of Americans oppose a BBA unless it exempts Social Security, bear in mind that the spin-meisters achieved this number by forcing the assumption that draconian Social Security cuts are a foregone conclusion.

Leaders from the Republican party, the Democratic party, the Administration and the President himself have all gone to great lengths to state that social security benefits are off the table.

Any member of congress who contends NOW that the new Republican leadership cannot be trusted to keep their hands off Social Security is also implicating their own party leaders and the President of the same un-trustworthiness.

TESTIMONY OF JAKE HANSEN, DIRECTOR OF GOVERNMENT AFFAIRS, THE SENIORS COALITION FOR THE JOINT ECONOMIC COMMITTEE, JANUARY 23, 1995

BALANCED BUDGET AMENDMENT: IMPERATIVE TO SOCIAL SECURITY

Mr. Chairman, this is not a new issue to The Seniors Coalition. Since our inception we have fought for a Balanced Budget Amendment. We have had experts on Social Security and an expert economist look at the issue, as well as hearing from thousands of our members. Their conclusion: give us a Balanced Budget Amendment.

During the elections and in recent debate, we have heard from many politicians that a Balanced Budget Amendment will destroy Social Security. However, the question is not ''Will a Balanced Budget Amendment destroy Social Security'', but rather ''Can Social Security survive without a Balanced Budget Amendment?''

As you know, up until 1983, the Social Security system ran on a pay-as-you-go basis. That is, the amount of money going into the Trust Funds from payroll deductions was basically equal to the amount of money being paid to beneficiaries of the day.

In the late seventies, the economy was a disaster. Inflation was up, leading to higher cost of living payments than had been anticipated. Unemployment was up, meaning that less money was being paid into the system than had been anticipated. The result: Social Security was headed for bankruptcy at break-neck speed.

In 1983, a bi-partisan effort saved Social Security by changing the benefit structure and raising Social Security payroll taxes. This effort created a new—and potentially worse—problem: a rising fund balance in the Social Security Trust Funds. For the past ten years, more money has been pouring into the Trust Funds than is needed to meet today's obligations.

This balance has been ''borrowed'' by the federal government. Today, the federal government owes the Trust Funds about $430 billion. By the year 2018, according to the Social Security Board of Trustees, that figure will be a shade over three trillion dollars. At that time, the entire federal debt will be—who knows, eight, ten, twelve trillion dollars?

The point is, how will the government ever pay back the Trust Funds? They could: turn on the printing presses and monetize the debt, so that a Social Security check would buy a loaf of bread; borrow the money—hurting both the economy and the Federal Budget; make massive cuts in benefits; raise taxes, and thus, destroy the economy for everyone; or simply renege on the debt.

Mr. Chairman, The Seniors Coalition doesn't find any of these alternatives acceptable.

The Chairman of our advisory board, Robert J. Myers (often referred to as the father of Social Security) wrote of his support of a Balanced Budget Amendment last year and said: ''In my opinion, the most serious threat to Social Security is the federal government's fiscal irresponsibility. If we continue to run federal defects year after year, and if interest payments continue to rise at an alarming rate, we will face two dangerous possibilities. Either we will raid the trust funds to pay for our current prolificacy, or we will print money, dishonestly inflating our way out of indebtedness. Both cases would devastate the real value of the Social Security Trust Funds.''

The bottom line, is that if we want to protect the integrity of Social Security the only way is through a Balanced Budget Amendment.

With that said, the question becomes will just any old Balanced Budget Amendment do? The answer is, some are better than others, and some are absolutely not acceptable.

First, some people are suggesting that Social Security should be exempted. That should be something that an organization like ours would leap at. The fact is, we are concerned that such an Amendment would end up destroying Social Security as more and more government programs would be moved to Social Security to circumvent the Balanced Budget Amendment. We believe this would destroy Social Security, and will not support such an Amendment.

Our first choice would be a Balanced Budget Amendment that controls taxes as well as spending—such as the Amendment that has been presented by Congressman Barton. We support tax limitation and would like to see this Amendment voted on. We would urge every Member of Congress to vote for this Amendment.

If, this Amendment does not pass, then we willingly support a Balanced Budget Amendment such as the one offered by Senators Hatch and Craig. While I am concerned about taxes, I believe that last year's elections

showed us that we, the people, do have the ultimate power. And, I believe that had we been forced to pay for all the government we were being given, we would have made massive changes much sooner.

Mr. Chairman, we believe that what is most important is that America be given a serious Balanced Budget Amendment as soon as possible. We will work with you and your colleagues in every way possible to make that happen. Thank you.

THE SENIORS COALITION,
Fairfax, VA, January 24, 1995.

MEMORANDUM

Re Balanced Budget Amendment.
To: Senator Craig.
From: Jake Hansen, Vice President for Government Relations.

The Seniors Coalition has supported a balanced budget amendment for several years. On behalf of our one million members nationwide. I am requesting your support of S.J. Res. 1 in the next few weeks.

It is vital that Congress pass a measure that would require the federal budget to be balanced. Our members feel that if the government were forced to evaluate its spending the way every family in America evaluates their own, this country would not be ''heading down the wrong path.'' While there are a great many factors that contribute to this public perception, the bottom line for many Americans is that the government takes too much from them and spends too much on programs that do not work. The time to end the cycle of taxing and spending has come.

I also want to touch briefly on the role of Social Security in the balanced budget amendment. We feel that there is no reason to exempt Social Security from a balanced budget. In fact, such an exemption would create a serious policy and political crisis for Congress, and would lead to the destruction of the Social Security system.

If Social Security is exempted, the total force of balancing the budget will find its way to Social Security. There will be an overwhelming temptation to either redefine government programs as Social Security programs, or pull money out of the Trust Fund to balance the budget by cutting Social Security taxes to offset tax increases elsewhere. In fact, there would be nothing to stop Congress from ''borrowing'' as much money as it wanted from the Trust Funds to finance any other government program.

We feel confident that the political climate surrounding Social Security is enough to protect it, thus engaging in destructive policy in the name of protection will only lead us down the path of truly committing damage to the Social Security system.

What is most important is that America be given a serious balanced budget amendment as soon as possible.

BALANCED BUDGET AMENDMENT ALERT FROM THE SENIORS COALITION, JANUARY 26, 1995.

This morning the opponent of a BBA launched a full scale attack on the Balanced Budget Amendment with Social Security bombs. Seniors across the country are watching C–SPAN with renewed and unjustified fear. It is vital that their scare campaign be stopped.

Exempting Social Security from the Balanced Budget Amendment will destroy the Social Security system—NOT protect it.

Balancing the budget will create tremendous pressure and that pressure will blow through any available escape hatch. Whatever is exempted from the balanced budget requirement becomes that escape hatch!

As the total force of balancing the budget falls on Social Security, there will be overwhelming pressure to redefine many government programs as Social Security programs. This endangers its original purpose. There would be nothing to stop Congress from ''borrowing'' as much money as it wanted from the trust fund to finance any government program if Social Security is exempted from the Balanced Budget Amendment.

Exempting Social Security from the Balanced Budget Amendment would open a loophole in the requirement that would completely gut its effectiveness by allowing all social welfare and other programs (such as Medicare and Medicaid) to be financed off-budget, in deficit, as the ''New Covenant Social Security.''

Failure to pass a Balanced Budget Amendment will destroy Social Security.

Eventually, $400 billion plus will have to be returned to the Social Security trust fund to pay benefits to retired baby-boomers. Without starting a balanced budget process now, the battle over Social Security will be like nothing Congress has ever seen thirty years from now.

Without balancing the budget, Social Security benefits will always be subject to cuts, new taxes and means-testing. This permanently erodes any confidence in discussions of systemic reforms for future generations.

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60 PLUS,
Arlington, VA, February 9, 1995.

Hon. LARRY E. CRAIG,
U.S. Senate,
Washington, DC.

DEAR SENATOR CRAIG: I am writing to you to express the strong support of the 60/Plus Association for the Balanced Budget Amendment to the Constitution, which is now being considered by the U.S. Senate.

The 60/Plus Association is a two-year-old, nonpartisan, seniors advocacy group with more than 225,000 members. For the 103rd Congress, we presented the Guardian of Seniors' Rights award to 226 House and Senate Members.

The Balanced Budget Amendment is the best friend the Social Security system and our nation's seniors could have. The Senate should pass H.J. Res. 1, as passed by the House of Representatives in a strong bipartisan vote, and submit it immediately to the States for ratification.

Continuted, growing deficit spending is the greatest threat to the integrity of the Social Security system and to the present and future benefits paid from Social Security trust funds. Past deficits have created a national debt of $4.8 trillion—an alarming 70 percent of our Gross Domestic Product. Gross interest payments now consume nearly one-fifth of total federal spending and will surpass Social Security as the largest item of spending by the end of the decade.

This national debt already has depressed the economy and lowered seniors' standard of living. As the costs of servicing that debt continue to climb and to squeeze all other budget priorities, they threaten the very existence of Social Security. Today's Social Security surpluses represent a commitment to seniors tomorrow. But a debtor bankrupted by an excessive debt load is not able to meet any of its commitments. Bitter experience has shown that only the Balanced Budget Amendment can save our nation from that fate.

While well-intentioned, these attempts to exempt Social Security from the discipline of the Balanced Budget Amendment are completely misguided. Instead of protecting seniors, exemptions like that in the Reid Amendment would allow the Social Security trust funds to run unlimited deficits. This would create an irresistible temptation to pay for all sorts of unrelated programs out of the trust funds, completely destroying the unique purpose for which they were created and rendering them insolvent.

The debt is the threat to Social Security and America's seniors. A ''clean'' balanced budget amendment, such as H.J. Res. 1. is their best protector. The 60/Plus Association urges you and your colleagues to pass their urgently needed legislation and resist the scare tactics of those who create any loopholes that would compromise either balancing the budget or protecting Social Security.

Former Senator Paul Tsongas summed it up best when he said he was ''embarrassed as a Democrat to watch a Democratic President raise the scare tactics of Social Security.''

In other words, it's 'scare us old folks time again' as opponents drag a 30-year-old red herring across the trail.

Many seniors—including this one—vividly remember the scare tactics then—the LBJ TV ad—a giant pair of scissors cutting through a Social Security card—with the clear implication that a vote for Barry Goldwater and Republicans would mean the end of Social Security.

Seniors didn't buy that canard then, nor do they now, 30 years later, judging by the response we get from a vast majority of seniors.

Sincerely.

JAMES L. MARTIN,
Chairman, 60+.

NATIONAL TAXPAYERS UNION,
February 6, 1995.

[Legislative memo]

Re Balanced Budget Amendment—Critique of Amendment To Exempt Social Security and Scoring in NTU Annual Rating of Congress.
To: U.S. Senators.
From: David Keating, Executive Vice President.

An amendment to SJR 1 by Senators Reid, Feinstein, and others will propose to exempt Social Security trust funds (OASDI) from a balanced budget rule. A vote against this proposal will be heavily counted as a pro-taxpayer vote in our annual Rating of Congress.

NTU strongly supports prompt passage, early this year, of the best Balanced Budget Amendment (BBA) that can get the needed two-thirds vote. This means a genuine, effective BBA, not the dishonest ''cover'' substitutes offered by BBA opponents.

KEY REASONS WHY CONGRESS SHOULD NOT EXEMPT SOCIAL SECURITY FROM THE BALANCED BUDGET AMENDMENT

Exempting Social Security would render a Balanced Budget Amendment meaningless and endanger Social Security. It would give Congress an excuse to delay action on huge Social Security deficits that will occur as today's younger workers retire. Although the Social Security system currently collects more in taxes than it spends on benefits, this will change early in the next century and eliminate the effectiveness of the balanced-budget rule. At that time, other federal funds should be in a surplus position to prevent large government budget deficits that would harm the economy. But the Reid Amendment would only require a balancing of non-Social Security receipts and outlays, resulting in huge legal federal budget deficits at that time.

1. It would create a huge loophole in the Amendment and encourage Congress to raid trust fund revenues.—A future Congress that wished to circumvent the Amendment could, by a simply majority vote, authorize deficits by reducing trust fund taxes and revenues and increasing ''operating'' fund taxes and revenues by an equal amount. Trust funds could pay for Social Security benefits by

running a deficit. This has the potential to be more than a $300 billion loophole.

2. Congress could also create deficits by channeling other programs aimed at aiding the elderly through the trust funds.—Candidates include veterans' benefits and pensions, which total over $20 billion a year. Supplemental Security Income at over $25 billion a year is another likely candidate, as is Medicare (over $110 billion) and the approximately three-fourths of Medicaid spending (or over $65 billion) that benefits the aged. A portion of funds spent on the retired poor by the Food Stamp, low-income home energy assistance, housing subsidy, and other social service programs might be transferred to newly exempt trust funds. Some or all of federal employee or military retirement programs may also become part of Social Security.

3. It would legalize an ANNUAL total budget deficit of over $2,000,000,000,000 ($2 trillion) in the year 2050!—Even if the Social Security exemption was faithfully observed, it would allow huge deficits in the Social Security trust funds in the next century that will occur under current policies as today's children retire.

4. Such loopholes could result in spending money from trust funds for other programs.—A future Congress and president that wished to circumvent the balanced-budget rule could do so simply by funding non-Social Security programs from trust fund accounts. There is nothing in the proposed exemption that would prohibit spending money from trust funds for non-retirement or non-disability programs. A simple majority of Congress could thus effectively circumvent any debt limit.

5. It would endanger Social Security.—Net interest on the national debt has grown from a mere 7.7 percent of federal spending in 1978 to 14 percent in 1995. Not only will interest begin to crowd out Social Security, but the continued buildup of debt will impair the ability of future taxpayers to refund moneys borrowed from the trust fund. Only an all-inclusive Balanced Budget Amendment will force Congress to balance the budget and create a sound environment for the future of Social Security.

IRET CONGRESSIONAL ADVISORY,
February 8, 1995.

A BALANCED BUDGET AMENDMENT MUST NOT EXCLUDE SOCIAL SECURITY

A few Senators who voted for a balanced budget amendment last year are saying they may oppose the amendment this year unless a special exemption for Social Security is attached to it. This may be a gambit to kill the amendment. Granting Social Security special constitutional status is not morally or economically justified, would greatly weaken the amendment, and ironically would add new burdens to the Social Security System in the long run.

The purpose of a balanced budget constitutional amendment is to compel Congress and the President to balance the federal budget. That means holding overall government expenditures at or below total government revenues. It does not mean holding some spending to no more than some revenues—with exemptions for national defense or the highway trust fund or medicaid or Social Security or any other program that might have a legitimate national purpose or powerful constituency.

Carving out Social Security benefits and taxes from the budget calculations would leave an especially large hole because Social Security benefits are the federal government's largest expenditure and second largest tax. Social Security benefits already exceed total national defense spending, formerly the largest expenditure category, and are growing much more rapidly; by the end of the decade federal payments of Social Security benefits will be about 60 percent greater than what the nation spends on national defense. On the tax side, the Social Security payroll tax is exceeded in size only by the individual income tax. Millions of individuals owe more in Social Security taxes than they do in income taxes. The employer share of the Social Security tax is, by itself, a bigger revenue source than the corporate income tax. A balanced budget amendment that leaves out Social Security would be seriously incomplete on both the expenditure and tax sides.

A Social Security exclusion would jeopardize passage of a balanced budget amendment in two ways. First, the exclusion would complicate the task of balancing the (redefined) budget in the near term. The Social Security trust fund is running a surplus for the time being. If Social Security were artificially removed from budget calculations, the deficit would suddenly appear bigger and reducing it to zero over the next several years would require extra large spending cuts or tax increases. That would make a balanced budget amendment appear more painful, which could scare away some potential supporters. Second, the version of the amendment with the exclusion gives political cover to opponents of a balanced budget amendment. Because a balanced budget amendment has strong public support, resisting it openly is politically risky. By putting forward the flawed version, which has no chance of passing Congress, opponents can to claim to voters that they back a balanced budget amendment even as they fight versions that would be more acceptable and effective. That is known as having your cake and eating it too.

In addition, as Senator Dole and others have cautioned, a Social Security exemption would create a giant loophole in the amendment. The contents of Social Security are defined by statute and can be modified by statute. If Social Security were excluded from the amendment while other spending were not, Congress could shield other programs from tough budget choices by passing statutes to shift them into Social Security. Under the pressure of dodging a constitutional amendment, some of the government programs that might be reclassified as part of Social Security are unemployment compensation, worker retraining, and spending on the earned income tax credit. And because Congress is inventive, this is just for starters.

At present, the Social Security trust fund is running a surplus. That would allow many other programs to be shifted into Social Security without busting its trust fund in the short run. When the baby boom generation starts retiring, however, Social Security will experience unsustainably large deficits under present benefit formulas. That looming crisis has nothing to do with a balanced budget amendment. It will be caused by the expanding number of retirees and other taxpayers. If the Social Security System has become a repository for myriad government programs when the demographic crunch arrives, the squeeze on the core program, benefits for the elderly, will come sooner and be harsher because of the extraneous spending that has become embedded in the Social Security System and is also making demands on its revenues.

Social Security projections under current budget formulas point to an enormously adverse impact on the availability of saving for private sector uses. Federal ''entitlements'', of which Social Security is the largest, already preempt much private saving, and, if nothing is done, entitlement spending will before very long consume all private saving. The core economic objective of a balanced budget amendment is to prevent federal budget developments from commandeering private saving. The Social Security System is projected to go into deficit early in the next century and thereafter fall deeper and deeper into debt, becoming the biggest federal government consumer of private saving. It makes no sense to enact a balanced budget amendment but allow Social Security to escape balanced budget discipline. To protect private saving from the inroads of federal deficits, a balanced budget amendment must apply to all government programs, including Social Security and other ''entitlements''.

A balanced budget amendment would force hard choices to be made regarding federal spending programs. Some defenders of a special exemption for Social Security assert that Social Security deserves privileged treatment. Although Social Security is politically popular (which in itself affords much protection), it is not clear on economic or moral grounds why Social Security should receive higher priority than other federal spending. For instance, is paying Social Security benefits a more noble or urgent federal government function than providing for the national defense, enforcing federal laws, or undertaking basic scientific research?

Treating Social Security benefits and taxes differently from all other government outflows and inflows would have some economic justification if Social Security were analogous to private saving, but it is not. Unlike private saving, Social Security payments are not voluntary choices reflecting individuals' preferences. As with other taxes, people can face fines and prison if they refuse to pay Social Security taxes.

With private saving, the funds are invested productively and the eventual payouts to savers come from the returns on those investments. Whereas many advocates of the Social Security program describe it as an efficient government-run saving program, it is, in reality, the largest Ponzi scheme in the history of the world. Social Security payroll taxes go to the U.S. Treasury, and the Treasury, after issuing IOUs to the Social Security trust fund, uses the taxes to help pay the government's current bills. That is not real saving. It is akin to a person earning income, writing himself a bunch of IOUs, putting those IOUs in a piggy bank, and then spending all the money. No matter how full of IOUs the piggy bank becomes, it will not hold even a dime of saving. In other words, the government no more directs Social Security revenues into productive investments than it does other tax revenues.

If a balanced budget amendment to the constitution is to be meaningful in subjecting federal budget policy to financial discipline, it must apply to all federal spending and revenues. It should not exempt the largest spending item and the second largest tax. The national issues the amendment addresses are too important to fall victim to a parliamentary ploy.

MICHAEL S. SCHUYLER,
Senior Economist.

CONGRESSIONAL LEADERS UNITED FOR A BALANCED BUDGET,
January 24, 1995.

FACT SHEET—HOW THE BALANCED BUDGET AMENDMENT PROTECTS SOCIAL SECURITY

THE BBA WOULD PUT AN END TO THE RAPID GROWTH IN INTEREST PAYMENTS THAT THREATEN TO CROWD OUT SOCIAL SECURITY SPENDING

Interest payments on the federal debt have nearly quadrupled since 1980. Net interest payments in 1993 were $200 billion and are expected to exceed $300 billion annually by the

end of the decade. Until we balance the budget, spiralling interest payments will continue to crowd out other spending, including Social Security.

BALANCING THE BUDGET WOULD AVERT THE THREAT OF RUNAWAY INFLATION

No industrialized nation has reached the level of debt we will face next century without monetizing the debt by printing more dollars. Monetizing the debt would lead to explosive inflation. Huge debt burdens contributed to ruinous inflation in Germany in the 1920's and several Third World nations in the 1980's. Runaway inflation would have a particularly severe impact on senior citizens living on a fixed income. It would not do any good to get a $1,000 retirement check if bread costs $100 a loaf.

THE BBA WOULD FORCE CONGRESS TO DEAL WITH DEFICITS IN TIME TO PREVENT A BUDGET CRISIS FORCING DRACONIAN CUTS EACH YEAR JUST TO ''MUDDLE THROUGH''

The General Accounting Office has warned that if the amount of deficit reduction required just to limit the deficit to three percent of GDP would increase exponentially by the year 2005. By the year 2020, Congress would be required to enact a half a trillion dollars of additional deficit reduction each year just to retrain the deficit to three percent of GDP. No program—including Social Security—would be able to escape deep spending cuts under this scenario.

BALANCING THE BUDGET WOULD PROMOTE THE ECONOMIC GROWTH NECESSARY TO SUSTAIN THE SOCIAL SECURITY TRUST FUNDS

GAO, CBO and most economists warn that continued growth in deficit spending would result in lower productivity and deteriorating living standards. As real wages for taxpaying workers decline, there will be increasing resistance to the taxes necessary to meet the growing commitments of the Social Security program. GAO found that balancing the budget by the year 2001 would lead to the higher productivity and growth in real wages that would be necessary to support our commitments to the growing elderly population.

THE AMENDMENT WOULD HELP ENSURE THAT CONGRESS TAKES ACTION BEFORE THE SOCIAL SECURITY TRUST FUNDS BEGIN RUNNING YEARLY DEFICITS

Although the Social Security trust funds currently run a surplus, within a generation, they will face cash shortfalls. A balanced budget amendment would provide Congress and the President with the necessary incentive to take corrective action to deal with this threat and provide for the long-term solvency of the trust funds.

THE AMENDMENT PRESERVES STATUTORY PROVISIONS PROTECTING SOCIAL SECURITY

The current statutory protections for Social Security would not be eliminated by the BBA. For example, under current law, any legislation that would change the actuarial balance of the social security trust funds are subject to a point of order which requires a 3/5 vote to waive in the Senate. Under the 1985 Gramm-Rudman-Hollings Act and the 1990 Budget Enforcement Act, Social Security was completely protected from all sequesters. Social Security is not subject to the spending caps in the 1990 budget agreement. Given political realities, Congress would be likely set budget priorities in such a way that protections for Social Security are maintained or even enhanced.

EXEMPTING SOCIAL SECURITY WOULD OPEN UP A LOOPHOLE IN THE BBA AND TEMPT CONGRESS TO DEFUND THE TRUST FUNDS, THREATENING RETIREMENT BENEFITS AND THE TRUST FUND SURPLUSSES

Exempting the Social Security trust funds from the amendment would create a perverse incentive for Congress to use them as a source to fund new or totally unrelated programs, threatening the ability of the trust funds to fulfill their current obligations to retirees. For example, Congress could pay for current and new non-Social Security spending by simply depositing FICA taxes into general Treasury revenues, instead of into the trust funds. Congress also could pass legislation to shift spending for Medicare, other retirement programs, or any number of programs to the Social Security trust funds to avoid a 3/5 vote to unbalance the budget. Thus, non-Social Security outlays and receipts could be ''balanced'' simply changing program definitions and draining the Social Security trust funds.

THE CONSTITUTION IS NOT THE PLACE TO SET BUDGET PRIORITIES

A constitutional amendment should be timeless and reflect a broad consensus, not make narrow policy decisions. As noted above, the financial status of Social Security will change drastically, and perhaps quite unpredictably, in the next century. We should not place technical language or overly complicated mechanisms in the Constitution and undercut the simplicity and universality of the amendment.

CONGRESSIONAL LEADERS UNITED FOR A BALANCED BUDGET,
January 18, 1995.

FACT SHEET—A BALANCED BUDGET AMENDMENT EXEMPTION WOULD IMPERIL SOCIAL SECURITY

A BBA EXEMPTION WOULD THREATEN THE REVENUES FOR THE SOCIAL SECURITY TRUST FUND

Placing the OASDI/Social Security trust funds outside the Amendment's deficit restrictions would provide a perverse incentive for a future Congress to shift FICA (and related income) taxes out of the trust funds. Portions of those taxes could be transferred to general Treasury accounts to balance the ''operating'' budget covered by the BBA, but at the cost of gutting the OASDI trust funds. The current stable revenue stream for Social Security could be critically diverted in small steps which would add up to disaster for the system. A precedent for this already exists: The income taxes on Social Security benefits in the 1983 ''bailout'' go directly into the trust funds, but higher income taxes imposed on Social Security retirees in 1993 are diverted to general Treasury revenues.

SOCIAL SECURITY COULD EASILY BE OVERWHELMED BY NON-SOCIAL SECURITY PROGRAMS MOVED TO SOCIAL SECURITY'S LEDGER IN AN ATTEMPT TO HIDE THEM BEHIND THE CLOAK OF ITS EXEMPT STATUS

It's easy to predict well-meaning efforts to protect a whole range of social programs by arguing they fall under the general intent of Social Security to provide a safety net. Contrary to the claims of those who want an exemption, funding for current Social Security would not be set aside for protection, but would be pilfered by reclassifying more and more programs as Social Security. This is an even greater threat than simply providing a loophole for deficit spending. As other programs intrude on Social Security, its stability will steadily erode.

A SOCIAL SECURITY EXEMPTION DEFEATS THE INTENT OF THE BBA BY PROVIDING THE GREATEST DEFICIT LOOPHOLE IN HISTORY

As if the direct threat to Social Security isn't enough, exempting it would create an enclave for additional federal debt while at the same time, government could proudly proclaim a ''balanced budget.'' Projects which risk being assigned a low priority under the BBA could avoid facing scrutiny and be paid for by draining the Trust Funds. The Social Security deficit tomorrow could be bigger than the total deficit today.

THE DEBT IS THE THREAT

The greatest threat to Social Security is the federal debt itself. Gross interest payments on the debt already are nipping at the heels of Social Security as the second largest single item in the federal budget. Social Security is in no way immune to the increasing pressure interest payments place on every single federal spending item as the growing debt forces ever larger debt service costs.

EVERY CURRENT STATUTORY PROTECTION FOR SOCIAL SECURITY CAN CONTINUE UNDER BBA

Social Security is the best statutorily protected program in the federal budget. Those laws are perfectly compatible with a BBA and can remain in force, continuing to protect the system. The BBA takes away the major threats to Social Security so existing statutes can do their jobs. But if the federal budget does not have the spending restraint imposed on it by a Constitutional Amendment, we cannot guarantee that the statutes which protect Social Security now can be maintained.

CONGRESSIONAL LEADERS UNITED FOR A BALANCED BUDGET,
January 30, 1995.

THE BALANCED BUDGET AMENDMENT—A NECESSARY AND APPROPRIATE ADDITION TO THE CONSTITUTION

THE AMENDMENT CORRECTS AN INSTITUTIONAL BIAS TOWARD DEFICIT SPENDING

Representatives may know that chronic deficits threaten the nation's long-term prosperity, but they also know that their short-term interest lies in spending more on the demands of various special interests. When faced from all sides with demands for more spending and less taxes, Congresses and Presidents have taken the easy way out by borrowing more money. A Balanced Budget Amendment corrects this bias by creating immediate political and economic consequences for running a deficit.

THE AMENDMENT PROTECTS RIGHTS DESERVING CONSTITUTIONAL PROTECTION

The ability to borrow money from future generations is a power of such magnitude that should not be left to the judgments transient majorities. Thomas Jefferson favored a Constitutional prohibition of federal indebtedness, fearing that taxes on farmers, laborers, merchants and their families would escalate forever to pay the interest on a growing debt. The threat of economic and political harm from deficit spending is the type of governmental abuse appropriately proscribed by the Constitution.

Even Professor Laurence Tribe of Harvard, a leading opponent of the amendment, told the Senate Budget Committee in 1992 that ''The Jeffersonian notion that today's populace should not be able to burden future generations with excessive debt, does seem to be the kind of fundamental value that is worthy of enshrinement in the Constitution. In a sense, it represents a structure protection for the rights of our children and grandchildren.''

THE AMENDMENT IS CONSISTENT WITH THE AMERICAN PRINCIPLE OF PROTECTING THE INTERESTS OF POLITICALLY UNDER-REPRESENTED GROUPS FROM MAJORITY ABUSE

The Constitution has always served to protect unrepresented minorities from the abuses of government. The framers of the Constitution were extremely concerned that the rights of the public would be trampled by the tyranny of the majority and crafted a Constitution that balanced the protection of minority rights against the principal of majority rule. Senator Byrd made an eloquent

statement on behalf of this principal during a debate regarding the Senate filibuster, stating that ''There have come times when the protection of minority is highly beneficial to a nation. Many of the great causes in the history of the world were at first only supported by a minority. and it has been shown time and time again that the minority can be right. So this is one of the things that's so important to the liberties of the people.''

Living off a giant credit card and sending the bill to the next generation is a form of taxation without representation in a very real sense. Requiring a higher threshold of support for deficit spending will protect the rights of future generations who are not represented in our political system but will bear the burden of our decisions today.

Requiring a higher threshold of support for deficit spending will protect the rights of future generations who are not represented in our political system but will bear the burden of our decisions today. The ability to borrow money from future generations is a power of such magnitude that it should not be left to the judgments of transient majorities.

Thomas Jefferson agreed with BBA proponents that, ''The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government.'' With what does a constitution deal, if not with ''the fundamental principles of government?''

The BBA is based on exactly the same principles as the rest of the constitution.—It would protect the fundamental rights of the people by restraining the federal government from abusing its powers. Morally dubious things should be difficult to do. That's the underlying principle for requiring 3/5 votes in both Houses to approve deficit spending.

Conclusion.—Thousands of pages and hundreds of hours of committee testimony, floor debate, and committee reports have answered every question and concern about the BBA. The only reason left for voting against the BBA is if you believe that it's all right to leave our children a legacy of excessive—and growing—debt. The determination of BBA opponents shows that they fear what BBA supporters have promised all along: the amendment will work.

CONGRESSIONAL LEADERS UNITED FOR A BALANCED BUDGET,
January 30, 1995.

WOULD THE BBA ''END MAJORITY RULE?'' NO. IT WOULD PROTECT FUNDAMENTAL RIGHTS.

A common criticism of the balanced budget amendment is that it would ''end majority rule.'' Those who focus on the difficulty of achieving a 3/5 majority to approve deficit spending are missing the point about this amendment. They are stuck in the status quo, revealing their reverence to an outdated pattern of thought; that deficits are the norm. Or, alternately they betray preferences FOR deficit spending. The mind-set exposed is, what would we need to do under the BBA to continue deficit spending?

Opponents of requiring super majorities to approve deficit spending ignore one point, intentionally or otherwise: Under a balanced budget amendment simple majorities will continue to rule. The amendment does not affect the ability of a majority to spend on programs it deems important and to set budget priorities as it sees fit. Super majorities would come into play only when deficit spending looms because the majority abdicates its responsibility to produce a balanced budget. They would serve as a deterrent to irresponsible fiscal policy, while allowing necessary flexibility when a consensus emerges to deal with a national emergency.

Some opponents of the amendment write as though super majorities were a foreign concept to the framers of the constitution. One of their explicit purposes outlined in the Federalist Papers, was to put certain rights and powers beyond the reach of the ''tyranny of the majority,'' and protect current minorities and future majorities from abuse by transient, coalescing ''factions.'' The BBA is very much within that spirit.

Every right protected in the constitution is protected with super majority requirements. That's what is necessary to amend the explicit rights stated in the document.

Senator Byrd of West Virginia, a leading opponent of this measure, might himself have made our point best when he said, ''There have come times when the protection of a minority is highly beneficial to a nation. Many of the great causes in the history of the world were at first only supported by a minority. And it has been shown time and time again that the minority can be right. So this is one of the things that's so important to the liberties of the people.''

The unfettered power to deficit spend carries with it the temptation to exercise that power to the point of abuse. Incurring huge debts on behalf of our children really is a form of taxation without representation. Our children are a minority whose economic interests demand to be represented through the super majorities provided for in the balanced budget amendment.

[U.S. Chamber of Commerce, Washington, DC]

BALANCED BUDGET AMENDMENT: CONSTITUTIONAL ISSUES

The U.S. Chamber of Commerce, the nation's largest business federation, has endorsed S.J. Res. 1, the Balanced Budget Amendment to the U.S. Constitution. The Chamber believes that this measure will help move the federal government toward fiscal responsibility. This paper discusses the most significant constitutional and legal questions raised by this landmark legislation, along with some of the conclusions reached by the U.S. Chamber.

IS A BALANCED BUDGET REQUIREMENT APPROPRIATE SUBJECT MATTER FOR THE CONSTITUTION?

Some commentators have argued that a balanced budget requirement is a mere rule of accounting, incompatible with the broad principles embodied in the Constitution. It is worth noting that the Constitution already contains several narrowly-focused economic and fiscal provisions, including the requirement of ''a regular statement and account of the receipts and expenditures of all public money'' (Article I. Section 9) and the requirement that ''duties, imposts and excises . . . [be] uniform throughout the United States'' (Article I, Section 8).

Moreover, the Balanced Budget Amendment embodies two principle themes of the Constitution: limitation on federal power, and protection of politically under-represented groups against majoritarian abuse. Thomas Jefferson, who perceived the inherent tendency of central government to expand, supported a constitutional prohibition of federal borrowing as a means of protecting individual liberty. For most of the nation's history the growth of the federal government was held in check by an implicit policy against deficits, except during war or recession. In recent times, the erosion of this principle has created persistent structural deficits, removed the need to limit and prioritize programs, and led to an excessively large federal sector. The BBA requirement that federal operations be funded from current revenues restores an important principle of fiscal responsibility and limited government.

Likewise, the protection of groups with limited access to the political process has emerged as a major theme of Constitutional law.[1] Limitations have been placed on governmental actions which unfairly impact racial minorities, aliens and other ''discreet and insular'' groups.[2] Because future generations who will bear much of the burden of current policy lack input in to the electoral process, it may be that their interests are undervalued in federal budget decisions. The Balanced Budget Amendment seeks to ensure that the vital interest of young and future Americans are reflected in the decisions of Congress, embodying a principle of fairness and political inclusion consistent with the best provisions of the Constitution.

CAN THE DEFICIT PROBLEM BE SOLVED SHORT OF AMENDING THE CONSTITUTION?

Statutory attempts to impose fiscal discipline upon the federal government have failed, largely because Congress was able to change the rules in mid-game. The ambitious deficit reduction targets of the 1985 Gramm-Rudman-Hollings law were repeatedly modified when they conflicted with Congress' spending ambitious. Likewise, big-ticket items such as unemployment compensation payments and disaster relief are customarily designated as ''emergency'' spending, which exempts them from spending caps. Between 1980 and 1990, each year's actual spending exceeded the targets of that year's budget resolution by an average of $30 billion (the excess was $85 billion in 1990).[3]

Each statutory response to the deficit has shown the same vulnerability: hard-won budget rules can be waived or modified by a simple majority vote. Not surprisingly, a majority can usually be assembled to support more spending. The key advantage of a Constitutional amendment is that tough budgetary rules can be placed beyond the reach of simple Congressional majorities *S.J. Res. 1* requires yearly enactment of a balanced budget, unless Congress approves a specific deficit for that fiscal year by a three-fifths vote of each house. (A simple majority of each house can waive the balanced budget requirement during a time of war.) The supermajority requirement reflects the view that incurring a deficit should be an exceptional event that requires clear consensus. This legislation commits future Congresses to avoid structural deficits, while providing them the flexibility to respond to true emergencies.

IS THERE ANY PLACE FOR STATUTORY SOLUTIONS?

While the Balanced Budget Amendment mandates a zero deficit by FY 2002 (or the second fiscal year after enactment), it does not specify how to get there. The Chamber believes that enactment of a BBA will force Congress to take a close look at statutory mechanisms designed to reach that goal, and this will probably begin well in advance of final ratification by the states. In approving *S.J. Res. 41*, the Senate Judiciary Committee contemplated enactment of ''legislation that will better enable the Congress and the President to comply with the language and intent of the amendment.''[4] Additional budget process reforms may include tax and spending limitations, line-item veto authority, and the creation of an independent commission to recommend spending cuts. The BBA will thus lay the groundwork for further budget process reforms at the statutory level.

Footnote at end of article.

WILL CONGRESS AND THE PRESIDENT STILL HAVE THE FLEXIBILITY TO RESPOND TO NATIONAL EMERGENCIES?

S.J. Res. 1 does not prohibit Congress from running a deficit in a given year; it merely requires that this decision be approved by three fifths of each house. This degree or consensus is required for many important decisions, including the approval of a treaty, and override of a Presidential veto. In the BBA, the three-fifths requirement reflects the view that incurring a deficit should be an exceptional event that is carefully scrutinized. At the same time, this provision allows Congress and the President the flexibility to respond to genuine emergencies. Should large-scale domestic problems such as recessions or natural disasters alter budget needs, it will be possible to assemble a three-fifths consensus that recognizes this. In the case of foreign aggression, the balanced budget requirement can be suspended by a simple majority vote of each house.

WILL THE AMENDMENT THRUST THE COURTS INTO AN INAPPROPRIATE ROLE OF CUTTING PROGRAMS AND RAISING TAXES?

Some commentators have raised questions about the enforcement of a Balanced Budget Amendment. A primary concern is that Congressional efforts to meet the balanced budget requirement would be challenged in the courts, and the judiciary would be thrust into the role of weighing policy demands, slashing programs and increasing taxes. On the other hand, there is a legitimate and necessary role for the courts in ensuring technical compliance with the amendment. The Chamber believes that these concerns can be reconciled in implementing legislation, which draws upon existing legal principles.

In general, the courts have shown an unwillingness to interject themselves into the fray of budgetary politics. The New Jersey Supreme Court observed that ''it is a rare case . . . in which the judiciary has any proper constitutional role in making budget allocation decisions.''[5] The judiciary has remained clear of most budget controversies through doctrines of ''nonjudiciability,'' including ''mootness,'' ''standing,'' and the ''political question'' doctrine.

A case is considered moot and can be rejected by the court, if the matter in controversy is no longer current (this will be a factor in many budgetary controversies, such as those based on unplanned expenditures or flawed revenue estimates which become apparent near the end of the fiscal year). The doctrine of standing limits judicial access to parties who can show a direct injury over and above that incurred by the general public. The logic is that the grievances of the public (or substantial segments thereof) are the proper domain of the legislature.[6] The U.S. Supreme Court has held that status as a taxpayer does not automatically confer standing to challenge federal actions,[7] and has barred taxpayer challenges of budget and revenue policies in the absence of special injuries to the plaintiffs.[8] The political question doctrine is a elated principle that the courts should remain out of matters which the Constitution has committed to another branch of government. The Supreme Court has held that a ''political question'' exists when a case would require ''nonjudicial discretion.''[9] This would be the case with many budgetary controversies, such as the choice to cut particular programs, which by their nature require ideological choices and the balancing of competing needs.

In contrast, courts have asserted jurisdiction over politically tinged controversies where they find ''discoverable and manageable standards'' for resolving them. In *Baker v. Carr,*[10] the U.S. Supreme Court reasoned that objective criteria guide judicial decisionmaking and limit the opportunity for overreaching. In the balanced budget context, the ''discoverable and manageable standards'' principle can help demarcate lines between impermissible judicial policymaking, and the needed enforcement of accounting rules and budget procedures.

In all likelihood, a strong framework of accounting guidelines will emerge from implementing legislation. The Senate Judiciary Committee has interpreted Section 6 of the bill to impose ''a positive obligation on the part of Congress to enact appropriate legislation'' regarding this complex issue.[11] Judiciary Committee staff on both the House and Senate side have indicated their intention that implementing legislation embrace stringent accounting standards that will minimize the potential for litigation. Should legitimate questions arise concerning the methods by which Congress balances the budget, these standards will also provide objective criteria which meet constitutional standards for judicial intervention.

The implementing package is also likely to establish guidelines for judicial involvement, defining what issues are judiciable and which parties have standing to challenge Congressional decisions. State budget officers, for example, could be given standing to contest unfunded federal mandates. The enforcement procedures, coupled with budget process and accounting guidelines, will operate against a backdrop of traditional legal principles to rationally limit judicial action. The effect should be to prevent judicial overreaching into legislative functions, while providing a check on Congressional attempts to evade the requirements of the BBA through procedural and numerical gimmickry.

FOOTNOTES

[1] See John Hart Ely, *''Toward A Representation-Reinforcing Mode of Judicial Review,''* 37 Md. Law Review 451 (1978).

[2] *United States* v. *Carolene Products Co.,* 304 U.S. 144 (1938), footnote 4.

[3] Source: *''The Economic and Budget Outlook,''* Congressional Budget Office (January 1993), p. 108.

[4] S. Rpt. 103–163, 103rd Congress, 1st Session (1993), p. 6.

[5] *Board of Education* v. *Kean,* 457 A.2d 59 (1982).

[6] *Flast* v. *Cohen,* 392 U.S. 83 (1968) (Harlan, J., dissenting).

[7] *Massachusetts* v. *Mellon,* 262 U.S. 447 (1923).

[8] *United States* v. *Richardson,* 418 U.S. (1974) (plaintiffs challenged a statute allowing the CIA to avoid public reporting of its budget); *Simon* v. *Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26 (1976) (plaintiffs challenged a Revenue Ruling granting favorable tax treatment to certain hospitals as inconsistent with the Internal Revenue Code).

[9] Id.

[10] *Baker* v. *Carr,* 369 U.S. 186 (1962).

[11] S. Rpt. 103–163, 103rd Congress, 1st Session (1993).

U.S. CHAMBER OF COMMERCE,
Washington, DC, 20062–2000.

THE ECONOMIC EFFECTS OF THE BALANCED BUDGET AMENDMENT

The U.S. Chamber of Commerce, the nation's largest business federation, endorses S.J. Res. 1, the Balanced Budget Amendment of the U.S. Constitution. The Chamber believes that this measure will help move the federal government toward fiscal responsibility. This paper discusses the most significant economic questions raised by this landmark legislation along with some of the conclusions reached by the U.S. Chamber.

Q. Why should we balance the federal budget?

A. There are several reasons why the federal budget should be balanced. Most fundamentally, the Balanced Budget Amendment would improve accountability in federal spending decisions. Government officials are generally inclined to increase government spending to improve services to their constituents. This, of course, is countered by their reluctance to raise taxes. But since borrowing can substitute for raising taxes, legislators find they can offer high level of services without the pain of raising the current level of taxes. Consequently, when it's time to make tough spending decisions, Congress finds it can dodge the question by just borrowing the difference. The proper counterweight to higher government spending—raising taxes—is circumvented by the seemingly painless act of federal borrowing. This leaves us with more government than taxpayers are willing to pay for. Over time, such borrowing leaves us with a bloated government sector and the problem of paying off the debt.

The Balanced Budget Amendment restores the proper balance between spending and taxes, and forces government officials to prioritize difficult spending choices. It improves the process whereby such decisions are made, forcing Congress to use much greater discipline.

Also, no matter whether the government finances its spending through taxes or borrowing, its still spending and therefore commanding economic resources. To those who believe in limited government and market systems, the *level* of federal spending is as much of a concern as how the amount is financed. Limiting government borrowing blocks the path of least resistance to government expansion, and so we expect that a Balanced Budget Amendment would act to limit the reach of government into the economy.

Q. Wouldn't Congress just raise taxes to close the deficit?

A. In a way. Congress already has. After all, the difference between Government borrowing and raising taxes is just a question of taxes today or taxes tomorrow. The important point is that, no matter how it's financed, the government is spending economic resources, and the amount of spending will surely be greater when government is allowed to use deficit spending.

And tax increases to close the deficit gap are being used now anyway—witness the tax increases in 1982, 1983, 1984, 1985, 1988, 1989, 1990 and 1993. In other words, we're already getting the tax increases. By requiring a balanced budget, we expect to place additional pressure on Congress to tackle the spending cuts that should be made.

To answer the question more directly. Congress can't just raise taxes, leave spending intact, and walk away—if it could, it would have done so a decade ago and spared us this long debate on deficit spending. So while it may raise some taxes to close the deficit, Congress will have to confront its voracious spending habit. The end result will be a lower level of government spending, and less government involvement in the economy.

In addition, a couple of provisions in the BBA make it more difficult to raise taxes. Under the amendment, tax increases require both a roll call vote (instead of anonymous voice votes) and a constitutional majority (which means 51 votes would be required in the Senate and 218 votes in the House to raise taxes, instead of a majority of those voting). This may not sound like much of a hurdle, but note that President Clinton's 1993 tax increase would have needed an additional two Senate votes under such a requirement. Instead, it passed after Vice President Gore's vote broke a 49–49 deadlock.

Finally, of course, congressmen and women would have to face the political consequences of raising taxes at the voting booth. Because a roll call vote would identify those who voted to raise taxes, legislators would be held to a higher level of accountability.

Q. What is the primary economic impact of running government deficits?

A. The worst thing about government deficit spending is that it distorts the economy's

balance between saving and investment, producing adverse long-term productivity growth. The funds the government is borrowing have to come from somewhere, and generally they come from private saving and private investment. Throughout the 1980's and early 1990's, we've seen the saving rate fall from about 8% to consistently below 4%—too low to fuel the kind of investment we need to keep up our high productivity. Since long-term productivity growth is the key to rising standards of living, it's dangerous to be skimping on investment.

Federal borrowing is not inherently wrong or bad for the economy; it depends on how the funds are used. If the funds were being used exclusively to create stronger schools, better highways, safer bridges, and so forth, we would be increasing the productive capacity of the economy. This means that we would be creating the means by which future generations can create the wealth to pay back the borrowed funds. But if we're using those funds to provide ourselves with consumption-oriented short-term benefits that don't improve our long-term productive capacity, then we're raising our standard of living by lowering that of future generations. To quote NationsBank economist Mickey Levy: ''Deficits matter most because they distort the way current national resources are allocated, generally favoring current consumption at the expense of private investment.''[1]

Q. Are there other effects of deficit spending that harm the economy?

A. In a complex, interlocking, international economy, you can expect sustained deficit spending to cause other distortions as well. First, chronic government borrowing tends to put upward pressure on interest rates. Businesses seeking to raise capital and households applying for mortgages have to compete with the federal government in securing loanable funds. This increase in demand pushes interest rates up. Consequently, fewer loans are made to the private sector, and those that are made carry a higher interest rate. This is known as ''crowding out,'' since government borrowing displaces some private borrowing.

Second, because our economy is increasingly linked to the global market, there are important international impacts related to the budget deficit.[2] Higher interest rates tend to raise the foreign exchange value of the dollar, meaning that our trading partners face price increases on the goods and services they buy from the U.S. This lowers our exports, pushing up our trade deficit. Many contend that one of the major forces behind the huge trade deficits of the 1980s was the federal budget deficit.

Third, the amount we're paying to service our national debt has grown almost fivefold since 1979—from $43 billion to $203 billion in 1994. As a share of total government outlays, interest payments on the debt have about doubled from 7.4% during the 1970s to over 14% currently. That means that for the same amount of revenue, there's less money for other government programs, whether it's for national defense, our court system, Head Start, or environmental clean-up. No matter what the budget priorities are, fewer funds are available.

To sum up, there are serious economic side-effects of deficit spending that Washington tends to ignore. In addition to restoring discipline to the spending decisions of Congress, the Balanced Budget Amendment seeks to remove the economic distortion caused by chronic deficit spending.

Q. Back to that notion of ''crowding out'' for a moment. If increased government borrowing leads to higher interest rates, as you claim, then why did interest rates fall during the 1980s just as the budget deficit was expanding?

A. The key to this apparent paradox is the behavior of inflation during the 1980s. After starting out the decade in the double-digits, the inflation rate fell sharply due to tighter monetary policy and, in mid-decade, the collapse of oil prices. Since expectations of future inflation are embedded in market interest rates this decline in inflation pushed interest rates down. This more than offset the impact of increasing federal deficits which were working at the same time to push interest rates up.

So while it's true that market interest rates fell significantly during the 1980's it's correct to say that they would have fallen even further had the federal budget been brought into balance. In fact later in this document we'll present results from an econometric study that show significally lower interest rates as a result of moving to a balanced budget.

Q. Doesn't government spending represent an investment in the economy, with highway and transportation construction, funds going to education, etc?

A. Some government spending can be regarded as ''investment spending,'' meaning that funds spend now will generate stronger economic growth later. Spending on infrastrucutre—highways, bridges, dams, and mass transit, for example—and other programs such as education are often thought of that way, since they provide benefits over a long period of time. But the bulk of government spending goes to projects and programs that don't provide much of a return over time, but instead represent ''current spending.'' Such programs include Social Security, Medicare, federal retirement programs, unemployment insurance, agricultural extension offices, and so forth. While many of these programs are desirable, we need to recognize that we're borrowing vast sums to pay for benefits that are only short-lived. If this generation believes that the current level of spending on entitlements such as Social Security is appropriate, that's fine, but the funding should therefore come from the current generation, not the next.

Because an extra dollar of private investment is generally more efficient that an extra dollar of government investment, our productive capacity generally grows less when funds are diverted away from the private sector. This means that productivity and wage growth will be held back, lowering our standard of living.

Q. Why a Balanced Budget Amendment now? After all, we've gotten along without it for 200 years.

A. Until about 1960 or so, running a balanced over time was almost an unwritten Constitutional amendment. The U.S. government ran deficits during the War of 1812, the severe recession of 1837–43, the Civil War, and the Spanish American War, to name a few episodes. But in other periods, the federal government ran surpluses to reduce its outstanding debt. On the whole, only emergencies justified running a deficit.

But since 1960, this informal rule apparently has gone by the wayside. In the past 34 years, the U.S. has avoided a deficit only once, when in 1969 there was a surplus of $3 billion. Given the chronic deficits we've come to expect, its time to make explicit through a Constitutional amendment the old implicit principle of government living within its means.

Q. Will passing a Balanced Budget Amendment really add discipline to the federal government?

A. Lawmakers have tried statutory measure to rein in government deficit spending, but they just haven't worked. For example, in 1985 Congress passed the Gramm-Rudman-Hollings deficit reduction bill, which was supposed to reduce the deficit to zero by fiscal year 1991 from the $293 billion deficit projected at the time for fiscal year 1991.[3] As it turned out, even with passage of GRH, we ended up with a $196 billion deficit in 1991 and a $289 billion deficit in 1992. That's because hard-won budget rules can be waived or modified by a simple majority vote. The Balanced Budget Amendment, on the other hand, requires a three-fifths vote of each house to enact a budget with a deficit (in times of war, only a simply majority is required).

It's clear that these statutory measures haven't worked, and so it's time to turn to the stronger medicine of a balanced budget amendment.

Q. Didn't we move to balancing the budget with the passage in August 1993 of President Clinton's budget package, the Omnibus Budget Reconciliation (OBRA)?

A. Washington made some progress in trimming the deficit in 1993 when it passed OBRA. The nonpartisan Congressional Budget Office estimated in September 1993 that OBRA will cut $433 billion of debt over the next five years from the projected baseline (i.e., pre-OBRA) level of debt.[4] But not only is the post-OBRA deficit still at $222 billion in FY 1998 (CBO January 1995 estimate), but it's also on the rise. By 2005, according to CBO, the deficit is projected to hit $421 billion. As a percentage of total output, that means the deficit rises from 2.7% of GDP in FY 1998 to 3.6% in FY 2004.[5]

Like the budget deals in the previous decade before it, OBRA clearly does not solve the deficit problem. That's why it's imperative to turn to a constitutional, rather than a statutory, remedy for our chronic deficit problem.

Q. What's the relationship between the federal deficit and federal debt?

A. The federal deficit is the difference between the government's outlays and receipts in any one year, while federal debt is the total amount of government debt outstanding. The debt, in other words, is the total accumulation of deficits over the years. In 1994, the federal deficit was $203 billion, and the total federal debt by year-end was $4.64 trillion.[6]

Q. A federal debt of $4.6 trillion sounds like a lot, but is it historically high?

A. In absolute terms, it's the highest it's ever been. But because of inflation and the growth of our economy, it's best to answer this question by measuring the federal debt relative to the size of the economy; that is, to look at the ratio of debt to GDP. Today, the total debt held by the public is 52% of current GDP.[7] While that's less than half of 1946's 114% of GDP, we don't have as much to show for it. The debt then paid for victory in World War II, while the current debt is simply funding higher levels of consumption.

Moreover, this ratio is currently moving in the wrong direction. It's grown from below 30% during the 1970s to just over 40% during the mid-1980s, and now to over 50%. In contrast, the federal debt ratio in the postwar period was pruned from 114% to 68% by 1951, and generally kept falling until the early 1970s.

Q. So the federal debt's higher, and it's been growing for twenty years. But while some continue to feel economic discomfort from structural changes unrelated to the higher federal debt (such as the defense build-down and the commercial real estate overhang), the U.S. seems to be doing fine. What's the crisis?

A. The growing federal debt is not a problem that can be characterized as ''a wolf at the door,'' which requires immediate attention. Instead, to use the analogy introduced by President Carter's top economist, Charles

[1] Footnotes at end of article.

Schultze, it's a ''colony of termites in the wall.''[8] In other words, it's a serious long-term problem that can be ignored in the short-term. The damage—lower investment, lower productivity, slower wage growth, etc.—may be hard to perceive or even hidden by other economic forces, but that doesn't mean it's not occurring. The termites are still chomping away and must still be dealt with, because the destruction can be massive.

Q. Won't the Balanced Budget Amendment hamper government activity in times of a national emergency, such as a war?

A. The Amendment will not compromise America's ability to respond to national emergencies. In general, the Amendment can be suspended for a specific fiscal year whenever three-fifths of both Houses of Congress vote to do so. In wartime, this requirement is lowered to a simple majority.

Q. Won't balancing the budget cause a serious disruption of economic growth?

A. If the deficit were reduced all at once—from FY 1995's projected $162 billion to zero next year, for example—there indeed would be a severe disruption. Because the removal of so much fiscal stimulus in one year is not advisable, the Balanced Budget Amendment calls for the provision to become law in FY 1999 or two years after the ratification by three-quarters of the states, whichever is later. The Amendment does not provide a specific path for deficit reduction in the meantime, but Congress would have five years to implement the needed changes.

While we should expect some disruption—balancing the budget is not, in the short-term, an economic growth policy—we will see several long-term benefits after the budget is balanced. And the short-term distress can be mitigated, according to economic simulations performed in a 1992 study conducted by Laurence H. Meyer & Associates, a nonpartisan and highly regarded macroeconomic consulting firm based in St. Louis, Missouri. If we had started in 1993 and balanced the budget by 1998, using Federal Reserve policy to cushion the economy, the LHM&A model shows that total output would be between 1% to 1.6% higher in 2003.[9] Even 1% additional output means an economy that's $80 billion larger (measured in today's dollars).

Q. Does it make any difference whether Congress balances the budget using tax increases or spending cuts?

A. It makes a big difference. In the study cited above, LHM&A found that the highest gains from deficit reduction come from expenditure cuts. That is because increases in taxes create disincentives for labor and investment, mitigating some of the beneficial effects of deficit reduction on interest rates.

In the following table we report the results of two policy simulations conducted by LHM&A in which the budget is balanced, and compare it to the baseline case where policy is left as is.

The first column shows where the economy would be if no action were taken.

The second column shows where the economy would be if expenditures were cut by the entire amount necessary to balance the budget (''All Spending'').

The final column shows the results of balancing the budget by raising spending and cutting expenditures by exactly the same amount (''Mix'').

The two balanced budget scenarios assume that the Federal Reserve eases monetary policy enough to maintain the unemployment rate at the baseline level of 5.2%. The following table compares how the economy would look with and without deficit reduction by showing some of the results for the first five years.

THE ECONOMIC IMPACT OF BALANCING THE BUDGET

[The First 5 Years of Deficit Reduction]

	No deficit reduction	Deficit reduction scenarios	
	Baseline	All spending	Mix
Levels in the fifth year:			
Federal deficit ($ bill)	−251	0	−1
3-month T-bill rate (percent)	5.5	4.7	4.6
30-year Government bond yield (percent)	6.9	5.7	5.8
AAA corporate bond yield (percent)	7.1	5.8	5.9
Average annual growth, first 5 years (percent):			
Real GDP	2.6	2.8	2.7
Inflation	3.3	3.5	3.4
Real personal disposable income	2.3	1.7	1.5

Notice how interest rates are significantly lower in the scenarios where the deficit has been reduced. This is the fuel for the higher level of business investment. In fact, the inflation-adjusted value of the nation's plant and equipment (what economists call the real capital stock) is 2% higher after the first five years of deficit reduction, and 6% higher after ten years, when comparing the result of the ''All Spending'' scenario to the baseline. While those figures may sound small, they mean $120 billion worth of additional computers and manufacturing plants within five years, and $390 billion more in ten years. And it should be noted that the capital stock is almost 2% higher when the budget is balanced entirely through spending cuts rather than an equal mix of spending cuts and tax increases.

While inflation is a bit higher in the deficit-reduction scenarios (due to the Federal Reserve's cushioning), growth in real GDP (inflation-adjusted output) is stronger, on average, in the five-year period, as the deficit is reduced. Real personal disposable income grows at a slower rate (1.7% and 1.5% versus 2.3%) in the cases where the deficit is lowered. But note that it's stronger in the case where all of the deficit reduction comes from reductions in government spending. This shows that moving to a balanced budget will inflict some economic pain. The short-term pain is unavoidable, but it helps set the stage for stronger growth in the years after the deficit has been balanced.

Of course, the active participation of Federal Reserve is an important component of LHM&A's simulations, and it comes with the price tag of slightly higher inflation. But the important point is that the model suggests a path that the economy can follow to get to a balanced budget without severe economic hardship.

Another factor that would help the transition that's hard to model is the boost to consumer and business confidence we would expect to find once a credible balanced-budget plan were enacted. Business investment should be higher, and the return of resources from the public to the private sector as government spending cuts are carried out should improve overall productivity in the economy.

Q. Most of the states have some sort of balanced budget requirement. What has been their experience?

A. According to the National Association of State Budget Officers, the application of the state experience to the Federal experience is not clear-cut. The state balanced budget requirements are diverse and written so generally that they're subject to varying interpretations. According to their 1992 statement, the tradition of balanced budgets, rather than the enforcement provisions or the threat of lower bond ratings, plays the most important role in developing balanced budgets.[10]

FOOTNOTES

[1] Mickey D. Levy, *Deficitphobia: Right for the Wrong Reasons,* in ''Economic and Financial Perspectives,'' CRT Government Securities Ltd., New York, December 1993, pg. 1.

[2] Benjamin M. Friedman, *U.S. Fiscal Policy in the 1980s: Consequences of Large Budget Deficits at Full Employment,* in ''Debt and the Twin Deficits Debate,'' James M. Rock, ed. Mayfield Publishing Company, 1991.

[3] Laurence H. Meyer & Associates, *Balancing the Budget by 1991: The Gramm-Rudman-Hollings Proposal,* November 1985, pg. 5.

[4] Congressional Budget Office, *The Economic and Budget Outlook: An Update,* September 1993, pgs. 26–29.

[5] Congressional Budget Office, *The Economic and Budget Outlook: FY 1996–2000,* January 1995, pg. 58.

[6] Ibid, pg. 51.

[7] Congressional Budget Office, *Federal Debt and Interest Costs,* May 1993, pg. 92.

[8] Charles L. Schultze, *Of Wolves, Termites and Pussycats,* ''The Brookings Review,'' Summer 1989, pgs. 26–33.

[9] Laurence H. Meyer & Associates, *Balancing the Budget: An Analysis of the Economic Effects of Deficit Reduction,* prepared for the Chase Manhattan Bank, December 1992, pg. 1.

[10] National Association of State Budget Officers, *State Balanced Budget Requirements: Provisions and Practices,* June 1992, pg. 3.

U.S. CHAMBER OF COMMERCE,
Washington, DC.

BALANCED BUDGET AMENDMENT: THE ROLE OF THE COURTS

Some lawmakers and commentators have raised questions about the enforcement of a Balanced Budget Amendment to the U.S. Constitution. A primary concern is that Congressional efforts to meet the balanced budget requirement would be challenged in the courts, and the judiciary would be thrust into a non-judicial role of weighing policy demands, slashing programs and increasing taxes.

On the other hand, there is a legitimate and necessary role for the courts in ensuring compliance with the amendment. Congress could potentially circumvent balanced budget requirements through unrealistic revenue estimates, emergency designations, off-budget accounts, unfunded mandates, and other gimmickry. Certainly, the track record of the institution under the spending targets of Gramm-Rudman-Hollings and other statutory provisions is no cause for optimism.

It is our view that the need to proscribe judicial policymaking can be reconciled with a

constructive role for the courts in maintaining the integrity of the balanced budget requirement. Congress is expected to address technical issues such as accounting standards, budget procedures and judicial enforcement in followup implementing legislation. By drawing on the existing legal principles of ''mootness,'' ''standing'' and ''nonjudiciability,'' implementing legislation can define an appropriate role for the courts in making the amendment work. The net effect can be to prevent judicial assumption of legislative functions such as selecting program cuts, while allowing the courts to police a framework of accounting standards and budget procedures.

TRADITIONAL LIMITS ON JUDICIAL INTERVENTION

In general, the courts have shown an unwillingness to interject themselves into the fray of budgetary politics. The New Jersey Superior Court observed that ''it is a rare case * * * in which the judiciary has any proper constitutional role in making budget allocation decisions.''[1] The judiciary has remained clear of most budget controversies through the principles of ''mootness'' and ''standing,'' as well as the ''political question'' doctrine.

A case is considered moot, and can be rejected by the court, if the matter in controversy is no longer current. In *Bishop v. Governor,* 281 Md. 521 (1977), taxpayers and Maryland legislators claimed that the governor's proposed budget violated the state's balanced budget law, because $95 million was contingent upon enactment of separate federal and state legislation. The Maryland Court of Appeals dismissed the case as moot because by that time the separate legislation had been approved, and the relevant fiscal year had elapsed. Mootness will be a factor in many potential challenges to Congressional action under a federal Balanced Budget Amendment, particularly those based on unplanned expenditures or flawed revenue estimates which become apparent near the end of the fiscal year.

The doctrine of standing limits judicial access to parties who can shoe a direct injury over and above that incurred by the general public. The logic is that the grievances of the public (or substantial segments thereof) are the proper domain of the legislature.[2] The U.S. Supreme Court has generally held that status as a taxpayer does not confer standing to a challenge federal actions[3], and has barred taxpayer challenges of budget and revenue policies in the absence of special injuries to the plaintiffs.[4] A state cannot sue the federal government on behalf of its citizens,[5] and it is doubtful that Members of Congress have standing to challenge federal actions in court.[6]

The political question doctrine is a related principle that the courts should remain out of such matters which the Constitution has committed to another branch of government. The U.S. Supreme Court has held that a ''political question'' exists when a case would require ''nonjudicial discretion.''[7] This would be the case with many budgetary controversies, such as the choice to cur particular programs, which by their nature require ideological choices and the balancing of competing needs. In theory, at least, Congress brings to this task a ''full knowledge of political, social and economic conditions. * * *,'' as well as the legitimacy of elected representation.[8] The New Jersey Supreme Court recognized this in a case where local governments challenged funding decisions made by the governor and legislature, holding that the allocation of state funds among competing constituent groups was a political question, to be decided by the legislature and not the judiciary.[9] The Michigan Supreme Court has likewise held that program cutting decisions are a non-judicial function.[10]

A ROLE FOR THE COURTS

The courts have asserted jurisdiction over politically tinged controversies where they find ''discoverable and manageable standards'' for resolving them. In *Baker v. Carr,* the U.S. Supreme Court reasoned that objective criteria guide judicial decisionmaking and limit the opportunity for overreaching. In the balanced budget context, the ''discoverable and manageable standards'' principle can help demarcate lines between impermissible judicial policymaking, and the needed enforcement of accounting rules and budget procedures.

In all likelihood, a strong framework of accounting guidelines will emerge from implementing legislation. The Senate Judiciary Committee has interpreted Section 6 of the bill to impose ''a positive obligation on the part of Congress to enact appropriate legislation'' regarding this complex issue.[11] Judiciary Committee staff on both the House and Senate side have indicated their intention that implementing legislation embrace stringent accounting standards that will minimize the potential for litigation. Should legitimate questions arise concerning the methods by which Congress ''balances'' the budget, these standards will also provide objective criteria which meet constitutional standards for judicial intervention.

The implementing package is also likely to establish guidelines for judicial involvement, defining what issues are judiciable and which parties have standing to challenge Congressional decisions. Where Congress has defined standing within the relevant statute, the courts have generally deferred to this request for judicial input, and entertained suitable cases.[12] This approach has the advantage of defining appropriate controversies and plaintiffs more precisely. In the Balanced Budget context, the right to raise particular arguments could be delegated to specific public officials. State budget officers, for example, could be given standing to contest unfunded federal mandates.

We are satisfied that such enforcement procedures, coupled with budget process and accounting guidelines, will operate against a backdrop of traditional legal principles to rationally limit judicial action. The effect should be to prevent overreaching into legislative functions, while providing a check on Congressional attempts to evade the requirements of the BBA through procedural and numerical gimmickry.

FOOTNOTES

[1] *Board of Education f. Kean,* 457 A.2d 59 (N.J. 1982).

[2] *Flast v. Cohen,* 392 U.S. 83 (1968), (Harlan, J., dissenting).

[3] *Massachusetts v. Mellon,* 262 U.S. 447 (1923). The courts have allowed taxpayer claims that public funds were used to support an unconstitutional purpose. The two important decisions in this area are both establishment of religion cases. *Flast v. Cohen,* 392 U.S. 83 (1968); *Valley Forge Christian College v. Americans United for Separation of Church and State,* 454 U.S. 464 (1982).

[4] *United States v. Richardson,* 418 U.S. 166 (1974) (plaintiffs challenged a statute allowing the CIA to avoid public reporting of its budget); *Simon v. Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26 (1976) (plaintiffs challenged a Revenue Ruling granting favorable tax treatment to certain hospitals as inconsistent with the Internal Revenue Code).

[5] *South Carolina v. Katzenbach,* 383 U.S. 301 (1966).

[6] *Goldwater v. Carter,* 444 U.S. 996 (1979).

[7] *Baker v. Carr,* 369 U.S. 186 (1962).

[8] *Id.*

[9] *Camden v. Byrne,* 82 N.J. 133 (1980).

[10] *Michigan Assn. of Countries v. Dept. of Management and Budget,* 418 Mich. 667 (1984).

[11] *S. Rpt. 103–163,* 103rd Congress, 1st Session (1993).

[12] Nowak, John E. et al. Constitutional Law, West Publishing Co. (1983), p. 87. In Lujan v. Defenders of Wildlife, 112 Sup. Ct. 2130 (1992), the Court voided a citizen suit under the Endangered Species Act, holding that Congress' power to define standing by statute is limited by Article III of the Constitution. The decision that citizen suit provisions must be carefully articulated and supported by clear legislative goals.

Footnotes at end of article.

U.S. CHAMBER OF COMMERCE,
Washington, DC, Thursday, February 9, 1995.

U.S. CHAMBER THROWS SUPPORT BEHIND BALANCED BUDGET AMENDMENT

WASHINGTON.—The U.S. Chamber of Commerce today pledged to ''pull out all the stops'' to ensure passage of the balanced budget amendment.

In a press conference rallying support for the upcoming Senate vote, Chamber Senior Vice President Bruce Josten said, ''We believe that passage of the balanced budget amendment is imperative if we are to restore the critical principle of fiscal responsibility and limited government. It is the lynch pin in our approach to taming government spending and shrinking government waste.

''Large and growing federal deficits reduce savings and investment, stymie income and job growth and lower productivity growth and our standard of living,'' Josten said. ''Deficits result in the accumulation of government debt and ultimately lead to higher taxer.

''Together with the line-item veto and the prohibition on unfunded mandates, passage of this balanced budget amendment will place renewed emphasis on fiscal discipline, force Congress to cut spending and constrain its ability to raise taxes.''

Josten promised the full extent of the Chamber's capabilities to ''pull out all the stops and pledge to use every aspect of our broad grassroots organization to ensure the passage of a balanced budget amendment.

''We urge all the senators to vote for its passage and we will count it as a key vote in our chamber rating system,'' he said.

NFIB,
SMALL BUSINESS NEWS,
Washington, DC.

BALANCED-BUDGET AMENDMENT CRUCIAL TO SMALL-BUSINESS GROWTH

WASHINGTON, February 9.—Jack Faris, president of the National Federation of Independent Business, the nation's largest advocacy group for small business, urged small-business owners to write and call Congress to support the idea of adding a balanced-budget amendment to the Constitution.

Faris said Congress must heed broad-based public support for a balanced-budget amendment, especially that coming from the small-business sector.

''Small-business owners have voted overwhelmingly for a balanced budget and deficit reduction in several NFIB surveys,'' Faris said. ''They understand that high deficits rob small businesses of available capital and mean less money for private investment. When small firms can't afford to expand and buy equipment, fewer jobs are created and less revenue is sent to the Treasury.''

The 1994 deficit hit $223 billion, Faris said, pointing out that the public debt, the accumulation of each year's deficit, reached $4.7 trillion.

''It's inconceivable that a business could spend or borrow as irresponsibly as the federal government has,'' Faris said. ''A small firm has to live within a budget. If owners spent and borrowed money like the federal government, they'd be out of business in a heartbeat.''

The NFIB Education Foundation, the organization's research arm, found that federal taxes and frequent tax law changes rank among the top problems of entrepreneurs.

''Small-business owners voted in November in greater numbers than ever before to elect lawmakers who wouldn't conduct 'business as usual,' Faris said. ''and a balanced-budget amendment would be a major step toward controlling the size of the federal government.''

NFIB represents more than 600,000 small and independent firms. Small business makes up 99 percent of the private sector, hires approximately half of the country's workforce, and creates some two-thirds of all new jobs, according to NFIB.

[News release from Financial Executives Institute]

FINANCIAL EXECUTIVES INSTITUTE ANNOUNCES TOP 10 LEGISLATIVE AGENDA

MORRISTOWN, NJ, January 16, 1995.—Financial Executives Institute, a professional association of corporate financial executives, is prepared to work with the Congressional leadership to enact the initiatives contained in the ''Contract with America.'' In a letter that outlines its legislative agenda for 1995, FEI urged its 14,000 members to support such ''Contract'' initiatives as deficit reduction, product-liability reform, regulatory reform, and capital-gains reform.

''For years we've been urging Congress to put a lid on spending and manage the taxpayers' money more wisely,'' says P. Norman Roy, president of FEI. ''Now, we seem to have people in Congress who are determined to give the taxpayers good value for their tax dollars. It's a good start.''

Heading FEI's agenda of ten key issues is passage of the Balanced Budget Amendment, which would prohibit federal outlays from exceeding total receipts. If the amendment passes, it will require a three-fifths majority in both houses of Congress for the federal government to incur a deficit. Despite strong Republican support, passage of the Amendment is not certain; passage will require a two-thirds majority in each house.

Other FEI ''top ten'' initiatives include:

Line-Item Veto—give the president the authority to strike any appropriation or specific tax provision from proposed legislation;

Product-Liability Reform—create uniform product-liability laws, covering state and federal actions;

Securities-Litigation Reform—limit the growth of lawsuits filed by class-action attorneys on behalf of shareholders whose stock prices have shown unusual market performance and make losing litigants responsible for winners' costs;

Tax Reform—allow individuals to exclude 50 percent of capital-gains income from taxes and reduce the corporate capital-gains tax to 17.5 percent. Also, explore alternatives to the current tax system, such as a flat rate with higher exemptions or replacing both corporate and individual taxes with value-added and/or personal-consumption taxes;

Regulatory Reform—eliminate regulations that stifle business initiative and competitiveness; also reduce paperwork and require federal agencies to calculate the costs and benefits of compliance;

Federal Financial Management Reform—strengthen the Chief Financial Officers Act, the goal of which is to get the government's fiscal house in order;

Entitlement Reform—resolve the long-term imbalance between the government's entitlement promises and its ability to pay for them and ensure the long-term solvency of Social Security and Medicare;

Health-care Reform—develop broad national agreement on a specific health-care reform initiative rather than leave the solution to the individual states, which could lead to multiple state rules and an onerous administrative burden for companies with multi-state operations;

Procurement Reform—Pass and implement the Federal Acquisition Streamlining Act of 1994, which is expected to save taxpayers $12.3 billion over the next 5 years by reducing cumbersome regulatory burdens and needless bureaucracy in the government's acquisition of products and services from the private sector.

Financial Executives Institute, the leading advocate for the views of corporate financial management, is a professional association of 14,000 senior financial executives from nearly 8,000 major corporations throughout the United States and Canada.

[News release from Associated Builders and Contractors, Inc., Rosslyn, VA, February 9, 1995]

ABC SUPPORTS BALANCED BUDGET AMENDMENT

Passage of the Balanced Budget Amendment (S.J. Res. 1) would promote much needed restraint in government taxation and spending, according to Charlie Hawkins, senior vice president of Associated Builders and Contractors.

''We can no longer tolerate the practice of freely granting exceptions to budget rules in order to accommodate funding demands. Congress must respond to the call to cease runaway spending and begin the kind of reform that the Balanced Budget Amendment dictates,'' Hawkins said.

Hawkins said the amendment would force the president and Congress to set priorities rather than to continually postpone making difficult choices. The prospect of having to move toward balanced budgets in the near future would have an immediate positive impact on the budget process and would provide a Constitutional gurantee that we will adhere to a deficit reduction plan, he said.

''Deficit spending should no longer be a way of life for the federal government. Every American family must live within its means and balance its budget. Forty-nine of the 50 states operate under some form of a balanced budget requirement—it makes sense that the federal government would compel itself to work with similar self-control,'' he said.

Hawkins added that the amendment should not include an exemption for Social Security. Such an exemption would put Social Security at risk by creating an incentive to link other programs to the entitlement program to exempt them from deficit calculations. ''The best protection for Social Security is a balanced budget,'' he said.

Associated Builders and Contractors is a national association representing more than 17,000 construction and construction-related companies located in 80 chapters throughout the country.

NAW CALLS ON THE SENATE TO PASS THE BALANCED BUDGET AMENDMENT

WASHINGTON, DC February 9, 1995.—The National Association of Wholesaler-Distributors (NAW) today called on the United States Senate to pass S.J. Res. 1, the Balanced Budget Amendment to the Constitution.

''On behalf of the 45,000 companies represented by NAW, we strongly urge every Member of the Senate to support S.J. Res. 1. An historic opportunity for national fiscal discipline has finally arrived, and we must seize it,'' said Dirk Van Dongen, NAW President.

''NAW and its member companies have actively supported a Constitutional Amendment for a balanced Federal budget for many years. After decades of uncontrolled Federal spending, our members again state the obvious: government budget discipline is essential. No longer should Federal outlays exceed receipts. Furthermore, we strongly believe that Congress should rely on spending restraints—not tax increases—to balance the budget, rather than further burdening hard-working American taxpayers.''

''There is little doubt that for too long American companies have felt the effects of the Federal deficit; a deficit that is projected to begin growing again soon. Now is our best chance to show real leadership—to permanently rein in government spending. If we are unsuccessful, Federal debt and deficits—and politics—will continue to cripple our economy and mortgage our future. The Balanced Budget Amendment moves our country in the right direction and it unburdens our employers and employees along the way. The Senate should pass it and send it to the states without hesitation,'' concluded Van Dongen.

(NAW represents 45,000 companies through a federation of wholesale distribution firms and national, state and local associations.)

CITIZENS GROUP URGES SENATE TO PASS BALANCED BUDGET AMENDMENT

STATEMENT OF PAUL BECKNER, PRESIDENT CITIZENS FOR SOUND ECONOMY

WASHINGTON, DC.—On behalf of Citizens for a Sound Economy (CSE), I offer my strong support of the proposed balanced budget amendment to the Constitution. Our 250,000 members are among the 80% of Americans who believe it is time for the federal government to put its fiscal house in order by doing what every American family must do—balance its budget.

The federal government continues to be plagued by wasteful deficit spending; Congress appropriates money it does not have and should not spend. The American people are fed up with the status quo that has given them $200 billion deficits, a $4.8 trillion national debt, bigger government, higher taxes, and a reduced standard of living. The House of Representatives has acted. Now it is time for the Senate to do its part.

The balanced budget amendment is about so much more than November's elections or the ''Contract with America.'' It is about Democrats and Republicans joining together to rise above partisan interests to act in the national interest. It is about the people's representatives finally standing up and saying, ''Passing The Buck Stops Here.''

I urge the Senate to do the right thing—for America and its future generations that we are so shamelessly willing to burden with our debt. Pass the balanced budget amendment. Pass it now.

CSE is a 250,000 member grassroots advocacy organization founded in 1984 to defend and promote America's free enterprise system.

COALITION URGES PASSAGE OF BALANCED BUDGET AMENDMENT IN THE SENATE ''GET WITH THE PROGRAM,'' SAYS SMALL BUSINESS GROUP

WASHINGTON, DC.—The Small Business Survival Committee [SBSC] urged members of the United States Senate to swiftly pass the Balanced Budget Amendment to begin restoring fiscal sanity, as well as America's faith, in the federal government.

''It is no surprise that those Senators lined up against the Balanced Budget Amendment [BBA] are those who continue to support big government, and continue to view government as the solution—not the problem. President Clinton, Senator Robert Byrd and the ''right to know'' crowd are fighting a losing battle and should get with the fiscal accountability program,'' said SBSC President Karen Kerrigan.

SBSC and a coalition of organizations supporting passage of the Balanced Budget Amendment held a press conference today to

collectively voice support for swift action in the United States Senate.

''I find it particularly insincere that Senators called for a ''right to know'' amendment, are the same Members who secretly stuff appropriation bills with pork and special interest programs, and continue to push funding for programs which have proven to be an abysmal failure. It seems to me that these practices are now in ''the know,'' after years of hiding such fiscal abuse, and taxpayers want this to end,'' added Kerrigan.

The Small Business Survival Committee is a 40,000-member nonpartisan, nonprofit advocacy organization.

STATEMENT ON THE BALANCED BUDGET AMENDMENT

(By Grover G. Norquist)

Americans for Tax Reform, the national clearinghouse for the grassroots taxpayers movement, strongly supports the Balanced Budget Amendment to the United States Constitution.

In addition, as the organization which opposes all tax increases as a matter of principle, we are delighted to support the Constitutional amendment requiring a 60% supermajority to raise taxes, to be voted in the House of Representatives on April 15, 1996. We are grateful for the leadership of freshman Representatives John Shadegg (R–AZ) and Linda Smith (R–WA) on this issue. In addition, we are pleased to see the supermajority as a likely initiative issue in several new states next year. Voters will choose the next President of the United States in November, 1996 as they vote on these initiatives.

Tax increases are not the solution to reducing the budget deficit: they merely feed politicians' appetite for increased federal spending. However, politicians use the federal deficit as a bogus rallying cry for the supposed need to raise taxes. That is why a balanced budget requirement and a supermajority requirement are necessary to keep taxes down and control federal spending. The Balanced Budget Amendment shuts off one spigot feeding federal spending by prohibiting deficit spending. The supermajority amendment shuts off the other spigot by making tax increases difficult. Together, they shut the valve which finally chokes off runaway federal spending. In the nine states which currently have a supermajority requirement, spending growth has slowed dramatically.

Taxpaying Americans have been robbed of their prosperity in the last half-century by the explosion of federal spending, fueled by deficit spending and dramatic increases in taxes. As Congressman Joe Barton has pointed out, federal taxes went from 5% of a family's income in 1934 to almost 19% in 1994. It is time that we reign in the beast. It is time that taxpaying Americans finally have leverage over spending interests. That is why we are strongly in support of the Balanced Budget Amendment and the supermajority amendment.

FARM BUREAU CALLS FOR BALANCED BUDGET AMENDMENT

WASHINGTON, Jan. 5, 1995.—Passage of a balanced budget amendment should be the first step in a series of needed changes in the federal government's policies on taxation, spending and regulations, Farm Bureau told the Senate Judiciary Committee today.

''Farm Bureau has supported a balanced budget amendment to the U.S. Constitution for 15 years,'' said Utah Farm Bureau President Ken Ashby. ''Farmers and ranchers believe a balanced budget amendment can help provide much needed budget discipline that, unfortunately, seems impossible to achieve in government today.''

Ashby, who grows alfalfa, hay and grain, said a more hands-off approach of federal regulations on private economic activity and on state and local governments, in combination with a reduction in deficit spending, would benefit all Americans. He said if a balanced budget amendment is passed, Congress must not slow down on spending reform.

''These changes in public policies will take months of serious consideration and debate by the Congress,'' Ashby said. ''You cannot do everything at once, and we do not expect you to. But we also do not want you to simply pass a balanced budget amendment and then go back to business as usual.''

As part of the Farm Bureau proposal, Ashby called on the senators to push for a balanced budget amendment that would require a three-fifths ''super majority'' vote of both houses of Congress to ignore the balanced budget requirement. He said ''this provision will elevate the scrutiny of proposed new spending and force Congress to go on record when it decides to increase spending.''

He told the Judiciary panel that as a result of the 1990 farm bill and the 1990 Omnibus Budget Reconciliation Act, government payments to farmers have been reduced by approximately one-third. He recognized some cuts as necessary to reduce the Federal debt, but said farmers are not the only segment of the population that needs to pitch in.

''Farmers have not been entirely happy with these reductions but understand that cuts are necessary if a balanced budget is to be achieved,'' Ashby said. ''Now it is time for all government programs, including social security and defense, to follow agriculture's example and contribute to spending control.''

Farm Bureau, he said, also believes any amendment proposal should require the president to submit a balanced budget to Congress. Ashby said this provision would help spread the responsibility for balancing revenue and spending among the legislative as well as the executive branch.

Ashby told the panel that the current practice of allowing passage of tax increases by a majority of the members present on the floor of either house must change. He told the committee that a majority of the total membership of each house, recorded by a roll call vote, should be required for future tax increases, making them more difficult to achieve.

CHRISTIAN COALITION,
CAPITOL HILL OFFICE,
Washington, DC, February 24, 1995.

DEAR SENATOR: On behalf of the 1.5 million members and supporters of the Christian Coalition, we urge you to support the balanced budget amendment [BBA] to the Constitution.

The mounting national debt threatens our nation's economic future. Unless we act today to restore fiscal sanity, more private savings will be drawn away from investments necessary for lasting economic growth. Without a BBA, the nation will grow deeper in debt to foreign creditors, and the interest payments on the soaring debt will preclude other budget priorities. This is indeed a bleak legacy to leave our children and grandchildren.

Moreover, we do not believe that the American people are taxed too little. Rather we believe that the federal government spends too much. According to the Tax Foundation, federal, state and local taxes claimed 39.5 percent of the income earned by a median two-earner family in 1994. Every additional four year delay without a balanced budget could result in another trillion dollars of debt, and another $55 billion in annual interest costs. According to the National Taxpayers Union, these interest payments alone will cost today's child over $130,000 in extra taxes, on average, over his or her lifetime.

A balanced budget amendment is long overdue. We urge you to pass it now to secure a sound fiscal future for America's families.

Sincerely,

MARSHALL WITTMANN,
Director, Legislative Affairs.
HEIDI SCANLON,
Director, Governmental Affairs.

CONGRESS OF THE UNITED STATES,
Washington, DC, March 15, 1994.

DEAR COLLEAGUE: What did Thomas Jefferson get for $225 billion? The Louisiana Purchase, which became all or part of 15 States.

What are we getting for $223 billion? Absolutely nothing, except another year older and deeper in debt.

THOMAS JEFFERSON AND THE LOUISIANA PURCHASE

OVERVIEW—FEBRUARY 1994

When Balanced Budget Amendment (BBA) supporters have quoted Thomas Jefferson's sentiments against government debt, Sen. Byrd cited the Louisiana Purchase, arguing:

The purchase amount, $15 million, all borrowed, was almost twice the size of the total annual federal budget in 1804. The comparable figure would be translated into $2.8 trillion today—a ''whopper'' of a transaction.

Jefferson talked tough against going into debt before he was President, but obviously saw how the need for borrowing could arise once he became President.

Jefferson had virtually no association with writing the Constitution; Madison, who did, said that the wise incurring of debt could benefit posterity.

RESPONSES

To buy the Louisiana Territory, Jefferson did borrow an amount equal to twice the amount the federal government was spending annually at the time. However, total federal outlays amounted to only about 1.6% of gross domestic product in 1804 (compared to 22% in 1994). Jefferson's purchase was equal to a less than 3.5% of GDP, the equivalent of about $224.5 BILLION in 1993 dollars.

In other words, in GDP-adjusted terms, the Louisiana purchase cost Jefferson about the same amount the government now deficit-spends every year, and about the same amount the government spends on net interest payments just to service the debt every year.

The BBA follows both Jefferson's philosophy and his example. Obviously, his ultimate position was that debt was acceptable (1) for extraordinary needs and (2) if it was repaid.

S.J. Res. 41, requiring a ⅗ vote to deficit spend or raise the debt limit, provides both a norm of balanced budgets and the flexibility to meet extraordinary needs.

Jefferson reduced the federal debt by half during his first term.

Unlike today's general indebtedness, Jefferson paid for the Louisiana Purchase with a specific, dedicated note. The debt so incurred was paid off fully within 20 years, by 1823.

When Jefferson submitted the treaty and related legislation to Congress in 1803, he stated his expectations that: (1) The remaining national debt would be paid off before the Louisiana note came due; and (2) the then-current growth in revenues would enable retirement of the Louisiana debt in a relatively short time.

The Louisiana Purchase was a once-in-a-lifetime opportunity. Certainly you would expect to obtain a ⅗ vote for such an extraordinary and beneficial investment. And in fact, all of the relevant Congressional

votes related to the Louisiana Purchase far exceeded the ⅗ margin required to borrow under S.J. Res. 41.

Madison, too, dedicated his Presidency to balanced budgets, promising ''to liberate the public resources by an honorable discharge of public debt.'' In fact, he retained Jefferson's Treasury Secretary to continue Jefferson's responsible fiscal policies.

This year the federal budget deficit will be, adjusted for size of GNP, about equal to the amount that President Jefferson borrowed for the Louisiana Purchase.

But the government is not ''investing'' this $223 billion. Unlike that of 1804, 1994's borrowing is not buying us 306,573,740 acres of fertile prairies, navigable waterways, and abundant natural resources, to resell at a profit and with which to enrich the lives and well-being of our children. Today's borrowing is for current consumption, simply allowing government programs to spend beyond their income.

Every year, this generation's government is incurring additional debt of a magnitude that Jefferson and his generation felt was appropriate only for a once-in-a-lifetime endeavor.

The $15 million (in 1804 dollars) worth of bonds issued to finance the Louisiana Purchase was paid off completely within 20 years. In GNP-adjusted 1993 dollars, this purchase turned a $74 billion profit in land sales alone by 1823, and another $132 billion profit in land sales by 1834. These proceeds helped reduce the federal debt to $38,000—that's $38 thousand—in 1834 and '35, its lowest level before or since.

In contrast, over this past 20 years, the gross federal debt will have increased by 869 percent—from $484 billion in fiscal year 1974 to $4.69 trillion at the end of FY 1994, as projected by CBO. In fact, the red ink has flowed in 56 of the last 64 years.

The federal government has been accumulating debt so fast and in such massive amounts that American taxpayers are now servicing that debt with interest payments about equal—again, adjusted for size of GNP—to what Jefferson and the 8th Congress borrowed to double the size of the nation. (CBO-projected gross interest in FY 1994: $298 billion; Net interest: $201 billion.)

Jefferson's government invested. Ours has been eating the seed corn in increasing quantities for decades.

The above information on Jefferson's Louisiana Purchase has been drawn from two papers prepared at our request: Jefferson's Constitutional Dilemma with the Louisiana Purchase, by James M. Hamilton (Stenholm staff), and An Economic Analysis of the Jefferson Administration and the Louisiana Purchase, by William A. Duncan, PhD (National Taxpayers Union Foundation). Rather than send you a 22-page Dear Colleague, we invite you to contact any of us or Ed Lorenzen (5–6605), Andy Moore (5–6730), Donna Tobias (4–2752), or Aaron Rappaport (4–5573) for copies of these papers.

Sincerely,

CHARLES W. STENHOLM.
ROBERT F. SMITH.
LARRY E. CRAIG.
PAUL SIMON.

gressional Leaders United for

A BALANCED BUDGET.

H.J. RES. 1, THE JEFFERSON AMENDMENT

For over 140 years in this nation, balanced federal budgets were part of the unwritten constitution just like the two party system and the workings of the electoral college. Modern necessity dictates change through a balanced budget amendment to the constitution. Jefferson foresaw this some 200 years ago:

''I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.'' (The Jefferson Memorial, Washington, D.C.)

Quotes from the Framers and others on the evils of public debt:

''It is a miserable arithmetic which makes any single privation whatever so painful as a total privation of everything which must necessarily follow the living so far beyond our income. What is to extricate us I know not, whether law, or loss of credit. If the sources of the former are corrupted, so as to prevent justice the latter must supply its place, leave us possessed of our infamous gains, but prevent all future ones of the same character.'' (Jefferson, 1787)

''I place economy among the first and most important of republican virtues, and public debt as the greatest of the dangers to be feared.'' (Jefferson, 1816)

''If we run into such debts, as that we must be taxed in our meat and in our drink, in our necessaries and our comforts, in our labors and our amusements, for our callings and our creeds, as the people of England are, our people like them, must come to labor sixteen hours in the twenty-four, give the earnings of fifteen of these to the government for their debts and daily expenses . . .'' (Jefferson, 1816)

I believe it may be regarded as a position warranted by the history of mankind that, in the usual progress of things, the necessities of a nation, in every stage of its existence, will be found at least equal to its resources. (Alexander Hamilton in the Federalist #30)

To liberate the public resources by an honorable discharge of public debts. (President James Madison, Stating one of the primary goals of his Administration)

Interest is now paid to capitalists out of the profits of labor; not only will this labor be released from the burden, but the capital, thus thrown out of an unproductive use, will seek a productive employment; giving thereby a new impetus to enterprise in agriculture, the arts, commerce, and navigation. (Samuel Inghams, Secretary of the Treasury under Andrew Jackson)

President Andrew Jackson, in proposing to effect substantial reductions in the war debt, observed:

We should look at the national debt, as just as it is, not as a national blessing but as a heavy burden on the industry of the country to be discharged without unnecessary delay.

President Benjamin Harrison described unnecessary public debt as ''criminal.''

[Even during unsatisfactory economic conditions,] * * * ''the government should not be permitted to run behind its debt.'' (President William McKinley)

The nation must make financial sacrifices accompanied by a stern self denial in public expenditures until we have conquered the disabilities of our public finance * * * we must keep our budget balanced for each year. (President Calvin Coolidge)

''To preserve our independence, we must not let our rulers load us with perpetual debt. We must make our election between economy and liberty, or profusion and servitude.'' (Jefferson, 1816)

''There does not exist an engine so corruptive of the government and so demoralizing of the nation as a public debt. It will bring on us more ruin at home than all the enemies from abroad against whom this army and navy are to protect us.'' (Jefferson, 1821)

''The payments made in discharge of the principal and interest of the national debt, will show that the public faith has been exactly maintained.'' (Jefferson, 1801)

''The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves.'' (Jefferson)

''I wish it were possible to obtain a single amendment to our constitution. I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of its constitution; I mean an additional article, taking from the federal government the power of borrowing.'' (Jefferson, 1798)

''The consequences arising from the continual accumulation of public debts in other countries ought to admonish us to be careful to prevent their growth in our own.'' (President John Adams in his Inaugural Address)

''Stewards of the public money should never suffer without urgent necessity to be transcended the maxim of keeping the expenditures of the year within the limits of its receipts. (President John Quincy Adams)

''As the vicissitudes of nations begat a perpetual tendency to the accumulation of debt, there ought to be a perpetual, anxious, and unceasing effort to reduce that which at any time exists, as fast as shall be practicable, consistent with integrity and good faith.'' (Alexander Hamilton)

''Once the budget is balanced and the debts paid off, our population will be relieved from a considerable portion of its present burdens and will find not only new motives to patriotic affection, but additional means for the display of individual enterprise.'' (President Andrew Jackson)

''After the elimination of the public debt, the Government would be left at liberty * * * to apply such portions of the revenue as may not be necessary for current expenses to such other objects as may be most conducive to the public security and welfare.'' (President James Monroe)

''Money being spent without new taxation and appropriation without accompanying taxation is as bad as taxation without representation.'' (President Woodrow Wilson)

If there is one omission I fear in the document called the Constitution, it is that we did not restrict the power of government to borrow money. (Thomas Jefferson, 1798)

A wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities. (Thomas Jefferson, First Inaugural Address, March 4, 1801)

The public debt is the greatest of dangers to be feared by a republican government. (Thomas Jefferson)

The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequences as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves. (Thomas Jefferson, Quoted by George Will in ''It Ought To Be A Crime,'' Washington Post, April 30, 1992)

[Factsheet from Congressional Leaders United for a Balanced Budget]

CAPITAL BUDGETING—NOT A CAPITAL IDEA FOR THE CONSTITUTION

A Constitutional Amendment should reflect broad principles and should not contain narrow policy decisions such as defining a capital budget. There is wide disagreement among policymakers about what should be included in a federal capital budget. We should not place a concept such as capital budgeting in the Constitution when there is no consensus on what constitutes a capital budget.

State and local governments have a check on their use of capital budgets through bond ratings. If a state government were to abuse its capital budget, the states bond rating would drop and the state would be unable to continue to finance new capital expenditures for borrowing. In addition, many states require that bond issues be approved by the voters. These checks on the abuse of capital budgets would not exist under a federal capital budget, making it far more likely that a federal capital budget would be abused.

The justification that most businesses and state and local governments have for capital budgeting is that they occasionally need to make one-time, extraordinary expenditures that are amortized over a long period of time. The federal budget is so huge—$1.5 trillion in 1994—that almost no conceivable, one-shot project would make even a small dent in it.

Even the Federal Interstate Highway System, which has been called the largest peacetime undertaking in all of human history, was financed on a pay-as-you-go basis. President Eisenhower initially proposed that the Interstate System be financed through borrowing. However, Congress kept it on-budget and financed it through a gas tax at the suggestion of Senator Albert Gore, Sr. We are unlikely to have another capital expenditure of this magnitude in the foreseeable future.

While state capital spending is often placed off-budget, so are trust fund surpluses. According to a Price-Waterhouse study, state budgets would be roughly in balance if both capital expenditures and trust funds were included on budget.

Exempting a capital budget from budget restraints ensures that spending on capital investments—financed entirely by debt—will increase. The debt incurred as a result of these expenditures will crowd out spending on items other than physical capital.

Less than four percent of federal outlays are for non-defense physical investment. Given the relatively small and constant share that capital expenditure have in the federal budget, there is no need to remove capital expenditures from the general budget.

S.J. Res. 1/H.J. Res. 28 does not prevent the creation of a separate operating and capital accounts, but the total budget must remain in balance. This is consistent with the recommendations of GAO, which stated,

''. . . the creation of explicit categories for government capital and investment expenditures should not be viewed as a license to run deficits to finance those categories . . . . The choice between spending for investment and spending for consumption should be seen as setting of priorities within an overall fiscal constraint, not as a reason for relaxing that constraint and permitting a larger deficit.''

[Congressional Leaders United for a Balanced Budget—Revised January 30, 1995]

BALANCED BUDGET AMENDMENT—PROMOTING HONESTY IN BUDGETING

H.J. Res. 1/S.J. Res. 1, the bi-partisan consensus Balanced Budget Amendment to the Constitution, is written to foreclose loopholes or evasions in its implementation and enforcement, while allowing for necessary and beneficial flexibility. It also will have the salutary effect of providing incentives for more honest and accurate budgeting than now or in the past.

The general self-enforcing mechanism in the BBA: The 3/5 vote on the debt limit:

No matter what accounting techniques are used to depict a balanced budget, and regardless of any ''rosy scenario'' economic assumptions, smoke and mirrors, or honest estimating mistakes, if *actual* outlays exceed *actual* receipts, the Treasury ultimately would need to borrow in order to meet the government's obligations. This would require 3/5 votes in both the Senate and House to raise the debt limit.

The threat of a ''train wreck'' on the debt limit provides a powerful incentive for truth-in-budgeting, because Congress and the President could not escape the consequences of policies that increased the debt. Opponents who focus on the difficulty of achieving a 3/5 majority miss the point. They are still focused on what's necessary to run a deficit. The possibility of a 3/5 debt vote is a *deterrent*. Facing it is so undesirable that Congress and the President generally would do anything to avoid it—even balance the budget!

H.J. Res. 1/S.J. Res. 1 rules out loopholes and ''gimmicks;'' for example:

The amendment could not be evaded by moving items off-budget. H.J. Res. 1 does not require that a single document, a ''budget,'' be written in balance. It deals with how *total* outlays conform to *total* receipts. Taking an item ''off-budget'' in statute still could be used to give that item priority over others or give it certain protections in the budget process (as has been done with Social Security), but would not affect the operation of the BBA. The amendment would remove the current incentive to move items off-budget for the purpose of masking a deficit. The possibility of a 3/5 debt limit vote would deter moving deficit spending ''off-budget.''

Definitions of terms could not be manipulated to evade the BBA. Terms such as ''receipts,'' ''debt,'' ''revenue,'' ''whole number,'' and ''war'' already appear in the Constitution and have long-established meanings. Others, such as ''outlays,'' ''debt held by the public,'' ''budget,'' and ''declaratory judgment'' are universally and solidly understood, having been long-defined and used in OMB, CBO, Congressional, legal, and other documents. Committee reports and floor debates since 1981 have gone to great lengths to establish a legislative history for, and preventing misinterpretation of, these and other terms.

H.J. Res. 28/S.J.Res. 1 would promote honesty and accuracy in budget estimates:

Congress and the President *can not* plan for a coming fiscal year without making estimates. Section 1, requiring that *actual* outlays and receipts be in balance, and Section 6, allowing for the use of estimates, operate together as follows:

Section 6 says estimates may be used in preparing a budget plan;

Section 1 requires that such planned budgets be in balance;

Following such a budget plan, so long it is reasonable to do so, complies with Section 1. This means Congress and the President need not re-open the budget throughout the fiscal year, simply because of month-to-month fluctuations in receipts or outlays. (E.g., A wave of last-minute tax payments could cause actual receipts to fall short of estimates in one month's and exceed them in the next.) Indeed, some previous versions have been criticized as inflexible because they lacked estimates language.

The threat of a 3/5 debt limit vote will enforce the accuracy of budget estimates.

The experience of our compliance with the caps on discretionary outlays enacted as part of the 1990 Budget Enforcement Act illustrates how budgetary restraints provide an incentive for sound estimates. Although Congress appropriates budget authority and must rely on estimates of outlays, it has complied with the outlay caps by taking care to ensure that the appropriations bills enacted did not pose a risk of breaching the outlay caps. A balanced budget amendment would provide a similar, but far stronger, incentive for improving *all* budget estimates.

To be safe, Congress should, and probably would, plan small surpluses in most years.

The BBA would be promoting honesty and accuracy in dealing with contingent liabilities:

Currently, there is no incentive for Congress and the President to tackle the politically difficult issues associated with contingent liabilities such as government pensions and savings and loan insurance. For example, Congress repeatedly postponed action on the S & L cleanup, even though that ultimately resulted in increased costs to the federal government. By restraining the government's ability to borrow, H.J.Res. 28/S.J.Res. 1 will provide a powerful incentive to deal with contingent liabilities promptly—before they result in unnecessary costs—and honestly.

EMERGENCY APPROPRIATIONS SHOULD NOT BE EXEMPTED FROM THE BALANCED BUDGET AMENDMENT

An amendment to override the balanced budget in case of disaster or national emergency is unnecessary.

According to the Congressional Budget Office, since 1978 there have been only seven years in which supplemental appropriations for natural disasters have exceeded $100 million. The incidence of natural disasters requiring large supplemental appropriations is historically unusual.

The text of the balanced budget amendment provides for the constitutional requirement for a balanced budget to be waived with a three-fifths vote of both Houses.

In the past five supplemental bills put before Congress, both Houses have voted with at least a three-fifths majority to approve the supplemental funding.

Congress has consistently voted to appropriate funds by at least three-fifths majority, in the case of national disaster, economic emergency and war.

In 1991 the Senate passed a bill to offset the costs of Desert Storm to various governmental agencies, as well as additional appropriations for food stamps, State unemployment compensation operations, veterans compensations and pensions, 92 to 8. It passed the House 365 to 43.

Later that year the Senate passed another supplemental bill providing disaster assistance funds to FEMA and to meet costs of Desert Storm, 75 to 17. The House passed the same bill 303 to 114.

In 1992 the Senate passed a bill appropriating emergency funds for hurricane Andrew and hurricane Iniki, 84 to 10. The House had already passed this bill 297 to 124.

In 1993, the Senate passed a bill for emergency relief for the major widespread flooding in the Midwest, by voice vote, the House passed it 400 to 27.

In the most recent emergency supplemental bill that went in large part to fund victims of the most recent Los Angeles earthquake, the Senate approved the measure 85 to 10, the House approved it 337 to 74.

EMERGENCY SUPPLEMENTAL VOTES FEBRUARY 1994

This is a summary of emergency supplemental appropriations from FY '78 through FY '94. The statistics are based on a review of funds appropriated to FEMA. There are a wide variety of disaster bailout funds, but this is the best measure because no broader study of federal disaster funding is available.

The measures cited here include two non-FEMA supplemental appropriations for the Small Business Administration and which appear on the dollar amount list in this section.

HISTORY OF DISASTER SUPPLEMENTALS AS OF FEBRUARY 1994

The table below from the Congressional Budget Office shows that in the sixteen years since 1978 there have been only seven years in which Supplemental Appropriations for Natural Disasters have exceeded $100 million. The incidence of natural disasters requiring large supplemental appropriations is historically unusual and the use of these funds has clearly not been a ''budget buster.''

CERTAIN SUPPLEMENTAL APPROPRIATIONS FOR NATURAL DISASTERS [1]

[By fiscal year, in millions of dollars]

	1978	1980	1989	1990	1992	1993	1994
P.L. 95–255:							
Disaster relief (floods)	300	.....	.....	.....	.....	.....	.....
P.L. 95–284:							
SBA disaster loans (floods)	758	0	0	0	0	0	0
P.L. 96–304:							
FEMA (Love Canal, NY)	0	870	0	0	0	0	0
SBA disaster loans (Mt. St. Helens)	0	1,177	0	0	0	0	0
P.L. 101–100:							
FEMA disaster relief (HUGO)	0	0	1,108	0	0	0	0
P.L. 101–130:							
Loma Prieta:							
Stafford disaster relief	0	0	0	1,100	0	0	0
Federal-aid to highways	0	0	0	1,000	0	0	0
SBA disaster loans	0	0	0	500	0	0	0
Unanticipated needs	0	0	0	250	0	0	0
P.L. 102–229:							
FEMA disaster relief	0	0	0	0	943	0	0
Commodity Credit Corporation	0	0	0	0	1,750	0	0
P.L. 102–302:							
FEMA disaster relief	0	0	0	0	300	0	0
SBA disaster loans	0	0	0	0	195	0	0
Employment & training	0	0	0	0	500	0	0
P.L. 102–368:							
Commodity Credit Corporation	0	0	0	0	430	100	0
SBA disaster loans	0	0	0	0	357	0	0
FEMA disaster relief	0	0	0	0	2,517	0	143
Assisted housing	0	0	0	0	183	100	0
P.L. 103–76:							
Commodity Credit Corporation	0	0	0	0	0	1,050	0
Prior contingency; released 8/12/93	0	0	0	0	0	300	0
Borrowing authority	0	0	0	0	0	0	900
Economic development assistance	0	0	0	0	0	100	0
Corps of Engineers	0	0	0	0	.....	.....	.....
Flood control, Mississippi River	0	0	0	0	0	120	60
Federal-aid to highways	0	0	0	0	0	100	0
Community development grants	0	0	0	0	0	200	0
FEMA disaster loans	0	0	0	0	0	1,735	265
P.L. 103–121:							
SBA disaster loans (LA earthquake)	0	0	0	0	0	0	140
Total	1,058	2,047	1,108	2,850	7,175	3,805	1,508

[1] The estimates on this table are for major disasters where the appropriations exceeded $100 million.

TABLE 1.—HOUSE AND SENATE VOTES ON SELECTED APPROPRIATION MEASURES INCLUDING DISASTER FUNDS, FY1978–FY1994

[as of February 1994]

Fiscal Year/bill number/name (Public law number)	Final passage [1]	
	House	Senate
FY1978:		
H.J.Res. 873, Supplemental (P.L. 95–284).	Voice [2]	
H.J.Res. 796, Supplemental (P.L. 95–255).	393–4 [3]	Voice [3]
FY1979:		
H.R. 4289, Supplemental (P.L. 96–38).	284–132	Voice
FY1980:		
H.R. 7542, Supplemental (P.L. 96–304).	291–117	37–19
FY1981:		
None		
FY1982:		
None		
FY1983:		
None		
FY1984:		
None		
FY1985:		
None		
FY1986:		
H.R. 4515, Supplemental (P.L. 99–349)	355–52	Voice
FY1987:		
None		
FY1988:		
None		
FY1989:		
H.J.Res. 407, Continuing Resolution, (P.L. 101–100)[4].	Voice [2]	
FY1990:		
H.J.Res. 423, Supplemental (P.L. 101–130).	303–107 [2]	
H.R. 4404, Supplemental (P.L. 101–302).	308–108	Voice
FY 1991:		
None		
FY 1992:		
H.R. 5620, Supplemental (P.L. 102–368).	Voice [5]	Voice [5]

TABLE 1.—HOUSE AND SENATE VOTES ON SELECTED APPROPRIATION MEASURES INCLUDING DISASTER FUNDS, FY1978–FY1994—Continued

[as of February 1994]

Fiscal Year/bill number/name (Public law number)	Final passage [1]	
	House	Senate
H.R. 5132, Supplemental (P.L. 102–302).	249–168	Voice
H.J. Res. 157, Supplemental (P.L. 102–229).	303–114	Voice
FY 1993:		
H.R. 2667, Supplemental (P.L. 103–75).	Voice [5]	Voice [5]
FY 1994:		
H.R. 2519, Commerce, Justice, State (P.L. 103–121).	303–100	90–10
H.R. 3759, Supplemental (P.L. 103–211).	245–65	Voice

Sources: Library of Congress. Bill digest files in Scorpio (C103, C102, C101, CG99, CG96); Daily Digest. Congressional Record, v. 124, March 22, 1978, p. D 230, March 23, 1978 p. D 234, & May 12, 1978, p. D 403; Daily Digetst. Congressional Record, v. 132, June 24, 1986. p. D 433. U.S. Library of Congress. Congressional Research Service. Federal Funding for Disasters. Memorandum by Keith Bea, dated November 3, 1993.

[1] Votes on final passage are votes on conference reports, unless otherwise noted.

[2] No conference report, House agreed to Senate amendments.

[3] On initial passage, the House and Senate passed the same bill.

[4] This was a continuing resolution, which included supplemental appropriations.

[5] No conference report, both Houses considered amendments between the two Houses. All votes were voice votes.

CRS REPORT FOR CONGRESS,
April 30, 1992.

(By Robert Keith and Edward Davis)

A BALANCED FEDERAL BUDGET: MAJOR STATUTORY PROVISIONS

SUMMARY

During the remainder of the 102nd Congress, the House and Senate are expected to consider whether the Constitution should be amended to require a balanced Federal budget. Both chambers have addressed this issue in past years, but Congress has never enacted such an amendment for ratification by the States. Although the Constitution does not prescribe a balanced Federal budget, provisions have been enacted into law on several occasions stating this as a goal or policy of the Federal Government.

This report identifies and briefly discusses the major statutory provisions that pertain to the goal or policy of a balanced Federal budget. These provisions range in scope from a simple, one-line statement to a lengthy set of provisions involving complicated implementing procedures. Most of them state that a balanced Federal budget is a national goal, or require that the President include proposals or information applicable to such a goal in his annual budget submission and economic report to Congress, but do not establish procedures to enforce compliance. While most of the provisions remain in effect, some were applicable to fiscal-year periods that have expired and have been repealed.

The most well-known statute in this category is the Balanced Budget and Emergency Deficit Control Act of 1985, commonly referred to as the Gramm-Rudman-Hollings (GRH) Act. The 1985 GRH Act set forth annual deficit targets leading to a balanced Federal budget by fiscal year 1991 and established an automatic process for across-the-board spending cuts (known as ''sequestration'') aimed at keeping the deficit within the statutory targets. The detailed enforcement mechanism distinguishes the GRH Act from other balanced-budget statues.

The GRH Act was amended extensively in 1987 and 1990. The 1987 amendments postponed the balanced-budget goal until fiscal year 1993; the most recent amendments extend the sequestration process through fiscal year 1995, provide for adjustable deficit targets, and change the focus of the GRH Act from achieving budgetary balance to controlling the growth of discretionary spending and maintaining deficit neutrality regarding legislative changes in mandatory spending and revenues. During the period from fiscal year 1986 through fiscal year 1991 (when fixed deficit targets were in effect), the actual deficit exceeded the deficit target in the GRH Act by between about $6 billion (fiscal year 1987) and $205 billion (fiscal year 1991).

Other major statutes pertaining to the goal of a balanced Federal budget include: a law increasing the public debt limit in 1979, the Byrd Amendment of 1978, the Humphrey-Hawkins Act of 1978, the Revenue Act of 1978, the Revenue Act of 1964, and the Budget and Accounting Act of 1921.

INTRODUCTION

During the remainder of the 102nd Congress, the House and Senate are expected to consider whether the Constitution should be amended to require a balanced Federal budget. Both chambers have addressed this issue in past years, but Congress has never enacted such an amendment for ratification by the States.[1] Although the Constitution does not prescribe a balanced Federal budget, provisions have been enacted into law on several occasions stating this as a goal or policy of the Federal Government.

This report identifies and briefly discusses the major statutory provisions that pertain to the goal or policy of a balanced Federal budget. These provisions range in scope from a simple, one-line statement to a lengthy set of provisions involving complicated implementing procedures. Most of them state that a balanced Federal budget is a national goal, or require that the President include proposals or information applicable to such a goal in his annual budget submission and economic report to Congress, but do not establish procedures to enforce compliance. While most of the provisions remain in effect, some were applicable to fiscal-year periods that have expired and have been repealed.

GRAMM-RUDMAN-HOLLINGS ACT OF 1985

The most well-known statute in this category is the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99–177, Increase in the Public Debt Limit; 99 Stat. 1038–1101; December 12, 1985), commonly referred to as the Gramm-Rudman-Hollings (GRH) Act. The 1985 GRH Act set forth annual deficit targets leading to a balanced Federal budget by fiscal year 1991 and established an automatic process for across-the-board spending cuts (known as ''sequestration'') aimed at keeping the deficit within the statutory targets. The detailed enforcement mechanism distinguishes the GRH Act from other balanced-budget statutes.

The Act was modified extensively in 1987 by the Balanced Budget and Emergency Deficit Control Reaffirmation Act 1987 (Title I of P.L. 100–119, Increase in the Public Debt Limit; 101 Stat. 754–784; September 29, 1987), which extended the goal of a balanced budget to fiscal year 1993.

Most recently, the GRH Act was amended extensively by the Budget Enforcement Act (BEA) of 1990 (Title XIII of P.L. 101–508, Omnibus Budget Reconciliation Act of 1990; 104 Stat. 1388–573 through 1388–630; November 5, 1990). The BEA revised the deficit targets in the GRH Act, making the targets adjustable rather than fixed, and extended the sequestration process for two more years—through fiscal year 1995 (although the budget is not required, and is not expected, to be in balance by that time). Additionally, two new procedures enforceable by sequestration were established: (1) adjustable limitations on different categories of discretionary spending funded in the annual appropriations process and (2) a ''pay-as-you-go'' process to require that increases in direct spending (i.e., spending controlled outside of the annual appropriations process) or decreases in revenues due to legislative action are offset so that there is no net increase in the deficit.

The 1990 amendments changed the focus of the GRH Act from achieving budgetary balance to controlling the growth of discretionary spending and maintaining deficit neutrality regarding legislative changes in mandatory spending and revenues. This change in focus is reflected in Table 1, which shows the original and revised GRH deficit targets.

TABLE 1. ORIGINAL AND REVISED DEFICIT TARGETS

[In billions of dollars]

Fiscal year	Original target	1987 revision	1990 revision	Revision in fiscal year 1993 budget
1986	171.9	.....	.....	.....
1987	144	.....	.....	.....
1988	108	144	.....	.....
1989	72	136	.....	.....
1990	36	100	.....	.....
1991	0	64	327	.....
1992	.....	28	317	.....
1993	.....	0	236	419.4
1994	.....	.....	102	304.9
1995	.....	.....	83	300.5

Note: The targets set in 1990 and revised subsequently, unlike the targets set in 1985 and revised in 1987, do not reflect the Social Security trust fund surpluses or the Postal Service.

The GRH Act is linked to the Congressional Budget Act of 1974 (P.L. 93–344, as amended), principally by the requirement in Section 606 of the 1974 Budget Act that budget resolutions not recommend deficits in excess of the GRH Act targets. Additionally, the unadjusted deficit targets and discretionary spending limits are set forth in Section 601(a) of the 1974 Budget Act.

During the period that the GRH Act has been in effect, sequestration has been triggered five times—once each for fiscal years 1986, 1988, and 1990, and twice for fiscal year 1991. The sequestration reductions made for fiscal year 1986 were voided by court action and later reaffirmed, the reductions for fiscal year 1988 were later rescinded, the reductions for fiscal year 1990 were modified substantially, and the reductions for fiscal year 1991 were applied in one instance to domestic discretionary programs and in another to international discretionary programs (the latter reductions were later rescinded). With regard to the other two fiscal years, sequestration was forestalled for fiscal year 1987 by the enactment of alternative deficit reduction measures and was avoided for fiscal year 1989 because the estimated deficit excess was less than the $10 billion margin-of-error amount.

During the period from fiscal year 1986 through fiscal year 1991 (when fixed deficit targets were in effect), the actual deficit exceeded the deficit target in the GRH Act (see Table 2). The overage ranged from about $6 billion for fiscal year 1987 to nearly $205 billion for fiscal year 1991.

TABLE 2.—ACTUAL DEFICIT COMPARED TO MAXIMUM DEFICIT AMOUNT: FISCAL YEAR 1986–1991

[In billions of dollars]

Fiscal year	Maximum deficit amount	Actual deficit	Actual deficit over target
1986	171.9	221.2	49.3
1987	144.0	149.8	5.8
1988	144.0	155.2	11.2
1989	136.0	153.5	17.5
1990	100.0	220.5	120.5
1991	64.0	268.7	204.7

Note: Deficit amounts are presented on a consolidated basis (including the transactions of off-budget entities—the Social Security trust funds and the Postal Service).

The major provisions of the Gramm-Rudman-Hollings Act and the 1974 Budget Act are codified in Titles 2 and 31 of the United States Code. The text of these laws is contained in publications of the House and Senate Budget Committees: (1) House Budget Committee, Congressional Budget and Impoundment Control Act of 1974 and Part C (and Sections 274 and 275) of the Balanced Budget and Emergency Deficit Control Act of 1985 and Subtitles C and E of Title XIII of the Budget Enforcement Act of 1990 as Amended Through December 31, 1990, committee print, serial no. CP–2, February 1991, and (2) Senate Budget Committee, Budget Process Law Annotated, committee print, S. Prt. 102–22, April 1991.

TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT (1979)

In 1979, Congress added two sections to a measure providing an increase in the debt limit (P.L. 96–5, Temporary Increase in the Public Debt Limit; 93 Stat. 8; April 2 1979). The provisions were intended to bring balanced budget proposals for fiscal year 1981 and 1982 before Congress for consideration by requiring both the Budget Committees and the President to submit them. Both sections were repealed on September 13, 1982, upon the enactment of P.L. 97–258, which recodified Title 31 of the United States Code (''Money and Finance'').

Budget Committee Reports.—The first provision, Section 5, required the House and Senate Budget Committees to report balanced budgets by April 15 of 1979, 1980, and 1981. Section 5 stated:

Congress shall balance the Federal budget. Pursuant to this mandate, the Budget Committees shall report, by April 15, 1979, a fiscal year budget for 1981 that shall be in balance, and also a fiscal year budget for 1982 that shall be in balance, and by April 15, 1980, a fiscal year budget for 1981 that shall be in balance and by April 15, 1981, a fiscal year budget for 1982 that shall be in balance; and the Budget Committees shall show the consequences of each budget on each budget function and on the economy, setting forth the effects on revenues, spending, employment, inflation, and national security.

1979 Reports. In 1979, the House Budget Committee complied with the requirement by issuing Toward a Balanced Budget: Report Pursuant to Public Law 96–5 (House Report 96–96, April 13, 1979, 102 pages) and a companion committee print that included majority and minority staff reports. The Committee reported the budget resolution for fiscal year 1980 (H. Con. Res. 107) the same day, but it did not include recommendations for fiscal years 1981 or 1982 (House Report 96–95, April 13, 1979)

The Senate Budget Committee reported two budget resolutions for fiscal year 1980 (Senate Report 96–68, April 12, 1979); both resolutions included recommendations for fiscal years 1981 and 1982. The principal budget resolution, S. Con. Res 22, proposed a surplus of $0.5 billion for fiscal year 1981 and $0.7 billion for fiscal year 1982. The second resolution, S.

[1] For a discussion of House and Senate action on this issue, see: (1) ''Congress and a Balanced Budget Amendment to the U.S. Constitution,'' by James V. Saturno, CRS Report 89–4 GOV, January 3, 1989, 19 pages; and (2) ''Balanced-Budget Amendment Fails in House; Act OK'd,'' by George Hager, Congressional Quarterly Weekly Reports, vol. 48, no. 29, July 21, 1990: 2284–2285.

Con. Res. 23, was referred to as the ''alternative congressional budget.'' It recommended a deficit of $18.2 billion for fiscal year 1981, but a surplus of $12.3 billion for fiscal year 1982.

The House and Senate agreed to a final version of H. Con. Res. 107 (the House adopted the Senate amendment of May 24, 1979) that recommended surpluses of $5.0 billion and $4.1 billion for fiscal years 1981 and 1982, respectively.

1980 Reports. In 1980, the House Budget Committee reported a budget resolution for fiscal year 1981 (H. Con. Res. 307, House Report 96–857, March 26, 1980) that recommended surpluses of $2.0 billion and $11.7 billion for fiscal years 1981 and 1982, respectively. The Senate Budget Committee reported a budget resolution (S. Con. Res. 86, Senate Report 96–654, April 9, 1980) that recommended a balanced budget for fiscal year 1981 (a deficit of zero) and a surplus of $10.0 billion for fiscal year 1982.

The final version of the budget resolution (H. Con. Res. 307) agreed to by the House and Senate (the Senate adopted the House amendment of June 12, 1980 to its amendment) recommended a surplus of $0.2 billion for fiscal year 1981. With respect to fiscal year 1982, the House recommended a surplus of $26.8 billion and the Senate recommended a surplus of $5.8 billion.

1981 Reports. In 1981, the House Budget Committee reported a budget resolution for fiscal year 1982 (H. Con. Res. 115, House Report 97–23, April 16, 1981) that recommended a deficit of $25.6 billion for that fiscal year, but a surplus of $25.8 billion by fiscal year 1984. The Senate Budget Committee reported a budget resolution (S. Con. Res. 19, Senate Report 97–49, May 1, 1981) that recommended a deficit of $48.8 billion for fiscal year 1982, but a balanced budget (a deficit of zero) for fiscal year 1984.

The House and Senate finally agreed on a budget resolution (H. Con. Res. 115, House Report 97–46, May 15, 1981) that recommended a deficit of $37.65 billion for fiscal year 1982, but a surplus of $1.05 billion for fiscal year 1984.

Alternate Budget Proposals of the President.—The second provision, Section 6, required the President to submit alternate proposals for a balanced budget if his budget submission for fiscal years 1981 or 1982 recommended a deficit for either fiscal year. Section 6 stated:

(a) If a budget which is transmitted by the President to the Congress under section 201 of the Budget and Accounting Act, 1921, would, if adopted, result in a deficit in fiscal year 1981 or in fiscal year 1982, the President shall also transmit alternate budget proposals which, if adopted, would not result in a deficit.

(b) Such alternate budget proposals shall be transmitted with the budget and, except as provided in subsection (c), shall be in such detail as the President determines necessary to carry out the purposes of this section.

(c) Alternate budget proposals for a fiscal year transmitted under subsection (a) shall include a clear and understandable explanation of specific differences between the budget and alternate budget proposals.

Fiscal Year 1981 Budget. President Carter submitted his budget for fiscal year 1981 to Congress on January 28, 1980. The President proposed a deficit for fiscal year 1981 of $15.8 billion and a surplus for fiscal year 1982 of $4.8 billion. The alternate proposals required by P.L. 96–5 were set forth on pages 319–326 of the budget and explored the impact of both $20 billion in revenue increases and spending reductions (including such options as a six-percent surtax on individual and corporate income, increased payroll taxes, the elimination of Federal pay raises, no real growth in defense, and holding cost-of-living increases in indexed programs to three-fourths of the increase in the Consumer Price Index).

On March 31, 1980, President Carter sent a package of budget revisions to Congress, calling for surpluses of $16.5 billion for fiscal year 1981 and $41.5 billion for fiscal year 1982.

Fiscal Year 1982 Budget. President Carter submitted his budget for fiscal year 1982 to Congress on January 15, 1981, shortly before leaving office. He proposed a deficit of $55.2 billion in fiscal year 1981 and $27.5 billion for fiscal year 1982. The alternate proposals required by P.L. 96–5 were included on pages 312–320 of the budget.

On March 10, 1981, President Reagan submitted to Congress revisions to the Carter budget for fiscal year 1982. The revised budget proposals recommended deficits for fiscal year 1981 and 1982 of $54.9 billion and $45.0 billion, respectively.

The actual deficits (on a consolidated basis) for fiscal years 1981 and 1982 were $79.0 billion and $128.0 billion, respectively.

BYRD AMENDMENT OF 1978

The ''Byrd Amendment,'' named for former Harry F. Byrd, Jr. of Virginia, was included in the Bretton Woods Agreements Amendments Act of 1978 (Section 7 of P.L. 95–435; 92 Stat. 1053; October 10, 1978). In its original form, the Byrd Amendment stated: ''Beginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.''

Two years later, the Byrd Amendment was modified by the Bretton Woods Agreements Amendment Act of 1980 (Section 3 of P.L. 96–389; 94 Stat. 1553; October 7, 1980) to read as follows: ''The Congress reaffirms its commitment that beginning with fiscal year 1981, the total outlays of the Federal Government shall not exceed its receipts.''

In 1982, as part of the recodification of Title 31 of the United States Code (P.L. 97–258; 96 Stat. 908; September 13, 1982), the Byrd Amendment was restated in its current form: ''Congress reaffirms its commitment that budget outlays of the United States Government for a fiscal year may not be more than the receipts of the Government for that year'' (see 31 U.S.C. 1103 (Budget Ceiling)).

HUMPHREY-HAWKINS ACT OF 1978

The Full Employment and Balanced Growth Act of 1978 (P.L. 95–523), commonly known as the Humphrey-Hawkins Act, included two provisions (in the form of amendments to the Employment Act of 1946) that pertain to the goal of a balanced Federal budget. First, Section 103(a) of the Act (92 Stat. 1892–1893) amended the required elements of the President's annual economic Report to Congress to include numerical goals for certain measurements of economic activity consistent with, among other things, a balanced Federal budget. The amended provision of the Employment Act of 1946 (15 U.S.C. 1022, Economic Report of the President) states in part:

The President shall transmit to the Congress during the first twenty days of each regular session * * * an economic report (hereinafter in this chapter referred to as the ''Economic Report'') together with the annual report of the Council of Economic Advisers, submitted in accord with section 1023(c) of this title, setting forth—

(2)(A) annual numerical goals for employment and unemployment, production, real income, productivity, Federal outlays as a proportion of gross national product, and prices for the calendar year in which the Economic Report is transmitted and for the following calendar year, designated as short-term goals, which shall be consistent with achieving as rapidly as feasible the goals of full employment and production, increased real income, balanced growth, fiscal policies that would establish the share of an expanding gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities, *a balanced Federal budget*, adequate productivity growth, price stability, achievement of an improved trade balance, and proper attention to national priorities * * * [*Emphasis added;* other provisions relating to the Economic Report and the goal of obtaining a balanced Federal budget are contained in 15 U.S.C. 1022a and 1022b]

Second, Section 106 of the Act (92 Stat. 1895–1896) added a new section to the Employment Act of 1946 (15 U.S.C. 1022c, inclusion of Priority Policies and Programs in President's Budget), which states in part:

To contribute to the achievement of the goals under the Full Employment and Balanced Growth Act of 1978, the President's Budget for each fiscal year beginning after October 27, 1978, shall include priority policies and programs, which shall include, to the extent deemed appropriate by the President, consideration of the following—

(I) proper attention to balancing the Federal budget; * * *

REVENUE ACT OF 1978

The Revenue Act of 1978 (P.L. 95–600) called for a balanced budget in fiscal years 1982 and 1983. Section 3 of the Act (Policy With Respect to Additional Tax Reductions; 26 U.S.C. 1 note; 92 Stat. 2767), stated:

As a matter of national policy the rate of growth in Federal outlays, adjusted for inflation, should not exceed 1 percent per year between fiscal year 1979 and 1983; Federal outlays as a percentage of gross national product should decline to below 21 percent in fiscal year 1980, 20.5 percent in fiscal year 1981, 20 percent in fiscal year 1982 and 19.5 percent in fiscal year 1983; *and the Federal budget should be balanced in fiscal years 1982 and 1983.* If these conditions are met, it is the intention that the tax-writing committees of Congress will report legislation providing significant tax reductions for individuals to the extent that these reductions are justified in the light of prevailing and expected economic conditions. *[Emphasis added]*

REVENUE ACT OF 1964

The Revenue Act of 1964 (P.L. 88–272) included a statement that Congress' action on the measure was intended to bring about a balanced budget, although no reference was made to a specific fiscal year. Section 1 of the Act (Declaration by Congress; 78 Stat. 19), stated:

It is the sense of Congress that the tax reduction provided by this Act through stimulation of the economy, will, after a brief transitional period, raise (rather than lower) revenues and that such revenue increases should first be used to eliminate the deficits in the administrative budgets and then to reduce the public debt. To further the objective of obtaining balanced budgets in the near future, Congress by this action, recognizes the importance of taking all reasonable means to restrain Government spending and urges the President to declare his accord with this objective.

BUDGET AND ACCOUNTING ACT OF 1921

Section 202 of the Budget and Accounting Act of 1921 (P.L. 67–13; 42 Stat. 21; June 10, 1921) requires the President to make appropriate recommendations to Congress in the budget whenever the estimates of revenues and spending in the budget show a deficit or a surplus. In its original form, the section directed the President to recommend ''new taxes, loans, or other appropriate action'' to meet a projected deficit. When the section was restated in the 1982 recodification of

Title 31 of the United States Code, the specific reference to new taxes and loans was removed. In its current form (31 U.S.C. 1105(c)), the section states:

The President shall recommend in the budget appropriate action to meet an estimated deficiency when the estimated receipts for the fiscal year for which the budget is submitted (under laws in effect when the budget is submitted) and the estimated amounts in the Treasury at the end of the current fiscal year available for expenditure in the fiscal year for which the budget is submitted, are less than the estimated expenditures for that year. The President shall make recommendations required by the public interest when the estimated receipts and estimated amounts in the Treasury are more than the estimated expenditures.

Mr. LEAHY. Mr. President, I am proud of the action taken by the Senate today. This vote was what serving in the Senate is really about—having the courage to do what is right, refusing to pass the buck to the States, standing up to special interest groups and voting our conscience. Once it become obvious that proponents of this constitutional amendment planned to use the annual surpluses in the Social Security trust fund to mask the true deficit, the so-called balanced budget amendment was doomed.

If this vote had been a secret ballot, it would have been lucky to get 40 votes. This is a lesson in why you don't amend the Constitution by taking a poll.

I have commended many of my colleagues for voting against the so-called balanced budget amendment. In particular, I believe that the senior Senator from West Virginia [Mr. BYRD] and the senior Senator from Oregon [Mr. HATFIELD] should be commended. They were true profiles in courage and the country is indebted for their courageous leadership.

THE PROPOSED CONSTITUTIONAL AMENDMENT REQUIRING A BALANCED BUDGET

Mr. ROCKEFELLER. Mr. President, this has been a historic day in the U.S. Congress. This afternoon, each of us casted our vote on whether to attach an amendment to the U.S. Constitution that would require in the strictest possible terms a balanced Federal budget in the next 7 years. And I joined my fellow and senior Senator from West Virginia, Senator BYRD, who led a serious and important battle against the amendment, in voting against this idea. I voted to defend West Virginians from the flaws and dangers of this amendment, and to help ensure that our State is not forced once again to pay the costs of others' political agendas, past mistakes, and potential for reckless harm.

Today's vote was another victory for the idea that promises like Social Security should be kept. That Congress should focus on making real choices and setting priorities in dealing with the Federal Government's budget, instead of using the Constitution to blindly do the job.

I have no doubt this idea for a constitutional amendment will be pushed again. For that reason, I want to outline my concerns again.

This proposed constitutional amendment will affect the lives of every single West Virginian, and every single American—children, parents, and grandparents; seniors, workers, and students; our large and small businesses, and all their workers; the poor and the disabled—everyone. So it is critical that we fully understand what it proposes to do and how it will work.

I suggest that we all have to be able to answer a few key questions: First, can the constitutional balanced budget amendment accomplish its goal of bringing the deficit down to zero in 7 years? Second, how it will accomplish that goal? And third, what are the consequences of moving to a zero deficit over a short period of time? Who will sacrifice, what programs will be cut, what programs will be spared?

In short, who wins and who loses? That's what West Virginians tell me they want to know about the balanced budget amendment. They're willing to participate in a national crusade to get the deficit down—they supported the significant downpayment we made on reducing the deficit in 1993. As always, West Virginians are willing to do their fair share—but they want to know what that share will be. They want to know up front. And so do I. Before I give you my best answers to those three key questions, I want to note why the answers to these questions are essential.

West Virginia has been told to trust Washington's promises about balancing the budget and cutting taxes in the past, as recently as the early 1980's. We didn't have the say in the matter then, and we were devastated. we don't want to let that happen again. We remember very well what happens when the Federal Government claims it can reduce its own costs, and then ignores the costs it foists onto the States.

I remember well because I was Governor of West Virginia, when all too similar promises were made. I watched Congress promise to balance the budget while cutting taxes. I saw what happened in living Color. West Virginia's plants shut down and threw working families into foreclosures and bankruptcies. Our kids were forced to drop out of college because tuition money had to go to their families' mortgage payments and medical expenses. Our senior citizens had to keep their thermostats at 58 degrees because they could not afford heating oil. When I say I want to see the hidden details of this balanced budget amendment, it is not a political ploy or out of intellectual curiosity.

It is because I have a contract with West Virginia. This time around I am here in Congress, not working in the State House, and I insist that West Virginia be told how this is going to be done. I insist on behalf of the residents of West Virginia. West Virginians take their right to know so seriously that the West Virginia Legislature passed a bipartisan resolution on February 14, 1995, reaffirming the importance of their right to know the details of the balanced budget amendment.

The West Virginia resolution urged Congress to submit:

[A] Balanced Budget Constitutional Amendment to the States for ratification only if Congress provides a detailed projection of what reductions will be made in the Federal budget and how these will affect the government and people of West Virginia, including, but not limited to, the effect on Social Security benefits, Medicare, Medicaid, education, highway moneys, including completion of the Appalachian corridor system, and other programs necessary to the health and well-being of the people of our State.

It's that simple. If you don't tell me how reaching a balanced budget is going to be achieved so I can share that information with West Virginia, you won't have my vote.

Democrats proposed just such an amendment. This amendment, the citizens' right to know amendment, would have given the States and their residents the right to know how we intend to reach a zero deficit by 2002. This improvement was offered by Senator DASCHLE on behalf of our Democratic Senate colleagues. It was summarily rejected, mostly on party lines, early in the debate on the balanced budget amendment.

I am both shocked and disappointed that a majority of Members serving in the U.S. Senate chose to deny the people whom they represent the right-to-know what it would take to reach a balanced budget. And I am forced to conclude what a number of Republican leaders have stated publicly is the case, they believe that if the people knew what it would take to balance the budget—they might not support the constitutional amendment.

The Senate also considered a proposed revision to this constitutional amendment to protect Social Security's trust funds. I voted for that idea, and watched my colleagues in support of the amendment proceed to vote to not protect Social Security. How can West Virginians—working people and seniors—trust their elected officials when they pay into a trust fund that's supposed to be dedicated only to Social Security, and see this rejection of the idea of keeping that promise. The failure of this constitutional amendment to protect Social Security is a reason alone to reject it.

In fact, surveys of public opinion show over and over again that support for this amendment plummets to 32 percent when they learn that Social Security could be cut. I want to be clear. The constitutional amendment before the Senate today could lead to cuts in Social Security, and if it had prevailed, I am sure it would result in cuts in Social Security.

Having said that, let us turn to the key questions: Can the amendment do what its exponents claim and how, and what does that mean?

Question 1—Can the constitutional amendment achieve a balanced budget by 2002?

A careful reading of the actual legislative language of the balanced budget amendment makes clear the amendment alone will do nothing to balance our budget. It will not make us any smarter or wiser, or fairer when it comes time to proceed with the actual budget bills required to make tangible progress toward deficit reduction.

This Congress does not need a constitutional amendment to perform its job of deficit reduction and fiscal prudence. Nothing in this provides Congress with any new authority to reduce the deficit, make tough budget cuts, or increase revenues. What the amendment says is that the Constitution requires Congress to balance the budget—and little more. Provisions are included which permit waiving the balanced budget requirements, but they have extraordinary hurdles attached to them in the form of supermajority rollcall votes. Other unprecedented provisions in this amendment would rewrite our Constitution's system of checks and balances, in addition to the provisions which upset the fundamental principles of majority rule.

The amendment does not lay out explicit definitions of what should or should not be counted in tallying up the deficit, or reducing it. It doesn't protect any program, not Social Security, not Medicare, not defense, not veterans, not children's programs, not disaster aid.

Congress already has the power to reduce the deficit. It doesn't need the algebra of fiscal policy written into the Constitution to do its job. And some of us in Congress, myself and my fellow West Virginian, the great Senator BYRD included, have stepped up to the plate and helped reduce the deficit. Congress has proven it can reduce the deficit on its own. We proved that in 1993 during the budget reconciliation debate—and we should all learn from that lesson. That congressional budget resolution, not a constitutional dictate, reduced the deficit. And Congress can and should reduce the deficit again. We should make our choices about how to do it prudently. We should take into consideration the benefits provided by certain Government programs and services, from Medicare to veterans benefits to public health programs to environmental protection. But continue on the path of deficit reduction we can and must.

In 1993, when the Vice President had to cast the final Senate vote for the President's budget to put us over the edge and ensure we made a sizeble downpayment on the deficit, Democrats voted to streamline and cut popular Federal programs, to ask individual Americans to contribute to our national effort to reduce the deficit, and to increase Federal revenues where appropriate.

That vote was about real deficit reduction—not a popular gimmick, not a quick constitutional fix that pretends to reduce the deficit, but is nothing more than a soundbyte so we can say we've resolved to get our financial house in order.

Should a balanced budget amendment pass this year, the national deficit for 1995 will be exactly the same tomorrow as it is today, even if this constitutional balanced budget amendment were to pass overwhelmingly. That fact seems to have been obscured by much of the talk surrounding this amendment.

The truth is that those who believe we need to start making the tough choices about how to reduce the deficit won't find any tough choices in the actual amendment. Indeed, I would argue that this amendment is an easy way out—it allows Members to declare their support for a balanced budget amendment, and lets them avoid the question of how we're going to do it. That's a copout in my book. And it is a huge step backward from the progress we made under the administration's 1993 budget that put us on the path to a reduced deficit with explicit, program-by-program cuts.

A specific budget plan that details how we will achieve a balanced budget is the only real way to reduce the deficit and balance the budget—with or without this constitutional amendment. We have seen no such plan from the Republican majority during the debate of this amendment, although the new majority leader has shared his speculation about the level of some cuts which might be necessary with some news organizations.

Just this week, the new chairman of the Finance Committee, Senator PACKWOOD, has speculated what kind of cuts would be necessary out of the health care programs for the elderly and disabled, and for poor children and pregnant women—$250 billion out of Medicare and Medicaid over the next 5 years, and some $400 billion over the full 7-year timeframe to reach balance. That's late breaking news from some of the Republican leaders and it raises real questions about why we have been provided with so little in terms of hard numbers to date.

I know West Virginia seniors, rural hospitals, the disabled, and doctors who care for Medicare and Medicaid patients will be significantly affected by the unprecedented cuts described by Senator PACKWOOD. But even as the new congressional leadership begins to give us real numbers about what will be required of certain programs—I have heard very little about how they are going to make those cuts—which providers' rates will be cuts, how much more seniors will pay out-of-pocket, if children can still count on receiving basic health care services, and so on. The lack of details has been astounding.

Question 2—How will we achieve the goal of a balanced budget in 7 years?

My answer to question 1 was that the constitutional amendment would not, of and unto itself, balance the budget. It merely says we have to do it. The only answer I can offer to question 2 is those in control of the numbers haven't told us how they will achieve the goal. They just say they will. They say ''trust us.'' That is it. Thats all the detail you get from the amendment.

True, by thinking about the basic components of the Federal budget, you can start figuring out what programs will take major hits under a balanced budget amendment—the health programs, Medicare and Medicaid, Social Security if Congress reneges on its ephemeral promise to protect it. Even the staff of the Republican chairman of the Budget Committee, Senator DOMENICI's staff, has concluded that over $664 billion in cuts will be required in non-Social Security, non-defense mandatory entitlement programs to reach a zero deficit by the year 2002. That's nearly $100 billion in cuts every year if you spread it out. But they will not tell you how.

I want to take a moment to explain a couple of very important amendments to the balanced budget resolution, and my views of them. You will recall that the Democratic amendment to exempt the Social Security Program from the calculations of the constitutional balanced budget amendment was rejected by a majority of Members. I voted for that initial amendment to protect Social Security because I saw it as a way to protect Social Security—and other—people from unfair harm, from broken promises, and for the sound financial reason that Social Security has not contributed to our deficit problems. It is a trust fund.

During the amendment process, I also voted for additional protections for other vital programs as well, but that approach to protecting certain populations from the ravages of the balanced budget amendment failed.

Recognizing that a series of those protective amendments failed to win passage, I could not vote for the substitute balanced budget amendment offered by Senator FEINSTEIN. The amendment has the laudable goal of, once again, attempting to protect Social Security beneficiaries as I voted to do earlier in this process, but it still would have required a balanced budget in a 7-year timeframe. This amendment would still put a straitjacket on the country's economic and budget policy, it could still cause the devastating effects that the main proposal before us poses for West Virginians and the rest of Americans. It still could turn a period of high unemployment into a recession. In protecting Social Security, but serving as the same speeding train, the Feinstein amendment might also mow down benefits for war-injured veterans, Medicare payments that rural hospitals depend on to survive, the programs that help create jobs in our communities, funds for our schools. Had the Feinstein amendment prevailed, it would have forced even more draconian cuts in services and benefits where

they shouldn't be made. You can be sure that I will fight as hard as anyone to protect Social Security, but slapping a balanced budget amendment onto the Constitution is not the way to do that.

Many Members also claim they want to protect defense from cuts as a result of the balanced budget, but haven't made any hard promises that they will do it. Other programs like veterans compensation and health care were not protected during the amendment process either—despite my offering what I believe to be a very surgical way to protect a special category of particularly needy and deserving veterans. It failed. Veterans have no guarantees that they are safe from the balanced budget's requirements for cuts.

And that leads us to question three.

Question 3—What are the consequences for our families, for our businesses, and for our States, of balancing the budget in 7 years?

Even if one accepts the lack of specific information regarding how we would actually reach a balanced budget, one of the things Congress is always responsible for doing is assessing the consequences of our actions. That's impossible to do without the detailed plan or road map of how we are going to get from here to there.

The amendment itself has been the subject of serious debate over the last few weeks in the U.S. Senate. Much of that debate has been a direct result of the tremendous effort and careful analysis of the senior Senator from West Virginia, ROBERT C. BYRD—we all owe him a debt of gratitude for the numerous illuminations he has provided. And I thank each of my colleagues for their various contributions and commentary on a whole list of amendments which have been offered as modifications to the amendment. I would like to be able to point to a single strengthening amendment beyond the limitation of how the courts can intervene in setting our budgetary and tax policies, but cannot.

But I do honestly believe that the Senate has come to understand what is decipherable from the text of the amendment, and the intent of its proponents, because of this debate—even though we have not been provided the critical road map which would show us how we would achieve the balance of the Federal budget. What we do know about how this amendment would work is troubling to me as well.

It astounds me to see Senators voting for this amendment without knowing how this amendment affects their States and our citizens, how vulnerable populations like children and seniors would fare under this amendment. I believe the citizens of West Virginia deserve to know how this amendment will affect their daily lives, the safety of the water they drink, the quality of the air they breathe, the health care services they need, the student loans their children need to make college affordable, and the roads which they drive on to get to and from work every day.

They deserve to know how this amendment will affect the basics of their daily lives—and because the majority voted down the right to know amendment offered by the minority leader they will not know. They cannot know because Congress does not know. All Congress knows is the amendment will constitutionally mandate us to find a way to make sure we do not spend any more than we take in every year—that's the only assurance in the entire amendment—every other provision is a maybe.

The cost-shifting that the balanced budget would cause to families and businesses in my State of West Virginia and in every State is mammoth. Statistics compiled by the Treasury Department, by the respected Wharton School, and by the Center for Budget and Policy Priorities, among others, give us a picture of how the amendment will affect our citizens even in the absence of detailed numbers, and program by program explanations.

The different analyses I have seen tell us that under the balanced budget amendment, in West Virginia, 22,000 jobs will be lost, personal income will drop, health care services will be limited, and State and local taxes will have to be increased by over 20 percent to compensate for lost Federal dollars.

The studies show that the State of West Virginia would have to raise its State and local taxes 20.6 percent across the board to compensate for the funds it would lose under the balanced budget amendment; that 22,000 jobs are projected to be lost in West Virginia as a result of the balanced budget amendment (in 2003); that personal income in West Virginia is projected to drop by 8 percent as a result of the balanced budget amendment (in 2003); that the balanced budget amendment and the House contract's fiscal agenda would result in a loss of $96 million in Federal grants in 1996—which is $53 per resident.

West Virginia would lose $322 million in 1998, $175 per resident of West Virginia.

West Virginia would lose $841 million in 2002, $457 per person in West Virginia.

West Virginia Medicare benefits would be cut by $824 million per year (by the year 2002), and total over $3 billion cumulatively.

West Virginia Medicaid funding would be cut by $488 million per year (by the year 2002).

Those projections provide a pretty stark picture of the consequences of this amendment. They tell me I cannot support this balanced budget amendment. And they raise a whole lot of additional questions about how this amendment will affect our national economy. How will the amendment affect West Virginia's economic recovery, and the economic future of our States? How will our most vulnerable populations fare under the amendment? How will defense be treated in the process? What kind of cuts, reforms, or increased revenues are necessary to take us from today's deficit, (which has steadily been reduced over the last 3 years for the first time since Harry Truman was President due to Democratic budget initiatives), to a zero deficit and how will we maintain that during natural disasters, recessions, or national security threats? How will we get from here to there?

These are more of the kind of questions that West Virginians have called my office asking me and my staff. These are the kind of questions I want hard answers to before I vote in favor of any balanced budget amendment. Because this is such a serious matter, amending the document which enshrines our Nation's guiding principles and which is our Nation's organic law, I would like to list a series of additional concerns about the amendment which the Senate debate of recent weeks has only served to highlight.

In some cases, we have had assurances from the amendments' proponents that some of these concerns will be met in implementing legislation, or because there is strong support for certain programs. But West Virginians have no guarantee of anything under this amendment. I cannot cast my vote on a constitutional amendment based on personal assurances of Members, even those from Members for whom I have the utmost regard. I have to cast my vote based on the actual language of the constitutional amendment and it remains deeply troubling to me.

First, I reiterate, nothing in the balanced budget amendment makes government more efficient, less wasteful, or stops unnecessary spending. Only specific legislation, like the President's own deficit reduction initiative, which passed without a solitary Republican vote, can do that. The debate makes it sound like this amendment is a magic bullet to our perplexing budget dilemmas.

Second, this amendment would result in big increases in State and local taxes. One Governor concludes that without seeing the plan for how balancing the budget will be accomplished, this amendment should be considered a vote to raise State and local taxes. He dubbed the existing amendment a ''trickle down tax increase''.

Third, the balanced budget amendment is bad economic policy. Basic economics tells us the size of the deficit is directly related to the health of the economy. The deficit rises when the economy weakens—but temporary increases in the deficit act as automatic economic stabilizers. When family and business incomes decline, their tax liabilities decline more than proportionately. The resulting deficit means the government is paying out more than it takes in, counterbalancing the fall in the economy. This is true on the spending side as well. For example, when workers lose their jobs, higher outlays

for unemployment, Medicaid, and other programs help fill the gap in family budgets, and in overall economic activity, until the economy or people's individual situations improve. If a balanced budget were required every year, that cushioning effect would not be there.

A balanced budget amendment would force us to cut spending or raise taxes to eliminate increases in the deficit caused by a slowing economy. Our fiscal policies would make the natural swings in the economy more pronounced—recessions will be deeper and longer.

The proposed super-majority vote that would permit a deficit to exist during times of economic weakness is ineffective. Congress would have to be more prescient than private sector forecasters in order to develop the needed consensus to waive the strict balanced budget requirement.

Fourth, the amendment does not adequately address how it will be enforced—making it either unenforceable or turning over enforcement to the courts or the President. The amendment would fundamentally restructure the balance of power set forth in the Constitution and could still empower unelected judges to raise taxes or cut spending, despite a restriction placed on the courts in an amendment offered by Senator NUNN in the closing moments of this debate. If the amendment were deemed unenforceable, respect for the Constitution would be severely diminished and rule of law would be undermined.

The question of who will enforce this amendment has not been adequately answered by its proponents. Will it be the courts or the President—or is it intended not to be enforceable? Placing an unenforceable amendment in our Nation's charter would result in countless constitutional violations and make all other constitutional rights, by extension, violable as well.

Judicial involvement in the budgetary process would be unprecedented, even for declaratory judgments, and yet the balanced budget amendment significantly increases judicial authority. Under this amendment, judges may be the ones asked to make the hard choices about that the Congress is accountable for making today—and I strongly believe judges lack the institutional capacity to make those decisions. It's wholly inappropriate to shift that duty to them.

The Constitution's decision to give the ''power of the purse'' to the legislature was not made lightly. This amendment could transfer some of that power to the courts.

Fifth, rules for fiscal policy should not be written into the Constitution. The Constitution is a miraculous document precisely because it establishes transcendent national ideals and freedoms and the structure of our Government, without micromanaging its performance. It sets individual rights and creates a system of separation of powers, our checks and balances, which protect against any one branch of government becoming too powerful.

Fiscal policies respond to current economic conditions and the structure of the economy—those conditions and structures are constantly changing and should not be restricted to today's needs. Fiscal policy should reflect a constantly changing economic environment, not written in stone in the Constitution.

Sixth, the amendment violates the our traditionally democratic principle of majority rule. The amendment requires a three-fifths supermajority vote to pass a law that allows deficit spending or a debt increase. For more than two centuries, the Constitution has only required a supermajority vote for measures vetoed by the President. Giving a minority the power to absolutely block legislative action would be an unprecedented undermining of majority rule. The wholesale transfer of power from the majority to the minority in cases where there is a recession, need to respond to an international or natural crisis, or to extend the Treasury's ability to borrow to pay the government's bills should not be permitted.

Seventh, the balanced budget amendment will create uncertainty about the reliability of government services and obligations. There is a real practical difficulty in insuring the government's budget is balanced every year. If estimates are inaccurate (as they can very well be) and mid-year revised projections show a deficit by year's end—where will the money to compensate for the deficit come from? Interest payments can't be defaulted on, cutting entitlement programs like Medicare with millions of beneficiaries count on would be extremely unpopular, especially in the circumstance that there is very little notice—which means discretionary programs would probably take the mid-year hit. Discretionary programs like student loans could be totally shut down.

In sum, this constitutional amendment is the most expansive amendment to our Constitution brought to a vote in both Houses in the last 206 years. The amendment is almost as long as the entire Bill of Rights, and it would embed fiscal policy in our Constitution. It's called the balanced budget amendment but does nothing more than say we should balance the budget—the amendment is misnamed, it should be called the ''Let's Use the Constitution to Promise We Will Balance the Budget Amendment.''

When the rhetoric of the virtues of financial responsibility or balance has to be translated into action which will cut the deficit, it will mean across the board cuts in programs which millions of Americans rely on for their health care and nutritional needs, to help send their children to college, to improve their highways and bridges, and to protect our environment. It dodges the toughest questions of how we can get our national health care costs, private and public, under control—and that is both a fundamental flaw of this amendment and a disgrace. In my judgment it will hurt West Virginians and have the harshest effect on the most vulnerable people in my State and in our country. I cannot in good conscience vote for this amendment.

But I can, and will, continue my efforts to reduce the deficit, and to make government programs more responsive to those they serve, and to eliminate duplication and waste as we strive to make government leaner and more efficient, and to manage the costs of priority government programs. A lion's share of that work will be in finally dealing with health care costs and access problems that we failed to address, in part, because the importance of comprehensive health care reform to getting our national deficit under control was not sufficiently understood.

I will continue to be willing to stand up and cast the tough votes if they are necessary to improve our Nation's overall economic health. But I cannot vote for this amendment because my constituents have been denied the basic information about how this amendment would affect their daily lives. In the absence of real information of its consequences, I have had to piece together the effects based on common sense assumptions of what will happen. I am dismayed that there has been a almost uniform refusal to improve this amendment to address the real concerns which have been raised.

It seems appropriate to reflect upon the words of our Founders. I close with the words of Thomas Jefferson who drafted the venerable Constitution which this amendment proposes to radically alter. Thomas Jefferson said:

> I know of no safe depository of the ultimate powers of society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion.

That is a perpetual responsibility of Congress and the business we should be getting about today.

THE 159TH ANNIVERSARY OF THE INDEPENDENCE OF TEXAS

Mrs. HUTCHISON. Mr. President, I think the relevance of what I am going to talk about today will be brought into what has just happened. The historic opportunity that we had that was missed actually falls on the 159th anniversary of the independence of Texas.

One of my predecessors in this Chamber, Sam Houston, led the Texas army to victory at San Jacinto on March 2, 1836, his birthday.

Today, Texans everywhere celebrate that historic victory, and now that we have joined ranks in the United States, we invite all to join us in honoring the victory at San Jacinto.

Texans also remember on this day the soldiers who did not live to see that

victory, because they died a few days earlier at the Battle of the Alamo. One hundred eighty-four brave men held the Alamo for 13 days before falling to 6,000 Mexican troops.

Following a tradition begun by my recent predecessor, John Tower, on the birthday of our more distant predecessor, Senator Sam Houston, I would like to read a letter sent by the commander of the Alamo, Col. William Barret Travis, during the siege. I think it will serve as a reminder of how many people spilled blood to make our country what it is today:

To the people of Texas and all Americans in the world—Fellow citizens and Compatriots—I am besieged by a thousand or more of the Mexicans under Santa Anna. I have sustained a continual Bombardment and cannonade for 24 hours and have not lost a man. The enemy has demanded a surrender at discretion, otherwise, the garrison are to be put to the sword if the fort is taken. I have answered the demand with a cannon shot, and our flag still waves proudly from the walls. I shall never surrender or retreat. Then, I call on you in the name of Liberty, of patriotism and everything dear to the American character to come to our aid with all dispatch. The enemy is receiving reinforcements daily and will no doubt increase to three or four thousand in four or five days. If this call is neglected, I am determined to sustain myself as long as possible and die like a soldier who never forgets what is due his own honor and that of his country. Victory or death. William B. Travis, The Alamo, 2/24/1836.

Today is a great day in the history of Texas. I am sorry that it is a sad day for America. It will be remembered as the day we did not declare independence from the debt accumulated over the last 34 years. We did not close the back door to become heroes of future generations, but while the Alamo is just a memory in our minds, we will be back to fight the battle of the balanced budget amendment. We will amend our Constitution, and we will do the right thing some day.

So while I am not able to celebrate the vote that just happened on this floor a few minutes ago, perhaps we will remember the lesson of the Alamo and perhaps we will remember that it was those who died at the Alamo, who thought they had failed to hold that bastion that paved the way for the success of the Battle of San Jacinto.

Mr. President, our Battle of San Jacinto has yet to come on the balanced budget amendment, but it will. It will come, and we will do what is right for the future generations of our country. The battle has just begun. Today was the Alamo and San Jacinto will follow.

Thank you, Mr. President.

Mr. THURMOND. Will the Senator yield?

The PRESIDING OFFICER. Will the Senator yield?

Mrs. HUTCHISON. Mr. President, I yield.

Mr. THURMOND. Mr. President, I want to commend the able Senator from Texas on what she has had to say about the Alamo. I am very pleased that South Carolina played a big part in that historic event. William Barret Travis, the commander at the Alamo, was born in Edgefield County in South Carolina, the county in which I was born. He was a brave soldier. He fought to the end. Every person there was killed.

James Bonham, another man prominent to the Alamo, was also born in Edgefield County, SC. So we are proud that South Carolina has played a big part in the history of Texas. They saw they could not win over the Mexicans, they were overpowered. James Bonham asked for permission to go out in the countryside to search for reinforcements. He had to fight through the Mexican lines to get out. He could find no help. He fought to get back to the Alamo.

He came back to the fort and fought to his death. He knew they would die because they did not have enough support. Again, I want to commend the able Senator from Texas for telling us about the history of the Alamo.

Mrs. HUTCHISON. Mr. President, let me just say that the Senator from South Carolina, as usual, is right. The people of South Carolina did come and die at the Alamo. They were very much an important part of the independence of Texas.

I want to say that there were people from Tennessee, Kentucky, and Georgia who also played a major part. I would not be standing here today as the Senator from Texas but for the blood of those great men who migrated from the East and came over and were a very important part of the history of our Nation.

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

Mr. FEINGOLD. I thank the Chair.

(The remarks of Mr. FEINGOLD pertaining to the submission of S. Res. 83 are located in today's RECORD under ''Submissions of Concurrent and Senate Resolutions.'')

Mr. FEINGOLD. I yield the floor.

Mr. LEAHY. Mr. President, all of Vermont is saddened today by the loss of a great leader in agriculture, George Dunsmore.

George was a strong advocate for Vermont agriculture. He worked tirelessly promoting it here and abroad, and fighting for it in the legislatures of Montpelier, VT and Washington, DC.

In addition to serving in the State legislature, he had two tenures as Commissioner of Agriculture. Under his leadership the high quality image of Vermont food and agricultural products has flourished. George always looked for ways to find new markets for Vermont products. He knew that it was important for Vermont and New England to look beyond our Nation's borders to the export market.

George understood Vermont agriculture so well because he was a part of it. A dairy farmer in Franklin County, he worked both on the farm and in Montpelier for many years.

He also understood how Washington worked. He was a leader in the National Association of State Departments of Agriculture. He also served as the agricultural specialist for my good friend JIM JEFFORDS when he was a Member of the House of Representatives.

George was a strong supporter of the State's dairy industry and the Northeast Interstate Dairy Compact. I think it is fitting that Senator JEFFORDS and I introduce this measure, Senate Joint Resolution 28, today and do so in memory of him.

Whether he was defending the purity of Vermont's maple products, looking for new markets for our apple growers or fighting for higher prices for dairy farmers, George was always a true advocate for agriculture.

My deepest sympathies go to his wife Bette Ann, and their three children.

TO MY FATHER, BY PETER TORRIERI

Mr. SARBANES. Mr. President, I want to call the attention of our colleagues to a very moving poem by my good friend Peter Torrieri of Baltimore. ''To My Father'' is a tribute not only to those of Italian-American heritage, but also to all of those who crossed the seas to establish families in this great Nation of ours. The immigrant legacy, deeply rooted in our history as Americans, is a facet of our society that should inspire pride and honor.

Peter Torrieri's father, Domenico, came to America during the wave of immigration in the early 1900's. His dream of a better life for himself, his wife, and their children was one that he would see slowly come to fruition. The sacrifices made by the entire Torrieri family illustrate both the strong work ethic displayed by so many immigrant families and the bonds of love and devotion that connect their family.

Domenico Torrieri, then a young man far from his home of Abruzzo, labored day in and day out all for the benefit of his family. Peter's poem shows the highest respect and esteem for his father and for all of the fathers and mothers who made this pilgrimage to the New World, hopeful that their journey would lead them to a bright future.

Peter and his wife Mary are leaders in Maryland's Italian-American community, playing important roles in preserving and passing on their heritage to the next generation as well as working tirelessly on behalf of community, health and civic organizations. As the son of immigrants and as an American who remains deeply devoted to my ethnic heritage, I invite all of our colleagues to read Peter's poem, which pays homage to his father and to all those who sailed the seas in search of a new life in America.

I ask unanimous consent the poem be printed in the RECORD.

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

TO MY FATHER

I praise you, my father, and all your brothers a million strong,
You, dauntless ones who crossed the ocean vast at the early dawn of the century,
Came from distant lands, and gained free access to our friendly shores,
You, challengers of water and wind and the unknown in search of bread and honest toil.
I praise you, Domenico, my father, who shared
Your scant bread with me and gave me the sweat of your brow.
I praise you and your brothers a million strong,
You, anonymous, unrecognized, unsung ones,
The laborers, the toilers, the workers, the builders of America.

I honor you, my father, and all your brothers a million strong,
You, amorphous neglected masses who slept on the earth bare,
Tamed the sooty demons in the coal mines, pushed the plows in the furrows,
Made the deserts bloom, and the stingy soils yield copious crops,
Hammered the spikes that held the rails that span the continent,
And raised the skyscrapers that flirt with the sky.
I honor you, my father, and all your brothers a million strong,
The laborers, the toilers, the workers, the builders of America.

I acclaim you, my father, and all your brothers a million strong,
You, red-eyed-from-soot-and-sweat, bare-chested smiths
Who wrought the steel that forged the spine and backbone of our mighty cities
And powerful industries and ships that sailed the seven seas;
Who dug the subways and laid the roadbeds of the spacious highways;
Who quarried the stones that raised the monuments, the cathedrals, the museums,
And the schools that taught brawn and brain, races and creeds to amalgamate.
I acclaim you, my father, and all your brothers a million strong,
The laborers, the toilers, the workers, the builders of America.

I bow before you, my father, in both humility and pride.
You were just sixteen when your mother, crying,
Gave you her blessings and kissed you good-bye.
Good-bye. You never saw your mother again alive.
You were still a boy when you waved farewell
To the seagulls on the Adriatic shores of Abruzzo,
A boy unbearded, unschooled, unskilled,
But unafraid of the heights and depths,
Driven only by unbending will to find your place in the sun.
I'll always remember you with love, my father,
The barrel-chested, broad-shouldered, five-foot-five
With thick, callus-gloved hands and sinewy biceps,
Face scorched by fierce summer suns and winter icy winds,
But face that greeted friends as well as strangers with a smile.

You, my father, and all your brothers a million strong
May have passed by unnoticed, unrecognized, unappreciated, and anonymous,
But in the juster spheres above, your names are carved on immortal granite.
Millions of you have come and gone
But Someone keeps making you and growing you by the millions more,
Because that Someone loves you, my father,
And all your brothers a million strong.

SHERIFF JOHNNY MACK BROWN: A TRIBUTE

Mr. HOLLINGS. Mr. President, I would like to take this opportunity to pay tribute to a leader in the law enforcement field, Sheriff Johnny Mack Brown from Greenville, SC.

Sheriff Brown's community-oriented approach to law enforcement has proved an effective and innovative way to help maintain law and order. Thanks to Sheriff Brown, agencies from across the country travel to observe this concept of bringing law enforcement back into the community.

Mr. President, it gives me great pride to see South Carolinians hard at work insuring that our State remains a safe place to raise a family and conduct business. Sheriff Brown has taken a bold stance against crime.

''We must not, we cannot fall into the trap of believing we are there to do law enforcement work for the community. We are there to do law enforcement work with the community,'' advised Sheriff Brown in a 1993 newsletter for the National Sheriff's Association.

Johnny Mack Brown has been recognized as a leader by his colleagues both at the national and State level. In 1993 he served as president of the National Sheriff's Association and from 1989–91 he was commissioner for the Commission on Accreditation for Law Enforcement Agencies, Inc. And, under the leadership of Sheriff Brown, the Greenville County Sheriff's Department was the first to achieve accreditation from the commission in 1988. He also served as president of the South Carolina Sheriff's Association in 1983.

Mr. President, I am delighted to commend Sheriff Johnny Mack Brown's dedication to improving the community. His efforts will have a lasting effect not only in South Carolina but across the country.

Recently, the Greenville News wrote of the Greenville County sheriff's exemplary law enforcement methods as a model for the country. I ask unanimous consent that the article be made a part of the RECORD.

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

NATIONAL STUDY LOOKS AT SHERIFF'S OFFICE

(By Bryan Gilmer)

The Greenville County Sheriff's Office is one of 12 law enforcement agencies nationwide being studied for its innovative use of community law enforcement strategies, a researcher said.

Community law enforcement includes getting law officers heavily involved with communities where they work a permanent beat. Then, rather than just responding to calls when trouble arises, the officer can work with community members to solve underlying problems that cause crime.

Gerald L. Williams, who teaches at Sam Houston State University in Huntsville, Texas, spent Thursday and Friday interviewing deputies and their commanders at the Sheriff's Office and touring the county.

In his research project, Williams and a colleague from the University of Kentucky are each examining six agencies. Their research is funded by a grant from the National Institute of Justice.

''This was the only sheriff's department that was selected,'' Williams said. ''It's difficult to be objective when you come into an organization like this one and you see the wonderful things they're doing. It's difficult to remain distant and not become a real cheerleader.''

Williams said he's gathered good information during his visit.

''One of the things that is really key to me is that I've been absolutely impressed with the amount of enthusiasm that exists in the people I've talked to, and a commitment toward community-oriented law enforcement here. There's a true sense of, 'We're going to make this work.'''

TRIBUTE TO COMMISSIONER TILLMAN HILL

Mr. HEFLIN. Mr. President, on March 16, a community committee will hold a special event to recognize the many contributions and hard work of Madison County, AL District One Commissioner Tillman Hill. Proceeds from this most-deserved event honoring an outstanding public servant will go to the Hazel Green Public Library Building Fund. Commissioner Hill opened this library at its temporary location in 1991.

The library is Tillman Hill's pride and joy, and it is entirely fitting and appropriate for his community to thank him by raising funds for the facility he has supported and been instrumental in establishing. He has always remembered his roots and has never forgotten his people's needs. Today, the Hazel Green Library checks out more books than any other rural branch in Madison County—over 40,000 volumes in 1994. Tillman's dream is to build a permanent building for the library on 2 acres of donated land. Plans for a 4,500 square foot facility have already been prepared.

Tillman Hill has dedicated his life to serving his community. He is a native son of Madison County, AL, born there, and having attended high school and college there. During the Korean war he was a noncommissioned officer with the 151st Engineering Battalion. Over the years, he has been a member of the Alabama Housing Authority; the Chamber of Commerce; the Jaycees; and the Lions Club. He is a past president of the Alabama Association of Counties.

Tillman is best known as a veteran county commissioner. He was first elected in 1976 and has served as a commissioner for 19 years. His quest to bring about a county building inspection function is only the most recent of

his efforts that characterize his expertise and talent as a public official. Throughout his career, he has been the driving force behind many other special projects, including the Sharon Johnston Park; Chase Industrial Park; an expanded county water system; senior citizen and nutrition centers; low-interest housing loans; the restoration of historic cemeteries; and, of course, the Hazel Green Public Library. Since being appointed a Madison County license inspector by Alabama Governor Albert Brewer in 1969, Tillman Hill has been living proof that one individual's concern and commitment can make a tremendous and lasting difference in people's lives.

I am proud to commend and congratulate my good friend Tillman Hill for his many years of service—service which reflects great credit upon him, his community, and his State. The success of the Hazel Green Library will long serve as only one testament to his selfless determination and generosity. He truly embodies the very best of what public service is all about.

A TRIBUTE TO THE KNIGHTS OF MALTA FOR WORLDWIDE GOOD DEEDS

Mr. SPECTER. Mr. President, at a time when citizen participation and volunteerism are uniquely important in addressing problems of our society, with the contemplated reduction of governmental expenditures I consider it worthwhile to note the important humanitarian contributions of The Sovereign Order Of Malta and its American foundation, the American Knights and Dames.

Some of the important activities of The Knights of Malta have been called to my attention by a longstanding friend and distinguished Philadelphia lawyer, Mr. James Binns:

(1) This year the Order plans to support the Medical Research Center of New York University, for finding and improving the care, and prevention of Parkinson's Disease and Movement Disorders, which unfortunately affects more and more people every day.

(2) This year also, a 400-bed hospital and a byomedical university is now under construction in Frosinone, Italy, for all students from throughout the world.

(3) For Christmas 1994 the Order donated food, toys and clothing to an entire orphanage in Oradea, Rumania.

(4) In 1992 in the State of Nueva Esparta, Venezuela, the Order donated medical equipment to the Civil Defense and to the Firefighter. In 1993, substantial humanitarian help was sent by the Order to Fiume, Yugoslavia, through the Red Cross.

(5) In 1988 a ''Proclamation'' was signed by Prime Minister Yitzchak Shamir, with a special Ambassador of the Order, sent to Israel, to encourage the spirit of ''Vatican II'', that Jews and Christians are brothers and sisters under Almighty God. Further, to uphold through dialogue, commerce and diplomacy, the World Council of Nations to recognize the State of Israel's inherent rights through Her Sovereign History in perpetuity, as stated in the United Nations Resolution of November 29, 1947.

(6) In 1984 in Rome, Italy, the Order collected over a million US dollars for the Institute, ''Regina Elena'', specializing in the research of the Hyperthermic Treatment or Cancer.

(7) In 1980 the Belgium branch of the Order donated medical assistance to Africa and a special machine to be utilized for the search of water.

(8) In 1978, in Salvador, Bahia, Brazil, an orphanage for 900 children, was founded with complete facilities, including a school up to the 8th grade.

These humanitarian contributions continue activities of The Knights of Malta which originated with the Order of St. John of Jerusalem in 1099 with assistance to the wounded when the first crusaders arrived at the Holy City.

After being expelled from Jerusalem in 1291, the Knights established a new headquarters of the Order at Limassol in Cyprus until 1309. They fortified the city and laid down the armaments regulations for the vessels carrying traders and pilgrims to the Holy Land. In doing so, the maritime power of the Order was established and the Mediterranean Sea was substantially liberated from pirates.

The Knights continuously played a significant role with the siege of the Island of Rhodes in 1309, the defeat of the Ottomans who attempted to seize Rhodes in 1480 and the later battle with the Ottomans in 1522 resulting in the Knights leaving for Candia in 1523. After the Holy Roman Emperor Charles V ruler of Spain and Sicily granted the Island of Malta to the Order, the Knights of Malta reigned over Malta until 1798. After the surrender of the Island to Napoleon Bonaparte in 1798, many of the Knights returned to their own countries forming different commanderies.

During the 19th and 20th centuries, The Knights of Malta sought to avoid political affairs in order to pursue philanthropic activities which its 40,000 members do to this day.

The Knights of Malta, with its unique history over nine centuries, have established a model for worldwide efforts which should inspire other individuals and organizations to do similar good deeds.

THE PEACE PROCESS IN NORTHERN IRELAND

Mr. PELL. Mr. President, last week, British Prime Minister Major and Irish Prime Minister Bruton took an important step toward lasting peace in Northern Ireland. The two leaders unveiled a framework document designed to serve as the basis for negotiations on Northern Ireland's future.

I believe it is important to note, as both Mr. Major and Mr. Bruton have, that the framework document is not a done deal or final settlement to be imposed, but a basis for talks among all the parties of Northern Ireland. This assurance should go a long way toward putting the various parties on the negotiating track.

Both the British and Irish Governments have signaled their willingness to make some difficult compromises in the name of enduring peace and reconciliation—compromises that cut to the heart of each country's traditional constitutional doctrines and that could cost each government political support at home. I believe that Mr. Major and Mr. Bruton should be commended for their courage. Similarly, Irish Foreign Minister Dick Spring, who was in Washington yesterday, deserves great credit for his efforts—in providing continuity and credibility to the process.

For its part, the British Government will propose changes to its constitutional legislation to ensure that the will of the majority of the people of Northern Ireland is respected in determining Northern Ireland's status. Similarly, the Irish Government will introduce and support proposals to end its constitutional claim to Northern Ireland. The document also proposes to create cross-border institutions, such as a North/South body with elected representatives from a Northern Ireland Assembly and the Irish Parliament.

The fate of the process now lies squarely in the hands of the various parties in Northern Ireland. I sincerely hope that they will not miss this historic opportunity to create a permanent peace. An editorial in Monday's Washington Post makes this point rather well, and I ask unanimous consent that it be printed in the RECORD.

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

[From the Washington Post, Feb. 27, 1995]

AGENDA FOR NORTHERN IRELAND

British Prime Minister John Major and his Irish counterpart, John Bruton, took an important first step last week in opening negotiations for the permanent resolution of the Ulster crisis. The leaders released a frame work for talks that offers a set of opening suggestions they hope will lead to permanent reconciliation.

As usual, the Rev. Ian Paisley and his colleagues were not impressed. Blasting the agreement as a conspiracy to force Ulster Protestants into union with the Irish Republic, the 68-year-old hard-liner seeks to block talks before they begin. But other, younger men who might have stood with him in year past were more responsive. One leader of a Protestant paramilitary group rejected the Paisley position and announced that he is tired after 25 years of killing, and ready to talk. That sentiment was echoed by a Protestant member of the Senate of Northern Ireland whose own daughter was killed by an IRA bomb. If that view is widespread, there is reason for hope.

The framework announced is simply the opening move in what may be a protracted series of negotiations. Devise over 18 months of consultations between the British and Irish governments, the document suggests steps that could be taken to heal divisions in the province. The British, for example, want to create a new legislative assembly in Northern Ireland, with voting procedures that will protect the Catholic minority. The Irish government will support changes in that country's constitution that will revoke legal and political claims to the countries in the North. Both governments suggest the

creation of a cross-border authority composed of elected legislators from Ulster and the Republic, which would work together on matters of common interest such as tourism, economic development and environmental regulation. ''These are our ideas,'' Mr. Major stressed, ''but the future is up to [the people of Northern Ireland.]''

That last assurance is critical. No steps will be taken without the consent of the governed. There will be parliamentary debates ahead, counterproposals, compromise and eventually referendums. But there is no rush so long as the cease-fire holds, as it now has for many months. Peace has given a whole generation of combatants an idea of what life should be like. Young people who, until last September never experienced a day free of fear that some indiscriminate killer or hidden bomb would destroy then don't want to see the old days return. Neither do most of their elders who have borne the full brunt of the violence.

INTERNATIONALISM OR ISOLATIONISM—A CHOICE FOR THE NEXT GENERATION OF AMERICAN LEADERS

Mr. PELL. Mr. President, in the opening words of a major foreign policy address last evening, President Clinton said that ''we live in a moment of hope.''

Mr. President, I concur with that sentiment. With the demise of the cold war, with the nascent friendship between the United States and Russia, and with the emergence of democratic trends across the globe, the world is experiencing a realignment in the fundamental relationship between states. It is, as the President suggests, a time of extraordinary opportunity for the United States.

I commend President Clinton for his rejection of an inward-looking course, and endorse his ambitious call to support international peacekeeping, to reduce the nuclear threat by extending indefinitely the Nuclear Non-Proliferation Treaty and implementing other arms control agreements, and to be an aggressive player in the global economy. I also ask unanimous consent that the President's speech be printed in the RECORD at the conclusion of my remarks.

The present circumstances call to mind the watershed period after World War II. Then, as now, the United States faced a stark challenge: whether to assume the mantle of international leadership and become engaged in the establishment of a new diplomatic order, or whether to retreat into isolation, comfortably sheltered by two great oceans from the turbulent world of European balance of power politics.

Due to the courage and foresight of our political leadership—visionaries such as Harry Truman, George Marshall, Dean Acheson, and Arthur Vandenberg—America chartered a firm course of internationalism, guided by the principle of containment of the Soviet Union. Recognizing the shortsightedness of isolationism, the United States chose not to repeat the mistakes it made in ignoring the League of Nations, and became a driving force behind and host of the new United Nations. Our decisions then, and in the ensuing decades, solidified our role as the preeminent power in world affairs.

The changes we have witnessed in the past 6 years are the direct result of the policies we, along with our allies, conceived, refined, and implemented during the course of the cold war. None of these changes, however, could have occurred without American leadership and engagement.

I am therefore troubled by the emerging desire, expressed both in Congress and in public fora across the Nation, to retreat from our international commitments and obligations. And nowhere is this sentiment more dangerous and ill-conceived than in the emerging obsession with the United Nations.

I am now and have been an ardent supporter of the United Nations since 1945, when I was part of the International Secretariat of the San Francisco Conference that drew up the U.N. Charter. In the years since then, I have tried to help to make the United Nations become the effective world organization—the very symbol of the international community of nations—that was envisioned in the charter.

I am not so naive as to profess that the United Nations has always lived up to its potential. The United States-Soviet rivalry tended at times to hamstring the Security Council, and U.N. history occasionally has been interspersed with examples of waste and ineffectiveness. But for every example of failure, I can think of numerous countervailing examples of success—Cambodia, El Salvador, Namibia, and countless others. And now that we are entering a new era of cooperation with Russia, the Security Council harbors even greater promise for becoming a first-rate arbiter of international conflict and discord. U.N. peacekeeping has helped to serve American interests in the Middle East, in Africa, in Latin America, and in Asia. And I know that there will be situations in the future where we will rely on the U.N. peacekeepers to support our foreign policy aims.

Now that we no longer are forced to dedicate such a sizable proportion of our resources to the containment of Russia, we can see before us an entire new range of opportunity for international cooperation and prosperity. But the growth industries and salient political issues of the future—be they in telecommunications, the exchange of information, the flow of capital, the sound use of our environmental resources, or the prevention of the proliferation of conventional and unconventional arms—are heading in a direction that transcends national boundaries. If the United States is to keep pace, it cannot afford to slide back into inward-looking detachment.

In his address, the President set out a challenging and crucially important arms control agenda. I was quite pleased to note the high priority he attaches to achieving the indefinite extension of the Non-Proliferation Treaty at the conference of the parties beginning next month. The President has decided to underscore the importance he attaches to the preservation of international barriers to nuclear proliferation by asking Vice President Gore to lead our delegation. The Vice President will be ably supported by Ambassador Thomas Graham, Jr., and other experts from the Arms Control and Disarmament Agency.

The President also reaffirmed his commitment to the quick completion of a complete ban on nuclear testing. Substantial progress has been made in the negotiations. With a dedicated effort, the remaining stumbling blocks can be overcome.

I was pleased also that the President attaches high priority to the ratification of the START II Treaty. The START I and START II effort is truly bipartisan, spanning three administrations. Under the leadership of Senator HELMS and Senator LUGAR, the Committee on Foreign Relations is in the process of wrapping up hearings started in the last Congress under my chairmanship.

In addition to these priorities, the President told his audience:

> There are other critical tasks we also face if we want to make every American more secure, including winning Senate ratification of the Chemical Weapons Convention, negotiating legally binding measures to strengthen the Biological and Toxin Weapons Convention, clarifying the ABM Treaty so as to secure its viability while permitting highly effective defenses against theater missile attacks, continuing to support regional arms control efforts in the Middle East and elsewhere, and pushing for the ratification of conventional weapons which, among other things, would help us to reduce the suffering caused by the tens of millions of antipersonnel mines. * * *

The President understands that this agenda is both far-reaching and imperative. He said:

> Now, in this year of decision, our ambition for the future must be even more ambitious. If our people are to know real lasting security, we have to redouble our arms control, nonproliferation and antiterrorism efforts. We have to do everything we can to avoid living with the 21st century version of fallout shelters and duck-and-cover exercises to prevent another World Trade Center tragedy.

Mr. President, it is very important to understand that many aspects of arms control and nonproliferation are truly bipartisan. To be sure, Senators have and have had disagreements. Nonetheless, working together in a bipartisan fashion, we have moved steadily forward. During my chairmanship of the Committee on Foreign Relations, we were able to craft bipartisan bills, with the strong involvement of Senator GLENN and other Members, imposing effective sanctions against both nations and individuals engaged in reprehensible activities involving chemical, biological, and nuclear weapons-related activities.

It is indicative of the bipartisan nature of our arms control efforts that every treaty the committee and the Senate approved while I was privileged to be chairman won overwhelming support in the end. We were careful in every instance to resolve all legitimate concerns along the way to committee and floor consideration, and there was never a question with any of the arms control treaties voted out—including the Intermediate-Range Nuclear Forces Treaty, the Conventional Forces in Europe Treaty, the Threshold Test Ban Treaty, the Peaceful Nuclear Explosions Treaty, and the START II Treaty—that the approval would be well beyond the required two-thirds support.

Mr. President, I am gratified that President Clinton has embraced an ambitious agenda that will merit continued bipartisan support. He will thus be able to bring to fruition major initiatives of the Bush administration, as well as his own. The end result will assuredly be a safer, more stable world.

It is important to understand that these efforts represent a continuum in arms control that covers much of the post-World War II period. Presidents Eisenhower and Kennedy initiated the first efforts to curb nuclear testing, and each succeeding administration has built on the successes of its predecessors.

Mr. President, I wish that I could say that the major challenges of arms control and nonproliferation are behind us. Despite the many successes, the challenges ahead are formidable. I am extremely pleased that the President is able and willing to face these challenges. I trust that the Congress will continue a truly bipartisan effort to control, reduce, and even eliminate weapons of mass destruction.

Mr. President, we stand at the crossroads of history. The tenor of current political discourse—focused as it is on disengagement, withdrawal, and neoisolationism—suggests we are heading toward a colossal error in judgment. Those who seek to retreat into a Fortress America offer no constructive suggestion for filling the vacuum to be left by America's withdrawal. We would lose our political and moral authority, our ability to exercise influence in matters vital to our interests, and do grave harm to our standing as one of the greatest powers in history.

In his speech last night, President Clinton mentioned one of the most distinguished members ever to have served in this body—Arthur Vandenberg—who advanced the principle that politics should stop at the waters edge. But many of our interests, Mr. President, only begin there. I stand behind President Clinton's conviction that America can prosper in the next century only through international engagement and the assertion of leadership.

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

[From the White House, Office of the Press Secretary, Mar. 1, 1995]

REMARKS BY THE PRESIDENT TO THE NIXON CENTER FOR PEACE AND FREEDOM POLICY CONFERENCE

The PRESIDENT. To Tricia and John Taylor, and all the people from the Nixon Center; our distinguished guests from Germany and from Russia; of course, to Henry Kissinger—I was thinking when he said we both spoke with accents, judging from the results of the last election, his native country is still claiming him more than mine is claiming me. (Laughter.) But I'm a big one for reconciliation. (Laughter.) And there's plenty of time to achieve it.

I am honored to be here tonight. Just a month before he passed away, President Nixon wrote me the last letter I received from him about his last trip to Russia. I told some people at the time that it was the best piece of foreign policy writing I had received, which angered my staff but happened to be the truth. (Laughter.) And as with all of our correspondence and conversations, I was struck by the rigor of his analysis, the energy of his convictions, and the wisdom of the practical suggestions that he made to me.

But more than the specifics of the letter, which basically argued for the imperative of the United States continuing to support political and economic reform in Russia, I was moved by the letter's larger message—a message that ran throughout Richard Nixon's entire public life and all of his prolific writings. President Nixon believed deeply that the United States simply could not be strong at home unless we were strong and prepared to lead abroad.

And that made a big impression on me. When I was running for President in 1992, even though there was this little sticker up on the wall of my campaign headquarters that said, ''It's the economy, stupid,'' I always said in every speech that we had to have two objectives. We had to restore the American Dream for all of our people, but we also had to make sure that we move into the next century still the strongest nation in the world, and the world's greatest force for peace and freedom and democracy.

Tonight I want to talk about the vital tradition of American leadership and our responsibilities, those which Henry Kissinger mentioned and those which President Nixon recognized so well. Our mission especially I want to discuss—to reduce the threat of nuclear weapons.

Today if we are going to be strong at home and lead abroad, we have to overcome what we all recognize I think is a dangerous and growing temptation here in our own land to focus solely on the problems we face here in America. I want to focus on the problems we face here in America. I've tried to do it for the last two years. I look forward to working with this new Republican-led Congress in the next two. But not solely.

There is a struggle now going on between those of us who want to carry on the tradition of American leadership and those who would advocate a new form of American isolationism. A struggle which cuts curiously across both party and ideological lines. If we're going to continue to improve the security and prosperity of all our people, then the tradition of American leadership must prevail.

We live in a moment of hope. We all know that. The implosion of communism and the explosion of the global economy have brought new freedoms to countries on every continent. Free markets are on the rise. Democracy is ascendant. The slogan says, ''after victory.'' Today, more than ever before, people across the globe do have the opportunity to reach their God-given potential. And because they do, Americans have new opportunities to reach theirs as well.

At the same time, the post-Cold War world has revealed a whole web of problems that defy quick or painless solutions—aggression of rogue states, transnational threats like overpopulation and environmental degradation, terrible ethnic conflicts and economic dislocation. But at the heart of all these complex challenges, I believe, lies an age-old battle—for power over human lives. The battle between the forces of freedom and tyranny, tolerance and repression, hope and fear. The same idea that was under attack by fascism and then by communism remains under attack today in different ways all across the world—the idea of the open society of free people.

American leadership is necessary for the tide of history to keep running our way, and for our children to have the future they deserve. Yet, there are some who would choose escapism over engagement. The new isolationists oppose our efforts to expand free trade through GATT or NAFTA through APEC and the Summit of the Americas. They reject our conviction that democracy must be nurtured with investment and support, a conviction that we are acting on from the former Soviet Union to South Africa. And some of them, being hypocritical, saying that we must trumpet the rhetoric of American strength; and then at the same time, they argue against the resources we need to bring stability to the Persian Gulf or to restore democracy to Haiti, or to control the spread of drugs and organized crime around the world, or even to meet our most elemental obligations to the United Nations and its peacekeeping work.

The new isolationists both on the left and the right would radically revise the fundamentals of our foreign policy that have earned bipartisan support since the end of World War II. They would eliminate any meaningful role for the United Nations which has achieved, for all of its problems, real progress around the world, from the Middle East to Africa. They would deny resources to our peacekeepers and even to our troops, and, instead, squander them on Star Wars. And they would refuse aid to the fledgling democracies and to all those fighting poverty and environmental problems that can literally destroy hopes for a more democratic, more prosperous, more safe world.

The new isolationists are wrong. They would have us face the future alone. Their approach would weaken this country, and generated build into a tidal wave. (Applause.)

If we withdraw from the world today, mark my words, we'll have to contend with the consequences of our neglect tomorrow and tomorrow and tomorrow. This is a moment of decision for all of us without regard to our party, our background or our accent. This is a moment of decision.

The extraordinary trend toward democracy and free markets is not inevitable. And as we have seen recently, it will not proceed easily in an even, uninterrupted course. This is hard work. And at the very time when more and more countries than ever before are working to establish or shore up their own freedom in their fragile democracies, they look to us for support. At this time, the new isolationists must not be allowed to pull America out of the game after just a few hours of debate because there is a modest price attached to our leadership. (Applause.)

We know now, as President Nixon recognized, that there must also be limits to

America's involvement in the world's problems—limits imposed by clear-headed evaluation of our fundamental interests. We cannot be the world's policeman; we cannot become involved in every problem we really care about. But the choice we make must be rooted in the conviction that America cannot walk away from its interests or its responsibilities.

That's why, from our first day in office, this administration has chosen to reach out, not retreat. From our efforts to open markets for America to support democracy around the world, to reduce the threat posed by devastating weapons and terrorists, to maintaining the most effective fighting force in the world, we have worked to seize the opportunities and meet the obligations of this moment.

None of this could have happened without a coalition of realists—people in both Houses of Congress and, importantly, people from both parties; people from coast to coast in our towns and cities and communities who know that the wealth and well-being of the United States depends upon our leadership abroad. Even the early leaders of our republic who went to great pains to avoid involvement in great power conflicts recognize not only the potential benefits, but the absolute necessity of engaging with the world.

Before Abraham Lincoln was elected President, our farmers were selling their crops overseas, we had dispatched the trade mission all the way to Japan trying to open new markets—some problems don't go away—(laughter)—and our Navy had already sailed every ocean. By the dawn of this century, our growing political and economic power already imposed a special duty on America to lead; a duty that was crystallized in our involvement in World War I. But after that war, we and the other great powers abandoned our responsibilities and the forces of tyranny and hatred filled the vacuum, as is well-known.

After the second world war, our wise leaders did not repeat that mistake. With the dawn of the Nuclear Age and the Cold War, and with the economies of Europe and Japan in shambles, President Truman persuaded an uncertain and weary nation, yearning to shift its energies from the front lines to the home front, to lead the world again.

A remarkable generation of Americans created and sustained alliances and institutions—the Marshall Plan, NATO, the United Nations, the World Bank, the IMF—the things that brought half a century of security and prosperity to America, to Europe, to Japan and to other countries all around the world. Those efforts and the special resolve and military strength of our own nation held tyranny in check until the power of democracy, the failures of communism, and the heroic determination of people to be free, consigned the Cold War to history.

Those successes would not have been possible without a strong, bipartisan commitment to American's leadership.

Senator Arthur Vandenburg's call to unite our official voice at the water's edge joined Republicans to Truman's doctrine. His impact was all the more powerful for his own past as an isolationist. But as Vandenburg himself said, Pearl Harbor ended isolationism for any realist.

Today, it is Vandenburg's spirit that should drive our foreign policy and our politics. The practical determination of Senators Nunn and Lugar to help Russia reduce its nuclear arsenal safely and securely; the support from Speaker Gingrich and Leader Gephardt, from Chairman Livingston and Representative Obey for aid to Russia and the newly-independent states; the work of Senators Hatfield, Leahy and McConnell, and Chairman Gilman, and Representative Hamilton for peace in the Middle East; the efforts of Senator Warner to restructure our intelligence—all these provide strong evidence of the continuing benefits and vitality of leadership with bipartisanship.

If we continue to lead abroad and work together at home, we can take advantage of these turbulent times. But if we retreat, we risk squandering all these opportunity and abandoning our obligations which others have entrusted to us and paid a very dear price to bring to us in this moment in history.

I know that the choice to go forward in a lot of these areas is not easy in democracies at this time. Many of the decisions that America's leaders have to make are not popular when they're made. But imagine the alternative. Imagine, for example, the tariffs and barriers that would still cripple the world trading system for years into the future if internationalists coming together across party lines had not passed GATT and NAFTA. Imagine what the Persian Gulf region would look like today if the United States had not stepped up with its allies to stop Iraqi aggression. Imagine the ongoing reign of terror and the flood of refugees at our borders had we not helped to give democracy a second chance in Haiti. Imagine the chaos that might have ensued if we had not moved to help stabilize Mexico's economy. In each case, there was substantial and sometimes overwhelming majority opinion against what needed to be done at the moment. But because we did it, the world has a better chance at peace and freedom. (Applause.)

But above all now, I ask you to imagine the dangers that our children and grandchildren, even after the Cold War is over, still can face if we do not do everything we can to reduce the threat of nuclear arms, to curb the terrible chemical and biological weapons spreading around the world, to counter the terrorists and criminals who would put these weapons into the service of evil.

As Arthur Vandenburg asked at the dawn of the Nuclear Age, after a German V–1 attack had left London in flames and its people in fear, ''How can there be isolation when men can devise weapons like that?''

President Nixon understood the wisdom of those words. His life spanned an era of stunning increases in humankind's destructive capacity, from the biplane to ballistic missiles, from mustard gas to mushroom clouds. He knew that the Atomic Age could never be won, but could be lost. On any list of his foreign policy accomplishments, the giant steps he took toward reducing the nuclear threat must stand among his greatest achievement. As President, I have acted on that same imperative.

Over the past two years, the United States has made real progress in lifting the threat of nuclear weapons. Now, in 1995, we face a year of particular decision in this era—a year in which the United States will pursue the most ambitious agenda to dismantle and fight the spread of weapons of mass destruction since the atom was split.

We know that ours is an enormously complex and difficult challenge. There is no single policy, no silver bullet, that will prevent or reverse the spread of weapons of mass destruction. But we have no more important task. Arms control makes us not only safer, it makes us stronger. It is a source of strength. It is one of the most effective insurance policies we can write for the future of our children.

Our administration has focused on two distinct, but closely connected areas—decreasing and dismantling existing weapons, and preventing nations or groups from acquiring weapons of mass destruction, and the means to deliver them. We've made progress on both fronts.

As the result of an agreement President Yeltsin and I reached, for the first time in a generation Russian missiles are not pointed at our cities or our citizens. We've greatly reduced the lingering fear of an accidental nuclear launch. We put into force the START I Treaty with Russia that will eliminate from both our countries delivery systems that carry more than 9,000 nuclear warheads—each with the capacity to incinerate a city the size of Atlanta.

START I, negotiated by two Republican administrations and put into force by this Democratic administration, is the first treaty that requires the nuclear powers actually to reduce their strategic arsenal. Both our countries are dismantling the weapons as fast as we can. And thanks to a far-reaching verification system, including on-site inspections which began in Russia and the United States today, each of us knows exactly what the other is doing. (Applause.)

And, again, through the far-sighted program devised by Senators Nunn and Lugar, we are helping Russia and the other newly-independent states to eliminate nuclear forces in transport, safeguard and destroy nuclear weapons and materiel.

Ironically, some of the changes that have allowed us to reduce the world's stockpile of nuclear weapons have made our nonproliferation efforts harder. The breakup of the Soviet Union left nuclear materials dispersed throughout the newly-independent states. The potential for theft of nuclear materials, therefore, increased. We face the prospect of organized criminals entering the nuclear smuggling business. Add to this the volatile mix, the fact that a lump of plutonium the size of a soda can is enough to build a bomb, and the urgency of the effort to stop the spread of nuclear materials should be clear to all of us.

That's why from our first day in office we have launched an aggressive, coordinated campaign against international terrorism and nuclear smuggling. We are cooperating closely with our allies, working with Russia and the other newly-independent states, improving security at nuclear facilities, and strengthening multilateral export controls.

One striking example of our success is Operation Sapphire, the airlift of nearly 600 kilograms of highly-enriched uranium—enough to make dozens of bombs from Kazakhstan to the United States for disposal. We've also secured agreements with Russia to reduce the uranium and plutonium available for nuclear weapons, and we're seeking a global treaty banning the production of fissile material for nuclear weapons.

Our patient, determined diplomacy also succeeded in convincing Belarus, Kazakhstan and Ukraine to sign the Non-Proliferation Treaty and give up the nuclear weapons left on their territory when the Soviet Union dissolved. One of our administration's top priorities was to assure that these new countries would become non-nuclear nations, and now we are also achieving that goal. (Applause.)

Because of these efforts, four potential suppliers of ballistic missiles—Russia, Ukraine, China and South Africa—have been agreed to control the transfer of these missiles and related technology, pulling back from the nuclear precipice has allowed us to cut United States defense expenditures for strategic weapons by almost two-thirds, a savings of about $20 billion a year, savings which can be shifted to vital needs such as boosting the readiness of our Armed Forces, reducing the deficit, putting more police on our own streets. By spending millions to keep or take weapons out of the hands of our potential adversaries, we are saving billions in arms costs and putting it to better use.

Now, in this year of decision, our ambition for the future must be even more ambitious. If our people are to know real lasting security, we have to redouble our arms control, nonproliferation and antiterrorism efforts. We have to do everything we can to avoid living with the 21st century version of fallout shelters and duck-and-cover exercises to prevent another World Trade Center tragedy.

In just four days we mark the 25th anniversary of the Non-Proliferation Treaty. Nothing is more important to prevent the spread of nuclear weapons than extending the treaty indefinitely and unconditionally. And that's why I've asked the Vice President to lead our delegation to the NPT conference this April and to work as hard as we can to make sure we succeed in getting that indefinite extension.

The NPT is the principal reason why scores of nations do not now possess nuclear weapons; why the doomsayers were wrong. One hundred and seventy-two nations have made NPT the most widely subscribed arms limitation treaty in history for one overriding reason—it's in their self-interest to do so. Non-nuclear weapon states that sign on to the treaty pledge never to acquire them. Nuclear weapons states vow not to help others obtain nuclear weapons, to facilitate the peaceful uses of atomic energy and to pursue nuclear arms control and disarmament—commitments I strongly reaffirm, along with our determination to attain universal membership in the treaty.

Failure to extend NPT indefinitely could open the door to a world of nuclear trouble. Pariah nations with rigid ideologies and expansionist ambitions would have an easier time acquiring terrible weapons, and countries that have chosen to forego the nuclear option would then rethink their position; they would certainly be tempted to reconsider that decision.

To further demonstrate our commitment to the goals of the treaty, today I have ordered that 200 tons of fissile material, enough for thousands of nuclear weapons, be permanently withdrawn from the United States nuclear stockpile. (Applause.) Two hundred tons of fissile material that will never again be used to build a nuclear weapon.

A second key goal of ours is ratifying START II. Once in effect, that treaty will eliminate delivery systems from Russian and American arsenals that carry more than 5,000 weapons. The major reductions under START I, together with START II, will enable us to reduce by two-thirds the number of strategic warheads deployed at the height of the Cold War. At my urging, the Senate has already begun hearings on START II, and I am encouraged by the interest of the senators from both parties in seeking quick action. I commend the Senate for the action taken so far, and I urge again the approval of the treaty as soon as possible.

President Yeltsin and I have already instructed our experts to begin considering the possibility after START II is ratified of additional reductions and limitations on remaining nuclear forces. We have a chance to further lift the nuclear cloud, and we dare not miss it.

To stop the development of new generations of nuclear weapons, we must also quickly complete negotiations on a comprehensive test ban treaty. Last month I extended a nuclear testing moratorium that I put into effect when I took office. And we revised our negotiating position to speed the conclusion of the treaty while reaffirming our determination to maintain a safe and reliable nuclear stockpile.

We will also continue to work with our allies to fully implement the agreement we reached with North Korea, first to freeze, then do dismantle its nuclear program, all under international monitoring. The critics of this agreement, I believe, are wrong. The deal does stop North Korea's nuclear program, and it does commit Pyongyang to roll it back in the years to come.

I have not heard another alternative proposal that isn't either unworkable or foolhardy, or one that our allies in the Republic of Korea and Japan, the nation's most directly affected, would fail to support.

If North Korea fulfills its commitment, the Korean Peninsula and the entire world will clearly be less threatened and more secure. The NPT, START II, the Comprehensive Test Ban Treaty, the North Korean Agreement, they top our agenda for the year ahead. [There are other critical tasks we also face if we want to make every American more secure, including winning Senate ratification of the Chemical Weapons Convention, negotiating legally binding measures to strengthen the Biological and Toxin Weapons Convention, clarifying the ABM Treaty so as to secure its viability while permitting highly effective defenses against theater missile attacks, continuing to support regional arms control efforts in the Middle East and elsewhere, and pushing for the ratification of conventional weapons which, among other things, would help us to reduce the suffering caused by the tens of millions of anti-personnel mines which are plaguing millions of people all across this world.] (Applause.)

My friends, this is a full and challenging agenda. There are many obstacles ahead. We cannot achieve it if we give into a new isolationism. But I believe we can do no less than make every effort to complete it.

Tonight, let us remember what President Nixon told the joint session of Congress when he returned from his historic trip to Moscow in 1972. He said, ''We have begun to check the wasteful and dangerous spiral of nuclear arms. Let us seize the moment so that our children and the world's children can live free of the fears and free of the hatreds that have been the lot of mankind through the centuries.''

Now it is within our power to realize the dream that Richard Nixon described over 20 years ago. We cannot let history record that our generation of Americans refused to rise to this challenge, that we withdrew from the world and abandoned our responsibilities when we knew better than to do it, that we lacked the energy, the vision and the will to carry this struggle forward—the age-old struggle between hope and fear.

So let us find inspiration in the great tradition of Harry Truman and Arthur Vandenburg—a tradition that builds bridges of cooperation, not walls of isolation; that opens the arms of Americans to change instead of throwing up our hands in despair; that casts aside partisanship and brings together Republicans and Democrats for the good of the American people and the world. That is the tradition that made the most of this land, won the great battles of this century against tyranny and secured our freedom and our prosperity.

Above all, let's not forget that these efforts begin and end with the American people. Every time we reduce the threat that has hung over our heads since the dawn of the Nuclear Age, we help to ensure that from the far stretches of the Aleutians to the tip of the Florida Keys, the American people are more secure. That is our most serious task and our most solemn obligation.

The challenge of this moment is matched only by its possibility. So let us do our duty.

Thank you very much. (Applause.)

SECRETARY GENERAL'S MESSAGE ON 1994 UNITED NATIONS DAY

Mr. PELL. Mr. President, last year, during the ceremony for United Nations Day on October 24, 1994, United Secretary-General Joseph Verner Reed delivered a message at U.N. headquarters on behalf of Secretary-General Boutros Boutros Ghali. That occasion launched the Golden Anniversary celebration of the United Nations and was the first in a series of planned events that will continue well into this year.

As Ambassador Reed—whom, by the way, many of my colleagues will recall from his distinguished service in the U.S. Government—noted in his introductory remarks to the Secretary General's message.

Forty-nine years ago in San Francisco, the United Nations was launched as our world organization and began its long journey for a better world. The signators of the charter were fifty-one sovereign states, and today the United Nations comprises 184 member-states; the organization represents the world with all its problems and all its aspirations.

I had the honor of serving on the International Secretariat of the San Francisco Conference which drew up the U.N. Charter. I have since then held the hope that the United Nations would fulfill the noble thoughts expressed in the charter and have tried to promote ways to make the United Nations become a functional and effective alternative to international conflict and discord.

Because of my longstanding interest in and support for the United Nations, it is a particular pleasure for me to witness and participate in the events to celebrate its 50-year anniversary. I also sure the sentiment expressed by the Secretary General in his message that * * * with the active commitment of people, the United Nations can continue to play its indispensible role for peace and security, social and economic progress, and global human development.

Mr. President, I ask unanimous consent that Ambassador Reed's remarks and the Secretary-General's message be printed in the RECORD.

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

MESSAGE OF THE SECRETARY-GENERAL OF THE UNITED NATIONS DR. BOUTROS BOUTROS-GHALI ON THE OCCASION OF UNITED NATIONS DAY 1994

Excellencies, Friends of the United Nations, Ladies and Gentlemen, it is an honour to represent the Secretary-General of the United Nations, Dr. Boutros Boutros-Ghali, at United Nations Day 1994 as we launch the year of the golden anniversary of our world organization here at headquarters, in this great world city—New York. Forty-nine years ago in San Francisco, the United Nations was launched as our world organization and began its long journey for a better world. The signators of the charter were fifty-one sovereign States, and today the United Nations comprises 184 member-States; the organization represents the world with all its problems and all its aspirations.

In this spirit, ladies and gentlemen, may I bring you the message from the Secretary-General:

United Nations Day has become a universally recognized time for celebration and reflection on the state of the world.

Today we all live in a global context. Societies which once felt able to stand alone, now see themselves interlocked with others. The great goals of peace, development and democracy increasingly are understood to require greater multilateral effort.

Without peace, nothing is possible. Without development, societies cannot look forward to the future. Without democracy, progress will not rest securely on a foundation of popular participation and commitment.

In the coming year, the United Nations calls upon the peoples and governments of the world to take charge of the development effort. This year, we shall review progress on the agreements reached at the United Nations Conference on environment and development held at Rio de Janeiro in 1992. We shall also continue to implement the decisions reached at the World Conference on Human Rights, held at Vienna in 1993.

At the World Summit for Social Development, to be held in Copenhagen 1995, we meet to find solutions to the development crisis faced by all nations, rich and poor. At the Fourth International Conference on Women, to be held in Beijing in September 1995, we meet to discuss the special role of women in development.

This year, as we prepare for the fiftieth anniversary of the United Nations, let us recall the opening words of the charter: ''We the peoples of the United Nations * * *.'' We—all of us—are the United Nations. The United Nations is now, and increasingly will be, what we choose to make of it.

Knowledge about the United Nations is thus ever-more important for people everywhere. With the active commitment of people, the United Nations can continue to play its indispensable role for peace and security, social and economic progress, and global human development.

Let us take up the challenge of the next fifty years. It is in our power to use the United Nations as a force for fundamental transformation to a world of peace and enduring prosperity.

Let this day be the starting point for taking your United Nations on the road to the future.

This concludes the message from the Secretary-General.

I believe it is in the spirit of United Nations Day 1994 to say that fostering harmony through understanding among the peoples of the world continues to be the principal mission of the United Nations; that is so today even more than in the past. The year of the fiftieth anniversary of the United Nations offers a unique opportunity for governments, peoples and institutions around the world to set aside social, racial, political and religious differences and initiate a real and productive dialogue on the burning problems of the world as we move towards a new century. On this day, United Nations Day 1994, let us rededicate our energies and join our forces towards this goal.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

DEFEAT OF THE BALANCED BUDGET CONSTITUTIONAL AMENDMENT

Mr. THURMOND. Mr. President, this has not been a good day for the United States. I cannot imagine any piece of legislation that could have been offered in the Senate which would do this country more good than this balanced budget amendment which was defeated today, defeated by one vote.

Mr. President, we cannot keep on as we are. We have not balanced this budget but one time in 32 years—eight times in 64 years. How are we going to change it? We are putting a burden on our children and our grandchildren that is unbearable. It is not fair to this generation or the next generation that we permit this to happen.

The best way we can stop this spending—and the Congress is intent on spending—is to adopt a balanced budget amendment. We passed a statute years ago, and before the end of that year—Harry Byrd was the author of it—the Congress had gone beyond and spent more than that statute permitted. The only way under the Sun you are going to stop this spending—the only way, I repeat—is to pass a constitutional amendment to mandate—to mandate, to make—the Congress balance the budget. That is the only way you are going to stop it.

We refused to pass that today. We turned it down. I hope the American people will study this question and see what happened and bring pressure on this Congress to do what it ought to do, and that is to pass this amendment when it comes up again. And it will come up again. It will come up again probably this session. It may not pass again this session. It will come up again next session. But I predict it will pass either this session or next session. It has to pass if we are going to stop this spending. It has to pass if we are going to save this country from financial ruin. I hope people rise up and demand that such action be taken.

Mr. President, let me pay tribute before I yield the floor to Senator DOLE, the majority leader, and Senator LOTT, the assistant majority leader, for their leadership throughout this fight.

I also wish to commend Senator HATCH, the chairman of the Judiciary Committee, for the fine job he did, and Senator SIMON, who joined him as one of the principal authors, and Senator CRAIG, from Idaho, who did such a herculean job in trying to get this amendment passed, and Senator HEFLIN from Alabama, who was prominent in pushing this amendment. They all deserve to be commended. I thank all Senators who voted for it, but I especially wish to thank the leaders whose names I just mentioned. I also want to commend the staff of Senator HATCH for their exemplary and dedicated work on this legislation, Sharon Prost, Shawn Bentley, and Larry Block. Additionally, Damon Tobias of Senator CRAIG's office was tireless in his efforts to assist during consideration of this measure and too I commend Thad Strom, my chief counsel on the Judiciary Committee for his able assistance.

The PRESIDING OFFICER. The Senator from Alabama.

TRIBUTE TO BILL GARDINER

Mr. HEFLIN. I rise today with much sorrow to lament the passing of my great friend Bill Gardiner, who passed away on February 21, 1995 at the age of 68. William F. Gardiner, Sr., was my chief of staff in charge of my Alabama offices.

The U.S. Marine Corps has as its motto the latin words ''Semper Fidelis,'' which mean ''Always Faithful.'' These words are descriptive and indicative of the spirit and life of Bill Gardiner. He was always faithful to his principles and to his friends. He also possessed the unfailing values of hard work, patriotism, and spirituality.

He loved politics. He relished being in the political arena as much as anyone I have ever known. He enjoyed the bonding that brings people with common likes, dislikes, feelings, philosophies, and goals together. He thrived on the excitement of politics. He especially delighted in political gatherings. On many occasions, he would stay up all night cooking meat for a barbecue or some other event where politicians would gather.

He believed politics and public service were ways to bring about improvements in the quality of life of all people; a way to increase the standards of living for our citizens; a means of rectifying wrongs and injustices; and a way of improving the future for generations that would follow. These principles were his guideposts in his own public service.

As mayor of the city of Tuscumbia, AL he took a leadership role in improving its educational system. He used Federal money and programs to benefit the citizens of his community in many different ways, such as substituting decent and good housing for shacks in blighted areas and providing homes for the elderly. He expanded and improve the infrastructure of the city. Every municipal service, including police protection and fire-fighting, improved under his leadership.

He loved to be kidded about ''Gardiner's Lake.'' A short time after he became mayor, a body of water was named for him. For generation after generation in Tuscumbia, every time a big rain came, a deep dip in Cave Street near the football stadium would become flooded with water that made traffic impassable for several days. Many of his friends kidded him about this body of water and jokingly named it ''Gardiner's Lake.'' He vowed to eliminate this, and he soon did with superb drainage engineering. He made many other vast improvements to his city during his years as mayor.

He made mistakes like all of us do. At one point, he was persuaded to carry out an urban renewal program in the center of the city. Parking was substantially reduced, water fountains and pools were established, and a beautification project was created with a fish pond and series of flag poles at the Palace drugstore corner. Some wag soon labeled this project ''Three Flags

Over Palace.'' There were so many complaints about the loss of parking, the program was soon abandoned. Bill wasn't alone, however, because many mayors had the same unpleasant experience with urban renewal projects.

His year and a half as president of the Alabama League of Municipalities was a period he really cherished. He had sincere affection for mayors and councilmen from all over the State and they loved him in return. When he become my chief of staff, he renewed his closeness with the Alabama League of Municipalities and would come to Washington with Municipal groups for conferences with the National League of Cities. He was always in attendance at the State conventions of the Alabama League of Municipalities.

Bill and I went through many campaigns together. He was my campaign manager in my election for chief justice and my three elections for U.S. Senate. No one could ever hope to have a greater friend. In the words of the 66th Psalm, ''We went through fire and through water.'' He was like a brother to me. His service as my chief of staff was superb. He was my eyes and ears in Alabama. I will indeed miss his outstanding judgment and motivation.

Bill spent approximately 35 years in public service, either as a public official or as my chief of staff.

He loved his friends and was always loyal to them. We know that loyal people themselves inspire loyalty among others, and Bill leaves behind many who were loyal to him. A great many of them were present at his funeral on February 23, 1995 at the First United Methodist Church in Tuscumbia. Those who attended, as well as many others who could not, were a testament to the kind of man that he was and to the kind of persons which he surrounded himself and depended on.

At the visitation the night before the funeral thousands of people came to the funeral home to express their affection to his family and pay their respects to him. People were lined up for blocks to get into the funeral home. Members of my staff who were there told me they waited in line for 2 hours in order to speak to his family. In the line were people from every walk of life, including farmers, garbage truck drivers, street cleaners, policemen, bankers, and government officials.

He was a fine family man. He loved to attend family reunions. He would tell me well in advance of a family reunion, ''Now mark that period down because I will be gone.'' He would gather at family reunions with members of his family who had grown up in Farley, AL and reflect upon their younger days, imparting to the younger members of the family a spirit of unity and a desire to be of help to everyone.

He was completely devoted to his wonderful wife Betsy and their children, and he always put them first and foremost in his thoughts. Betsy's understanding always helped Bill in so many ways. She seemed to always know the right thing to say and do at the right time. She knew how to bring out the best in him. I firmly believe that his wonderful trait of loyalty was reinforced by her own loyalty to him. As his grandchildren grow and learn more about their ''Big Daddy,'' they will be very proud of him.

At his funeral, as we said goodbye to Bill Gardiner, many of us were wondering silently how we would get along without him. We will really never find anyone to take his place. But we must persevere and be guided by his spirit of being always faithful. After all, that funeral was just as much a celebration of the life of a wonderful friend and family man who was an inspiration to all who knew him. We are all better because Bill Gardiner came our way.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the Senate made a mistake today in rejecting the balanced budget amendment. But make no mistake, that issue will be before the Senate before very long again. In failing by a single vote, the Senate rejected the overwhelming demand of the American people, as expressed in last November's election, that we need to exercise restraint in a constitutional context to live within our means. Today, on the motion for reconsideration entered by the majority leader, the procedural posture is now established so that the Senate can take up the issue again at any time.

It is my prediction that the American people will respond to today's vote by a forceful declaration to the 34 Senators who voted against the balanced budget amendment that the American people want the balanced budget amendment passed. The procedure of the Senate is such that, if any one of those 34 Senators changes his or her mind, the amendment may be brought again to the floor of the Senate on short notice, giving Senators an opportunity to be present so all may express themselves, and the amendment could be passed.

So my request, my plea to the American people, is to let your representatives, your U.S. Senators, the Senators who represent you in the U.S. Senate, know what your feelings are. A number of the Senators had been expected to vote in favor of the balanced budget amendment based upon prior votes or upon prior statements. I do not challenge in any way, shape, or form the good faith of any Senator who voted, in any respect, in any way. But there were six Senators who had previously voted in favor of the amendment and today voted against it. Those six Senators previously expressed themselves forcefully in favor of the principles of the balanced budget amendment, suggesting at least some indication of a favorable disposition. It is my thought that if their constituents express themselves, that there may well be a change of heart. Beyond that, there are 20 other U.S. Senators who might be persuaded to have a shift of position, based upon the will of the American people.

I do believe the principle behind the balanced budget amendment is sound. I do not say so lightly, because changing the Constitution of the United States is a very major act. But it has been demonstrated that not only the Congress of the United States, but the people of the United States, need a discipline to have a framework which requires us to live within our means. Every State has to live within its means—every county, every city, and every individual. If you and I do not live within our means, we wind up in a bankruptcy court. Within the context of the need for economy, constituents now come to us—and I am sure you, Mr. President, have had the same response in your State of Oklahoma as I have in my State of Pennsylvania—people are no longer asking for increases or even cost-of-living adjustments. But in many cases, they are saying, ''Do not make the cut too big.'' In other cases, they are saying, ''Do not zero out the program all the way in this year.''

I think that mental attitude is very important. I think this amendment would have been a good thing for America, to have that kind of discipline imposed.

Mr. President, in the absence of any other Senator in the Chamber, I ask unanimous consent I may proceed up to 10 minutes for the purpose of introducing legislation.

THE PRESIDING OFFICER. The Senator from Pennsylvania is so recognized.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 488 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. INHOFE addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Oklahoma.

THE DEFICIT

Mr. INHOFE. Mr. President, during the time that I was privileged to sit in the chair, some comments were made that I think should be responded to.

A comment was made that we are doing something constructively about the deficit today. Reference was made that President Clinton's budget was dramatically cutting the deficit.

I was reminded of an article that anyone can find, if they wanted to get last December's Reader's Digest. It was called ''Budget Baloney.'' In this article, they talked about how politicians refer to cutting deficits as if somehow they are going to bring the deficit and the debt under control. They used this example. They said if a guy has $5,000 but he wants a $10,000 car, all he does is say, ''Well, I really want a $15,000 car, and I have effectively taken a $10,000 car and, therefore, cut the deficit by $5,000.''

If we take to the conclusion of 5 years the budget that the President has submitted to us for the fiscal year coming up, it would increase the debt by $200 billion a year for the next 5 years. That is an increase in the debt at the end of that time by $1 trillion. I think the American people are aware of this. I think a few years ago they got tired of the smoke and mirrors that we were doing here in Washington and they became aware of what is really happening.

The second thing that was mentioned was the cuts—all of these draconian cuts that would be necessary, if we had been successful in passing the balanced budget amendment. I would suggest to you that there are ways of balancing the budget without having any cuts; that is, just limit the growth. There was a study made using the figures that were supplied by the Federal Government that, if we could put merely a 2-percent growth cap on Government spending, we would be able to bring the deficit down to zero at end of 6 years. This can be done. But Congress in both Houses has had historically an insatiable appetite to spend money that they do not have, and without the discipline that would be imposed upon them by a constitutional amendment for a balanced budget, it has been demonstrated that for 40 years they are incapable of that discipline.

The third thing that was talked about was the awareness of what is going on around the country. I suggest that there is not one Senator who would go home and misrepresent his or her position to his or her constituents. However, it has been quite evident that there are many people in some of the States who really believed that their Senator was in favor of a balanced budget amendment. Now, I think the good news in today's vote is they all know, and they know which Senators voted yes and which Senators voted no.

Last, during the debate, I put together a profile of those individuals who were in support of the so-called ''right-to-know amendment'' to the balanced budget amendment. That was the amendment that says show us exactly where the cuts are going to be for the next 7 years. I found that all 41 of those cosponsors had either a D or an F rating by the National Taxpayers Union. All 41 had voted for the stimulus bill, which was the largest spending bill increase that we have had in contemporary history.

And so the bottom line is, is it just a coincidence that those 41 who supported that amendment also were the big tax and spenders here in the U.S. Senate? No, I do not think so. In fact, I am having my staff, right now, look at the 34 who voted against it this time. And I suspect that we are going to find the same thing; that is, those 34, each one of whom was responsible for killing the balanced budget amendment today, I suspect, was a big tax and spender. When we find out, we will give this report tomorrow.

I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

THE ANNIVERSARY OF THE BATTLE OF IWO JIMA

Mr. GLENN. Mr. President, I rise today to add my voice to that of my colleagues who have made remarks commemorating the 50th anniversary of the heroic Battle of Iwo Jima, which began on February 19, 1945.

I made some impromptu remarks on this subject last week when my colleague from Arkansas delivered his remarks. It was one of the most moving moments on the floor of the U.S. Senate that I have participated in. We had the Senators here who had been marines at one time in their lives, and it was a very moving moment. Each of the other former marines in the Senate have stood on the Senate floor over the last several days to pay tribute to the extraordinary bravery of the men who fought so ferociously in the Battle of Iwo Jima. It was this grueling 36-day battle that gave rise to Admiral Nimitz' famous description that ''Among the Americans who served on Iwo, uncommon valor was a common virtue.''

This battle also exacted one of the greatest casualty tolls in the history of the Marine Corps. For that uncommon valor, more medals of honor—27 in all—were awarded for that action than for any other action in World War II. Out of those 27, 14 were awarded posthumously.

I was in World War II. I went in a few days after Pearl Harbor and started training. Fifty years ago, I had just returned to the United States from combat in the Pacific in the Marshall Islands, just when the Marine assault on the island of Iwo Jima began. Having participated in combat at that time in the Marshall Islands, we took our losses there, too, but nothing like Iwo, of course. But I understood the strategic importance this battle was to play in our island-hopping campaign in the Pacific. We watched that very closely, because I was in training, along with other members of the squadron I was in, to go back out again for the assault on Japan. Lying between Japan and our bomber bases in the Marianas was Iwo Jima, which would provide a critical base from which fighter escorts could protect our B–29's en route to the Japanese home islands.

Our B–29's had the range to make their way from the Marianas, but without fighter escorts, they went unprotected and too often fell victim to attacks by Japanese fighters.

Iwo Jima also would provide a haven for battle damaged bombers returning from their assaults on Japan. And taking Iwo Jima's three airfields would deprive the Japanese of a base from which they could intercept our bombers.

This was part of the overall strategy, the strategy of saying we needed bases that bring the Japanese to their senses to bomb, to bomb, to bomb, and hope that we could end that war before we would need to make an invasion. Estimates of that invasion were that if the Japanese fought with the tenacity they had throughout that war, we could lose as many as a million people in that conquest of Japan. So it was in that strategy that Iwo was of critical importance.

The challenge that 75,000 marines of the 3d, 4th, and 5th Marine Divisions faced was an awesome one. Iwo Jima, despite the heavy bombing it had endured in the hours leading up to the Marine assault, remained heavily defended by Japanese in caves and pill boxes and bunkers.

Just picture yourself coming to shore in a bobbing landing craft, coming in with shells landing and people being hit in the landing craft before it got there, and seeing other craft ahead of you that had already been hit. It was a very tough moment. The island provided no natural cover for attackers, and Marines were slowed by Iwo Jima's black sand beaches. It was a sand of large grain, where you would step up on the beach and try and go uphill, and you made two steps forward and went one step backward.

As I mentioned the other night, Mr. President, I did not participate in the Battle of Iwo Jima. But after the war, following assignment to China, my squadron flew through Iwo. We were there for several days and we walked that territory. I stood on those beaches and on the cliffs and was up on Mount Suribachi. I tried to imagine what it must have been like in those days.

Having seen the terrain, it is hard to imagine how anybody could have ever made it up those beaches. They were the only landing areas on the island, but above the beaches, the cliffs were literally honeycombed with caves, back in the rocks, interconnected so the defenders could go from one cave opening to another. From the caves, machine guns would come out and fire, and unless naval supporting gunfire was able to make an unlikely very direct hit on a tiny cave opening, the guns kept coming out and kept mowing people down, and mowing them down, and mowing them down.

As far as that gunfire, I remember one large Japanese gun that had been shooting at ships, and it accidentally had been hit directly by a shell while coming in from the sea. The whole end of that gun barrel was splayed out just like a banana that you would peel down, or like a flower petal spread out in different directions. It was a savage, savage battle. We were there, and my squadron mates and I walked in the caves and walked on the beaches just as the Japanese gunners were able to during that combat. How anybody ever got ashore with that kind of withering fire coming right down their throats, on top of them, is something hard to fathom. It was an experience being

there even after the battle. The experience was vividly impressed on my memory to this very day. As they came ashore, the usual thing would be to hunker down in a fox hole or a crater. But here was Mount Suribachi looking down. There was no such thing as a fox hole. They were being fired upon out on the beach. It is no wonder there were so many casualties.

My visit to Iwo makes me appreciate just what is meant when it is said that the progress of the marines of the V Corps was measured in yards, as Japanese defenders resisted to the death.

The Japanese were of a mood and psyche at that time, as they were through all of World War II, that they would rather be killed than give up. It was a Kamikaze mentality. We expected the assault on Japan, which we were training for, would be the same, and that, once again, emphasizes the importance of Iwo.

Yet, by February 24, 1945, 4 days after the onslaught began, the American flag waived from the summit of Mount Suribachi, the proud image that to this day symbolizes the unwavering resolve of the Marine Corps, of our Nation, and of the staggering sacrifices that were made by the marines in their relentless advance on Iwo Jima.

Uncommon valor was indeed a common virtue.

Just imagine you are there, and just think of the determination. You have flamethrowers, tanks, bulldozers, landing craft hit and on the beach and shot up and out of commission, and still you have to advance and neutralize and silence the fire from those hundreds and hundreds of enemy caves.

Well, by early March, the three Marine divisions had compressed the remaining enemy into isolated pockets of resistance. An awesome foe, the Japanese defenders fought with courage and determination, with the vast majority in their fanaticism, preferring death to surrender. The final pockets of resistance were finally eliminated, and the capture of the island was announced on March 26.

The casualty statistics are harrowing. Almost 7,000 Americans were killed, and more than 17,000 were wounded. But the assault and capture of Iwo Jima was of critical importance to final victory in the Pacific, and the island proved to be an important base from which to deliver more and heavier blows against the enemy. It also became the emergency landing field it had been envisioned to be.

And by the end of the war a total of 2,251 B–29 bombers, carrying 24,761 crewmen landed on Iwo Jima. A large number of these brave pilots and crewmen undoubtedly would have been lost if the land had not been taken.

Once again, you can imagine those planes coming in, shot up, battle damaged, wounded being taken out, planes repaired, wounded being given help, back to Guam or Saipan, and out again to pound Japan after being repaired.

Mr. President, I conclude my remarks by repeating the words of then Secretary of the Navy James V. Forrestal, who was present on the island during the campaign, when he expressed his ''tremendous admiration and reverence for the guy who walks up beaches and takes enemy positions with a rifle and grenades or his bare hands.''

We have had a lot of battles, Mr. President, battles we read about. The battle of Iwo Jima, like Bunker Hill, Gettysburg, Belleau Wood, and Normandy, was won literally not just by machines but by young Americans who wanted to live but were not afraid to die for their country.

People go off to war with the flags flying and bands playing and we think about liberty and the pursuit of justice and world community and all of these things we like to talk about, loyalty to country. But to the people on a beach, it is a matter of them and their fellow marines that they are trying to survive alongside. And it is that Marine training, which makes them more afraid of letting their fellow marines down than they are of getting hurt, that wins those battles. Sometimes they are killed. Sometimes it is hard to explain that kind of psychology, that kind of mentality that wins battles, particularly a battle as vicious and as tough as was Iwo Jima. But that Marine gung ho spirit of being more afraid of letting each other down in a battle than they are of getting hurt or killed themselves, while hard to explain, is what is so important in winning battles. It means that a person will take grenades over to somebody and expose himself to fire because his fellow marines need that kind of help. It is what you have seen in the squadron where people dive back in on a target a second time to split up antiaircraft fire. You would think that would be the most stupid thing anybody can do, but it is done because they see somebody in trouble.

So, Mr. President, to those brave Americans who paid the ultimate sacrifice on the black sand beaches of Iwo Jima and the rocky slopes of Mount Suribachi, ''Semper Fi,'' and may God's blessings rest on our Corps, on our military, and on this United States of America.

Thank you, Mr. President I yield the floor.

Mr. NUNN. Mr. President, I enjoyed very much hearing the Senator from Ohio, Senator GLENN, who is a stalwart member of the Armed Services Committee and has been a stalwart defender of the United States his entire life, either as a member of the Marine Corps or in the space program or in his splendid service here in the U.S. Senate.

I heard him talk about Iwo Jima. All of us, I believe, are the beneficiaries of that reminder of the heroism that took place on Iwo Jima. And I might add that no one is better qualified to speak of heroism and patriotism and dedication than the Senator from Ohio, Senator GLENN, his plane having been shot five times when he was flying in the Marshall Islands, and I believe seven times his plane was shot when he was in Korea fighting for our country.

So I thank the Senator from Ohio for that beautiful tribute to those who were so brave and gave so much of themselves for their country on Iwo Jima and other places in the Pacific.

EXECUTIVE SESSION

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to consider Executive Calendar Order Nos. 12 through 17, and No. 34, en bloc, nominations to the Defense Base Closure and Realignment Commission.

The clerk will report the nominations.

The legislative clerk read the nominations of Alton W. Cornella, of South Dakota; Rebecca G. Cox, of California; General James B. Davis, U.S. Air Force, Retired, of Florida; S. Lee Kling, of Maryland; Benjamin F. Montoya, of New Mexico; Wendi Louise Steele, of Texas; and Josue Robles, Jr., of Texas, to be members of the Defense Base Closure and Realignment Commission.

The Senate proceeded to consider the nominations.

The PRESIDING OFFICER. Debate on the nominations is limited to 30 minutes, equally divided between the President pro tempore and the Senator from Georgia [Mr. NUNN].

The Chair recognizes the President pro tempore.

Mr. THURMOND. Mr. President, I previously expressed my support for the confirmation of Mrs. Cox, General Davis, Admiral Montoya, Mr. Kling, Mr. Cornella, and Mrs. Steele to be members of the Base Closure and Realignment Commission. I want to reiterate that support and add to it my support of General Robles.

Mr. President, I have no doubt that our former colleague, Senator Alan Dixon, can complete this process by himself, However, I believe both he and the Senate would rather see a group of individuals make decisions on the future of the Nation's military bases and our local economies. Therefore, I urge the Senate to confirm these nominations and let the 1995 Base Closure Commission proceed with its work.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I am pleased to join Senator THURMOND in urging my colleagues to support the seven nominees to be members on Defense Base Closure and Realignment Commission.

I agree with Senator THURMOND that each of these individuals are well-qualified to serve as members of the Commission.

Mr. President, I am certain that all of my colleagues are aware that the 1995 base closure process is well underway, as the Secretary of Defense presented his list of closure and realignment recommendations to the Defense Base Closure and Realignment Commission on February 28. In fact, the Commission has conducted two hearings on the 1995 process with the Commission's chairman, Alan Dixon, conducting the hearings alone. And, as Senator THURMOND just reminded the Senate, former Senator Dixon, now Chairman Dixon, could act alone, if necessary, but that is not the way this process was set up. That is not the way we intended it. It is not the way the overall Congress intended it because we wanted all the commissioners. And so we are here today to try to confirm the other commissioners.

During those hearings that former Senator Dixon, now Chairman Dixon, just held, he stated more than once that he urged the Senate to act on the outstanding nominations at the earliest moment possible.

The 1995 commission has much work to do in the next few months, and the Senate should not impede on the commission's progress by further delaying action on these seven nominations. I do not doubt that Chairman Dixon could handle it alone, but I do not think he wants that, and I do not think any of us want that. I believe it is in the interest of the Nation that the Senate favorably act on the nominations before us today.

I urge my colleagues to approve the nominations.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I do not think it is any secret that I had some grave reservations about going forth with the nominations of the BRAC commissioners. I have withdrawn any objection I had. I do not intend to ask for a recorded vote.

Let me tell you how it is and why it is that I was concerned.

Two years ago, my State, New York, was a victim of one of the most outrageous, self-serving, manipulative, politically mean-spirited and inspired acts under the former BRAC commission. Not the kind of thing that would engender confidence in a process that was to be fair, that was to be open, that was to take into consideration everyone's concern. A process that would not lend itself to the political process as we know it. A process of putting forth your best case, seeing to it that people have an opportunity to be heard, recognizing that this was not easy and that, regardless of the wisdom of the decision, there were going to be areas in this country that would suffer.

Let me tell Members that what the process did was close Plattsburgh Air Force Base and build up McGuire Air Force Base, and that one of the moving forces behind this travesty was none other than the Chairman of the BRAC Commission. That does not inspire confidence.

In the 1993 round of closures, the Air Force proposed establishing an air mobility wing at Plattsburgh. They were going to put in an air mobility wing there. Their recommendation. It was not this Senator's. It was not anybody's in the community. They reasoned that the long runways and the vast apron at Plattsburgh were ideal for the large airlift aircraft.

Facilities at the base were new—new. Tens and tens of millions of dollars had been spent and the base was well laid out. To all observers it was the perfect match. But somehow the BRAC Commission saw it differently. They bullied the FAA into not objecting at the introduction to McGuire AFB of 70 to 80 large aircraft in the busiest air corridor in the world.

Now, Mr. President, it does not take one long to figure out that when we have one of the busiest commercial air corridors in the world, that is not the place where we put 70 to 80 large transports and say that that is going to be the mobility airbase. Not to mention the antiquated facilities. Not to mention the cost would be hundreds of millions of dollars in new construction.

The FAA did not object. After having created a tissue of false rumors and lies regarding Plattsburgh's crash zone and fuel delivery costs, the BRAC decided that, lo and behold, McGuire, the oldest, the most antiquated of the facilities, located in the middle of one of the heaviest traffic air corridors in the world, that that would be where the Air Force would move these planes.

They decided that McGuire, which the Air Force had initially recommended be downgraded to a reserve facility, obviously because of the traffic congestion in the air, that it be chosen as the new mobility hub.

Want to talk about politics in its rawest, nastiest, rottenest sense, that is it. That is the kind of thing that all Members have an obligation to avoid. The infamous proposal—by the way, because it took somebody with some ingenuity to suggest this—came from none other than one of the commissioners. That was H.T. Johnson, a former Air Force general. He harbored a grudge—well-known, well-known—and my distinguished colleagues on the floor, if they care to check into this will find out because there are no secrets in this business. H.T. Johnson did not like the then Air Force Chief of Staff Tony McPeak.

Can you imagine, here we now have these personalities, one former general is on the commission, does not like the then Air Force chief, and he knew that the Air Force and General McPeak were solidly behind the Plattsburgh proposal. So when H.T. Johnson came up with this plan, he did not have any trouble getting the Chairman of the Commission to quickly second it, to follow through on this deed, the commissioner himself having been a former Congressman from New Jersey, representing that district in which this move was made.

Now, that is not what this process is to be about. We understand that there will be difficult decisions. We understand that. There has not been anyone here who has not seen them, and we understand, and we lick our wounds and we go on and do the best we can, and we try to get a community to pick up the pieces.

I have to say, this outrage was buried in a host of other recommendations to Congress. Senator MOYNIHAN and myself raised our voices. If there was any solace in what took place, it was that New York retained Rome Lab, which was located at Griffiss Air Force Base. It was the premier command and control research and development facility in the country.

The Air Force said, ''Well, we will keep this going for another 5 years.'' Now, even that, in this last round, is gone. So, having been victimized once, the Pentagon is now recommending the closure of that lab, when they said ''Do not worry.'' And now they come back and put it on the list. And to add insult to injury, where do you think they call for realigning some of its work? Fort Monmouth, NJ.

Now, look, there is a moral obligation and a commitment that this lab was going to be kept and the State went forward—the State of New York—putting forth millions of dollars. We built a comprehensive scientific foundation linked with all of the universities: Rensselaer, Syracuse, Poly Institute, Rochester Institute, University of Rochester, Cornell. And now, instead of being an integral part of the Air Force's 5-year plan, nothing. Based on those assurances, New York gave millions of dollars to ease the operating costs and further facilitate the transfer of lab products to the private sector—and we can do it, and we can eventually take over the entire Government cost. Give us those 5 years and it will not cost the Federal Government anything.

But, no, no, let me tell members how serious our State is. We are cutting spending. We have a deficit of $5 billion. For the first time in 40 years the State is actually reducing spending. We will spend less this year than we did the previous year. Three percent less. I do not think there is another State in the country that is doing that, yet the Governor increased the budget allotments and saw to it that the funds for Rome lab would be continued.

The fact is that the Air Force deceived the Rome community into making investments in that lab, and now under their plan the hope for economic recovery is removed. It is morally wrong to do that to any community. If I saw that taking place in another community and my colleague addressed that and said, ''Take a look and see what took place,'' where one general, former general, because of his dislike of another, moves to crush the plan which called for the location of

the air mobility center at a major installation, only to have that major installation—which was the best—decimated, closed down, with the remaining lab over at Griffiss. It was promised we will keep this and now we come back 2 years later and we will take that out as well.

That does not inspire confidence in the integrity of the process. Having said that, I say I am tremendously encouraged at the qualifications, the candor, the ability, and the credibility first of all of the Chairman of the Commission, our former colleague Senator Dixon, and after having seen the quality of the other commission Members.

Now, it is not easy for a commission to then restore a base once the Air Force or any of the services have put it on the list and said they are targeted. They do not generally do that. Not as a rule. But I certainly hope that we can make a case based upon the situation that exists today, and based upon what was morally indefensible, and what was done to the community by the BRAC Commission of 1993. It is a sorry saga, but one I believe that has to be told. I would not have come forth and made this public at this time were it not for what took place this year, following the commitments that were made, and the expectations that we had to save this facility. That is why I do so. It is a sordid, dirty, little story.

But if anything, hopefully we can learn by that. I think we have a moral obligation to see to it that this facility is continued. The Governor has assured me that he will do everything in his power to give whatever aid in reducing costs to this facility and helping to move it into the private sector and in helping to keep it the premier lab that it is.

So, Mr. President, it is on that basis that I have withdrawn my objection because, obviously, I understand there are decisions that have to be made. The taxpayers and the Members of this Congress have an obligation to see that our money is wisely spent and husbanded. This is not easy. But I thought that it was important to lay these facts out and, hopefully, we can avoid a repetition of that kind of thing. Nobody and no community should ever be subjected to it.

I yield the floor.

Mr. THURMOND. I wish to thank the able Senator from New York.

Mr. BUMPERS. Mr. President, I did not intend to speak on this particular matter, but I heard the Senator from New York making some points. I do not know the particular situation in New York, but I know that the Senator and I share one thing in common, and that is the Pentagon's base closing nominations should not be considered as sacred by the Commissioners that we are about to confirm.

I have no intention of speaking at length or trying to block any of their nominations. As far as I know, they are all very honorable people, and I come not to resist them, not even to admonish them, but to make a point which I hope they will seriously consider, and that is that the Pentagon's decisions are not perfect. They are not made in the cosmos. They are made by human beings who are subject to error.

Needless to say, that I am upset about what they are doing in my State would be a gross understatement.

In 1991, I daresay that my State was one of the two or three hardest hit States on the loss of jobs as a percentage of our people. We lost Eaker Air Force Base, a strategic bomber base, and we lost what we call the Joint Readiness Training Center in Fort Chaffee, AR, which was moved to Fort Polk, LA.

Eaker Air Force Base was in Mississippi County, which is in the First Congressional District of my State, which happens to be one of the 10 poorest districts in the United States. I do not have to tell you what closing a very significant air base in that county did to that county and the surrounding area. But if you look at it in pure terms of dollars and cents, you could not argue with it. When Senator PRYOR, and some of the rest of us, went before the Base Closure Commission and pleaded for them to take into consideration the economic consequences, they said, ''That is not a part of our mandate.''

That county had always had, even with the air base there, a very much higher unemployment rate than the rest of our State. We cannot consider the economic consequences, which is the same thing as saying we are not interested in human beings; we are not interested in the trauma and the tragedy that people experience when they lose their jobs and wonder how they are going to put bread on the table for their children.

But it was closed. We might as well have been shouting in the rain barrel for all the attention we got from the Base Closure Commission.

As far as Fort Chaffee was concerned, we showed conclusively, we crunched the numbers time and time and time again, and presented them to the Base Closure Commission and said, ''You are supposed to be saving money. You will save a lot of money by closing Eaker Air Force Base, even though you are creating unspeakable, horrible consequences for a lot of people who are going to be thrown into the streets, but in Chaffee's case you cannot even justify the savings.'' The figures we gave them which, in my opinion, were absolutely unassailable and are unassailable to this day, went unheard, unheeded. We might as well, again, have been shouting in a rain barrel.

Now we have this new list of bases for closing that have been nominated by some faceless group in the Pentagon. After we took that kind of a hit in our State in 1991, I daresay that with this base closure list we are again one of the two or three hardest hit of any State as a percentage of our population. Red River Army Depot and the Defense Logistics Agency Depot, sit side by side a few miles from Texarkana, which my colleagues know includes parts of Arkansas and Texas, as is near Louisiana; a city of 77,000 to 80,000 people, about 30,000 of whom are on the Arkansas side of the line.

Mr. President, since I have been in politics, I have stood with one leg in Texas and one leg in Arkansas 30 times. The line runs right through the Federal Building, half in Arkansas and half in Texas. Of the 4,100 people who work at the 3,600-acre Red River complex, 1,000 or so live in Arkansas. I know, as Deputy Secretary Deutch told me the other day, they do not consider economics, they do not consider red-blooded human beings who lose their jobs. Theirs is not to ameliorate that. Theirs is to look at hard, cold dollars-and-cents figures.

They did not cut these facilities in half, which would have been traumatic enough. They didn't try to figure out how can we eliminate this human drama, this tragic human drama unfolding by cutting their workload in half and leaving at least 2,000 people working there, or 3,000, or whatever.

I do not even know where they are going to transfer the work. I know there are two bases that do the same thing the Red River Depot does that are being left open that have never won the awards that Red River has won, such as the 1995 Presidential Quality Award. Red River is one of only six government facilities in the whole country to win that.

I listened to the Base Closure Commission hearings yesterday afternoon in my office, and the chairman, our former colleague, Senator Dixon from Illinois, asked did they take into consideration all of the achievement awards and the meritorious awards that Red River Depot had won? No, they did not. I regret the chairman said he had a tendency to agree with that.

Tell me, Mr. President, what is the purpose of people who have worked for the Federal Government trying to excel and be recognized for their excellent service if nobody is going to take it into consideration? What is that all about?

One other thing, Mr. President. What is it about these people who make these nominations that make them perfect and infallible, and their judgments and their decisions unquestioned? Do you think somebody on the Army or Navy or Air Force groups that made these recommendations does not have a brother-in-law working someplace? Do you think the fact that he has a brother-in-law working someplace does not play a role in his thinking about whether that base is going to be closed or this base is going to be closed?

That may be putting it a little strongly, but after all, we are all human beings, are we not? You may have a friend who gave your opponent money the last time, and it may have

shocked you and you are not ever going to feel as kindly toward that guy again. That happens in the Pentagon too. Decisions are not always based on what is best according to the facts.

Fort Chaffee, AK, is also on the list. It stands to lose 350 jobs. It is near Fort Smith, which is a city of about 80,000 people. They can withstand it. But I can tell you, the 350 people who are going to lose their jobs cannot stand it. Think of a city, all of you. I hope all of my colleagues will think of a city in their States with 77,000 people, like the entire city of Texarkana, in Texas and Arkansas. And take away 4,100 jobs. That is 5 percent of the total population. Each one of those jobs represents a family. Compute that. It is devastating, and it is unnecessary. And if it does cost a few more bucks to keep the place open, say, at half strength, or something of that kind, maybe the Pentagon should have decided to do that. But nobody in the Pentagon tried to work anything out. The Pentagon simply said, ''Close that sucker.''

Mr. President, I am emotional about it because I have been here 20 years and have not fired very many people. The people I really had to let go in my office had to be let go. But I know that when you take somebody's livelihood away from them, you are taking away everything. So I am really bothered when people lose their jobs.

The reason I am talking now, and I will close on this, is because I want this Commission—whom we are about to confirm—to bear in mind that everybody who made these closure recommendations has something in the back of their minds that caused them to make them, other than just those cold dollars-and-cents figures that were coming out of a computer.

Do you think there is no politics in any of this? Do you think these are sacrosanct things that people with noble purposes and no other goal conjured up?

So, members of the Commission, I just want to say, do not think for a minute that you do not have a responsibility to look at these things—not rubberstamp them, look at them—count the figures over and over again, take into consideration whose lives are being affected and whose children are not going to be educated as a result of the loss of their jobs.

I hope this Commission will look especially look at the Pentagon's recommendation to close Red River Army Depot and Fort Chaffee. I know there are other Senators—Senator D'AMATO has already spoken, and others will. A lot of people feel put upon. But let me reemphasize, Arkansas took the biggest hit in 1991 of all but two other States, and we are being asked to take one of the biggest hits in this one. What is going on?

I yield the floor, Mr. President.

NOMINATION OF ALTON W. CORNELLA

Mr. BAUCUS. Mr. President, I am pleased that the Senate is today taking up the confirmation of this important group of nominees to serve on the Defense Base Closure and Realignment Commission.

In my home State of Montana, there have been some concerns expressed about one of these nominees, Mr. Alton W. Cornella of Rapid City, SD. Mr. Cornella has spent a number of years advocating for Rapid City's Ellsworth Air Force Base. And there has been concern that this may create a conflict with the interests of Malmstrom Air Force Base in Great Falls.

Frankly, when I first learned about this potential conflict, I was deeply concerned. The base closing process must be above politics and parochialism. And I would strongly oppose any nominee that I believe would not give Malmstrom and Montana an absolutely fair hearing.

That is why, last week, I called Mr. Cornella and spoke with him directly. He assured me that he would be impartial. Moreover, he agreed to recuse himself any decisions involving Ellsworth or any base deemed to be in competition with Ellsworth. These assurances are reflected in a letter Mr. Cornella recently sent to me. I ask unanimous consent that Mr. Cornella's letter be printed in the RECORD immediately following these remarks.

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

(See exhibit 1.)

Mr. BAUCUS. In closing, let me say that I found Mr. Cornella to be a man of integrity. I believe he aspires to serve on the Commission because he wants to render a public service for the entire Nation. And I wish him well in that endeavor.

EXHIBIT 1

AL CORNELLA REFRIGERATION SERVICE,
Rapid City, SD, February 27, 1995.

Hon. MAX BAUCUS,
U.S. Senate, Washington, DC.

DEAR SENATOR BAUCUS: Thank you for allowing me the opportunity to discuss with you your concerns about my potential role as a Commissioner on the Defense Base Closure and Realignment Commission.

It is my understanding that I must recuse myself from any matter that would have a direct and predictable effect on any of my financial interests. Alternatively, I could divest myself of any asset that gives rise to a financial conflict or seek a statutory waiver. I have had discussions with the Commission General Counsel about such potential financial conflicts of interests. Based on these discussions, I have announced my decision to recuse myself from any matters affecting Ellsworth Air Force Base, if I am confirmed. This would include recusal from any other base that is determined to be a competitor with Ellsworth. For example, if the recommendations of the Secretary of Defense place Malmstrom Air Force Base in competition with Ellsworth, either in closure or realignment of missions, then Malmstrom would come within the scope of such a recusal.

In accordance with the procedures established by the Senate Armed Services Committee, my financial interests will be reviewed at the time the Secretary's recommendations are published, and throughout the proceedings, to determine what conflicts exist and what action is appropriate to address any conflict. The Commission General Counsel, in conjunction with the Department of Defense General Counsel and the Office of Government Ethics, will conduct such reviews.

I have attached the statements that I provided to the Senate Armed Services Committee during the confirmation process.

Please let me know if I can provide any additional information.

Sincerely,

ALTON W. CORNELLA.

RESPONSES OF ALTON W. CORNELLA TO QUESTIONS FOR DEFENSE BASE CLOSURE AND REALIGNMENT NOMINEES FROM THE SENATE ARMED SERVICES COMMITTEE

POSSIBLE CONFLICTS OF INTEREST

Are you aware of any circumstances that might require you to rescue yourself from participating in the consideration of the proposed closure or realignment of a particular base or type of base? If so, please describe.

Yes. I served as the Chairman of Military Affairs for the Rapid City Area Chamber of Commerce. This included chairing a subcommittee called the Ellsworth Task Force or Defense Initiative. The purpose of the subcommittee was to provide a proactive approach to the perservation of Ellsworth Air Force Base, SD. I also own real estate in the area, and my firm has done business at Ellsworth Air Force Base. I will recuse myself on this base and any others determined as competitors by the General Counsel of the Defense Base Closure and Realignment Commission.

Have you ever participated on a compensated or uncompensated basis in any activity directed at precluding, modifying, or obtaining the closure or realignment of any base during the BRAC process? If so, please describe.

Yes. I served as Chairman of the Ellsworth Task Force on a uncompensated basis. The activity was directed at precluding the closure of Ellsworth AFB, SD. The base was not considered for closure in past rounds.

Have you been stationed at or resident in the vicinity of any base while the base was under considration for closure or realignment during the BRAC process? If so, please describe.

Yes. I was a resident in the vicinity of Ellsworth AFB, SD when the base received additional missions and personnel from realignment under the 1993 BRAC process.

Do you or, to the best of your knowledge, does any member of your immediate family have any specific reason for wanting a particular base to be closed, realigned, or remain unchanged during the BRAC process?

My wife or I could suffer the same financial loss as any other member of the community if Ellsworth AFB, SD would be closed. For this reason. I will recuse myself on Ellsworth AFB and any other bases determined to be competitors by the General Counsel of the BRAC.

CONFLICT OF INTEREST FOR ALTON W. CORNELLA

This is in response to Senator McCain's request that each nominee review their own situation and provide a response for the record on his or her plans to deal with recusal or other conflict-related issues.

I will follow the procedure developed by the Committee and Executive Branch which was used by the 1991 and 1993 Commissions. At the time that the Secretary's March 1 proposed list is announced, the Commission's General Counsel, working with the DoD General Counsel and the Office of Government Ethics, will review my financial interests and advise me if any recusal or other remedial action, such as divestiture or waiver, is

necessary. The Commission's General Counsel will then advise the Committee of the results of this review and any subsequent actions that I would take to remove myself from any potential conflict. The Commission's General Counsel will also establish a procedure providing for similar review of my financial interests and transmittal of this information to the Committee when the Commission considers action on installations that are not on the Secretary's March 1 list.

If I am advised that a conflict of interest exists and that a statutory waiver is not available, I will either divest myself of the interest or recuse myself from that particular installation affected by the holding. If the number of recusals impairs my ability to effectively participate in a significant number of Commission proceedings, I agree to resign my position as Commissioner.

At the present time, the Commission's General Counsel and I have determined that I have a financial interest in Ellsworth Air Force Base, South Dakota. I served as the Chairman of Military Affairs for the Rapid City Area Chamber of Commerce. I also served as Chairman of one of its subcommittees, the Ellsworth Task Force or Defense Initiative, which worked to preserve Ellsworth AFB. My firm has done business with Ellsworth AFB and I also own real estate in the area. My wife or I could suffer the same financial loss as any other member of the community should Ellsworth AFB be closed. For these reasons, I will recuse myself on Ellsworth AFB and any other bases determined to be competitors by the Commission's General Counsel.

A CALL FOR FAIRNESS IN BASE CLOSING

Mr. MOYNIHAN. Mr. President, my friend and colleague from New York has elucidated the travesty that befell Plattsburgh and our State 2 years ago. It was the most parochial of decisions made by that Commission, and one for which they will long be remembered. I still recall the findings of the BRAC staff on a screen overhead, showing clearly that Plattsburgh had greater military value than McGuire. But that did not trouble much of anyone on the dais.

This year the Commissioners have the opportunity, and the obligation, to improve on the record of the 1993 group. The Air Force has proposed to move the finest laboratory in the Defense research establishment, Rome Laboratory, to Hanscom Air Force Base near Boston and to the Army's electronics laboratory in Fort Monmouth, NJ. Rome Laboratory has produced three generations of scientists in its 45-year connection with central New York. According to the Air Force, moving half of it one State east and half of it one State south is expected to save $12 million per year. I have asked for an explanation of that claim, but say it is correct. For $12 million annually we are to give up the established relationships between the lab and the ellipse of universities and industry in the region that have helped Rome to its numerous successes. For $12 million annually we are to lose probably half the civilian staff of scientists who, by measure of similar situations with other labs, will leave the laboratory rather than move with it. This is shortsightedness of the highest order.

The return for moving Rome Laboratory is small. Only one other installation on the 1995 list, of all bases that will lose over 500 civilians, will get less of an annual and total return on the money saved per civilian lost. That is an Army ocean terminal. Closing it does not bring the immense loss of intangibles and productivity that moving a preeminent scientific institution does. This is not like moving the base laundry.

Most egregious about the Air Force recommendation is that 2 years ago the assistant secretary for installations put in writing that ''the Air Force has no plans to close or relocate Rome Laboratory within the next five years.'' The people of Rome believed him. They trusted him. That was a mistake. They have spent 2 years planning the reuse of Griffiss Air Force Base, all of which was closed except for the laboratory, with the laboratory as the linchpin of their plans. They have lost 2 years in the redevelopment effort unless the commission sees the folly of the Air Force proposal.

Mr. President, my colleagues from New York and Arkansas have raised concerns I share about this process and the new Commission. I will be in touch with the new Commissioners shortly, and I hope they are aware of the standards they must restore.

Ms. MIKULSKI. Mr. President, the Department of Defense's recommendations on base closings would have a very serious impact on Maryland. Up to 1,700 jobs could be lost—and an additional 4,000 potential new jobs are at stake. The effect of these job losses on families and communities would be devastating. I won't forget these families as I fight for Maryland's bases.

But I will fight for Maryland's facilities based on their military value. There are three basic criteria that must be considered. These are the mission, merit, and value to the Nation of each base. In Maryland, my colleague PAUL SARBANES and I are working on a bipartisan basis with the rest of the congressional delegation. We are also working together with task forces in our local communities to make our best case based on those principles. When the BRAC examines the recommendations in Maryland, those are the principles on which we expect to compete. And we expect to prevail.

I am shocked that some of the recommendations that the Commission will be examining do not appear to be based on merit, mission, or value to the Nation. The Navy's new plan to move the Naval Sea Systems Command [NAVSEA] to Washington, DC—overturning the last Commission's instructions to move to White Oak, MD—is incomprehensible.

In 1993, the Department of Defense found that we would save tax dollars by relocating many of the White Oak personnel to make room for the Naval Sea Systems Command, which has been in leased space. Nothing has changed in the last 2 years to change that assessment. The strategic and budgetary reasons for the move have not changed. Already, many people have been transferred. Lives have been disrupted and new plans made. Now, the Navy's recommendation says that it was all just a big bait and switch game.

We are now beginning a new round of defense base closures by reexamining the decisions of the last round. The Navy is asking us to overturn decisions made by the 1993 BRAC, approved by the President and accepted by Congress. This is a perfect example of why people are frustrated with their government.

No one questions the merit of White Oak. Just yesterday, General Shalikashvili, Chairman of the Joint Chiefs of Staff, said that the loss of White Oak's hypervelocity wind tunnel ''could eliminate a unique national capability, a capability that serves military research and development needs and that is used by other agencies such as NASA.'' That wind tunnel, along with a 1.75 million gallon testing tank, are irreplaceable one-of-a-kind facilities.

This time, the burden of proof must be on the Navy. They must show that the merit of their new proposal significantly outweighs the findings of previous BRAC commissions. They must show that their mission can be performed butter, quicker, and cheaper in Washington instead of in White Oak. And they must show that the Nation will achieve real savings from this new proposal. Those are tough standards * * * but in 1993, those are the standards White Oak met. We will hold the Navy's new proposal to the same standards—and we don't think their numbers can add up or hold up.

The recommendation to close the Naval Surface Warfare Center in Annapolis is also a serious blow to Maryland and to the military. And it is another attempt to revisit decisions that were made during the 1993 BRAC.

Some of the Navy's most important research and development is done at the Annapolis site. We have one-of-a kind facilities, and a world class workforce in place and working at peak capacity. Their mission is more important now than ever before—it is focused on the kinds of ship systems our Navy will need in the 21st century. And once again, the reasons and numbers haven't changed. So PAUL SARBANES and I will once again be leading the charge to maintain this vital facility.

The Army's recommendations, too, must be examined by the same principles and standards. I am deeply concerned that the recommendation to close Fort Ritchie was made without fully examining all of the missions performed at this post, and has not taken a full accounting of the value to the Nation of those missions. This post is almost 100 years old—but has proven to be one of the Army's most versatile facilities. It has constantly adapted and upgraded its facilities to fit changing communications needs. Its facilities

and workforce are unique—and must be maintained.

And nowhere does the concept of a full accounting become more important than at the Army Publications Distribution Center in Middle River. This center is competitive with the most technologically advanced private sector operations, yet the recommendation to close was flatout wrong when it said that they are not automated. I will push to make sure that one of the BRAC Commissioners visits this site, so that they can see this state-of-the-art facility first hand. With the facts in hand, I am confident that the Commission will recommend to the DOD that they revisit their recommendation entirely.

There are some silver linings for Maryland. The far-reaching and forward-thinking consolidation at the Naval Air Warfare Center, Patuxent River will continue. Pax River is the only Navy base in the country that can do aircraft acquisition, research, development, and training. This ''one-stop-shop'' is a crown jewel in the Navy. I will stand sentry during this BRAC process to ensure that the next century mission of Pax is not overlooked or undermined. And across southern Maryland, I am pleased that the value to the Nation of NESEA and the Naval Surface Warfare Center at Indian Head was acknowledged and maintained.

Another piece of good news is that additional jobs will be coming to both Aberdeen Proving Ground and Fort Meade. Each of these posts has a proud history of service and stand ready to make significant contributions as the military continues to reexamine the roles and missions they must perform in the new millenium.

Mr. President, before a serious consideration of the fate of Maryland's bases can begin, we must first confirm the nominations to the Base Closure and Realignment Commission. I fully support these nominees. They will be seeing a lot of me, because I will be fighting tooth and nail for Maryland's unique facilities and capabilities.

Mr. THURMOND. Mr. President, I yield back time on our side.

Mr. NUNN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Eleven minutes forty-four seconds.

Mr. NUNN. I yield back the time on this side.

The PRESIDING OFFICER. All time having been yielded back, the question is, Will the Senate advise and consent to the nominations on the Executive Calendar, Nos. 12 through 17 and No. 34, en bloc, Alton W. Cornella, of South Dakota; Rebecca G. Cox, of California; James B. Davis, U.S. Air Force, Retired, of Florida; S. Lee Kling, of Maryland; Benjamin F. Montoya, of New Mexico; Wendi Louise Steele, of Texas; Josue Robles, Jr., of Texas, to be members of the Defense Base Closure Realignment Commission?

So the nominations were confirmed.

Mr. NUNN. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I ask unanimous consent that the President be immediately notified of the Senate's action and that the Senate return to legislative session.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ORDER OF PROCEDURE

Mr. THURMOND. Mr. President, on behalf of the majority leader, I wish to announce that there will be no further rollcall votes today.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. FRIST). Without objection, it is so ordered.

THE BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Mr. BUMPERS. Mr. President, I had thought that I might wait until tomorrow to speak on the vote that occurred this afternoon, but I think perhaps now is as good a time as any simply to reflect on what happened today, what has happened in the past and what is likely to happen in the future.

First of all, taking Social Security out of the amendment was a perfectly legitimate issue and I supported the Reid amendment and I supported the efforts of the Senator from North Dakota to take it out, but that is not the real reason I voted against this amendment. I voted against it because I have a reverence for the Constitution of the United States. I do not want it trivialized. I do not want to put economic theory in it. I do not want to put an unenforceable requirement in it. I do not want to put a requirement in there which can be taken away by 60 votes. And I do not want to have the people expecting to see the budget balanced in the year 2002 when that is highly unlikely in any case and utterly impossible under the other provisions of the Contract With America. That would raise the cynicism level about Congress still higher.

What I want to do is put this Nation on a glidepath toward a balanced budget and stick with it. We could reduce the deficit $20 billion a year and not disrupt the economy. The economy could handle it. And if the American people saw us doing that, year after year, they would be happy, they would see that we are solving the problem.

It is true the polls show that about 70 to 80 percent of the people of the country favor the so-called constitutional amendment to balance the budget, but I promise you they favor it because they are frustrated and they think it is the last best hope. And, second, they think there is some magic machine in the amendment that will balance the budget if they just put it in the Constitution as the 28th amendment.

Unhappily, nothing could be further from the truth. This afternoon the argument was made, why not submit it to the people? It is a powerful argument. The people like that argument. But for just a moment let me give a couple of extra thoughts on that. Since this great Republic of ours was founded in 1789, there have been over 11,400 proposals by Members of Congress to change that document—11,400. And we have adopted 18 of them, counting the Bill of Rights as one—that is the first 10 amendments to the Constitution all adopted at the same time.

Since then, 17 amendments have been ratified out of 11,400 proposed. What if we took the argument that every time a constitutional amendment came up on the floor we had a duty to submit it to the people? The people would not have time to work. They would be so busy voting on constitutional amendments they would not have time to hold a job.

Why do the Members of this body think that James Madison and Ben Franklin and all the rest of the Framers, in 1787, when they crafted this document—why do they think they gave Congress the first responsibility? And more important, why do they think they insisted that 67 percent of the Congress vote for it before it is submitted to the people? They did not say lay down in the aisle of the Senate and vote aye. They said we should deliberate. If they expected a two-thirds majority of both Houses to approve this thing before it went to the people of the country, surely to God they intended us to have a sensible debate on it. And we had one.

Mr. President, when you start tinkering with the Constitution of the United States, I belong to the ''wait just a minute'' club. I do not care how meritorious a proposal sounds. The Constitution has given this Nation 205 years of unfettered freedom the likes of which no other nation on Earth has enjoyed. And when you start trivializing the Constitution with amendments that are wholly unenforceable, people will lose their reverence for that sacred document. You see, I do not want just a balance-the-budget amendment that merely says we will balance the budget. I want actually to balance the budget. The people in my State and your

State, they think that opposing a balance-the-budget amendment is like saying ''I oppose a balanced budget.''

Who in this body does not favor a balanced budget? No one, but there are some who are not quite as committed to it as others. But in 1993, in August, the President and the Democrats in the Congress proposed a $500 billion deficit reduction. We stood up and we said exactly what the people in the pool hall say, ''I wouldn't mind paying taxes if they cut spending.'' So we raised taxes on the wealthiest 1.2 percent of the people in this country. You had to have an income of $180,000 to affected by it. I wish I were in that category, I would be tickled to death to pay those taxes. We raised taxes on 1.2 percent of the wealthiest people in the country to the tune of $250 billion over 5 years and we cut spending, dollar for dollar, $250 billion, for a total of $500 billion in deficit reduction. And, yes, we said in that same bill, in the future couples who make $44,000 a year and are on Social Security will pay taxes on 85 percent of that amount that exceeds $44,000.

Who thinks I enjoyed voting for that? I hated it. But you are not going to solve the deficit problem on people flipping hamburgers down at McDonald's. Justice Holmes said taxes are what you pay in order to live in a civilized society. So we passed that deficit reduction bill and we have now lowered the deficit for three straight years for the first time since Harry Truman was in the White House.

Mr. President, it has been said time and time again, and it is worth repeating: not one single Republican favored deficit reduction that day—not one. They said, ''We hate taxes.'' I do, too, but I hate deficits as well. And on October 1, 1994, the deficit was $100 billion less than it would have otherwise been if we had not passed the deficit reduction package. You think about it. We cut the deficit $100 billion last year. And it will be down $110 to $120 billion this year from what it would have otherwise been.

The distinguished majority leader, whom I respect and admire and consider to be my friend, this afternoon said that the Senate walked away from the American people today. In August 1993, the Republicans ran away from the people of this country. Not one vote.

Mr. President, we have never put anything into the Constitution in 205 years that you can suspend with 60 votes in the U.S. Senate. You think about it. Anytime this amendment is adopted and subsequent thereto, 60 people in this body can say we vote for an unbalanced budget and those words will mean nothing. What if I came on this floor and said: Here is an amendment that says, the fourth amendment, which protects us against unlawful searches and seizures—can be suspended by 60 percent of the Congress? You would be home calling the carpenter to put some more locks on your door, never knowing when Congress might cast 60 votes to suspend your right to be protected from police who might want to knock your door down on any flimsy excuse they can find, or ne excuse at all.

Women are now permitted to vote as a result of the 19th amendment adopted in 1921. Can you believe the women have only had the right to vote in this country since 1921? Suppose we passed an amendment saying, with 60 votes of both Houses, we could suspend the right of women to vote. With 60 votes, we can suspend the right of due process. With 60 votes, we can suspend religious freedom, freedom of the press, freedom of speech. With 60 votes, we will put the poll tax back in. With 60 votes, we will take any right in the Constitution out of it. The people would be marching in the streets.

So where does that leave us on this amendment? We say, ''Well, here is an amendment that requires us to balance the budget by the year 2002.'' How? I do not know. Well, can we go to court? No. We took care of that in order to accommodate the Senator from Georgia, Senator NUNN. The courts could not involve themselves in the budget unless Congress expressly gave them jurisdiction . Next question: Who can enforce this amendment? Search me. I do not know.

If you have an amendment that requires a balanced budget by the year 2002 and the courts are taken out in that same amendment, who does that leave you to enforce it? The same U.S. Congress that has refused to do it in the past. We are back to square one. You pass this amendment, and the American people will have been hoodwinked like they have never been hoodwinked before in the history of this Nation. That is right. We are right back where we started, with the U.S. Congress having to balance the budget, and with the right to ignore it with 60 votes. We have never put anything in the Constitution that was not absolute and inviolate. We act as if we are dealing with a State constitution around here. The balanced budget amendment is legislation all dressed up in the finery of the Constitution.

I remember that spectacle in 1993 where only the Democrats voted for a bill to actually reduce the deficit. It is the most significant thing that has happened since I have been in the U.S. Senate. Every fall, for 7 years, I have stood at this desk and offered amendment after amendment after amendment to cut spending. In 1993 I offered six amendments to kill or cut appropriations. Those amendments would have saved the taxpayers over $420 billion, including interest over the next 35 years, but 13 Republican votes was my highwater mark on those votes. It reminds me of the back bencher who hears the preacher say ''Who all here wants to go to Heaven?'' and replies, ''I do, but not tonight.''

I want a balanced budget, and I do not like to have to go home and tell the voters that we cut the spending that affects their job or affects something else important to them or raises their taxes. We just want to talk about it.

Here on this chart are the budget-cutting amendments I put in just the other day for this year. I want my colleagues to look at these right now because they are coming, I promise you. The space station, 5-year savings of $10 billion; long-term savings, $52 billion. The same people who will vote to cut food stamps, Medicare, put children in orphanages, will vote to spend every dime of that. The F–22 fighter, we do not need it. We can postpone it for at least 4 years; it will cost $6 billion next year; in 5 years, $24 billion. I will not go through all of them, but we could save $33 billion over the next 5 years, and $114 billion over the next 15 years just on the amendments that I have introduced.

Mr. President, if I get 13 votes on the Republican side this year for any of those, I will be absolutely amazed. Everybody wants to go to Heaven. But not just yet.

There is not one thing in this amendment that would require us to do anything between now and the year 2002. There is not one single enforceable thing about this that would require us to cut the deficit one dime between now and the year 2002.

I offered an amendment. I got 37 votes. The amendment I offered said that, starting this year, the budget resolution must contain a deficit smaller than last year. And, in addition to that, it must show us how we are going to reach a balanced budget by the year 2002; that would be difficult to achieve but at least my amendment would keep us honest.

I submit that the people of this country would be immensely gratified if they could go to bed tonight and realize that Congress is going to cut the deficit every year for the next 7 years, not wait until the year 2002. Do it now.

The Contract With America—and to the eternal credit of the Republicans in the U.S. Senate, they are not a party to that. They want us to spend $471 billion in tax cuts and defense increases between now and the year 2002, and then start dealing with the deficit.

Do you think I enjoy standing here and saying I am not going to support a so-called middle-class tax cut? Do you think the people of my State do not need tax relief? If you do what the Contract With America proposes, I will tell you where you wind up. You will wind up with a deficit that will choke a mule, that will cause interest rates to start soaring again, and the poor guy who would have otherwise gotten a tax cut that might buy him a pizza every Friday night will lose two pizzas every Friday on interest costs. And 74 percent of the people of this country agree that they would rather see the savings put into deficit reduction.

Over and over and over again, I heard people say the balanced budget amendment is very popular, that 75 percent of

the people in this country favor it. When you get down to a little tax cut, I will be saying that 75 percent of the people would rather see this go on the deficit than into a middle-class tax cut. You say we must do what 75 percent of the people want on one thing. But on the next thing that 75 percent of the people want, you say something else.

Mr. President, I will tell you what ought to happen. The Republican and Democratic leaders ought to get together and say, look, we share a common goal, and that common goal is to keep faith with the American people. In order to do that, we have to start getting the deficit under control. You go back to your people and submit a list of cuts, and we will come up with our own cuts; then we will get back together and try to figure out what we can agree on. Once we agree on what we can cut, once we are convinced in our own minds that we are going to actually cut the deficit this year and the next year and the next year, the leaders, Democrats and Republicans, can go before the television cameras and say solemnly to the American people: Here is our contract. We all agree on it.

If we keep going like we are going, Mr. President, the Constitution and the American people both are going to lose mightily. I did not sign that contract. As far as I know, not a single one of the 100 Members of the U.S. Senate signed that contract. Can you believe that that contract would be as dramaticaly unrealistic as it is—we are going to have a constitutional amendment to balance the budget, provide $471 billion in tax cuts, and defense increases. Most of the people who signed that are wannabes, people running for Congress who will say anything, sign their name to anything, and worry about the details later, after they have been elected.

And they will do it in 100 days. We are supposed to be a deliberative body. If it takes 100 days, fine; if it takes 300 days, fine. These things are supposed to be seriously considered. 100 days? It would not have been unthinkable in this Senator's mind to spend half of that—which we almost did—on this amendment until the American people focused on it and understood precisely what the consequences were going to be.

I must say I was terribly chagrined when I realized that no change to the constitutional amendment was going to be adopted. We were presented with a constitutional amendment that was crafted by the House of Representatives and sent to the Senate, and they said here it is, do not change one word. Do not uncross one ''t,'' do not undot one ''i,'' do not change anything. Think of that, saying to Senators here, who represent the people of their States, who want to improve it or kill it or otherwise change it. And they say, no, you do not count. We have 52 votes locked up over here and we will table anything you try to do. What kind of deliberative body is that? It is like saying we do not care that we are dealing with this precious document and we do not care what you think.

That is not a fan you hear, Mr. President, that is the sound of James Madison whirling in his grave.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Mr. NICKLES. Mr. President, I rise to make a couple comments concerning the balanced budget amendment vote today, because I think in my 14½ years in the Senate, it is probably the most important vote that we have cast. In my Senate career, we voted on a balanced budget amendment four times—three times for real; and once on a cloture vote to end debate on a balanced budget amendment which I offered.

We passed it once, in 1982. We passed it with 69 votes. It was a bipartisan vote. At that time, the majority leader of the Senate was Howard Baker. I remember his support for the amendment. We had the support of Ronald Reagan, who was President at the time. But we lost by just a few votes in the House of Representatives.

The reason we lost the vote today is because six people who voted for the balanced budget amendment a year ago voted against it today. They have the right to change their minds. Many of the people that voted against it today who voted for it last year said they wanted to protect Social Security. But when they voted for it last year, there was no specific protection for Social Security. Those individuals thought the balanced budget amendment was worthy of voting for last year, but they voted against it this year. They have that right, and I respect Senators for their votes. I also think they should be held accountable.

When people are running for reelection, they many times claim, ''Oh, yes I have always voted for a balanced budget amendment.''

But today we had a chance to vote for one for real. The one we voted on last year, in all likelihood, was not going to pass. The House tried it last year and they lost by a few votes. We lost by a few votes.

This year, the House passed it. This year, if the Senate had passed it and we worked out whatever small differences we had between the House and the Senate, it would have gone to the States and we would have found out whether 38 States would have ratified it. My guess is, they would. My guess is, we would have followed the advice of Thomas Jefferson. We would have enacted an additional amendment which would prohibit Congress from spending more than they take in. Thomas Jefferson was right.

BOB DOLE was right when he made his comments. I want to compliment Senator DOLE for his leadership. He has shown great patience. We spent over a month on this amendment. The House of Representatives debated it for 2 days. The Senate spent a month. Senator DOLE indicated the willingness to spend another week if we could have picked up the necessary votes. But we might spend another 2 months and still not get 67 votes. Senator DOLE can count votes. All of us can. Many of us were working, trying to make a difference, but we were not successful, mainly because six people changed their minds. They have the right to change their minds, but people need to know why we did not pass it.

In the November elections, we elected a lot of new people.

As a matter of fact, all 11 new Senators elected in the 1994 elections voted for it. But six people who voted for it in the past decided to vote against it. That is the reason the amendment failed.

To pass a constitutional amendment is a high bar to jump over. It is not easy. You have to pass the constitutional amendment by two-thirds in both Houses, and then additionally it has to be ratified by three-fifths of the States. That is not easily done.

We have had 27 amendments to the Constitution, 10 of which were the Bill of Rights and were ratified very early in our history. We have only had 17 since then. Sixty-six Members of this body felt as though we should have the balanced budget amendment, as well. The American people have supported it. It was mentioned two or three times on the floor that 80 percent of the American people believe we should have it.

I have been here long enough to know we need a balanced budget amendment. I have served on the Budget Committee; I have served on the Appropriations Committee; and now I serve on the Finance Committee. I think we need the discipline. It would not be necessary if we had a strong majority of both bodies, being fiscally responsible Members. Maybe then we would not need a balanced budget amendment.

Mr. President, I am totally committed to trying to balance the budget, whether we pass the amendment or not. I think we ought to do it by the year 2002. So I hope that we will pass a budget resolution that will move Congress toward balancing the budget no later than the year 2002. I hope we can pass it in both the House and the Senate.

Maybe that will be the easy part. Then we will have to pass the implementing legislation to make it happen, pass what we call a reconciliation bill and all 13 appropriations bills. We will

make Congress, for the first time, really cut entitlements. If we do not reduce the rate of growth of entitlements, we will never balance the budget.

Mr. President, the figures are not that complicated. We are spending about $1.5 trillion right now. We are taking in a little over $1.3 trillion. So we have a deficit of $200 billion per year. Unfortunately, President Clinton's budget does nothing to reduce the deficit. The deficit stays at least about $200 billion for the foreseeable future, and then escalates much, much higher in future years.

He does not touch entitlements; I had charts up earlier this week showing what the President has accomplished budgetwise. The President has said in his first 2 years, he has reduced the deficit by $600 billion, but the facts do not agree with him. The facts are that spending has not been cut in the President's first 2 years. Actually, spending went up, if we use the CBO baseline. And President Clinton mentioned, in his State of the Union speech, that we should use the Congressional Budget Office.

Spending has not been cut. Actually, spending for the first 4 years of his administration goes up, compared to what would have otherwise happened. So spending has gone up, not down. That is evidenced by the fact that we used to spend $1.3 trillion a couple years ago, and now we spend $1.5 trillion. Under the President's budget year we spent $1.6 trillion, and by the year 2000, we spend $1.9 trillion. Spending goes up every year.

The facts are, also, we can balance the budget if we limit the growth of spending to about 3 percent per year. The total amount of money that we spend, if we can limit that growth to 3 percent, we can balance the budget.

I did not say cut spending; I say limit the growth of spending. We will have to somehow ingrain this in people's minds. I can tell Members right now when we come up with a budget people will say, ''Republicans, are slashing programs. You are insensitive. You are making tough decisions.'' We should be.

But I also say, Mr. President, even under the Republicans, and in spite of all the slashing that we will be accused of, Federal spending will continue to escalate. I would like for Congress to freeze Federal spending. We are spending $1.5 trillion. I would like for Congress to spend next year $1.5 trillion. If we have an increase in some programs, that means other programs will have to be reduced to pay for it. That is what I would like. If we kept spending $1.5 trillion, we could balance the budget before the year 2002.

Mr. President, we have to do it. I just hope that our colleagues, now that they have defeated this balanced budget amendment, will help us. Many people on the other side of the aisle said we do not need a balanced budget amendment. Many Members on this side of the aisle on the Budget Committee, on the Finance Committee, on the Appropriations Committee, I believe are committed to trying to balance the budget by the year 2002, because we think that is the right thing to do.

I can tell Members it probably will not be the right thing politically. We will expose ourselves politically. People will say, ''You are slashing popular programs and you are not going to be popular if you cut this program or that program,'' and we will have to cut most all programs. I say cut. We will have to reduce the rate of growth in almost all programs if we are going to get there. I hope that we have the courage to do it. I think we need to do what needs to be done to make Congress balance the budget, regardless of whether or not we pass the balanced budget amendment.

I am really disappointed that we did not pass it today. I think if we would have passed it today, it would have changed the way we do business. I think people in the Budget Committee, in the Finance Committee, in the Appropriations Committee would say, ''Wait a minute; this is a different era.''

We stand right here in this Senate and put our hand on the Bible and swear to uphold the Constitution. That is the reason it is more important than a statute. That is the reason I think we would be more committed to abiding by that balanced budget amendment, regardless of the enforcement mechanism, because we are sworn to uphold the Constitution. I think we are serious when we take that oath.

A lot of our colleagues said that the amendment is not necessary. Well, we will try to do it, anyway. We will find out how sincere they are when we have the tough votes. We will find out what happens when we try to curb the growth of entitlements.

I will give an example. We have 336 different welfare programs—336—most of them stacked on top of each other. Many of which are counterproductive to our goals, if we want to try to help people, because it is making people become addicted to Federal programs—addicted to Federal assistance—not helping them climb up the economic ladder, but basically addicted to this idea that, ''Hey, Government will take care of me, so why should I bother?'' We have 152 different job programs. I know the Senator from Kansas is looking at consolidating many of those programs and giving them to the States to determine how best to manage them.

We have to curb programs like Medicaid, which has grown annually by 28, 29, 13, and 8 percent. We cannot continue to have rates of growth like that. We will have to curtail programs like the earned income tax credit that President Clinton is so proud of. His tax bill increased it dramatically. Three years ago, it cost $5 billion a year. In 3 years, it will cost $25 billion per year. These are astronomical rates of growth.

The EITC is an entitlement program. I read by one estimation that 40-some percent of the people in the District of Columbia are eligible for the earned income tax credit. That is absurd. It is a negative income tax under which Uncle Sam writes checks. It is rife with fraud. The IRS is now slowing the processing of returns because of fraud. A lot of people found out, ''If I give you a few hundred dollars for your social security number, I can do your return and collect a $1,000 or $2,000 check from Uncle Sam.'' A lot of people are pulling that scam.

Food stamps—we have had unbelievable fraud and abuse in food stamps. The program's cost has compounded in growth well beyond inflation. We will have to take all programs, Mr. President, and look to scale many back substantially. If we want programs to grow more than 2 percent or 3 percent per year, we will have to cut other programs to make that happen.

I just hope we will have the courage to do it, in a bipartisan fashion. I hope that we will come up with a budget unlike President Clinton's, which projects $200 billion deficits forever. I hope that we will pass a program that will bring the deficits on a downward trend where we will be down to zero no later than the year 2002. That will not be easy. And maybe if we cannot do it—I hope we can, but maybe we cannot—people on the other side will realize they made a mistake in voting against the constitutional amendment to balance the budget. Maybe they will realize that we need that kind of discipline to be able to say no.

Congress will have to say no to Federal spending if we are ever going to get there. You are more popular as elected officials giving people money, cutting ribbons for more Federal spending, for XYZ school and XYZ projects, than taking away from them in taxation. You are more popular giving than taking away, and more popular spending than taxing.

I am really disappointed in the vote today. I think we need a constitutional amendment. I hope and expect that we will have the opportunity to vote again, and maybe they will hear from their constituents. I hope people across the country, when they find out that their elected Members voted against this amendment, will talk to their Members, and let them know how strongly they feel that this amendment should have passed.

If this is a democracy where people really have a chance to meet with their constituencies and listen to their constituencies, this amendment should pass, and I believe it will pass. I would like for it to pass this year. Maybe it will take another election. The American people spoke clearly in the elections in 1994. I believe they will be speaking very loudly in 1996, and maybe they will hold their elected Members accountable. Then maybe that will enable us to pick up the extra

vote or two necessary to pass this amendment.

So, Mr. President, I am very sincere in saying I think this is probably the most important vote we have had in decades. It is unfortunate it did not pass today. It did not fail for a lack of effort or leadership on behalf of Senator DOLE. He showed great patience and, I think, great leadership. I also wish to compliment Senator HATCH and Senator CRAIG for the hours and hours that they spent on the floor. It is just unfortunate we were not successful.

I hope that the American people help us succeed, not just for Republicans in the Senate, not just for the idea of a balanced budget but really succeed for American taxpayers, for our children. People should not be confused about claims that, ''I would vote for that except I want to protect the Social Security trust funds.''

That is one of the most absurd arguments made on the floor of the Senate. How can they protect Social Security trust funds which do not exist? The Social Security trust fund is a falacy. There are no trust funds. There is not a bank account where any person in America can go look at the billions of dollars accumulating there. The trust fund is full of IOU's. And very soon, perhaps by the year 2013, we are going to be paying out more than is coming in.

At that point it is assumed that we will start cashing in on the trust fund IOU's. But what is really there? There is nothing in the trust fund but an IOU. How do we pay off Government IOU's? We borrow more money. By the year 2013, we are going to be paying more in social security benefits more than we take in from social security payroll taxes, and for each IOU we cash in to pay benefits we are going to have to borrow to pay off the IOU. That will put an enormous burden on younger generations.

I think my colleagues who say they voted against this amendment to protect the trust funds do not understand that there are no real trust funds, there is no bank account, there is no fund where money is actually accumulating. There is just a Government IOU, and that Government IOU is going to be paid for like we pay other Government IOU's. It is going to be paid for with additional borrowing.

Maybe that was the political cover they needed to excuse them from voting against this amendment, but it is very deceptive and very misleading. I think we have to be truthful with the American people.

Again, those same people who voted ''no'' today voted ''yes'' last year, and we had no special protection for social security. We had no such exemption for Social Security. I hope that the people will speak out loud and clear to their elected officials, and maybe we can reverse the result that we had on the floor today.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PRESIDENT CLINTON'S LEADERSHIP IN REDUCING THE NUCLEAR THREAT

Mr. DASCHLE. Mr. President, yesterday, in a speech before the Nixon Center For Peace and Freedom's policy conference held here in Washington, President Clinton spoke eloquently about America's leadership role in the post-cold war era and the importance of America remaining engaged in world affairs. The President placed particular and appropriate emphasis on the need to continue to make strong efforts to reduce the threat of nuclear weapons.

The President's remarks regarding his concerns over the new isolationism creeping into the debate over American foreign policy and the outline of his ambitious agenda to reduce the international nuclear threat are especially significant for members of the Senate. In the coming weeks we will be beginning debate on major foreign policy issues and may vote this year on ratification of the START II treaty as well as consider the Chemical Weapons Convention.

As President Clinton has rightly pointed out, American leadership is vital to continued international efforts to promote peace and reduce the threat of nuclear weapons. Since the days when President Truman began American efforts to curtail the threat of nuclear war, every American President has worked to reduce that threat to world peace. President Clinton has sought to advance that goal and exploit the additional possibilities for peace and prosperity provided by the end of the cold war.

There have been some notable successes. For the first time in a generation, no Russian missiles are targeted on American cities. Under the START I treaty negotiated by President Bush and placed into force by President Clinton, the United States and Russia are dismantling thousands of nuclear weapons. Former Soviet republics that were potential nuclear powers have now pledged to rid their countries of nuclear weapons.

This year President Clinton has started a vigorous program to reduce the threat posed by weapons of mass destruction. He has called for an indefinite world-wide extension of the Nuclear Non-Proliferation Treaty. And he has urged the Senate to quickly ratify the START II treaty, and the Chemical Weapons Convention to ban poison gas. He has promised to push for conclusion of a Comprehensive Test Ban Treaty and to fight for a global ban on the production of nuclear material for weapons.

The President's efforts to keep America engaged as the world's leader in the pursuit of peace and in reducing the threat of nuclear weapons are of vital importance to the national security of the United States and deserve the support of every American.

I commend his remarks to my colleagues' attention, and I ask unanimous consent that they be printed in the RECORD.

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

REMARKS BY THE PRESIDENT TO THE NIXON CENTER FOR PEACE AND FREEDOM POLICY CONFERENCE

The President. To Tricia and John Taylor, and all the people from the Nixon Center; our distinguished guests from Germany and from Russia; of course, to Henry Kissinger—I was thinking when he said we both spoke with accents, judging from the results of the last election, his native country is still claiming him more than mine is claiming me. (Laughter.) but I'm a big one for reconciliation. (Laughter.) And there's plenty of time to achieve it.

I am honored to be here tonight. Just a month before he passed away, President Nixon wrote me the last letter I received from him about his last trip to Russia. I told some people at the time that it was the best piece of foreign policy writing I had received, which angered my staff but happened to be the truth. (Laughter.) And as with all of our correspondence and conversations, I was struck by the rigor of his analysis, the energy of his convictions, and the wisdom of the practical suggestions that he made to me.

But more than the specifics of the letter, which basically argued for the imperative of the United States continuing to support political and economic reform in Russia, I was moved by the letter's larger message—a message that ran throughout Richard Nixon's entire public life and all of his prolific writings. President Nixon believed deeply that the United States simply could not be strong at home unless we were strong and prepared to lead abroad.

And that made a big impression on me. When I was running for President in 1992, even though there was this little sticker up on the wall of my campaign headquarters that said, ''It's the economy, stupid,'' I always said in every speech that we had to have two objectives. We had to restore the American Dream for all of our people, but we also had to make sure that we move into the next century still the strongest nation in the world, and the world's greatest force for peace and freedom and democracy.

Tonight I want to talk about the vital tradition of American leadership and our responsibilities, those which Henry Kissinger mentioned and those which President Nixon recognized so well. Our mission especially I want to discuss—to reduce the threat of nuclear weapons.

Today if we are going to be strong at home and lead abroad, we have to overcome what we all recognize I think is a dangerous and growing temptation here in our own land to focus solely on the problems we face here in America. I want to focus on the problems we face here in America. I've tried to do it for the last two years. I look forward to working with this new Republican-led Congress in the next two. But not solely.

There is a struggle now going on between those of us who want to carry on the tradition of American leadership and those who would advocate a new form of American isolationism. A struggle which cuts curiously across both party and ideological lines. If we're going to continue to improve the security and prosperity of all our people, then the tradition of American leadership must prevail.

We live in a moment of hope. We all know that. The implosion of communism and the explosion of the global economy have brought new freedoms to countries on every continent. Free markets are on the rise. Democracy is ascendant. The slogan says, ''after victory.'' Today, more than ever before, people across the globe do have the opportunity to reach their God-given potential. And because they do, Americans have new opportunities to reach theirs as well.

At the same time, the post-Cold War world has revealed a whole web of problems that defy quick or painless solutions—aggression of rogue states, transnational threats like overpopulation and environmental degradation, terrible ethnic conflicts and economic dislocation. But at the heart of all these complex challenges, I believe, lies an age-old battle—for power over human lives. The battle between the forces of freedom and tyranny, tolerance and repression, hope and fear. The same idea that was under attack by fascism and then by communism remains under attack today in different ways all across the world—the idea of the open society of free people.

American leadership is necessary for the tide of history to keep running our way, and for our children to have the future they deserve. Yet, there are some who would choose escapism over engagement. The new isolationists oppose our efforts to expand free trade through GATT or NAFTA through APEC and the Summit of the Americas. They reject our conviction that democracy must be nurtured with investment and support, a conviction that we are acting on from the former Soviet Union to South Africa. And some of them, being hypocritical, saying that we must trumpet the rhetoric of American strength; and then at the same time, they argue against the resources we need to bring stability to the Persian Gulf or to restore democracy to Haiti, or to control the spread of drugs and organized crime around the world, or even to meet our most elemental obligations to the United Nations and its peacekeeping work.

The new isolationists both on the left and the right would radically revise the fundamentals of our foreign policy that have earned bipartisan support since the end of World War II. They would eliminate any meaningful role for the United Nations which has achieved, for all of its problems, real progress around the world, from the Middle East to Africa. They would deny resources to our peacekeepers and even to our troops, and, instead, squander them on Star Wars. And they would refuse aid to the fledgling democracies and to all those fighting poverty and environmental problems that can literally destroy hopes for a more democratic, more prosperous, more safe world.

The new isolationists are wrong. They would have us face the future alone. Their approach would weaken this country, and we must not let the ripple of isolationism that has been generated build into a tidal wave.

If we withdraw from the world today, mark my words, we'll have to contend with the consequences of our neglect tomorrow and tomorrow and tomorrow. This is a moment of decision for all of us without regard to our party, our background or our accent. This is a moment of decision.

The extraordinary trend toward democracy and free markets is not inevitable. And as we have seen recently, it will not proceed easily in an even, uninterrupted course. This is hard work. And at the very time when more and more countries than ever before are working to establish or shore up their own freedom in their fragile democracies, they look to us for support. At this time, the new isolationists must not be allowed to pull America out of the game after just a few hours of debate because there is a modest price attached to our leadership. (Applause.)

We know now, as President Nixon recognized, that there must also be limits to America's involvement in the world's problems—limits imposed by clear-headed evaluation of our fundamental interests. We cannot be the world's policemen; we cannot become involved in every problem we really care about. But the choice we make must be rooted in the conviction that America cannot walk away its interests or its responsibilities.

That's why, from our first day in office, this administration has chosen to reach out, not retreat. From our efforts to open markets for America to support democracy around the world, to reduce the threat posed by devastating weapons and terrorists, to maintaining the most effective fighting force in the world, we have worked to seize the opportunities and meet the obligations of this moment.

None of this could have happened without a coalition of realists—people in both Houses of Congress and, importantly, people from both parties; people from coast to coast in our towns and cities and communities who know that the wealth and well-being of the United States depends upon our leadership abroad. Even the early leaders of our republic who went to great pains to avoid involvement in great power conflicts recognize not only the potential benefits, but the absolute necessity of engaging with the world.

Before Abraham Lincoln was elected President, our farmers were selling their crops overseas, we had dispatched the trade mission all the way to Japan trying to open new markets—some problems don't go away—(laughter)—and our Navy had already sailed every ocean. By the dawn of this century, our growing political and economic power already imposed a special duty on America to lead; a duty that was crystallized in our involvement in World War I. But after that war, we and the other great powers abandoned our responsibilities and the forces of tyranny and hatred filled the vacuum, as is well-known.

After the second world war, our wise leaders did not repeat that mistake. With the dawn of the Nuclear Age and the Cold War, and with the economies of Europe and Japan in shambles, President Truman persuaded an uncertain and weary nation, yearning to shift its energies from the front lines to the home front, to lead the world again.

A remarkable generation of Americans created and sustained alliances and institutions—the Marshall Plan, NATO, the United Nations, the World Bank, the IMF—the things that brought half a century of security and prosperity to America, to Europe, to Japan and to other countries all around the world. Those efforts and the special resolve and military strength of our own nation held tyranny in check until the power of democracy, the failures of communism, and the heroic determination of people to be free, consigned the Cold War to history.

Those successes would not have been possible without a strong, bipartisan commitment to American's leadership.

Senator Arthur Vandenburg's call to unite our official voice at the water's edge joined Republicans to Truman's doctrine. His impact was all the more powerful for his own past as an isolationist. But as Vandenburg himself said, Pearl Harbor ended isolationism for any realist.

Today, it is Vandenburg's spirit that should drive our foreign policy and our politics. The practical determination of Senators Nunn and Lugar to help Russia reduce its nuclear arsenal safely and securely; the support from Speaker Gingrich and Leader Gephardt, from Chairman Livingston and Representative Obey for aid to Russia and the newly-independent states; the work of Senators Hatfield, Leahy and McConnell, and Chairman Gilman, and Representative Hamilton for peace in the Middle East; the efforts of Senator Warner to restructure our intelligence—all these provide strong evidence of the continuing benefits and vitality of leadership with bipartisanship.

If we continue to lead abroad and work together at home, we can take advantage of these turbulent times. But if we retreat, we risk squandering all these opportunity and abandoning our obligations which others have entrusted to us and paid a very dear price to bring to us in this moment in history.

I know that the choice to go forward in a lot of these areas is not easy in democracies at this time. Many of the decisions that America's leaders have to make are not popular when they're made. But imagine the alternative. Imagine, for example, the tariffs and barriers that would still cripple the world trading system for years into the future if internationalists coming together across party lines had not passed GATT and NAFTA. Imagine what the Persian Gulf region would look like today if the United States had not stepped up with its allies to stop Iraqi aggression. Imagine the ongoing reign of terror and the flood of refugees at our borders had we not helped to give democracy a second chance in Haiti. Imagine the chaos that might have ensued if we had not moved to help stabilize Mexico's economy. In each case, there was substantial and sometimes overwhelming majority opinion against what needed to be done at the moment. But because we did it, the world has a better chance at peace and freedom.

But above all now, I ask you to imagine the dangers that our children and grandchildren, even after the Cold War is over, still can face if we do not do everything we can to reduce the threat of nuclear arms, to curb the terrible chemical and biological weapons spreading around the world, to counter the terrorists and criminals who would put these weapons into the service of evil.

As Arthur Vandenburg asked at the dawn of the Nuclear Age, after a German V–1 attack had left London in flames and its people in fear, ''How can there be isolation when men can devise weapons like that?''

President Nixon understood the wisdom of those words. His life spanned an era of stunning increases in humankind's destructive capacity, from the biplane to ballistic missiles, from mustard gas to mushroom clouds. He knew that the Atomic Age could never be won, but could be lost. On any list of his foreign policy accomplishments, the giant steps he took toward reducing the nuclear threat must stand among his greatest achievement. As President, I have acted on that same imperative.

Over the past two years, the United States has made real progress in lifting the threat of nuclear weapons. Now, in 1995, we face a year of particular decision in this era—a year in which the United States will pursue the most ambitious agenda to dismantle and fight the spread of weapons of mass destruction since the atom was split.

We know that ours is an enormously complex and difficult challenge. There is no single policy, no silver bullet, that will prevent or reverse the spread of weapons of mass destruction. But we have no more important task. Arms control makes us not only safer, but it makes us stronger. It is a source of strength. It is one of the most effective insurance policies we can write for the future of our children.

Our administration has focused on two distinct, but closely connected areas—decreasing and dismantling existing weapons, and preventing nations or groups from acquiring weapons of mass destruction, and the means to deliver them. We've made progress on both fronts.

As the result of an agreement President Yeltsin and I reached, for the first time in a generation Russian missiles are not pointed at our cities or our citizens. We've greatly reduced the lingering fear of an accidental nuclear launch. We put into force the START I Treaty with Russia that will eliminate from both our countries delivery systems that carry more than 9,000 nuclear warheads—each with the capacity to incinerate a city the size of Atlanta.

START I, negotiated by two Republican administrations and put into force by this Democratic administration, is the first treaty that requires the nuclear powers actually to reduce their strategic arsenal. Both our countries are dismantling the weapons as fast as we can. And thanks to a far-reaching verification system, including on-side inspections which began in Russia and the United States today, each of us knows exactly what the other is doing.

And, again, through the far-sighted program devised by Senators Nunn and Lugar, we are helping Russia and the other newly-independent states to eliminate nuclear forces in transport, safeguard and destroy nuclear weapons and material.

Ironically, some of the changes that have allowed us to reduce the world's stockpile of nuclear weapons have made our nonproliferation efforts harder. The breakup of the Soviet Union left nuclear materials dispersed throughout the newly-independent states. The potential for theft of nuclear materials, therefore, increased. We face the prospect of organized criminals entering the nuclear smuggling business. Add to this the volatile mix, the fact that a lump of plutonium the size of a soda can is enough to build a bomb, and the urgency of the effort to stop the spread of nuclear materials should be clear to all of us.

That's why from our first day in office we have launched an aggressive, coordinated campaign against international terrorism and nuclear smuggling. We are cooperating closely with our allies, working with Russia and the other new-independent states, improving security at nuclear facilities, and strengthening multilateral export controls.

One striking example of our success is Operation Sapphire, the airlift of nearly 600 kilograms of highly-enriched uranium—enough to make dozens of bombs from Kazakhstan to the United States for disposal. We've also secured agreements with Russia to reduce the uranium and plutonium available for nuclear weapons, and we're seeking a global treaty banning the production of fissile material for nuclear weapons.

Our patient, determined diplomacy also succeeded in convincing Belarus, Kazakhstan and Ukraine to sign the Non-Proliferation Treaty and give up the nuclear weapons left on their territory when the Soviet Union dissolved. One of our administration's top priorities was to assure that these new countries would become non-nuclear nations, and now we are also achieving that goal.

Because of these efforts, four potential suppliers of ballistic missiles—Russia, Ukraine, China and South Africa— have all agreed to control the transfer of these missiles and related technology, pulling back from the nuclear precipice has allowed us to cut United States defense expenditures for strategic weapons by almost two-thirds, a savings of about $20 billion a year, savings which can be shifted to vital needs such as boosting the readiness of our Armed Forces, reducing the deficit, putting more police on our own streets. By spending millions to keep or take weapons out of the hands of our potential adversaries, we are saving billions in arms costs and putting it to better use.

Now, in this year of decision, our ambition for the future must be even more ambitious. If our people are to know real lasting security, we have to redouble our arms control, nonproliferation and antiterrorism efforts. We have to do everything we can to avoid living with the 21st century version of fallout shelters and duck-and-cover exercises to prevent another World Trade Center tragedy.

In just four days we mark the 25th anniversary of the Non-Proliferation Treaty. Nothing is more important to prevent the spread of nuclear weapons than extending the treaty indefinitely and unconditionally. And that's why I've asked the Vice President to lead our delegation to the NPT conference this April and to work as hard as we can to make sure we succeed in getting that indefinite extension.

The NPT is the principal reason why scores of nations do not now possess nuclear weapons; why the doomsayers were wrong. One hundred and seventy-two nations have made NPT the most widely subscribed arms limitation treaty in history for one overriding reason—it's in their self-interest to do so. Non-nuclear weapon states that sign on to the treaty pledge never to acquire them. Nuclear weapons states vow not to help others obtain nuclear weapons, to facilitate the peaceful uses of atomic energy and to pursue nuclear arms control and disarmament—commitments I strongly reaffirm, along with our determination to attain universal membership in the treaty.

Failure to extend NPT indefinitely could open the door to a world of nuclear trouble. Pariah nations with rigid ideologies and expansionist ambitions would have an easier time acquiring terrible weapons, and countries that have chosen to forego the nuclear option would then rethink their position; they would certainly be tempted to reconsider that decision.

To further demonstrate our commitment to the goals of the treaty, today I have ordered that 200 tons of fissile material, enough for thousands of nuclear weapons, be permanently withdrawn from the United States nuclear stockpile. Two hundred tons of fissile material that will never again be used to build a nuclear weapon.

A second key goal of ours is ratifying START II. Once in effect, that treaty will eliminate delivery systems from Russian and American arsenals that carry more than 5,000 weapons. The major reductions under START I, together with START II, will enable us to reduce two-thirds the number of strategic warheads deployed at the height of the Cold War. At my urging, the Senate has already begun hearings on START II, and I am encouraged by the interest of the senators from both parties in seeking quick action. I commend the Senate for the action taken so far, and I urge again the approval of the treaty as soon as possible.

President Yeltsin and I have already instructed our experts to begin considering the possibility after START II is ratified of additional reductions and limitations on remaining nuclear forces. We have a chance to further lift the nuclear cloud, and we dare not miss it.

To stop the development of new generations of nuclear weapons, we must also quickly complete negotiations on a comprehensive test ban treaty. Last month I extended a nuclear testing moratorium that I put into effect when I took office. And we revised our negotiating position to speed the conclusion of the treaty while reaffirming our determination to maintain a safe and reliable nuclear stockpile.

We will also continue to work with our allies to fully implement the agreement we reached with North Korea, first to freeze, then do dismantle its nuclear program, all under international monitoring. The critics of this agreement, I believe, are wrong. The deal does stop North Korea's nuclear program, and it does commit Pyongyang to roll it back in the years to come.

I have not heard another alternative proposal that isn't either unworkable or foolhardy, or one that our allies in the Republican of Korea and Japan, the nation's most directly affected, would fail to support.

If North Korea fulfills its commitment, the Korean Peninsula and the entire world will clearly be less threatened and more secure. The NPT, START II, the Comprehensive Test Ban Treaty, the North Korean Agreement, they top our agenda for the year ahead. There are other critical tasks we also face if we want to make every American more secure, including winning Senate ratification of the Chemical Weapons Convention, negotiating legally binding measures to strengthen the Biological and Toxin Weapons Convention, clarifying the ABM Treaty so as to secure its viability while permitting highly effective defenses against theater missile attacks, continuing to support regional arms control efforts in the Middle East and elsewhere, and pushing for the ratification of conventional weapons which, among other things, would help us to reduce the suffering caused by the tens of millions of anti-personnel mines which are plaguing millions of people all across the world.

My friends, this is a full and challenging agenda. There are many obstacles ahead. We cannot achieve it if we give in to a new isolationism. But I believe we can do no less than make every effort to complete it.

Tonight, let us remember what President Nixon told the joint session of Congress when he returned from his historic trip to Moscow in 1972. He said, ''We have begun to check the wasteful and dangerous spiral of nuclear arms. Let us seize the moment so that our children and the world's children can live free of the fears and free of the hatreds that have been the lot of mankind through the centuries.''

Now it is within our power to realize the dream that Richard Nixon described over 20 years ago. We cannot let history record that our generation of Americans refused to rise to this challenge, that we withdrew from the world and abandoned our responsibilities when we knew better than to do it, that we lacked the energy, the vision and the will to carry this struggle forward—the age-old struggle between hope and fear.

So let us find inspiration in the great tradition of Harry Truman and Arthur Vandenburg—a tradition that builds bridges of cooperation, not walls of isolation; that opens the arms of Americans to change instead of throwing up our hands in despair; that casts aside partisanship and brings together Republicans and Democrats for the good of the American people and the world. That is the tradition that made the most of this land, won the great battles of this century against tyranny and secured our freedom and our prosperity.

Above all, let's not forget that these efforts begin and end with the American people. Every time we reduce the threat that has hung over our heads since the dawn of the Nuclear Age, we help to ensure that from the far stretches of the Aleutians to the tip of the Florida Keys, the American people are more secure. That is our most serious task and our most solemn obligation.

The challenge of this moment is matched only by its possibility. So let us do our duty.

Thank you very much.

MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 4 1995, the Secretary of the Senate, on March 1, 1995, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bill:

S. 257. An act to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea.

Under the authority of the order of the Senate of January 4, 1994, the enrolled bill was signed on March 1, 1995, during the recess of the Senate by the President pro tempore (Mr. BYRD).

MESSAGE FROM THE HOUSE

At 2:04 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House of Representatives has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1022. An act to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety, and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules, and for other purposes.

The message also announced, that pursuant to the provisions of Public Law 84–372, the Speaker appoints as a member of the Franklin Delano Roosevelt Memorial Commission the following Member on the part of the House: Mr. LEWS of California.

The message further announced that, pursuant to the provisions of 22 United States Code 276h, the Speaker appoints the following Member as a member on the part of the House of the United States Delegation of the Mexico-United States Interparliamentary Group for the First Session of the 104th Congress: Mr. KOLBE, Chairman.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 1022. An act to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety, and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules, and for other purposes; to the Committee on Governmental Affairs.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on March 1, 1995 she had presented to the President of the United States, the following enrolled bill:

S. 257. An act to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SIMPSON, from the Committee on Veterans' Affairs:

Special Report entitled ''Legislative and Oversight Activities During the 103d Congress by the Senate Committee on Veterans' Affairs'' (Rept. No. 104–11).

By Mr. HATFIELD, from the Committee on Appropriations, with amendments and an amendment to the title:

H.R. 889. A bill making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes (Rept. No. 104–12).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

Herschelle Challenor, of Georgia, to be a Member of the National Security Education Board for a term of 4 years.

Sheila Cheston,* of the District of Columbia, to be General Counsel of the Department of the Air Force.

Josue Robles, Jr.*, of Texas, to be a member of the Defense Base Closure and Realignment Commission for a term expiring at the end of the first session of the 104th Congress.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–446. A communication from the President of the United States, transmitting, pursuant to law, a report on the Selective Service System; to the Committee on Armed Services.

EC–447. A communication from Deputy Secretary of Defense, transmitting, pursuant to law, a report relative to the Defense Business Operations Fund; to the Committee on Armed Services.

EC–448. A communication from the Under Secretary of Defense, transmitting, pursuant to law, notice relative to the report on the manpower request for fiscal year 1996; to the Committee on Armed Services.

EC–449. A communication from the Secretary of Defense, transmitting, pursuant to law, the report on proposed obligations for facilitating weapons destruction and nonproliferation in the Former Soviet Union; to the Committee on Armed Services.

EC–450. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report on monetary policy; to the Committee on Banking, Housing, and Urban Affairs.

EC–451. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the report on the Stewart B. McKinney Homeless Programs; to the Committee on Banking, Housing, and Urban Affairs.

EC–452. A communication from Assistant Administrator for Weather Services, Department of Commerce, transmitting, pursuant to law, a report relative to the National Weather Service; to the Committee on Commerce, Science, and Transportation.

EC–453. A communication from the President of the National Railroad Passenger Corporation, transmitting, pursuant to law, the legislative report and the Federal Grant request for fiscal year 1996; to the Committee on Commerce, Science, and Transportation.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mrs. HUTCHISON:

S. 480. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Gleam*; to the Committee on Commerce, Science, and Transportation.

By Mr. BAUCUS:

S. 481. A bill to limit the amount of expenditures required under the Endangered Species Act of 1973 and other laws for the protection of fish and wildlife made by the Bonneville Power Administration that may be recovered from ratepayers, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 482. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for the vessel *Emerald Ayes*; to the Committee on Commerce, Science, and Transportation.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, and Mr. THOMPSON):

S. 483. A bill to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for the other purposes; to the Committee on the Judiciary.

By Mr. GRAHAM:

S. 484. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to establish a national clearinghouse to assist in background checks of applicants for law enforcement positions, and for other purposes; to the Committee on the Judiciary.

By Mrs. HUTCHISON:

S. 485. A bill to amend the Solid Waste Disposal Act to provide and clarify the authority for certain municipal solid waste flow control arrangements; to the Committee on Environment and Public Works.

By Mr. HEFLIN (for himself, Mr. SPECTER, Mr. FORD, Mr. THURMOND, Mr. BUMPERS, Mr. BROWN, Mr. SIMON, Mr. SHELBY, Ms. MOSELEY-BRAUN, and Mr. COHEN):

S. 486. A bill to reorganize the Federal administrative law judiciary, and for other purposes; to the Committee on the Judiciary.

By Mr. MCCAIN (for himself and Mr. INOUYE):

S. 487. A bill to amend the Indian Gaming Regulatory Act, and for other purposes; to the Committee on Indian Affairs.

By Mr. SPECTER:

S. 488. A bill to amend the Internal Revenue Code of 1986 to impose a flat tax only on the earned income of individuals and the business taxable income of corporations, and for other purposes; to the Committee on Finance.

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

S. 489. A bill to authorize the Secretary of the Interior to enter into an appropriate form of agreement with, the Town of Grand Lake, Colorado, authorizing the town to maintain permanently a cemetery in the Rocky Mountain National Park; to the Committee on Energy and Natural Resources.

By Mr. GRASSLEY:

S. 490. A bill to amend the Clean Air Act to exempt agriculture-related facilities from certain permitting requirements, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BREAUX (for himself, Mr. HOLLINGS, Mr. INOUYE, Mr. COCHRAN, and Mr. CHAFEE):

S. 491. A bill to amend title XVIII of the Social Security Act to provide coverage of outpatient self-management training services under part B of the medicare program for individuals with diabetes; to the Committee on Finance.

By Mr. CHAFEE:

S. 492. A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel *Intrepid*; to the Committee on Commerce, Science, and Transportation.

S. 493. A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel *Consortium*; to the Committee on Commerce, Science, and Transportation.

By Mr. JEFFORDS (for himself, Mr. LEAHY, Ms. SNOWE, Mr. KENNEDY, Mr. COHEN, Mr. GREGG, Mr. DODD, Mr. SMITH, Mr. CHAFEE, Mr. KERRY, Mr. LIEBERMAN, and Mr. PELL):

S.J. Res. 28. A joint resolution to grant consent of Congress to the Northeast Interstate Dairy Compact; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

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

S. Res. 82. A resolution to petition the States to convene a Conference of the States to consider a Balanced Budget Amendment to the Constitution; to the Committee on the Judiciary.

By Mr. FEINGOLD (for himself and Mr. BUMPERS):

S. Res. 83. A resolution expressing the sense of the Senate regarding tax cuts during the 104th Congress; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mr. MACK:

S. Res. 84. A resolution saluting Florida on the 150th anniversary of Florida statehood, and for other purposes; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 482. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for the vessel *Emerald Ayes;* to the Committee on Commerce, Science, and Transportation.

"EMERALD AYES" CERTIFICATE OF DOCUMENTATION LEGISLATION

Mr. HOLLINGS. Mr. President, I am introducing a bill today to direct that the vessel *Emerald Ayes*, official number 986099, be accorded coastwise trading privileges and be issued a certificate of documentation under section 12103 of title 46, United States Code.

The *Emerald Ayes* was constructed in Canada in 1992, and is a sailing catamaran for use as a recreational vessel. It is 36.4 feet in length, 18.2 feet in breadth, has a depth of 9.4 feet, and is self-propelled.

The vessel was purchased by Dr. Stephen D. Michel of Mount Pleasant, SC, who purchased it with the intention of chartering the vessel for short sailing tours. However, because the vessel was built in Canada, it did not meet the requirements for coastwise license endorsement in the United States. Such documentation is mandatory to enable the owner to use the vessel for its intended purpose. He first sought to purchase a U.S.-built vessel, but this type of sailboat is not built by any U.S. shipbuilders. He has invested a considerable amount of money in this vessel, and without a Jones Act waiver for the boat, he will be forced to sell it.

The owner of the *Emerald Ayes* is seeking a waiver of the existing law because he wishes to use the vessel for charters. His desired intentions for the vessel's use will not adversely affect the coastwise trade in U.S. waters. If he is granted this waiver, it is his intention to comply fully with U.S. documentation and safety requirements. The purpose of the legislation I am introducing is to allow the *Emerald Ayes* to engage in the coastwise trade and the fisheries of the United States.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, and Mr. THOMPSON):

S. 483. A bill to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes; to the Committee on the Judiciary.

THE COPYRIGHT TERM EXTENSION ACT OF 1995

Mr. HATCH. Mr. President, Congress has in recent years passed many significant copyright measures, but it is a rare occasion when we address the fundamental aspects of copyright protection, such as the nature of the works protected, the scope of rights recognized, or the duration of copyright.

Still, from time to time, it becomes clear that fundamental change is needed. I believe we are now at such a point with respect to the question of whether the current term of copyright adequately protects the interests of authors and the related question of whether the term of protection continues to provide a sufficient incentive for the creation of new works of authorship.

The current term of copyright is, in my view, inadequate to perform its historic functions of spurring creativity and protecting authors. Thus, I am filing today the Copyright Term Extension Act of 1995, which has the general purpose of increasing existing copyright terms by the addition of a further 20 years of protection. I am pleased to be joined in this effort by my colleagues on the Senate Judiciary Committee, Senator FEINSTEIN of California and Senator THOMPSON of Tennessee.

Mr. President, Congress has protected copyrights since the very first Congress, and the entire history of our copyright laws has been a history of everincreasing protection, both with respect to the nature of works protected, as well as with respect to the duration of protection. Still, in over 200 years, the copyright term has only been extended on three prior occasions.

In 1790, the first Congress set the maximum term of copyright protection at 28 years—a 14-year initial period that could be renewed for an additional 14 years. In 1831, we extended that period by 14 years—a 28-year initial period that could be renewed for an additional 14 years. In 1909, the major copyright reform act of that era extended the maximum term of copyright to 56 years—a 28-year initial term that could be renewed for an additional 28 years.

Most recently, the Copyright Act of 1976 fundamentally altered the way in which we measure copyright by protecting works throughout the life of their creator plus an additional 50 years. In so doing, we adopted the prevailing international standard of protection—a standard that was first recommended by the members of the Berne Convention for the Protection of Literary and Artistic Works in the Act of Berlin of November 13, 1908, and that was made mandatory for members of the Berne Union by the Act of Brussels of June 26, 1948.

For existing works, the Copyright Act of 1976 created a maximum term of 75 years of protection—a 34-percent increase in term of protection over the preceding maximum of 56 years. The 20-year increase in protection that the Copyright Extension Act of 1995 provides for existing works is a far more modest extension of copyright than that which we adopted in 1976, or, in fact, that which was implemented by the two previous congressional extensions of copyright term.

Every work created after the effective date of the Copyright Term Extension Act will be prospectively protected for the remainder of the author's life and for 70 years thereafter. Works in existence on that date will receive the identical protection, if their author is still living. As for the works of authors already decreased, my bill provides an additional 20 years of protection; provided, that the works have not, on the effective date of the bill, already gone into the public domain.

Those works whose term of protection under the current Copyright Act is not tied to the life of an author but is a fixed term of years, such as works made for hire, will also receive an additional 20 years of protection. Where they are protected for 75 years under present law, they will be protected for 95 years under the provisions of the Copyright Term Extension Act.

By providing this across-the-board extension of copyright for an additional 20 years, I believe that authors will reap the full benefits to which they are entitled from the exploitation of their creative works. In addition, there are significant trade benefits to be obtained by extending copyright in the United States to bring our law into conformity with the longer copyright term enjoyed by authors in other nations.

As I noted above, our current basic copyright term of life plus 50 years is prevailing international standard, one now also applicable to the members of the World Trade Organization through the implementation of the Agreement on the Trade Related Aspects of Intellectual Property Protection [TRIPS]. Despite the nearly universal adoption of the life-plus-50-year term of copyright, many have observed that the term itself, particularly the decision to give significance to 50 years, has achieved dominance perhaps more through imitation and acceptance than through an analytical belief that the life-plus-50-year term represents the ideal period of protection needed to appropriately reward and inspire creative activity. See, that is, Ricketson, ''The Berne Convention for the protection of literary and artistic works: 1886–1986'' p. 321.

> While the [Berne Convention's] prescriptions as to duration are quite precise, there has never been any real effort made to justify why, or to explain how, these terms have come to be adopted * * *

Even though the United States adopted the life-plus-50-year term of copyright only 19 years ago, and even though that term of protection has a nearly century-old history in the international arena, I do not believe that it should be accepted uncritically as an ideal or even sufficient measurement of the most appropriate duration for copyright term. Instead, we should be aware of the many nations that have historically provided longer terms of copyright as well as the recent developments to extend copyright in Europe. Also, we need to examine the real-life experience of creators, their reasonable expectations for exploiting their works, and the concerns and views of the descendants, heirs, and others whom the postmortem protection of copyright was designed to benefit.

Among the European nations, Germany and Spain have for some time recognized respectively terms of life plus 70 pears and life plus 80 years, and Portugal has for much of this century provided a perpetual term of protection. In addition, it is common for bilateral agreements relating to copyright protection among particular nations to provide for terms of protection in excess of the life-plus-50-year standard.

As far as a general reconsideration of the life-plus-50-year term, it should be noted that as long ago as 1961 the permanent committee of the Berne Union began the process of reexamining the sufficiency of that term of protection. At the Stockholm Conference of 1967, a proposal to increase the copyright term to life plus 80 years was debated though not adopted. It is, however, easy to speculate that the failure to increase copyright term at that time may have been disproportionately influenced by the contemporaneous efforts in the United States to adopt a copyright act compatible with the existing minimum requirements of the Berne Convention. An extension of the minimum term at that time would, however meritorious, surely have made more difficult the eventual adoption of the Copyright Act of 1976 in the United States.

In the intervening years, the inadequacy of the life-plus-50-year term has become more apparent, and nations have acted to increase the duration of copyright. Most significantly, the nations of the European Union, pursuant to an October 1993, directive of the Council of the European Communities, are committed to reaching a life-plus-70-minimum term of protection by July of this year. It is thus fair to say that for a significant portion of the developed world—for the nations, moreover, that have traditionally been in the forefront of protecting authors' rights—the term of life-plus-70 has gained a broad acceptance.

I am pleased to be the author of the bill that I hope will bring American copyright law into accord with this developing international understanding as to the appropriate duration of copyright.

The benefits of extending copyright by 20 years will be felt in many areas. The vast majority of our European and other trading partners have obligated themselves to extend to our authors the full protection of their copyright laws—at least to the extent that America recognizes complementary rights. Of course, I should add that with respect to the minimum requirements for copyright protection, national treatment for U.S. authors is mandated by the Berne Convention as well as by the TRIPS agreement. But copyright protections in excess of the Berne minima will not be freely granted to U.S. authors on the basis of national treatment. Instead, the option allowed by the Berne Convention's ''role of the shorter term'' will no doubt be often employed by foreign states with the result that American works will be protected in those nations only to the extent that the works of their authors are protected in America—article 7(1) of the EC directive explicitly mandates rule of the shorter term treatment for the works of foreign authors.

After the European law goes into effect, American authors will be theoretically protected for an additional 20 years, but will in reality be unprotected for that entire period of time—unless American law is strengthened in the manner proposed by the bill I am filing today.

America exports more copyrighted intellectual property than any country in the world, a huge percentage of it to the nations of the European Union. Intellectual property is, in fact, our second largest export; it is an area in which we possess a large trade surplus. At a time when we face trade deficits in many other areas, we cannot afford to abandon 20 years' worth of valuable overseas protection now available to our creators and copyright owners. We must adopt a life-plus-70-year term of copyright if we wish to improve our international balance. It just makes plain common sense to ensure fair compensation for the American creators whose efforts fuel this important intellectual property sector of our economy by extending our copyright term to allow American copyright owners to benefit from foreign uses. By so doing, we guarantee that our trading partners do not get a free ride for their use of our intellectual property.

While we may be accustomed to a substantial American balance-of-trade surplus with respect to trade in works of intellectual property, we cannot afford to take this condition for granted. In a world economy where copyrighted works flow through a fiber optic global information infrastructure, American competitiveness demands that we adapt our laws—and adapt them quickly—to provide the maximum advantage for our creators.

Anonymous and pseudonymous works: I noted about that the copyright term extension provided by the bill I file today is not mandated by our treaty obligations. But it may be well to note parenthetically that at least in one respect the 20-year term extension does advance our ongoing efforts to fulfill our obligations under the Berne Convention. I am speaking of the term of protection applicable to anonymous and pseudonymous works. Article 7(3) of the Berne Convention mandates that such works be protected for at least 50 years after they are first made lawfully available to the public. Our current law protects those works for 75 years, yet §302(c) of the Copyright Act also establishes a maximum term of protection—

100 years from the date of their creation—beyond which no anonymous or pseudonymous work will be protected, regardless of the date on which it may ultimately be made available to the public. My bill increases each of these terms by 20 years.

Since the Stockholm Act of July 14, 1967, the Berne Convention has recognized the need for an outer limit on the protection of anonymous and pseudonymous works by providing that, ''The countries of the Union shall not be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for fifty years.'' Art. 7(3). It has been argued that the American provision setting an outer limit of 100 years of protection for anonymous and pseudonymous works is in violation of the Berne Convention, see Nimmer, ''Copyright'' §9.01[D], at least with respect to works whose country of origin is not the United States. By increasing the maximum protection from its current 100 years to a period of 120 years, the Copyright Term Extension Act will at least serve to reduce greatly the number of potential situations in which our law may operate in violation of the Berne Convention. This for the reason that it is far more reasonable to presume that an author who created a work 120 years ago may have been deceased for 50 years, than it is to presume that the author of a work created only 100 years ago may have been deceased for at least 50 years.

Mr. President, that is the theoretical, one might say jurisprudential, background of the copyright issue before us today. But it may be well to consider this legal question in its practical aspect as well. What works are we talking about? Who is affected by this legislation?

Mr. President, this legislation matters and it matters to some of the most distinguished members of America's cultural and artistic community. If we examine the significance of this legislation just in the area of popular music alone, I believe we will see its importance.

Consider the following songs that fell into the public domain just 2 months ago at the end of 1994—works still widely performed in theaters and through media around the world:

''Swanee'' by George Gershwin and Irving Caesar; ''A Pretty Girl Is Like a Melody'' by Irving Berlin; ''Alice Blue Gown'' by Joseph McCarthy and Harry Tierney.

In the preceding 2 years, the following standards also lost copyright protection, despite their continued popularity: ''After You've Gone'' by Henry Creamer and turner Layton; ''Till the Clouds Roll By'' by Jerome Kern and P.G. Wodehouse; ''Over There'' by George M. Cohan; ''Till We Meet Again'' by Richard Whiting and Raymond Egan.

If the Copyright Term Extension Act of 1995 is not adopted this year in this session of Congress, the following songs will no longer be protected by copyright: ''Look for the Silver Lining'' by Jerome Kern and bud DeSylva; ''Avalon'' by Al Jolson, Bud DeSylva, and Vincent Rose.

Within the next few years, if Congress does not act to adopt legislation such as that which I introduce today, the following musical works will also fall into the public domain: ''Rahpsody in Blue'' by George Gershwin; ''My Buddy'' by Walter Donaldson and Gus Kahn; ''What'll I Do'' by Irving Berlin; ''Georgia'' by Walter Donaldson and Howard Johnson; ''It Had To Be You'' by Isham Jones and Gus Kahn; ''Showboat'' by Jerome Kern and Oscar Hammerstein II.

All of these songwriters and composers are household names still, after 75 years. Indeed ''Showboat'' is back on Broadway, eight performances a week, nearly 70 years after its premiere.

But I would like to draw particular attention to the career of Walter Donaldson. He composed the songs cited above when he was in his twenties, and he died in 1947 when he was in his midfifties. He composed innumerable standards and will forever be linked to the extraordinary success of the 1927 film ''The Jazz Singer'' in which his songs were sung by Al Jolsen. The historical significance of that motion picture, the first sound film to be commercially released, can hardly be overstated.

If the present copyright law had been in effect in the 1920's, all of Walter Donaldson's compositions would fall into the public domain within the next 2 years. Yet these historical facts should not mislead us into thinking that the copyright status of his works is an academic issue. For it was Ellen Donaldson, the composer's daughter, who first alerted me to the importance of this issue only 2 years ago. I do not think she will mind my pointing out that she is now only in her early fifties. She remains extremely active in publishing and exploiting her father's music and in protecting his copyrights. Like the children of composers such as Richard Rogers, Irving Berlin, Richard Whiting, Hoagy Carmichael, and many, many others, her legitimate interest in her father's copyrights can be expected to continue for decades, certainly for another 20 years.

Mr. President, from interviews I have had with writers, authors, and artists of all kinds, and from the hearings we have held on issues of concern to authors in the Judiciary Committee over the past 18 years, I have come to the conclusion that the vast majority of authors expect their copyrights to be a potentially valuable resource to be passed on to their children and through them into the succeeding generation. I believe that they are reasonable in this expectation and that such a general expectation is what the Framers of the Constitution had in mind when they constrained the power of Congress to grant patents and copyrights only with the very broad and flexible requirement that such rights be granted ''for limited times.'' Article I, section 8. When, however, we so often see copyrights expiring before even the first generation of an author's heirs have fully benefited from them, then I believe that is accurate to say that our term of copyright is too short and for a too limited time.

One could also cite demographic factors that point to the need for a longer term if copyright is truly to reflect the natural desire of authors to provide for their heirs. Principal among these would be the increasing lifespan of the average American, as well as the increasing fact of children being born far later, in a marriage than in past decades. Whatever the reason, the inescapable conclusion must be drawn that copyrights in valuable works are too often expiring before they have served their purpose of allowing an author to pass their benefits on to his or her heirs. I urge my colleagues to pass the Copyright Term Extension Act of 1995 to remedy this situation.

Mr. President, we in Congress are currently dealing with a number of fundamental issues that bring into question how we have done things in the Federal government over many years. These debates raise the question of the proper role of the Federal Government in sponsoring, stimulating, and, where appropriate, funding artistic activity across a wide range of fields. We are asking virtually every Federal program now in existence to justify its function. And, as a result, we hear much about the programs that do not work.

We hear all too little about the good that Government can do when it functions in a limited and effective way. I would submit that the copyright system—in the way that it rewards private initiative through governmental protection, all without the need for a regulatory bureaucracy—is a model for the best that government can do to improve the life of its citizens.

And when one considers that all works of creativity fixed by any method now known or later developed are invested from the moment of their creation with substantial rights that can be protected in any Federal court, then I think it becomes clear that the copyright system is something we should encourage and, where appropriate, extend.

Because the bill I introduce today does extend the benefits of copyright in an appropriate and obviously needed way, I am proud to be its sponsor. I urge my colleagues to give it their most serious consideration.

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

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

S. 483

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 ''Copyright Term Extension Act of 1995''.

SEC. 2. DURATION OF COPYRIGHT PROVISIONS.

(a) PREEMPTION WITH RESPECT TO OTHER LAWS.—Section 301(c) of title 17, United States Code, is amended by striking out ''February 15, 2047'' in each place it appears and inserting ''February 15, 2067'' in each such place.

(b) DURATION OF COPYRIGHT: WORKS CREATED ON OR AFTER JANUARY 1, 1978.—Section 302 of title 17, United States Code, is amended—

(1) in subsection (a) by striking out ''fifty'' and inserting in lieu thereof ''seventy'';

(2) in subsection (b) by striking out ''fifty'' and inserting in lieu thereof ''seventy'';

(3) in subsection (c) in the first sentence—

(A) by striking out ''seventy-five'' and inserting in lieu thereof ''ninety-five''; and

(B) by striking out ''one hundred'' and inserting in lieu thereof ''one hundred and twenty''; and

(4) in subsection (e) in the first sentence—

(A) by striking out ''seventy-five'' and inserting in lieu thereof ''ninety-five'';

(B) by striking out ''one hundred'' and inserting in lieu thereof ''one hundred and twenty''; and

(C) by striking out ''fifty'' in each place it appears and inserting ''seventy'' in each such place.

(c) DURATION OF COPYRIGHT: WORKS CREATED BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANUARY 1, 1978.—Section 303 of title 17, United States Code, is amended in the second sentence—

(1) by striking out ''December 31, 2002'' in each place it appears and inserting ''December 31, 2012'' in each such place; and

(2) by striking out ''December 31, 2027'' and inserting in lieu thereof ''December 31, 2047''.

(d) DURATION OF COPYRIGHT: SUBSISTING COPYRIGHTS.—

(1) Section 304 of title 17, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1)—

(I) in subparagraph (B) by striking out ''47'' and inserting in lieu thereof ''67''; and

(II) in subparagraph (C) by striking out ''47'' and inserting in lieu thereof ''67'';

(ii) in paragraph (2)—

(I) in subparagraph (A) by striking out ''47'' and inserting in lieu thereof ''67''; and

(II) in subparagraph (B) by striking out ''47 and inserting in lieu thereof ''67''; and

(iii) in paragraph (3)—

(I) in subparagraph (A)(i) by striking out ''47'' and inserting in lieu thereof ''67''; and

(II) in subparagraph (B) by striking out ''47'' and inserting in lieu thereof ''67''; and

(B) in subsection (b) by striking out ''seventy-five'' and inserting in lieu thereof ''ninety-five''.

(2) Section 102 of the Copyright Renewal Act of 1992 (Public Law 102–307; 106 Stat. 266; 17 U.S.C. 304 note) is amended—

(A) in subsection (c)—

(i) by striking out ''47'' and inserting in lieu thereof ''67'';

(ii) by striking out ''(as amended by subsection (a) of this section)''; and

(iii) by striking out ''effective date of this section'' each place it appears and inserting in each such place ''effective date of the Copyright Term Extension Act of 1995''; and

(B) in subsection (g)(2) in the second sentence by inserting before the period the following: '', except each reference to forty-seven years in such provisions shall be deemed to be sixty-seven years''.

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

Mrs. FEINSTEIN. Mr. President, as always when it comes to matters of copyright law, the distinguished chairman of the Judiciary Committee has spoken well and to the point as to why extending the basic term of copyright protection by 20 years is both the right and the economically desirable thing to do, and to do without delay. As the bill's coauthor, I'd like to add just a few thoughts about our proposal to extend the length of copyright protection for only the fourth time since the Founding Fathers established such rights more than 200 years ago.

First principles come first. The fundamental animating principle of copyright protection was—and remains—assuring that the Nation's most creative individuals have and retain a sufficient economic incentive to continue to craft, work by copyrightable work, the incomparable mosaic of our Nation's cultural life. For many years now, such incentive has been considered to be the right to profit from licensing one's work during one's lifetime and to take pride and comfort in knowing that one's children—and perhaps their children—might also benefit from one's posthumous popularity. Indeed, it was to preserve that incentive that Congress adopted the current life plus 50 years term that is now the law.

Human longevity, however, is increasingly undermining this fundamental precept of copyright law, Mr. President, and with it the economic incentive deemed essential by the authors of the Constitution. We all had the great good fortune, for example, to have the incomparable Irving Berlin among us until 1989, when he died at the age of 101. By that time, however, Mr. Berlin had outlived the period in which he was entitled to royalties from the immortal ''Alexander's Ragtime Band.'' Although not every American copyright owner will reach the century mark, Mr. President, it's clear that we as a Nation are living longer and more active lives.

Copyright law has in the past—and should now again—reflect that central fact of life. Accordingly, the Copyright Term Extension Act of 1995 uniformly extends the life of copyright protection in this country by 20 years, a modest extension relative to past adjustments, as Chairman HATCH points out. Writers, artists, filmmakers, composers, photographers, sculptors, and cartographers alike—and their children, all will benefit from this overdue adjustment. Perhaps more importantly, as the ultimate beneficiaries of the creativity that copyright protection is intended to assure, so will we all.

Second, Mr. President, as important as America's cultural enrichment is, the United States also stands to benefit dramatically on the world economic stage from extension of the current copyright term. As the tense and protracted negotiations with China just concluded underscored, intellectual property—the collective copyrightable output of America's creators of movies, music, art and other works—is an enormous asset to the Nation's balance of trade.

Indeed, in a recent Billboard magazine commentary, Prof. Arthur Miller of the Harvard Law School noted that, ''In 1990, America's 'copyright industries' recorded $34 billion in foreign sales * * *.'' It's no wonder, Mr. President, that the Chinese preferred to appropriate American film and music for resale—two great exports from my State of California—rather than license American works.

By extending to life plus 70 years the basic copyright protection afforded in the United States for new works, Congress will assure comparable protection for American authors in the countries of the European Union, which will formally adopt the life-plus-70 standard this summer. If we do not act, Mr. President, those nations quite simply will not be required to provide American authors, artists and other copyright holders with more than the protection we afford their intellectual property holders here at home. Simply put, Mr. President, conforming our intellectual property laws with those of our trading partners in the service of American competitiveness is critical.

As Professor Miller aptly put it: ''Unless Congress matches the copyright extension adopted by the European Union, we will lost 20 years of valuable protection against rip-off artists around the world.'' I'm certain that the tired, but successful team from the United States Trade Representative's office just returned from China will testify if asked, Mr. President, that the stronger our copyright laws here at home, the better the deal they can negotiate for American copyright holders abroad. Since America is—and is likely to remain—the world's principal exporter of popular culture, extension of the basic copyright term makes international dollars and sense.

Third, and finally, Mr. President, I want to note for the record the extraordinary support for this legislation within the intellectual property community. Not only do movie and music companies strongly back this bill as written, as one would expect, but book and music publishers, performing rights societies representing America's premier songwriters and composers, and major software producing firms all concur that Congress can and must pass this important legislation.

I want to thank Chairman HATCH and his staff once again, Mr. President, for another—to my mind—successful collaboration to protect and encourage the production of American intellectual property. Just as was the case with the digital performance rights legislation which we first introduced in the last Congress and jointly offered again recently, it is equity and economics which make the Copyright

Term Extension Act of 1995 an important and worthwhile bill.

I commend it to my colleagues, and look forward to working with them and the copyright community at large to put it—as well as digital performance rights legislation—before the President by the end of this session of Congress.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

[From Billboard magazine, January 14, 1995]

EXTENDING COPYRIGHTS PRESERVES U.S. CULTURE

(By Arthur R. Miller)

Beginning this summer, all member nations of the European Union will extend the length of copyright protection to the life of the author plus 70 years. Should we in America provide the same protection for our own writers, musicians, artists, computer programmers, and other creators of copyrighted items?

Some feel that we should not tamper with existing U.S. law, which provides copyright protection for life plus 50 years. But this status-quoism ignores some fundamental changes that have occurred in the 20th century.

One of the major reasons Congress originally adopted life-plus-50-years was to offer protection not only to the creator of the copyrighted works, but to his or her children and grandchildren—that is, to three generations in all. With people living longer today, an extension of the copyright term by 20 years would roughly correspond to the increase in longevity that has occurred during the 20th century.

In addition, Congress has already recognized the wisdom of extending copyright protection to match the terms guaranteed by other nations. That is exactly what Congress did in 1976 when it extended the copyright term to life-plus-50-years, in order to bring American law into line with the term then commonly recognized by other nations.

But beyond this, the main arguments for term extension are equity and economics.

If Congress does not extend to Americans the same copyright protection afforded Europeans, American creators will have 20 years less protection than their European counterparts—20 years during which Europeans will not be paying Americans for our copyrighted products. This situation would not only be unfair to creators of copyrighted works, but would be harmful economically to the country as a whole.

The export of intellectual property is growing at a tremendous rate because America dominates popular culture the world over. In 1990, America's ''copyright industries'' recorded $34 billion in foreign sales of records, CDs, computer software, motion pictures, music, books, scientific journals, periodicals, photographs, designs, and pictorial and sculptural works. Because the world is so eager for the products of America's copyright industries, they are one of the few bright spots in our balance-of-trade picture.

The question of copyright extension should be viewed in the larger context of bilateral and multilateral trade talks—including the Trade Related Intellectual Property Rights (TRIPS) negotiations under GATT. U.S. trade representatives have found that shortcomings in our own copyright law are used against us when we call for stronger protection for American works overseas. One can just hear the Europeans objecting in future negotiations: ''How can you ask for better protection in Europe when you do not even grant the same term of protection we do?''

The need for strong copyright protection becomes more important every year as a weapon with which to fight the piracy of intellectual property. Overseas piracy of American copyrighted material has grown dramatically in recent years due to the availability of equipment that can make cheap copies of movies, videotapes, sound recordings, and computer programs. As more and more digital technology arrives on the scene, the problem will only become worse.

Indeed, China alone produced an estimated $2 billion worth of counterfeit recordings and computer discs last year. According to the International Federation of the Phonographic Industry, China now has as many as 26 factories capable of producing 62 million compact discs. China's domestic market accounts for only about 3 million discs, so the dimension of the loss to copyright owners is obvious. Unless Congress matches the copyright extension adopted by the European Union, we will lose 20 years of valuable protection against rip-off artists around the world.

It would not take long to see what harm can come from not changing our laws to match those of Europeans. America may be a young nation, but we have the world's oldest popular culture. Many wonderful motion pictures and songs—including Irving Berlin's ''Alexander's Rag Time Band''—already have lost their copyright protection. Dozens, if not hundreds, of other valuable songs and motion pictures—the legacy of American culture—also will lose their protection in the next few years. For example, if Congress does not act soon, such classics as ''After You've Gone,'' ''I'm Always Chasing Rainbows,'' ''A Pretty Girl Is Like A Melody,'' ''Swanee,'' and ''The World Is Waiting For The Sunrise'' will fall into the public domain, and that is only the beginning.

Commentary writer Professor Lewis Kurlantzick (Billboard, Oct. 29, 1994) asserted that when copyrighted works lose their protection, they become more widely available. At first blush, this appears logical. But, paradoxically, works of art become less available to the public when they enter the public domain—at least in a form that does credit to the original. This is because few businesses will invest the money necessary to reproduce and distribute products that have lost their copyright protection and can therefore be reproduced by anyone. The only products that do tend to be made available after a copyright expires are ''down and dirty'' reproductions of such poor quality that they degrade the original copyrighted work. And there is very little evidence that the consumer really benefits economically from works falling into the public domain.

Kurlantzick also denigrates the importance of long-term copyright protection by stating that ''a dollar to be received 75 years from now is worth a small fraction of one cent.'' But, he fails to see that the dollar value placed on future copyright advantages will increase more or less in proportion with the inflation rate. That is to say, if the dollar loses 90% of its value over the next 75 years, then the cost of goods and services will be roughly 90% higher in 75 years than it is today.

For all these reasons, it's clear why Congress should act. America can reap valuable benefits, at no cost to itself, if Congress enacts legislation to extend our copyright protection by 20 years. By harmonizing our laws with the EU, we can reduce our balance-of-trade deficit, encourage economic investment, strengthen our hand in dealing with intellectual piracy, and see to it that America's authors, composers, artists, and computer programmers receive the same level of protection afforded the creative people of other nations. Thus, copyright term extension makes economic sense, and it's equitable.

By Mr. GRAHAM:

S. 484. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to establish a national clearinghouse to assist in background checks of applicants for law enforcement positions, and for other purposes; to the Committee on the Judiciary.

THE LAW ENFORCEMENT AND CORRECTIONAL OFFICERS EMPLOYMENT REGISTRATION ACT OF 1995

● Mr. GRAHAM. Mr. President, I introduce the Law Enforcement and Correctional Officers Employment Registration Act of 1995, which will establish a national clearinghouse to assist in background checks on law enforcement applicants.

This legislation would establish a national data bank to provide quick, accurate and prior officer employment history on all applicants for law enforcement agencies. This clearinghouse has been called a Pointer File and simply maintains basic information of all certified officers, including names, dates of birth, social security numbers, dates of employment, and any decertifications. The Department of Justice would maintain and offer computer access to all criminal agencies.

The intent of my legislation is to help prevent what ''Dateline NBC'' has referred to as gypsy cops. These are police officers who have been dismissed or have been forced to resign from previous positions but conceal prior employment history in future job applications.

In the case of the beating death of Bobby Jewett on November 24, 1990, in West Palm Beach, FL, ''Dateline NBC'' was able to subsequently trace the prior employment histories of the two officers involved in the case through four States and eight different law enforcement agencies. Much of this had been concealed in their job applications.

As noted in a Tampa Tribune editorial in support of a clearinghouse,

> Few agencies, particularly those in rural areas and smaller towns, have the personnel and resources to conduct thorough background checks on police applicants. Not even the largest agencies always succeed in finding an officer's past if he or she is determined to hide it.

Florida Department of Law Enforcement Commissioner James T. Moore adds, ''Experience has shown that, after being found guilty of misconduct, many problem officers resign or are fired, only to seek police jobs elsewhere. The clearinghouse system would allow a law enforcement agency to review each officer applicant's prior history as an officer.'' In order to protect the rights of officers, however, the clearinghouse would not contain information relating to causes of dismissal.

Thomas J. O'Loughlin, chief of police of Wellesley, MA, notes,

The safety of the citizens of this Commonwealth and this Nation is either weakened or solidified by the character of the individuals that we entrust with the responsibility to protect. This legislation provides society with the necessary tools to ensure that individuals who have violated this trust do not simply relocate and once again commit grievous offenses against the public good, and it ensures that a complete and thorough background investigation will be completed prior to an individual assuming the public's trust to be a protector of society.

This legislation is essential to maintaining public confidence in the police. Further, the financial impact of office misconduct, as measured by the costs of civil liability litigation, is alarming. A 1992 survey of members of the National Institute of Municipal Law Officers found police liability to be the leading cause of soaring litigation costs since 1989. For the majority of law enforcement officers, this is also an issue of job integrity and job safety. The misdeeds of a few place others in an unfavorable light and also at risk.

It is safe to say that a history of past dishonorable service in other criminal justice agencies is the most compelling reason to reject an offer. However, this critical information is often unavailable. That is why the International Association of Chiefs of Police has endorsed this legislation.

In addition, the Florida Criminal Justice Standards and Training Commission adopted a unanimous resolution in support of such a program. I would like to thank these organizations, as well as Commissioner Moore, for their efforts to protect effectiveness and professionalism in law enforcement as well as the public's safety.

I urge my colleagues to join me in support of this important legislation.●

By Mrs. HUTCHISON:

S. 485. A bill to amend the Solid Waste Disposal Act to provide and clarify the authority for certain municipal solid waste flow control arrangements; to the Committee on Environment and Public Works.

THE MUNICIPAL WASTE FLOW CONTROL TRANSITION ACT OF 1995

● Mrs. HUTCHISON. Mr. President, on May 16, 1994 the U.S. Supreme Court handed down a decision in C&A Carbone versus Clarkstown, NY that has important implications for local municipal waste management planning.

At issue in the Carbone case was the constitutionality of local ordinances that enforce flow control. A flow control ordinance enables a local government to direct locally generated waste to a specific waste disposal facility. The waste disposal facility is typically a solid waste combustor that is owned by the local government.

In its Carbone decision the Court found that flow control was an unconstitutional interference in interstate commerce. In general, this ruling was a victory for taxpaying consumers who will benefit from the improved service and prices that result from competition for waste disposal services.

However, the Court's decision leaves local governments with flow control regimes in a vulnerable position. In most cases, flow control assures the financial feasibility of a locally owned or financed waste disposal facility. That is, municipal bonds were sold and facilities built in reliance on flow control guaranteed waste disposal income. Lacking this the financial feasibility of such disposal facilities and local governments is jeopardized.

At the end of the 103d Congress a number of my colleagues and I worked on a bill that would have grandfathered existing flow control arrangements. Unfortunately, the Senate did not complete action before adjournment.

If anything, the urgency of cushioning the effects of the Carbone decision on affected local governments has increased. Although there have not yet been any defaults, the risk of local and municipal bond market disruptions continues.

Today I offer legislation, the Municipal Waste Flow Control Transition Act of 1995, that is very similar to that supported by most of the affected parties at the end of the last Congress.

My bill preserves flow control for local governments that made substantial investments predicated on flow control authority before Carbone. It ensures flow control authority for the life of the affected facilities. However, my legislation would not permit new flow control arrangements, thereby assuring free competition and unfettered interstate commerce in the future.

Mr. President, we should protect the local governments and local taxpayers who are threatened financially by invalidation of their flow control ordinances. We can do so, as my bill does, in a straight forward fashion and, at the same time, assure that businesses and homeowners will have the benefits of a free market in the future.●

By Mr. HEFLIN (for himself, Mr. SPECTER, Mr. FORD, Mr. THURMOND, Mr. BUMPERS, Mr. BROWN, Mr. SIMON, Mr. SHELBY, Ms. MOSELEY-BRAUN, and Mr. COHEN):

S. 486. A bill to reorganize the Federal administrative law judiciary, and for other purposes; to the Committee on the Judiciary.

THE REORGANIZATION OF THE FEDERAL ADMINISTRATIVE JUDICIARY ACT

Mr. HEFLIN. Mr. President, I am pleased to rise in support of legislation entitled ''the Reorganization of the Federal Administrative Judiciary Act.'' I am pleased to advise that I have been joined today by nine colleagues from both sides of the aisle and who are original cosponsors of this reform legislation. They are Senators SPECTER, FORD, THURMOND, BUMPERS, BROWN, SIMON, SHELBY, MOSELEY-BRAUN, and COHEN.

The purpose of this legislation is to reorganize and establish an independent corps of administrative law judges within the executive branch of Government. The bill is designed to address two critical issues which face our Nation. First, an independent corps is vital to the continued impartial resolution of issues and decision of cases arising under the administrative procedure act. Second, this bill streamlines the Federal bureaucracy in order to better meet the needs of the people of the United States. For these reasons, legislation needs to be adopted to improve this Nation's administrative system of justice.

In the 103d Congress, I introduced similar legislation, and on September 15, 1993, the Judiciary Committee considered this legislation, and ordered it favorably reported in the nature of a substitute to the Senate. On November 19, 1993, this bill was considered on the floor of the Senate and adopted a technical amendment which I offered and two valuable amendments offered by my colleagues Senator HANK BROWN of Colorado and Senator WILLIAM COHEN of Maine. The legislation I am introducing today is identical to the legislation which unanimously passed the Senate on November 19, 1993.

While the House of Representatives regretfully failed to consider S. 486 during the second session of the 103d Congress, I am hopeful, in light of the recent election results by which the American people expressed their support for leaner, more efficient, and less costly Federal Government, that the new Congress will favorably consider and adopt this legislation and send it to President Clinton for signature.

the primary objective of this legislation is to reorganize the Federal administrative judiciary to promote efficiency, productivity, and the reduction of overhead functions. It will provide for economies of scale to better serve the public in the resolution of administrative disputes. This goal will be accomplished by placing all ALJ's in a unified corps with a chief judge as the primary administrative officer. The chief judge will be responsible for developing programs and practices, which attain this objective. Those programs and practices will include the training of judges in more than one subject area. This training will permit the utilization of the skills and expertise of each judge across agency lines to meet the demands of the existing workload.

Generally, this bill would establish an independent corps for administrative law judges which would operate under the executive branch of the Government. The corps would be governed by a chief administrative law judge. Further, the corps would be divided into eight divisions, with each division governed by a division chief administrative law judge. The chief and division chief ALJ's would be Presidential appointments, by and with the advice and consent of the U.S. Senate.

The chief and division chief ALJ's would form a council. The council would be the policy making body for

the corps. The council would have the authority to assign judges to divisions, appoint persons as administrative law judges, prescribe rules of practice and procedure for the corps, issue appropriate rules and regulations for the efficient conduct of the corps, and generally manage the day-to-day operations of the corps.

This bill provides explicit protection for ALJ's. The corps would continue to make appointments of administrative law judges from a register of qualified candidates maintained by the Office of Personnel Management. In order for an ALJ to be involuntarily reassigned to a new permanent duty station, an ALJ must receive a written explanation from the council stating that such a move is required in order to meet substantial changes in workloads. ALJ's would continue to hear and adjudicate the same types of cases which they presently decide. Further, ALJ's would continue to be assigned cases within their division on a rotating basis, taking into account issues of expertise and education. In addition, ALJ's would be given explicit authority to continue to act as special masters pursuant to Federal Rule of Civil Procedure 53(a). This bill also contains provisions for the removal and discipline of administrative law judges.

In the committee report (103–154) to this legislation, my colleague, Senator COHEN. expressed support for the concept of establishing an independent corps of administrative law judges within the executive branch of Government and for the concept which would reform and streamline the Federal bureaucracy in order to serve the American public. Senator COHEN did have legitimate concerns and offered excellent suggestions to improve and strengthen section 599(e) of the bill relating to removal and discipline of judges.

I have worked with Senator COHEN to strengthen and improve the removal and discipline provisions of the bill, and I believe these provisions are a balanced effort to make the provisions fairer to all interest parties concerned by insuring public members serve on the complaint resolution board—and its panels—to ensure objectivity and impartiality. This legislation is better because of Senator COHEN's participation and I greatly appreciate his cooperation.

This legislation will promote good government in an efficient and effective manner. The Congressional Budget Office [CBO] has prepared a report which estimates the legislation can save as much as $22 million a year in as few as 5 years. These are the types of savings the American people expect and deserve.

Since the reorganization of the Federal administrative law judges into a unified corps is expected to save the U.S. taxpayer substantial dollars, and in consultation with Senator HANK BROWN of Colorado, a provision offered by Senator BROWN is included in this legislation ensuring that agencies will reduce their budgets to reflect the projected savings from the removal of ALJ's from their agencies and report to Congress on their efforts.

The establishment of a unified corps of administrative law judges is not a unique concept. In fact, this type of legislation was first implemented in a number of States, and has been very successful. The individual States have been leaders in adapting and streamlining the administrative process to meet the changing needs of the American public. The adoption of similar Federal legislation merely builds upon the successful experiences of the States.

A final consideration which argues in favor of independence for ALJ's is the issue of public perception. For individuals who face the daunting prospect of being accused by a Federal agency of illegal activities, the fact that an administrative law judge who is an employee of that agency is hearing their case is hardly reassuring. The realities of the everyday world indicate that the key to public satisfaction and confidence in judicial decisionmaking is the issue of decisional independence. The creation of a unified corps of administrative law judges is likely to have the beneficial effect of greater public satisfaction with the administrative law system.

This legislation which I introduce today responds to concerns expressed by executive branch agencies, particularly the Department of Justice. This legislation is truly a reorganization of Federal administrative adjudication functions and not a radical departure from the principles of administrative law, which has concerned some members in the past. To the contrary, the substitute insures that the rule of law will prevail in administrative adjudications without impermissible influence.

The legislation specifically states that an agency's policymaking authority will not be changed nor will the administrative law judge's adjudicatory authority. The reorganization preserves the existing powers of both agency managers and the administrative law judges, while removing the tension that naturally arises between those two functions. The bill provides that enactment of the bill will effect no change in an agency's rulemaking, interpretative or policymaking authority in carrying out statutory responsibilities vested in the agency or agency head.

The bill clarifies that the reorganization of administrative law judges in a corps will give the new corps no policymaking authority for the agency, a past concern expressed by some members. In preserving the status quo of the present administrative system, the agency and its head retain the authority to review decisions of administrative law judges under any applicable provision of law. The policymaking role of ALJ's is not enlarged by enactment of the bill nor is their adjudicatory authority changed from current status. An agency head or secretary retains final authority to reverse ALJ decisions as provided by statute and makes the final decisions for the agency.

I look forward to working for passage of this reform legislation here in the Senate, and I hope my colleagues in the House of Representatives will likewise favorably consider and act on it, so that President Clinton can sign it into law before the end of the year.

Mr. President, I ask unanimous consent that the bill in its entirety be printed in the RECORD.

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

S. 486

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 ''Reorganization of the Federal Administrative Judiciary Act''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) in order to promote efficiency, productivity, the reduction of administrative functions, and to provide economies of scale and better public service and public trust in the administrative resolution of disputes, Federal administrative law judges should be organized in a unified corps;

(2) the dispersal of administrative law judges appointed under section 3105 of title 5, United States Code, in every Federal agency that requires hearings to be conducted by administrative law judges, underutilizes the potential of administrative law judges to serve the public and assist the Federal courts as special masters and finders of fact in specific instances to help reduce the backlog of cases in Federal courts;

(3) the organization of administrative law judges in a corps will best promote their assignment to Federal agency needs as demand requires;

(4) a unified administrative law judge corps will better promote the use of information technology in serving the public; and

(5) an administrative law judge corps will, through consolidation, eliminate unnecessary offices and reduce travel and other related costs.

SEC. 3. ESTABLISHMENT OF ADMINISTRATIVE LAW JUDGE CORPS.

(a) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

''SUBCHAPTER VI—ADMINISTRATIVE LAW JUDGE CORPS

''§ 597. Definitions

''For the purposes of this subchapter—

''(1) 'agency' means an authority referred to in section 551(1);

''(2) 'Corps' means the Administrative Law Judge Corps of the United States established under section 598;

''(3) 'administrative law judge' means an administrative law judge appointed under section 3105 on or before the effective date of the Reorganization of the Federal Administrative Judiciary Act or under section 599c after such effective date;

''(4) 'chief judge' means the chief administrative law judge appointed and serving under section 599;

''(5) 'Council' means the Council of the Administrative Law Judge Corps established under section 599b;

''(6) 'Board', unless otherwise indicated, means the Complaints Resolution Board established under section 599e; and

''(7) 'division chief judge' means the chief administrative law judge of a division appointed and serving under section 599a.

''§ 598. Establishment; membership

''(a) ESTABLISHMENT.—There is established an Administrative Law Judge Corps consisting of all administrative law judges, in accordance with the provisions of subsection (b). Such Corps shall be administered in Washington, D.C.

''(b) MEMBERSHIP.—An administrative law judge serving as such on the date of the commencement of the operation of the Corps shall be transferred to the Corps as of that date. An administrative law judge who is appointed on or after the date of the commencement of the operation of the Corps shall be a member of the Corps as of the date of such appointment.

''§ 599. Chief administrative law judge

''(a) APPOINTMENT; TERM.—The chief administrative law judge shall be the chief administrative officer of the Corps and shall be the presiding judge of the Corps. The chief judge shall be appointed by the President, by and with the advice and consent of the Senate. The chief judge shall be learned in the law. The chief judge shall serve for a term of five years or until a successor is appointed and qualifies to serve. A chief judge may be reappointed upon the expiration of the term of such judge, by and with the advice and consent of the Senate.

''(b) VACANCIES.—(1) If the office of chief judge is vacant, the division chief judge who is senior in length of service as a member of the Council shall serve as acting chief judge until such vacancy is filled.

''(2) If 2 or more division chief judges have the same length of service as members of the Council, the division chief judge who is senior in length of service as an administrative law judge shall serve as such acting chief judge.

''(c) SPECIAL FUNCTIONS OF CHIEF JUDGE.—(1) In addition to other duties conferred on the chief judge, the chief judge shall be responsible for developing programs and practices, in coordination with agencies using administrative law judges, which foster economy and efficiency in the processing of cases heard by administrative law judges. These programs and practices shall include—

''(A) training of judges in more than one subject area;

''(B) employment of computers and software and other information technology for automated decision preparation, case docketing, and research;

''(C) consolidating hearing facilities and law libraries; and

''(D) programs and practices to foster overall efficient use of staff, personnel, equipment, and facilities.

''(2) In order to minimize costs—

''(A) all administrative law judges and support personnel shall, for at least 1 year after the date of the commencement of the operation of the Corps, continue to use the office space and facilities, at the agencies using such judges and personnel, available before such date, and

''(B) the chief judge shall phase in transfers of administrative law judges and support personnel to other facilities so that the cost of providing facilities for the Corps shall not exceed the cost of maintaining such judges and personnel in equivalent space available at agencies using the Corps.

''(d) REPORTS.—The chief judge shall, within 90 days after the end of each fiscal year, make a written report to the President and the Congress concerning the business of the Corps during the preceding fiscal year. The report shall include information and recommendations of the Council concerning the future personnel requirements of the Corps.

''(e) SERVICE AFTER TERM EXPIRES.—After serving as chief judge, an individual may continue to serve as an administrative law judge unless such individual has been removed from office in accordance with section 599e.

''§ 599a. Divisions of the Corps; division chief judges

''(a) ASSIGNMENT TO DIVISIONS.—Each judge of the Corps shall be assigned to a division by the Council, pursuant to section 599b. The assignment of a judge who was an administrative law judge on the date of commencement of the operation of the Corps shall be made after consideration of the areas of specialization in which the judge has served. Each division shall be headed by a division chief judge who shall exercise administrative supervision over such division.

''(b) DIVISIONS.—The divisions of the Corps shall be as follows:

''(1) Division of Communications, Public Utility, and Transportation Regulation.

''(2) Division of Safety and Environmental Regulation.

''(3) Division of Labor.

''(4) Division of Labor Relations.

''(5) Division of Health and Human Services Programs.

''(6) Division of Securities, Commodities, and Trade Regulation.

''(7) Division of General Programs.

''(8) Division of Financial Services Institutions.

''(c) APPOINTMENT OF DIVISION CHIEF JUDGES.—(1) The division chief judge of each division set forth in subsection (b) shall be appointed by the President, by and with the advice and consent of the Senate, and shall be learned in the law.

''(2) Division chief judges shall be appointed for 5-year terms, except that of those division chief judges first appointed, the President shall designate 2 such individuals to be appointed for 5-year terms, 3 for 4-year terms, and 2 for 3-year terms.

''(3) Any division chief judge appointed to fill an unexpired term shall be appointed only for the remainder of such predecessor's term, but may be reappointed as provided in paragraph (4).

''(4) Any division chief judge may be reappointed upon the expiration of his or her term.

''(5) Any judge, after serving as division chief judge, may continue to serve as an administrative law judge unless such individual has been removed from office in accordance with section 599e.

''§ 599b. Council of the Corps

''(a) IN GENERAL.—The policymaking body of the Corps shall be the Council of the Corps. The chief judge and the division chief judges shall constitute the Council. The chief judge shall preside over the Council. If the chief judge is unable to be present at a meeting of the Council, the division chief judge who is senior in length of service as a member of such Council shall preside at the meeting.

''(b) QUORUM; VOTING.—One half of all of the members of the Council shall constitute a quorum for the purpose of transacting business. The affirmative vote by a majority of all the members of the Council shall be required to approve a matter on behalf of the Council. Each member of the Council shall have one vote.

''(c) MEETINGS.—Meetings of the Council shall be held at least once a month at the call of the chief judge or by the call of one-third or more of the members of the Council.

''(d) POWERS.—The Council is authorized—

''(1) to assign judges to divisions and transfer or reassign judges from one division to another, subject to the provisions of section 599c;

''(2) to appoint persons as administrative law judges under section 599c;

''(3) to file charges seeking adverse action against an administrative law judge under section 599e;

''(4) to prescribe, after providing an opportunity for notice and comment, the rules of practice and procedure for the conduct of proceedings before the Corps, except that, with respect to a category of proceedings adjudicated by an agency before the effective date of the Reorganization of the Federal Administrative Judiciary Act, the Council may not amend or revise the rules of practice and procedure prescribed by that agency during the 2 years following such effective date without the approval of that agency, and any amendments or revisions made to such rules shall not affect or be applied to any pending action;

''(5) to issue such rules and regulations as may be appropriate for the efficient conduct of the business of the Corps and the implementation of this subchapter, including the assignment of cases to administrative law judges;

''(6) subject to the civil service and classification laws and regulations—

''(A) to select, appoint, employ, and fix the compensation of the employees (other than administrative law judges) that the Council deems necessary to carry out the functions, powers, and duties of the Corps; and

''(B) to prescribe the authority and duties of such employees;

''(7) to establish, abolish, alter, consolidate, and maintain such regional, district, and other field offices as are necessary to carry out the functions, powers, and duties of the Corps and to assign and reassign employees to such field offices;

''(8) to procure temporary and intermittent services under section 3109;

''(9) to enter into, to the extent or in such amounts as are authorized in appropriation Acts, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), contracts, leases, cooperative agreements, or other transactions that may be necessary to conduct the business of the Corps;

''(10) to delegate any of the chief judge's functions or powers with the consent of the chief judge, or whenever the office of such chief judge is vacant, to one or more division chief judges or other employees of the Corps, and to authorize the redelegation of any of those functions or powers;

''(11) to establish, after consulting with an agency, initial and continuing educational programs to assure that each administrative law judge assigned to hear cases of that agency has the necessary training in the specialized field of law of that agency;

''(12) to make suitable arrangements for continuing education and training of other employees of the Corps, so that the level of expertise in the divisions of the Corps will be maintained and enhanced; and

''(13) to determine all other matters of general policy of the Corps.

''(e) OFFICIAL SEAL.—The Council shall select an official seal for the Corps which shall be judicially noticed.

''§ 599c. Appointment and transfer of administrative law judges

''(a) APPOINTMENT.—After the initial establishment of the Corps, the Council shall appoint new or additional judges as may be necessary for the efficient and expeditious conduct of the business of the Corps. Appointments shall be made from a register maintained by the Office of Personnel Management under subchapter I of chapter 33 of this title. Upon request by the chief judge, the Office of Personnel Management shall certify enough names from the top of such

register to enable the Council to consider five names for each vacancy. Notwithstanding section 3318, a vacancy in the Corps may be filled from the highest five eligible individuals available for appointment on the certificate furnished by the Office of Personnel Management.

''(b) LIMITATION ON JUDGE'S DUTIES.—A judge of the Corps may not perform or be assigned to perform duties inconsistent with the duties and responsibilities of an administrative law judge.

''(c) REASSIGNMENTS; DETAILS.—A judge or staff member of the Corps on the date of commencement of the operation of the Corps, and all new judges and staff members appointed by the Council, may not thereafter be involuntarily reassigned to a new permanent duty station if such station is beyond the commuting area of the duty station which is the judge's or staff member's permanent duty station on that date. A judge or staff member of the Corps may be temporarily detailed, once in a 24-month period, to a new duty station at any location, for a period of not more than 120 days.

''§ 599d. Jurisdiction

''(a) IN GENERAL.—Any case, claim, action, or proceeding authorized to be heard before an administrative law judge on the day before the effective date of the Reorganization of the Federal Administrative Judiciary Act shall, on or after such date, be referred to the Corps for adjudication on the record after an opportunity for a hearing.

''(b) TYPES OF CASES.—An administrative law judge who is a member of the Corps shall hear and render a decision upon—

''(1) every case of adjudication subject to the provisions of section 553, 554, or 556;

''(2) every case in which hearings are required by law to be held in accordance with sections 553, 554, or section 556;

''(3) every other case referred to the Corps by an agency in which a determination is to be made on the record after an opportunity for a hearing; and

''(4) every case referred to the Corps by a court for an administrative law judge to act as a special master or to otherwise making findings of fact on behalf of the referring court, which shall continue to have exclusive and undiminished jurisdiction over the case.

''(c) REFERRAL OF CASES.—When a case under subsection (b) arises, it shall be referred to the Corps. Under regulations issued by the Council, the case shall be assigned to a division. The appropriate division chief shall assign cases to judges, taking into consideration specialization, training, workload, and conflicts of interest.

''(d) REFERRALS BY AGENCIES AND COURTS.—Courts are authorized to refer, subject to the approval of the majority of the Council and the parties in the court proceeding, those cases, or portions thereof, in which they seek an administrative law judge to act as a special master pursuant to the provisions of Rule 53(a) of the Federal Rules of Civil Procedure which shall continue to have exclusive and undiminished jurisdiction over the case. When a court has referred a case to an administrative law judge, the recommendations, rulings, and findings of fact of the administrative law judge are subject to de novo review by the referring court.

''(e) SATISFACTION OF OTHER PROCEDURAL REQUIREMENTS.—Compliance with this subchapter shall satisfy all requirements imposed under section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

''(f) APPLICATION OF AGENCY POLICY.—The provisions of this subchapter shall effect no change in—

''(1) an agency's rulemaking, interpretative, or policymaking authority in carrying out the statutory responsibilities vested in the agency or agency head;

''(2) the adjudicatory authority of administrative law judges; or

''(3) the authority of an agency to review decisions of administrative law judges under any applicable provision of law.

''§ 599e. Removal and discipline

''(a) IN GENERAL.—(1) Except as provided under paragraph (2), an administrative law judge may not be removed, suspended, reprimanded, or disciplined except for misconduct or neglect of duty, but may be removed for physical or mental disability (consistent with prohibitions on discrimination otherwise imposed by law).

''(2) Paragraph (1) shall not apply to an action initiated under section 1215.

''(b) RULES OF JUDICIAL CONDUCT.—No later than 180 days after the appointment and confirmation of the Council, the Council shall adopt and issue rules of judicial conduct for administrative law judges. Such code shall be enforced by the Council and shall include standards governing—

''(1) judicial conduct and extra-judicial activities to avoid actual, or the appearance of, improprieties or conflicts of interest;

''(2) the performance of judicial duties impartially and diligently;

''(3) avoidance of bias or prejudice with respect to all parties; and

''(4) efficiency and management of cases so as to reduce dilatory practices and unnecessary costs.

''(c) DISCIPLINARY ACTION BY THE COUNCIL.—An administrative law judge may be subject to disciplinary action by the Council under subsection (j). An administrative law judge may be removed only after the Council has filed with the Merit Systems Protection Board a notice of removal and the Merit Systems Protection Board has determined on the record, after an opportunity for a hearing before the Merit Systems Protection Board, that there is good cause to take the action of removal.

''(d) COMPLAINTS RESOLUTION BOARD.—Under regulations issued by the Council, a Complaints Resolution Board shall be established within the Corps to consider and to recommend appropriate action to be taken when a complaint is made concerning conduct of a judge of the Corps. Such complaint may be made by any interested person, including parties, practitioners, the chief judge, administrative law judges, and agencies.

''(e) COMPOSITION OF THE BOARD.—(1) The Board shall consist of—

''(A) 2 judges from each division of the Corps, who shall be appointed by the Council; and

''(B) 16 attorneys who shall be appointed in accordance with the provisions of paragraph (2).

''(2) The Council shall request a list of candidates to be members of the Board from the American Bar Association. Such list may not include any individual who is an administrative law judge or former administrative law judge.

''(3) The chief judge and the division chief judges may not serve on the Board.

''(4) No individual may serve 2 successive terms on the Board.

''(5)(A) Except as provided under subparagraph (B), all terms on the Board shall be 2 years.

''(B) In making the original appointments to the Board, the Council shall designate one-half of the appointments made under paragraph (1)(A) and one-half of the appointments made under paragraph (1)(B), as a term of 1 year.

''(6)(A) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for a position at the level of AL–3, rate C under section 5372 of this title for each day (including traveltime) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are administrative law judges shall serve without compensation in addition to that received for their services as officers or employees of the United States.

''(B) The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

''(f) FILING AND REFERRAL OF COMPLAINT.—(1) A complaint concerning the official conduct of an administrative law judge shall be made in writing. The complaint shall be filed with the chief judge, or it may be originated by the chief judge on his own motion. The chief judge shall refer the complaint to a 5-member panel designated by the Council—

''(A) consisting of 3 administrative law judges appointed under subsection (e)(1)(A), none of whom may be serving in the same division as the administrative law judge who is the subject of the complaint; and

''(B) two members appointed under subsection (e)(1)(B), none of whom regularly practice before the division to which the administrative law judge, who is the subject of the complaint is assigned.

''(2) Any individual chosen to serve on the panel who has a personal or financial conflict of interest involving the administrative law judge who is the subject of the complaint shall be disqualified by the Council from serving on the panel. The Council shall replace any disqualified individual or vacancy with another member of the Board who is eligible to serve on the panel.

''(g) CHIEF JUDGE ACTION.—(1) After expeditiously reviewing a complaint, the chief judge, by written order stating his reason, may—

''(A) dismiss the complaint, if the chief judge finds the complaint to be—

''(i) directly related to the merits of a decision or procedural ruling; or

''(ii) frivolous;

''(B) conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events; or

''(C) refer the complaint to the Complaint Resolution Board in accordance with subsection (f).

''(2) The chief judge shall transmit copies of the written order to the complainant and to the administrative law judge who is the subject of the complaint.

''(h) NOTICE OF THE COMPLAINT.—The administrative law judge and the complainant shall be given notice of receipt of the complaint and notice of referral of the complaint to the panel.

''(i) INQUIRY AND REPORT BY PANEL.—(1) The panel shall inquire into the complaint and have authority to conduct a full investigation of the complaint, including authority to hold hearings and issue subpoenas, examine witnesses, and receive evidence. All proceedings of the Complaint Resolution Board shall be confidential. The administrative law judge who is the subject of the complaint shall have the right to be represented by counsel and shall have an opportunity to appear before the panel. The complainant shall be afforded an opportunity to appear at the proceedings conducted by the investigating panel, if the panel concludes that the

complainant could offer substantial information.

''(2) In determining whether misconduct has occurred, the panel shall apply a preponderance of evidence standard of proof to its proceedings.

''(3)(A) Within 90 days after the referral of the complaint, the panel shall report to the Council on its findings of fact and recommendations for appropriate disciplinary action, if any, that should be taken against the administrative law judge.

''(B) If the panel has not completed its inquiry within 90 days after receiving the complaint, the panel shall request an extension of time from the Council to complete its inquiry.

''(C) A copy of the report shall be provided concurrently to the Council, the administrative law judge who is the subject of the complaint, and the complainant. The Council shall retain all reports filed under this section and such reports shall be confidential, except that a recommendation for disciplinary action shall be made available to the public.

''(4) The recommendations of the panel shall include one of the following:

''(A) Dismissal of all or part of the complaint.

''(B) Direct informal reprimand.

''(C) Direct formal reprimand.

''(D) Suspension.

''(E) Automatic referral to the Merit Systems Protection Board on recommendations of removal.

''(5) The recommendations of the panel are binding on the Council, unless the administrative law judge appeals to the Merit Systems Protection Board.

''(j) DISCIPLINARY ACTION.—Except as provided in subsection (a)(2), the Council shall take appropriate disciplinary action against the administrative law judge based upon the report of the panel within 30 days after receiving the report of the panel. Such disciplinary action shall be enforced by the Council and shall be final unless the administrative law judge files an appeal with the Merit Systems Protection Board within 30 days after receiving notice of such disciplinary action.

''(k) RECOMMENDATION FOR RELIEF TO AGENCY, DEPARTMENT, OR COMMISSION.—Based upon a finding of judicial misconduct by an administrative law judge, the Council shall have authority to recommend to the head of an agency, department or commission that action may be taken to provide relief to aggrieved individuals due to the judicial misconduct by an administrative law judge.''.

(b) APPOINTMENTS OF DIVISION CHIEF JUDGES.—It is the sense of the Congress that the President should appoint as division chief judges under section 599a(c) of title 5, United States Code (as added by subsection (a) of this section), individuals who have served as an administrative law judge for at least 5 years.

(c) ADMINISTRATIVE PROVISION.—Except as provided under subchapter VI of chapter 5 of title 5, United States Code, the chief administrative law judge and the division chief judges appointed under such subchapter shall be deemed administrative law judges appointed under section 3105.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following:

''SUBCHAPTER VI—ADMINISTRATIVE LAW JUDGE CORPS

''Sec.
''597. Definitions.
''598. Establishment; membership.
''599. Chief administrative law judge.
''599a. Divisions of the Corps; division chief judges.
''599b. Council of the Corps.
''599c. Appointment and transfer of administrative law judges.
''599d. Jurisdiction.
''599e. Removal and discipline.''.

SEC. 4. AGENCY REVIEW STUDY AND REPORT.

(a) STUDY.—The chief administrative law judge of the Administrative Law Judge Corps of the United States shall conduct a study of the various types and levels of agency review to which decisions of administrative law judges are subject. A separate study shall be conducted for each division of the Corps. The studies shall include monitoring and evaluating data and shall be conducted in consultation with the division chief judges, the Chairman of the Administrative Conference of the United States, and the agencies that review the decisions of administrative law judges.

(b) REPORT.—(1) Not later than 2 years after the effective date of this Act, the Council shall report to the President and the Congress on the findings and recommendations resulting from the studies conducted under subsection (a).

(2) The report under paragraph (1) shall include recommendations, including recommendations for new legislation, for any reforms that may be appropriate to make review of administrative law judges' decisions more efficient and meaningful and to accord greater finality to such decisions, except that all decisions subject, before the effective date of this Act, to review pursuant to section 205(g) of the Social Security Act (42 U.S.C. 405(g)) shall continue to be subject to such review pursuant to such section.

(3) The report under paragraph (1) shall also include recommendations for using staff more efficiently to decrease backlogs, especially in the area of social security disability cases.

SEC. 5. TRANSITION AND SAVINGS PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the administrative law judges of the Administrative Law Judge Corps established by section 598 of title 5, United States Code (as added by section 3 of this Act), all functions authorized to be performed on the day before the effective date of this Act by the administrative law judges appointed under section 3105 of such title before the effective date of this Act.

(b) USE OF AGENCY FACILITIES AND PERSONNEL.—With the consent of the agencies concerned, the Administrative Law Judge Corps of the United States may use the facilities and the services of officers, employees, and other personnel of agencies from which functions and duties are transferred to the Corps for so long as may be needed to facilitate the orderly transfer of those functions and duties under this Act.

(c) INCIDENTAL TRANSFERS.—The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, in connection with the functions transferred by this Act, are, subject to section 1531 of title 31, United States Code, transferred to the Corps for appropriate allocation.

(d) PAY OF TRANSFERRED PERSONNEL.—The transfer of personnel pursuant to subsection (b) or (c) shall be without reduction in pay or classification for 5 years after such transfer.

(e) AUTHORITIES OF DIRECTOR OF OMB.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this Act.

(f) CONTINUED EFFECTIVENESS OF PRIOR ACTIONS.—All orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements, recognition of labor organizations, certificates, licenses, and privileges which have been issued, made, granted, or allowed to become effective in the exercise of any duties, powers, or functions which are transferred under this Act and are in effect at the time this Act becomes effective shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrative Law Judge Corps of the United States or a judge thereof in the exercise of authority vested in the Corps or its members by this Act, by a court of competent jurisdiction, or by operation of law.

(g) PENDING PROCEEDINGS.—(1) Except as provided in subsections (d)(5) and (e) of section 599b of title 5, United States Code, this Act shall not affect any proceeding before any department or agency or component thereof which is pending at the time this Act takes effect. Such a proceeding shall be continued before the Administrative Law Judge Corps of the United States or a judge thereof, or, to the extent the proceeding does not relate to functions so transferred, shall be continued before the agency in which it was pending on the effective date of this Act.

(2) No suit, action, or other proceeding commenced before the effective date of this Act shall abate by reason of the enactment of this Act.

(h) REPORTS BY OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall monitor and report to the Congress—

(1) 60 days after the effective date of this Act, on the amount of all funds expended in fiscal year 1995 by each agency on the functions transferred under this Act and the amendments made by this Act;

(2) no later than October 1, 1995, on the amount of unexpended balances of appropriations, authorizations, allocations, and other funds transferred by all agencies to the Administrative Law Judge Corps under this Act and the amendments made by this Act; and

(3) 1 year after the effective date of this Act, and each of the next 2 years thereafter on—

(A) whether the expenditure of each agency that transfers functions and duties under this Act and the amendments made by this Act are reduced by the amount of savings resulting from the transfer of such functions and duties; and

(B) the Government savings resulting from transfer of such functions to the Administrative Law Judge Corps and recommendations to the Congress on how to achieve additional savings.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of fiscal years 1996, 1997, 1998, 1999, and 2000 to carry out the provisions of this Act and subchapter VI of title 5, United States Code (as added by section 3 of this Act) such amounts as may be necessary, not to exceed in any such fiscal year the total amount expended by all agencies in fiscal year 1995 in performing all functions transferred under this Act and the amendments made by this Act.

SEC. 7. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended as follows:

(1) Section 593(b) is amended—

(A) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and

(B) by inserting the following after paragraph (3):

''(4) the chief administrative law judge of the Administrative Law Judge Corps of the United States;''.

(2) Section 3105 is amended to read as follows:

''§ 3105. Appointment of administrative law judges

''Administrative law judges shall be appointed by the Council of the Administrative Law Judge Corps pursuant to sections 596 and 599c of this title.''.

(3) Section 3344, and the item relating to section 3344 in the table of sections for chapter 33, are repealed.

(4) Subchapter III of chapter 75, and the items relating to subchapter III and section 7521 in the table of sections at the beginning of chapter 75, are repealed.

(5) Section 559 is amended—

(A) in the first sentence by striking ''chapter 7'' and all that follows through ''7521'' and inserting ''subchapter VI of this chapter, chapter 7, and sections 1305, 3105, 4301(2)(E), and 5372''; and

(B) in the last sentence by striking ''chapter 7'' and all that follows through ''7521'' and inserting ''subchapter VI of this chapter, chapter 7, section 1305, 3105, 4301(2)(E), or 5372''.

(6) Section 1305 is amended—

(A) by striking ''section 3105, 3344,'' and inserting ''sections 3105,''; and

(B) by striking '', and for the purpose of section 7521 of this title, the Merit Systems Protection Board may''.

(7) Section 5514(a)(2) is amended in the fourth sentence by striking '', except that'' and all that follows through ''administrative law judge''.

(8) Section 7105 is amended—

(A) in subsection (d) by striking '', administrative law judges under section 3105 of this title,''; and

(B) in subsection (e)(2) by striking ''under subsection (d) of this section'' and inserting ''under section 3105 of this title''.

(9) Section 7132(a) is amended by striking ''appointed by the Authority under section 3105 of this title'' and inserting ''appointed under section 3105 of this title who is conducting hearings under this chapter''.

(10) Section 7502 is amended by striking ''7521 or''.

(11) Section 7512(E) is amended by striking ''or 7521''.

(b) OTHER PROVISIONS OF LAW.—

(1) Section 6(c) of the Commodity Exchange Act is amended—

(A) in the second sentence (7 U.S.C. 9)—

(i) by striking ''Administrative Law Judge designated by the Commission'' and inserting ''administrative law judge of the Administrative Law Judge Corps''; and

(ii) by striking ''Administrative Law Judge'' and inserting ''administrative law judge''; and

(B) by striking ''Administrative Law Judge'' each subsequent place it appears (7 U.S.C. 15) and inserting ''administrative law judge of the Administrative Law Judge Corps''.

(2) Section 12(b) of the Commodity Exchange Act (7 U.S.C. 16(b)) is amended by striking ''Administrative Law Judges,''.

(3) Section 274B(e)(2) of the Immigration and Nationality Act (8 U.S.C. 1324b(e)(2)) is amended by striking ''are specially designated by the Attorney General as having'' and inserting ''have''.

(4) Section 1416(a) of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1715(a)) is amended—

(A) in the first sentence by inserting '', subject to section 599d of title 5, United States Code,'' after ''who may'';

(B) by striking the second sentence; and

(C) in the third sentence by striking ''his administrative law judges to other administrative law judges or'' and inserting ''administrative law judges carrying out functions under this title''.

(5) Section 488A(b) of the Higher Education Act of 1965 (20 U.S.C. 1095a(b)) is amended in the third sentence by striking '', except that'' and all that follows through ''administrative law judge''.

(6) Section 509(1) of title 28, United States Code, is amended—

(A) by striking ''subchapter II'' and inserting ''subchapters II and VI''; and

(B) by striking ''employed by the Department of Justice''.

(7) Section 12 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 661) is amended—

(A) in subsection (e)—

(i) by striking ''administrative law judges and other''; and

(ii) by striking '': *Provided*'' and all that follows through the end of the subsection and inserting a period;

(B) in subsection (j) in the first sentence by striking ''A'' and all that follows through ''Commission,'' and inserting ''An administrative law judge to whom is assigned any proceeding instituted before the Commission shall hear and make a determination upon the proceeding and any motion in connection with such proceeding,''; and

(C) by striking subsection (k).

(8) Section 502(e)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 792(e)(1)) is amended by striking the second and third sentences and inserting the following: ''Proceedings required to be conducted under this section shall be presided over by administrative law judges appointed under subchapter VI of chapter 5 of title 5, United States Code.''.

(9) Section 166 of the Job Training Partnership Act (29 U.S.C. 1576(a)) is amended in the first sentence by striking ''of the Department of Labor''.

(10) Section 5(e) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 804(e)) is amended to read as follows:

''(e) Proceedings required to be conducted in accordance with the provisions of this Act shall be presided over by administrative law judges appointed under subchapter VI of chapter 5 of title 5, United States Code.''.

(11) Section 113 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 823) is amended—

(A) in subsection (b)(2) by striking all that follows the second sentence;

(B) in subsection (d)(1) in the first sentence by striking ''appointed by the Commission'' and all that follows through ''by the Commission,'' and inserting ''to whom is assigned any proceeding instituted before the Commission shall hear and make a determination upon the proceeding and any motion in connection with the proceeding,''; and

(C) in subsection (e) in the first sentence by striking ''its'' each place it appears.

(12) Section 428(b) of the Black Lung Benefits Act (30 U.S.C. 938(b)) is amended by striking the seventh sentence.

(13) Section 321(c)(1) of title 31, United States Code, is amended—

(A) by striking ''subchapter II'' and inserting ''subchapters II and VI''; and

(B) by striking ''employed by the Secretary''.

(14) Section 3801(a)(7)(A) of title 31, United States Code, is amended by striking ''appointed in the authority'' and all that follows through ''such title;'' and inserting ''of the Administrative Law Judge Corps;''.

(15) Section 19(d) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 919(d)) is amended by amending the second sentence to read as follows: ''Any such hearing shall be conducted by an administrative law judge qualified under subchapter VI of chapter 5 of that title.''.

(16) Section 21(b)(5) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 921(b)(5)) is amended by striking the first sentence.

(17) Section 7101(b)(2)(B) of title 38, United States Code, is amended by striking ''7521'' and inserting ''599e''.

(18) Section 8(b)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(b)(1)) is amended in the first sentence by striking ''hearing examiners appointed pursuant to section 3105 of title 5, United States Code'' and inserting ''administrative law judges appointed under section 3105 of title 5, United States Code (as in effect on the day before the effective date of the Reorganization of the Federal Administrative Judiciary Act)''.

(19) Section 705(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4(a)) is amended—

(A) by striking ''administrative law judges,''; and

(B) by striking '': *Provided*'' and all that follows through the end of the subsection and inserting a period.

(20) Section 808(c) of the Act of April 11, 1968 (42 U.S.C. 3608(c)), is amended—

(A) in the first sentence by inserting '', subject to section 599d of title 5, United States Code,'' after ''The Secretary may'';

(B) by striking the second sentence; and

(C) in the last sentence by striking ''his hearing examiners to other hearing examiners or'' and inserting ''administrative law judges carrying out functions under this title''.

(21) Section 806 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3787) is amended—

(A) in the first sentence by striking ''appoint such hearing examiners'' and all that follows through ''United States Code,'' and inserting '', subject to section 599d of title 5, United States Code, request the use of such administrative law judges''; and

(B) in the second sentence by striking ''hearing examiner or administrative law judge assigned to or employed thereby'' and inserting ''such administrative law judge''.

(22) Section 401(c) of the Department of Energy Organization Act (42 U.S.C. 7171(c)) is amended by striking ''appointment and employment of hearing examiners in accordance with the provisions of title 5,'' and inserting ''referral of cases to the Administrative Law Judge Corps in accordance with subchapter VI of chapter 5 of title 5,''.

(23) Section 303(c)(3) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1902(c)(3)) is amended by striking '', attorneys, and administrative law judges'' and inserting ''and attorneys''.

(24) Section 304(b)(1) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1903(b)(1)) is amended in the first sentence by striking ''employed by or''.

(c) REFERENCES IN OTHER LAWS.—Reference in any other Federal law to an administrative law judge or hearing examiner or to an administrative law judge, hearing examiner, or employee appointed under section 3105 of title 5, United States Code, shall be deemed to refer to an administrative law judge of the Administrative Law Judge Corps established by section 598 of title 5, United States Code.

SEC. 8. OPERATION OF THE CORPS.

Operation of the Corps shall commence on the date the first chief administrative law judge of the Corps takes office.

SEC. 9. CONTRACT DISPUTES ACT.

Nothing in this Act or the amendments made by this Act shall be deemed to affect

any agency board established pursuant to the Contract Disputes Act (41 U.S.C. 601 and following), or any other person designated to resolve claims or disputes pursuant to such Act.

SEC. 10. PAYMENT BY CERTAIN AGENCIES FOR ADMINISTRATIVE LAW JUDGE SALARIES AND EXPENSES.

Any agency which before the effective date of this Act paid the salaries and expenses of administrative law judges from fees charged by such agency shall on and after the effective date of this Act pay from such fees to the chief judge of the Administrative Law Judge Corps, or the designee of the chief judge, an amount necessary to reimburse the salaries and expenses of the Corps for services provided by the Corps to such agency.

SEC. 11. EFFECTIVE DATE.

Except as otherwise provided, this Act and the amendments made by this Act shall take effect 120 days after the date of the enactment of this Act.

By Mr. MCCAIN (for himself and Mr. INOUYE):

S. 487. A bill to amend the Indian Gaming Regulatory Act, and for other purposes; to the Committee on Indian Affairs.

THE INDIAN GAMING REGULATORY ACT AMENDMENTS ACT OF 1995

● Mr. MCCAIN. Mr. President, I am pleased to join today with the vice chairman of the Committee on Indian Affairs, Senator INOUYE, as the sponsor of the Indian Gaming Regulatory Act Amendments Act of 1995. I want to associate myself with Senator INOUYE's remarks regarding this legislation and the issue of Indian gaming. I commend Senator INOUYE for his outstanding leadership over the years on this complex issue.

The bill we are introducing today would provide for a major overhaul of the Indian Gaming Regulatory Act of 1988. It will provide for minimum Federal standards in the regulation and licensing of class II and class III gaming as well as all of the contractors, suppliers, and industries associated with such gaming. This will be accomplished through the Federal Indian Gaming Regulatory Commission which will be funded through assessments on Indian gaming revenues and fees imposed on license applicants. The bill also provides a new process for the negotiation of class III compacts which authorizes the Secretary of the Department of the Interior to negotiate compacts with Indian tribes in those instances where a State chooses not to participate in compact negotiations or where an Indian tribe and a State cannot reach an agreement on a compact. This process is consistent with recent Federal court decisions.

In addition, the bill is consistent with the 1987 decision of the U.S. Supreme Court in the case of California versus Cabazon Band of Mission Indians in that it neither expands for further restricts the scope of Indian Gaming. The laws of each State would continue to be the basis for determining what gaming activities may be available to an Indian tribe located in that State.

Since the enactment of the Indian Gaming Regulatory Act in 1988, there has been a dramatic increase in the amount of gaming activity among the Indian tribes. In 1993, Indian gaming was estimated to yield gross revenues of about $4 billion per year and net revenues were estimated at $750 million. Today, there are about 160 class II bingo and card games in operation and there are now over 110 tribal/State compacts governing class III gaming in 21 States. Indian gaming comprises about 3 percent of all gaming in the United States. Gaming activities operated by State governments comprise about 36 percent of all gaming and the private sector accounts for the balance of the gaming activity in the Nation.

Indian gaming has become the single largest source of economic activity for Indian tribes. Annual revenues derived from Indian agricultural resources have been estimated at $550 million and have historically been the leading source of income for Indian tribes and individuals. Annual revenues from oil, gas, and minerals are about $230 million and Indian forestry resources revenues are estimated at $61 million. The estimated annual earnings on gaming now equal or exceed all of the revenues derived from Indian natural resources. In addition, Indian gaming has generated tens of thousands of new jobs for Indians and non-Indians. On many reservations gaming has meant the end of unemployment rates of 90 or 100 percent and the beginning of an era of full employment.

Under the Indian Gaming Regulatory Act of 1988, Indian tribes are required to expend the profits from gaming activities to fund tribal government operations or programs and to promote tribal economic development. Profits may only be distributed directly to the members of an Indian tribe under a plan which has been approved by the Secretary of the Interior. Only a few such plans have been approved. Virtually all of the proceeds from Indian gaming activities are used to fund the social welfare, education, and health needs of the Indian tribes. Schools, health facilities, roads, and other vital infrastructure is being built by the Indian tribes with the proceeds from Indian gaming.

In the years before the enactment of the Indian Gaming Regulatory Act and in the years since its enactment we have heard concerns about the possibility for organized criminal elements to penetrate Indian gaming. Both the Department of Justice and the FBI have repeatedly testified before the Committee on Indian Affairs and have indicated that there is not any substantial criminal activity of any kind associated with Indian gaming. Some of our colleagues have suggested that no one would know if there is criminal activity because not enough people are looking for it. I believe that this point of view overlooks the fact that the act provides for a very substantial regulatory and law enforcement role by the States and Indian tribes in class III gaming and by the Federal Government in class II gaming. The record clearly shows that in the few instances of known criminal activity in class III gaming, the Indian tribes have discovered the activity and have sought Federal assistance in law enforcement.

Nevertheless, the record before the Committee on Indian Affairs also shows that the absence of minimum Federal standards for the regulation and licensing of Indian gaming has allowed a void to develop which will become more and more attractive to criminal elements as Indian gaming continues to generate increased revenues. The legislation we are introducing today provides for the development of strict minimum Federal standards based on the recommendations of Federal, State and tribal officials. While Indian tribes or States, or both, will continue to exercise primary regulatory authority, their regulatory standards must meet or exceed the minimum Federal standards. In the event that the Federal Indian Gaming Regulatory Commission determines that the minimum Federal standards are not being met, then the Commission may directly regulate the gaming activity until such time as the Federal standards are met. In addition, the Commission is vested with authority to issue and revoke licenses as well as to impose civil fines, close Indian gaming facilities or seek enforcement of the act through the Federal courts.

As many of our colleagues know, one of the areas which has caused the greatest controversy under the current law relates to what has come to be known as the scope of gaming. A related issue is the refusal of some States to enter into negotiations for a class III compact and their assertion of sovereign immunity under the 11th amendment to the Constitution when an Indian tribe seeks judicial relief as provided by the act. The bill we are introducing incorporates the explicit standards of the Cabazon decision to guide all parties in determining the permissible gaming activities under the laws of any State. State laws will continue to govern this issue. We have not proposed the preemption of the gaming laws of any State. In most States, the issue of scope of gaming has now been settled through negotiation or litigation. In a few States this issue remains unresolved, but appears headed toward resolution by the courts.

In the course of our work on the gaming issue in the 103d Congress, Senator INOUYE and I advanced various formal and informal proposals for Federal legislation to resolve the scope of gaming issue. In addition proposals were developed by State and tribal officials. However, we were never able to develop a consensus on any one proposal. While the Committee on Indian Affairs remains open to suggestions on this issue, it is apparent that obtaining a consensus may not be possible. This

may be an area of the law best left to resolution through the courts.

With regard to the issue of the refusal of some States to negotiate and their assertion that the 1988 act violates the 11th amendment, the U.S. Supreme Court recently agreed to hear a case which raises that issue. As I noted earlier, the bill we are introducing today seeks to resolve this issue on terms that are consistent with recent decisions of the Federal courts.

Mr. President, I am sure that we will find many things to change in this legislation as it moves through the Senate. However, I believe that it provides a good foundation for our further consideration of this important issue. I want to emphasize that this bill is intended to stimulate discussion. I am looking forward to hearing from all interested parties with regard to their constructive suggestions for ways to improve the bill and move it forward.

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

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

S. 487

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Indian Gaming Regulatory Act Amendments Act of 1995''.

SEC. 2. AMENDMENTS TO THE INDIAN GAMING REGULATORY ACT.

The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) is amended—

(1) by striking the first section and inserting the following new section:

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

''(a) SHORT TITLE.—This Act may be cited as the 'Indian Gaming Regulatory Act'.

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

''Sec. 1. Short title; table of contents.
''Sec. 2. Congressional findings.
''Sec. 3. Purposes.
''Sec. 4. Definitions.
''Sec. 5. Establishment of the Federal Indian Gaming Regulatory Commission.
''Sec. 6. Powers of the Chairperson.
''Sec. 7. Powers and authority of the Commission.
''Sec. 8. Regulatory framework.
''Sec. 9. Advisory Committee on Minimum Regulatory Requirements and Licensing Standards.
''Sec. 10. Licensing.
''Sec. 11. Requirements for the conduct of class I and class II gaming on Indian lands.
''Sec. 12. Class III gaming on Indian lands.
''Sec. 13. Review of contracts.
''Sec. 14. Review of existing contracts; interim authority.
''Sec. 15. Civil penalties.
''Sec. 16. Judicial review.
''Sec. 17. Commission funding.
''Sec. 18. Authorization of appropriations.
''Sec. 19. Miscellaneous.
''Sec. 20. Dissemination of information.
''Sec. 21. Severability.
''Sec. 22. Criminal penalties.
''Sec. 23. Conforming amendment.
''Sec. 24. Definition of financial institutions.'';

(2) by striking sections 2 through 19 and inserting the following new sections:

''SEC. 2. CONGRESSIONAL FINDINGS.

''The Congress finds that—

''(1) Indian tribes are—

''(A) engaged in the operation of gaming activities on Indian lands as a means of generating tribal governmental revenue; and

''(B) licensing such activities;

''(2) clear Federal standards and regulations for the conduct of gaming on Indian lands will assist tribal governments in assuring the integrity of gaming activities conducted on Indian lands;

''(3) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government;

''(4) while Indian tribes have the right to regulate the operation of gaming activities on Indian lands if such gaming activities are—

''(A) not specifically prohibited by Federal law; and

''(B) conducted within a State that as a matter of public policy permits such gaming activities,

Congress has the authority to regulate the privilege of doing business with Indian tribes in Indian country (as defined in section 1151 of title 18, United States Code);

''(5) systems for the regulation of gaming activities on Indian lands should meet or exceed federally established minimum regulatory requirements;

''(6) the operation of gaming activities on Indian lands has had a significant impact on commerce with foreign nations, among the several States and with the Indian tribes; and

''(7) the Constitution vests the Congress with the powers to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes, and this Act is enacted in the exercise of those powers.

''SEC. 3. PURPOSES.

''The purposes of this Act are—

''(1) to ensure the right of Indian tribes to conduct gaming activities on Indian lands in a manner consistent with the decision of the Supreme Court in California et al. v. Cabazon Band of Mission Indians et al. (480 U.S. 202, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987)), involving the Cabazon and Morongo Bands of Mission Indians;

''(2) to provide a statutory basis for the conduct of gaming activities on Indian lands as a means of promoting tribal economic development, self-sufficiency, and strong Indian tribal governments;

''(3) to provide a statutory basis for the regulation of gaming activities on Indian lands by an Indian tribe adequate to shield such activities from organized crime and other corrupting influences, to ensure that an Indian tribal government is the primary beneficiary of the operation of gaming activities, and to ensure that gaming is conducted fairly and honestly by both the operator and players; and

''(4) to declare that the establishment of independent Federal regulatory authority for the conduct of gaming activities on Indian lands and the establishment of Federal minimum regulatory requirements for the conduct of gaming activities on Indian lands are necessary to protect such gaming.

''SEC. 4. DEFINITIONS.

''For purposes of this Act, the following definitions shall apply:

''(1) APPLICANT.—The term 'applicant' means any person who applies for a license pursuant to this Act, including persons applying for a renewal of a license.

''(2) ADVISORY COMMITTEE.—The term 'Advisory Committee' means the Advisory Committee on Minimum Regulatory Requirements and Licensing Standards established under section 9(a).

''(3) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

''(4) CHAIRPERSON.—The term 'Chairperson' means the Chairperson of the Federal Indian Gaming Regulatory Commission established under section 5.

''(5) CLASS I GAMING.—The term 'class I gaming' means social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

''(6) CLASS II GAMING.—

''(A) IN GENERAL.—The term 'class II gaming' means—

''(i) the game of chance commonly known as bingo or lotto including, if played in the same location, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

''(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations;

''(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and

''(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards; and

''(ii) card games that—

''(I) are explicitly authorized by the laws of a State; or

''(II) are not explicitly prohibited by the laws of a State and are played at any location in the State, but only if such card games are played in conformity with any such laws (including regulations) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

''(B) EXCLUSIONS.—The term 'class II gaming' does not include—

''(i) any banking card games, including baccarat, chemin de fer, or blackjack (21); or

''(ii) gambling devices, as defined in paragraph (11), except for any class II game that is played under subparagraph (A)(i) with technologic aid that has been approved by the Commission.

''(C) TREATMENT OF CERTAIN GAMES.—Notwithstanding any other provision of this paragraph, the term 'class II gaming' includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that, on or before May 1, 1988, were actually operated in such State by an Indian tribe, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Commission (as defined in paragraph (8)).

''(7) CLASS III GAMING.—The term 'class III gaming' means all forms of gaming that are not class I gaming or class II gaming.

''(8) COMMISSION.—The term 'Commission' means the Federal Indian Gaming Regulatory Commission established under section 5.

''(9) COMPACT.—The term 'compact' means an agreement relating to the operation of class III gaming on Indian lands entered into by an Indian tribe and a State, that is approved by the Secretary, or an agreement relating to the operation of class III gaming that is negotiated by an Indian tribe and the Secretary, and approved by the Secretary.

''(10) ELECTRONIC, COMPUTER, OR OTHER TECHNOLOGIC AID.—The term 'electronic,

computer, or other technologic aid', in connection with class II gaming, means a device, such as a computer, telephone, cable, television, satellite, or bingo blower, that, when used—

''(A) is not a game of chance or a gambling device;

''(B) merely assists a player or the playing of a game; and

''(C) is operated according to applicable Federal communications law.

''(11) ELECTRONIC OR ELECTROMECHANICAL FACSIMILE.—The term 'electronic or electromechanical facsimile' means any gambling device, as defined in paragraph (12).

''(12) GAMBLING DEVICE.—The term 'gambling device' means—

''(A) any gambling device, as defined in section 1(a) of the Act of January 2, 1951 (commonly referred to as the 'Gambling Devices Transportation Act') (64 Stat. 1134, chapter 1194; 15 U.S.C. 1171(a)), including any electronic or electromechanical facsimile; and

''(B) does not include a technological aid to class II gaming that is approved by the Commission.

''(13) GAMING-RELATED CONTRACT.—The term 'gaming-related contract' means any agreement for an amount of more than $50,000 per year—

''(A) under which an Indian tribe or an agent of any Indian tribe procures gaming materials, supplies, equipment, or services that are used in the conduct of a class II or class III gaming activity, or

''(B) financing contracts or agreements for any facility in which a gaming activity is to be conducted.

''(14) GAMING-RELATED CONTRACTOR.—The term 'gaming-related contractor' means any person who enters into a gaming-related contract with an Indian tribe or an agent of an Indian tribe, including any person with a financial interest in such contract.

''(15) GAMING SERVICE INDUSTRY.—The term 'gaming service industry' means any form of enterprise that provides goods or services that are used in conjunction with any class II or class III gaming activity, in any case in which—

''(A) the proposed agreement between the enterprise and a class II or class III gaming operation, or the aggregate of such agreements is for an amount of not less than $100,000 per year; or

''(B) the amount of business conducted by such enterprise with any gaming operation in the 1-year period preceding the effective date of such agreement was not less than $250,000.

''(16) INDIAN LANDS.—The term 'Indian lands' means—

''(A) all lands within the limits of any Indian reservation; and

''(B) any lands—

''(i) the title to which is held in trust by the United States for the benefit of any Indian tribe; or

''(ii) the title to which is—

''(I) held by an Indian tribe subject to a restriction by the United States against alienation;

''(II) held by the United States for the benefit of an individual Indian; or

''(III) held by an individual subject to restriction by the United States against alienation; and

''(iii) over which an Indian tribe exercises governmental power.

''(17) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community of Indians that—

''(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians; and

''(B) is recognized as possessing powers of self-government.

''(18) KEY EMPLOYEE.—The term 'key employee' means any individual employed in a gaming operation licensed pursuant to this Act in a supervisory capacity or empowered to make any discretionary decision with regard to the gaming operation, including any pit boss, shift boss, credit executive, cashier supervisor, gaming facility manager or assistant manager, or manager or supervisor of security employees.

''(19) MANAGEMENT CONTRACT.—The term 'management contract' means any contract or collateral agreement between an Indian tribe and a contractor, if such contract or agreement provides for the management of all or part of a gaming operation.

''(20) MANAGEMENT CONTRACTOR.—The term 'management contractor' means any person entering into a management contract with an Indian tribe or an agent of the Indian tribe for the management of a gaming operation, including any person with a financial interest in such contract.

''(21) MATERIAL CONTROL.—The term 'material control' means the exercise of authority or supervision or the power to make or cause to be made any discretionary decision with regard to matters which have a substantial effect on the financial or management aspects of a gaming operation.

''(22) NET REVENUES.—The term 'net revenues' means the gross revenues of an Indian gaming activity reduced by the sum of—

''(A) any amounts paid out or paid for as prizes; and

''(B) the total operating expenses associated with the gaming activity, excluding management fees.

''(23) PERSON.—The term 'person' means an individual, firm, corporation, association, partnership, trust, consortium, joint venture, entity, or gaming operation.

''(24) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''SEC. 5. ESTABLISHMENT OF THE FEDERAL INDIAN GAMING REGULATORY COMMISSION.

''(a) ESTABLISHMENT.—There is established as an independent agency of the United States, a Commission to be known as the Federal Indian Gaming Regulatory Commission. Such Commission shall be an independent establishment, as defined in section 104 of title 5, United States Code.

''(b) COMPOSITION OF THE COMMISSION.—

''(1) IN GENERAL.—The Commission shall be composed of 3 full-time members, who shall be appointed by the President, by and with the advice and consent of the Senate.

''(2) CITIZENSHIP OF MEMBERS.—Each member of the Commission shall be a citizen of the United States.

''(3) REQUIREMENTS FOR MEMBERS.—No member of the Commission may—

''(A) pursue any other business or occupation or hold any other office;

''(B) be actively engaged in or, other than through distribution of gaming revenues as a member of an Indian tribe, have any direct pecuniary interest in gaming activities;

''(C) other than through distribution of gaming revenues as a member of an Indian tribe, have any pecuniary interest in any business or organization that holds a gaming license under this Act or that does business with any person or organization licensed under this Act;

''(D) have been convicted of a felony or gaming offense; or

''(E) have any financial interest in, or management responsibility for, any gaming-related contract or any other contract approved pursuant to this Act.

''(4) POLITICAL AFFILIATION.—

''(A) IN GENERAL.—Not more than 2 members of the Commission shall be members of the same political party. In making appointments to the Commission, the President shall appoint members of different political parties, to the extent practicable.

''(B) TRIBAL MEMBERSHIP.—At least 2 members of the Commission shall each be a member of a federally recognized Indian tribe. No 2 members appointed under this subparagraph shall be members of the same Indian tribe.

''(5) ADDITIONAL REQUIREMENTS.—The Commission shall be composed of the most qualified individuals available, subject to the following conditions:

''(A) CERTIFIED PUBLIC ACCOUNTANT REPRESENTATION.—One member of the Commission shall be a certified public accountant with not less than 5 years of progressively responsible experience in accounting and auditing, and a comprehensive knowledge of the principles and practices of corporate finance.

''(B) LAW ENFORCEMENT REPRESENTATION.—One member of the Commission shall be selected with special reference to training and experience in the fields of investigation or law enforcement.

''(6) BACKGROUND INVESTIGATIONS.—The Attorney General shall conduct a background investigation concerning any individual under consideration for appointment to the Commission, with particular regard to the financial stability, integrity, responsibility, and reputation for good character, honesty, and integrity of the nominee.

''(c) CHAIRPERSON.—The President shall select a Chairperson from among the members appointed to the Commission.

''(d) VICE CHAIRPERSON.—The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairperson. The Vice Chairperson shall—

''(1) serve as Chairperson of the Commission in the absence of the Chairperson; and

''(2) exercise such other powers as may be delegated by the Chairperson.

''(e) TERMS OF OFFICE.—

''(1) IN GENERAL.—Each member of the Commission shall hold office for a term of 5 years.

''(2) INITIAL APPOINTMENTS.—Initial appointments to the Commission shall be made for the following terms:

''(A) The Chairperson shall be appointed for a term of 5 years.

''(B) One member shall be appointed for a term of 4 years.

''(C) One member shall be appointed for a term of 3 years.

''(3) LIMITATION.—No member shall serve for more than 2 terms of 5 years each.

''(f) VACANCIES.—

''(1) IN GENERAL.—Each individual appointed by the President to serve as Chairperson and each member of the Commission shall, unless removed for cause under paragraph (2), serve in the capacity for which such individual is appointed until the expiration of the term of such individual or until a successor is duly appointed and qualified.

''(2) REMOVAL FROM OFFICE.—The Chairperson or any member of the Commission may only be removed from office before the expiration of the term of office by the President for neglect of duty, malfeasance in office, or for other good cause shown.

''(3) TERM TO FILL VACANCIES.—The term of any member appointed to fill a vacancy on the Commission shall be for the unexpired term of the member.

''(g) QUORUM.—Two members of the Commission shall constitute a quorum.

''(h) MEETINGS.—

''(1) IN GENERAL.—The Commission shall meet at the call of the Chairperson or a majority of the members of the Commission.

''(2) MAJORITY OF MEMBERS DETERMINE ACTION.—A majority of the members of the Commission shall determine any action of the Commission.

''(i) COMPENSATION.—

''(1) CHAIRPERSON.—The Chairperson shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5316 of title 5, United States Code.

''(2) OTHER MEMBERS.—Each other member of the Commission shall be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5, United States Code.

''(3) TRAVEL.—All members of the Commission shall be reimbursed in accordance with title 5, United States Code, for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

''(j) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

''SEC. 6. POWERS OF THE CHAIRPERSON.

''(a) CHIEF EXECUTIVE OFFICER.—The Chairperson shall serve as the chief executive officer of the Commission.

''(b) ADMINISTRATION OF THE COMMISSION.—

''(1) IN GENERAL.—Subject to subsection (c), the Chairperson—

''(A) shall employ and supervise such personnel as the Chairperson considers necessary to carry out the functions of the Commission, and assign work among such personnel;

''(B) shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for ES–6 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code;

''(C) shall appoint and supervise other staff of the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service;

''(D) may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for ES–6 of the Senior Executive Service Schedule;

''(E) may request the head of any Federal agency to detail any personnel of such agency to the Commission to assist the Commission in carrying out the duties of the Commission under this Act, unless otherwise prohibited by law;

''(F) shall use and expend Federal funds and funds collected pursuant to section 17; and

''(G) may contract for the services of such other professional, technical, and operational personnel and consultants as may be necessary to the performance of the Commission's responsibilities under this Act.

''(2) COMPENSATION OF STAFF.—The staff referred to in paragraph (1)(C) shall be paid without regard to the provisions of chapter 51 and subchapters III and VIII of chapter 53 of title 5, United States Code, relating to classification and General Schedule and Senior Executive Service Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for ES–5 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code.

''(c) APPLICABLE POLICIES.—In carrying out any of the functions under this section, the Chairperson shall be governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

''SEC. 7. POWERS AND AUTHORITY OF THE COMMISSION.

''(a) GENERAL POWERS.—

''(1) IN GENERAL.—The Commission shall have the power to—

''(A) approve the annual budget of the Commission;

''(B) promulgate regulations to carry out this Act;

''(C) establish a rate of fees and assessments, as provided in section 17;

''(D) conduct investigations, including background investigations;

''(E) issue a temporary order closing the operation of gaming activities;

''(F) after a hearing, make permanent a temporary order closing the operation of gaming activities, as provided in section 15;

''(G) grant, deny, limit, condition, restrict, revoke, or suspend any license issued under any licensing authority conferred upon the Commission pursuant to this Act or fine any person licensed pursuant to this Act for violation of any of the conditions of licensure under this Act;

''(H) inspect and examine all premises in which class II or class III gaming is conducted on Indian lands;

''(I) demand access to and inspect, examine, photocopy, and audit all papers, books, and records of class II and class III gaming activities conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this Act;

''(J) use the United States mail in the same manner and under the same conditions as any department or agency of the United States;

''(K) procure supplies, services, and property by contract in accordance with applicable Federal laws;

''(L) enter into contracts with Federal, State, tribal, and private entities for activities necessary to the discharge of the duties of the Commission;

''(M) serve or cause to be served process or notices of the Commission in a manner provided for by the Commission or in a manner provided for the service of process and notice in civil actions in accordance with the applicable rules of a tribal, State, or Federal court;

''(N) propound written interrogatories and appoint hearing examiners, to whom may be delegated the power and authority to administer oaths, issue subpoenas, propound written interrogatories, and require testimony under oath;

''(O) conduct all administrative hearings pertaining to civil violations of this Act (including any civil violation of a regulation promulgated under this Act);

''(P) collect all fees and assessments authorized by this Act and the regulations promulgated pursuant to this Act;

''(Q) assess penalties for violations of the provisions of this Act and the regulations promulgated pursuant to this Act;

''(R) provide training and technical assistance to Indian tribes with respect to all aspects of the conduct and regulation of gaming activities;

''(S) monitor and, as specifically authorized by this Act, regulate class II and class III gaming;

''(T) approve all management-related and gaming-related contracts; and

''(U) in addition to the authorities otherwise specified in this Act, delegate, by published order or rule, any of the functions of the Commission (including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting on the part of the Commission concerning any work, business, or matter) to a division of the Commission, an individual member of the Commission, an administrative law judge, or an employee of the Commission.

''(2) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to authorize the delegation of the function of rulemaking, as described in subchapter II of chapter 5 of title 5, United States Code, with respect to general rules (as distinguished from rules of particular applicability), or the promulgation of any other rule.

''(b) RIGHT TO REVIEW DELEGATED FUNCTIONS.—

''(1) IN GENERAL.—With respect to the delegation of any of the functions of the Commission, the Commission shall retain a discretionary right to review the action of any division of the Commission, individual member of the Commission, administrative law judge, or employee of the Commission, upon the initiative of the Commission.

''(2) VOTE NEEDED FOR REVIEW.—The vote of one member of the Commission shall be sufficient to bring an action referred to in paragraph (1) before the Commission for review, and the Commission shall ratify, revise, or reject the action under review not later than the last day of the applicable period specified in regulations promulgated by the Commission.

''(3) FAILURE TO CONDUCT REVIEW.—If the Commission declines to exercise the right to such review or fails to exercise such right within the applicable period specified in regulations promulgated by the Commission, the action of any such division of the Commission, individual member of the Commission, administrative law judge, or employee, shall, for all purposes, including any appeal or review of such action, be deemed an action of the Commission.

''(c) MINIMUM REQUIREMENTS.—Pursuant to the procedures described in section 9(d), after receiving recommendations from the Advisory Committee, the Commission shall establish minimum Federal standards—

''(1) for background investigations, licensing of persons, and licensing of gaming operations associated with the conduct or regulation of class II and class III gaming on Indian lands by tribal governments; and

''(2) for the operation of class II and class III gaming activities on Indian lands, including—

''(A) surveillance and security personnel and systems capable of monitoring all gaming activities, including the conduct of games, cashiers' cages, change booths, count rooms, movements of cash and chips, entrances and exits to gaming facilities, and other critical areas of any gaming facility;

''(B) procedures for the protection of the integrity of the rules for the play of games and controls related to such rules;

''(C) credit and debit collection controls;

''(D) controls over gambling devices and equipment; and

''(E) accounting and auditing.

''(d) COMMISSION ACCESS TO INFORMATION.—

''(1) IN GENERAL.—The Commission may secure from any department or agency of the United States information necessary to enable the Commission to carry out this Act. Unless otherwise prohibited by law, upon request of the Chairperson, the head of such department or agency shall furnish such information to the Commission.

''(2) INFORMATION TRANSFER.—The Commission may secure from any law enforcement or gaming regulatory agency of any State, Indian tribe, or foreign nation information necessary to enable the Commission to carry out this Act. Unless otherwise prohibited by law, upon request of the Chairperson, the head of any State or tribal law enforcement agency shall furnish such information to the Commission.

''(3) PRIVILEGED INFORMATION.—Notwithstanding sections 552 and 552a of title 5, United States Code, the Commission shall protect from disclosure information provided by

Federal, State, tribal, or international law enforcement or gaming regulatory agencies.

''(4) LAW ENFORCEMENT AGENCY.—For purposes of this subsection, the Commission shall be considered a law enforcement agency.

''(e) INVESTIGATIONS AND ACTIONS.—

''(1) IN GENERAL.—

''(A) POSSIBLE VIOLATIONS.—The Commission may, at the discretion of the Commission, and as specifically authorized by this Act, conduct such investigations as the Commission considers necessary to determine whether any person has violated, is violating, or is conspiring to violate any provision of this Act (including any rule or regulation promulgated under this Act). The Commission may require or permit any person to file with the Commission a statement in writing, under oath, or otherwise as the Commission may determine, concerning all of the relevant facts and circumstances regarding the matter under investigation by the Commission pursuant to this subsection.

''(B) ADMINISTRATIVE INVESTIGATIONS.—The Commission is authorized, at the discretion of the Commission, and as specifically authorized by this Act, to investigate such facts, conditions, practices, or matters as the Commission considers necessary or proper to aid in—

''(i) the enforcement of any provision of this Act;

''(ii) prescribing rules and regulations under this Act; or

''(iii) securing information to serve as a basis for recommending further legislation concerning the matters to which this Act relates.

''(2) ADMINISTRATIVE AUTHORITIES.—

''(A) IN GENERAL.—For the purpose of any investigation or any other proceeding conducted under this Act, any member of the Commission or any officer designated by the Commission is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission considers relevant or material to the inquiry. The attendance of such witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing.

''(B) REQUIRING APPEARANCES OR TESTIMONY.—In case of contumacy by, or refusal to obey any subpoena issued to, any person, the Commission may invoke the jurisdiction of any court of the United States within the jurisdiction of which an investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records.

''(C) COURT ORDERS.—Any such court may issue an order requiring such person to appear before the Commission or member of the Commission or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question, and any failure to obey such order of the court may be punished by such court as a contempt of such court.

''(3) ENFORCEMENT.—

''(A) IN GENERAL.—If the Commission determines that any person is engaged, has engaged, or is conspiring to engage, in any act or practice constituting a violation of any provision of this Act (including any rule or regulation promulgated under this Act), the Commission may—

''(i) bring an action in the appropriate district court of the United States or the United States District Court for the District of Columbia to enjoin such act or practice, and upon a proper showing, the court shall grant, without bond, a permanent or temporary injunction or restraining order; or

''(ii) transmit such evidence as may be available concerning such act or practice as may constitute a violation of any Federal criminal law to the Attorney General, who may institute the necessary criminal proceedings.

''(B) STATUTORY CONSTRUCTION.—The authority of the Commission to conduct investigations and take actions may not be construed to affect in any way the authority of any other agency or department of the United States to carry out statutory responsibilities of such agency or department.

''(4) WRITS, INJUNCTIONS, AND ORDERS.—Upon application of the Commission, each district court of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding any person to comply with the provisions of this Act (including any rules and regulations promulgated under this Act).

''SEC. 8. REGULATORY FRAMEWORK.

''(a) CLASS II GAMING.—For class II gaming, Indian tribes shall retain the right of such tribes to, in a manner that meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c)—

''(1) monitor and regulate such gaming; and

''(2) conduct background investigations and issue licenses to persons who are required to obtain a license under section 10(a).

''(b) CLASS III GAMING CONDUCTED UNDER A TRIBAL-STATE COMPACT.—For class III gaming conducted under the authority of a tribal-State compact entered into pursuant to section 12, an Indian tribe or a State, or both, as provided in a compact or by tribal ordinance or resolution, shall, in a manner that meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c)—

''(1) monitor and regulate gaming;

''(2) conduct background investigations and issue licenses to persons who are required to obtain a license pursuant to section 10(a); and

''(3) establish and regulate internal control systems.

''(c) CERTAIN OTHER COMPACTS.—For class III gaming conducted under the authority of a compact negotiated with the Secretary pursuant to section 12(a)(2), such compact shall provide that the Indian tribes or other appropriate entity shall, in a manner that meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c)—

''(1) monitor and regulate such gaming;

''(2) conduct background investigations and issue licenses to persons who are required to obtain a license pursuant to section 10(a); and

''(3) establish and regulate internal control systems.

''(d) VIOLATIONS OF MINIMUM FEDERAL STANDARDS.—

''(1) CLASS II GAMING.—In any case in which an Indian tribe that conducts class II gaming substantially fails to meet minimum Federal standards for class II gaming, after providing the Indian tribe notice and opportunity to cure violations and to be heard, and after the exhaustion of other authorized remedies and sanctions, the Commission shall have the authority to conduct background investigations, issue licenses, and establish and regulate internal control systems. Such authority of the Commission may be exclusive until such time as the regulatory and internal control systems of the Indian tribe meet or exceed the minimum Federal standards concerning regulatory, licensing, or internal control requirements established by the Commission.

''(2) CLASS III GAMING.—In any case in which an Indian tribe or a State (or both) that regulates class III gaming fails to meet or exceed minimum Federal standards for class III gaming, after providing notice and opportunity to cure violations and be heard, and after the exhaustion of other authorized remedies and sanctions, the Commission shall have the authority to conduct background investigations, issue licenses, and establish and regulate internal control systems. Such authority of the Commission may be exclusive until such time as the regulatory or internal control systems of the Indian tribe or a State, or both, meet or exceed the minimum regulatory, licensing, or internal control requirements established by the Commission.

''SEC. 9. ADVISORY COMMITTEE ON MINIMUM REGULATORY REQUIREMENTS AND LICENSING STANDARDS.

''(a) ESTABLISHMENT.—The President shall establish an advisory committee to be known as the 'Advisory Committee on Minimum Regulatory Requirements and Licensing Standards'.

''(b) MEMBERS.—The Advisory Committee shall be composed of 7 members who shall be appointed by the President, of which—

''(1) 3 members, selected from a list of recommendations submitted to the President by the Chairperson and Vice Chairperson of the Committee on Indian Affairs of the Senate and the Chairperson and ranking minority member of the Subcommittee on Native American and Insular Affairs of the Committee on Resources of the House of Representatives, shall be members of federally recognized Indian tribes involved in gaming covered under this Act;

''(2) 2 members, selected from a list of recommendations submitted to the President by the Majority Leader and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives, shall represent State governments; and

''(3) 2 members shall each be an employee of the Department of Justice.

''(c) RECOMMENDATIONS FOR MINIMUM FEDERAL STANDARDS.—

''(1) IN GENERAL.—Not later than 180 days after the date on which the Advisory Committee is fully constituted, the Advisory Committee shall develop and submit to the entities referred to in paragraph (2) recommendations for minimum Federal standards for the conduct of background investigations and the establishment of internal control systems and licensing standards.

''(2) RECIPIENTS OF RECOMMENDATIONS.—The Advisory Committee shall submit the recommendations described in paragraph (1) to the Committee on Indian Affairs of the Senate, the Subcommittee on Native American and Insular Affairs of the Committee on Resources of the House of Representatives, the Commission, and to each federally recognized Indian tribe.

''(3) FACTORS FOR CONSIDERATION.—While the minimum standards established pursuant to this section may be developed in light of existing industry standards, the Advisory Committee, and Commission in promulgating standards pursuant to subsection (d), shall give equal weight to—

''(A) the unique nature of tribal gaming as compared to non-Indian commercial, governmental, and charitable gaming;

''(B) the broad variations in the scope and size of tribal gaming activity;

''(C) the inherent sovereign right of Indian tribes to regulate their own affairs; and

''(D) the findings and purposes set forth in sections 2 and 3.

''(d) REGULATIONS.—Upon receipt of the recommendations of the Advisory Committee, the Commission shall hold public hearings on the recommendations. After the conclusion of the hearings, the Commission shall promulgate regulations establishing minimum regulatory requirements and licensing standards.

''(e) TRAVEL.—Members of the Advisory Committee appointed under paragraphs (1) and (2) of subsection (b) shall be reimbursed for travel and per diem in lieu of subsistence expenses during the performance of duties of the Advisory Committee while away from home or their regular place of business, in accordance with subchapter I of chapter 57 of title 5, United States Code.

''(f) TERMINATION.—The Advisory Committee shall cease to exist on the date that is 60 days after the date on which the Advisory Committee submits the recommendations under subsection (c).

''(g) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—All activities of the Advisory Committee shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

''SEC. 10. LICENSING.

''(a) IN GENERAL.—A license issued under this Act shall be required of—

''(1) gaming operations;

''(2) key employees of a gaming operation;

''(3) management- and gaming-related contractors;

''(4) any gaming service industry; and

''(5) any person who has material control, either directly or indirectly, over a licensed gaming operation.

''(b) CERTAIN LICENSES FOR MANAGEMENT CONTRACTORS AND GAMING OPERATIONS.—Notwithstanding any other provision of law relating to licenses issued by an Indian tribe or a State (or both) pursuant to this Act, the Commission may require licenses of—

''(1) management contractors; and

''(2) gaming operations.

''(c) STATEMENT OF COMPLIANCE.—

''(1) IN GENERAL.—The Commission may issue a statement of compliance to an applicant for any license or for qualification status under this Act at any time that the Commission is satisfied that one or more eligibility criteria for the license have been satisfied by an applicant.

''(2) CONTENTS OF STATEMENT.—A statement issued under subparagraph (A) shall specify the eligibility criterion satisfied, the date of such satisfaction, and a reservation by the Commission permitting the Commission to revoke the statement of compliance at any time on the basis of a change of circumstances affecting such compliance.

''(d) GAMING OPERATION LICENSE.—

''(1) IN GENERAL.—No gaming operation shall operate unless all required licenses and approvals for the gaming operation have been obtained in accordance with this Act.

''(2) WRITTEN AGREEMENTS.—

''(A) FILING.—Prior to the operation of any gaming facility or activity, each management contract for the gaming operation shall be in writing and filed with the Commission pursuant to section 13.

''(B) EXPRESS APPROVAL REQUIRED.—No such agreement shall be effective unless the Commission expressly approves the agreement.

''(C) REQUIREMENT OF ADDITIONAL PROVISIONS.—The Commission may require that an agreement referred to in subparagraph (A) includes any provisions that are reasonably necessary to meet the requirements of this Act.

''(D) INELIGIBILITY OR EXEMPTION.—Any applicant who does not have the ability to exercise any significant control over a licensed gaming operation may be determined by the Commission to be ineligible to hold a license or may exempt such applicant from being required to hold a license.

''(e) DENIAL OF LICENSE.—The Commission, in the exercise of the specific licensure power conferred upon the Commission by this Act, shall deny a license to any applicant who is disqualified on the basis of a failure to meet any of the minimum Federal standards promulgated by the Commission pursuant to section 7(c).

''(f) APPLICATION FOR LICENSE.—

''(1) IN GENERAL.—Upon the filing of the materials specified in paragraph (2), the Commission shall conduct an investigation into the qualifications of an applicant. The Commission may conduct a nonpublic hearing on such investigation concerning the qualifications of the applicant in accordance with regulations promulgated by the Commission.

''(2) FILING OF MATERIALS.—The Commission shall carry out paragraph (1) upon the filing of—

''(A) an application for a license that the Commission is specifically authorized to issue pursuant to this Act; and

''(B) such supplemental information as the Commission may require.

''(3) TIMING OF FINAL ACTION.—After an application is submitted to the Commission, the Commission shall take final action not later than 90 days after—

''(A) completing all hearings and investigations concerning the application; and

''(B) receiving all information required to be submitted to the Commission.

''(4) DEADLINE FOR HEARINGS AND INVESTIGATIONS.—Not later than 90 days after receiving the information described in paragraph (3)(B), the Commission shall complete the hearings and investigations described in paragraph (3)(A).

''(5) ACTION BY COMMISSION.—Following the completion of an investigation and hearing, the Commission shall either deny or grant a license to an applicant.

''(6) DENIALS.—

''(A) IN GENERAL.—The Commission may deny any application pursuant to this Act.

''(B) ORDER OF DENIAL.—If the Commission denies an application submitted under this section, the Commission shall prepare an order denying such application. In addition, if an applicant requests a statement of the reasons for the denial, the Commission shall prepare such statement and provide the statement to the applicant. The statement shall include specific findings of fact.

''(7) ISSUANCE OF LICENSES.—If the Commission is satisfied that an applicant is qualified to receive a license, the Commission shall issue a license to the applicant upon tender of—

''(A) all license fees and assessments as required by this Act (including regulations promulgated by the Commission under this Act); and

''(B) such bonds as the Commission may require for the faithful performance of all requirements imposed by this Act (including regulations promulgated under this Act).

''(8) BONDS.—

''(A) AMOUNTS.—The Commission shall, by rules of uniform application, fix the amount of each bond that the Commission requires under this section in such amount as the Commission considers appropriate.

''(B) USE OF BONDS.—The bonds furnished to the Commission under this paragraph may be applied by the Commission to the payment of any unpaid liability of the licensee under this Act.

''(C) TERMS.—Each bond required in accordance with this section shall be furnished—

''(i) in cash or negotiable securities;

''(ii) by a surety bond guaranteed by a satisfactory guarantor; or

''(iii) by an irrevocable letter of credit issued by a banking institution acceptable to the Commission.

''(D) TREATMENT OF PRINCIPAL AND INCOME.—If a bond is furnished in cash or negotiable securities, the principal shall be placed without restriction at the disposal of the Commission, but any income shall inure to the benefit of the licensee.

''(g) RENEWAL OF LICENSE.—

''(1) IN GENERAL.—

''(A) RENEWALS.—Subject to the power of the Commission to deny, revoke, or suspend licenses, any license issued under this section and in force shall be renewed by the Commission for the next succeeding license period upon proper application for renewal and payment of license fees and assessments, as required by applicable law (including regulations of the Commission).

''(B) RENEWAL TERM.—Subject to subparagraph (C), the term of a renewal period for a license issued under this section shall be for a period of not more than—

''(i) 2 years, for each of the first 2 renewal periods succeeding the initial issuance of a license pursuant to subsection (f); and

''(ii) 3 years, for each succeeding renewal period.

''(C) REOPENING HEARINGS.—The Commission may reopen licensing hearings at any time after the Commission has issued or renewed a license.

''(2) TRANSITION.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, the Commission shall, for the purpose of facilitating the administration of this Act, renew a license for an activity covered under subsection (a) that is held by a person on the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995 for a renewal period of 18 months.

''(B) ACTION BEFORE EXPIRATION.—The Commission shall act upon any license renewal application that is filed in a timely manner prior to the date of expiration of the then current license.

''(3) FILING REQUIREMENT.—Each application for renewal shall be filed with the Commission not later than 90 days prior to the expiration of the then current license. All license fees and assessments that are required by law shall be paid to the Commission on or before the date of expiration of the then current license.

''(4) RENEWAL CERTIFICATE.—Upon renewal of a license, the Commission shall issue an appropriate renewal certificate, validating device, or sticker, which shall be attached to the license.

''(h) HEARINGS.—

''(1) IN GENERAL.—The Commission shall establish procedures for the conduct of hearings associated with licensing, including procedures for denying, limiting, conditioning, restricting, revoking, or suspending any such license.

''(2) ACTION BY COMMISSION.—Following a hearing conducted for any of the purposes authorized in this section, the Commission shall—

''(A) render a decision of the Commission;

''(B) issue an order; and

''(C) serve such decision and order upon the affected parties.

''(3) REHEARING.—

''(A) IN GENERAL.—The Commission may, upon a motion made not later than 10 days after the service of a decision and order, order a rehearing before the Commission on such terms and conditions as the Commission considers just and proper if the Commission finds cause to believe that the decision and order should be reconsidered in view of

the legal, policy, or factual matters that are—

''(i) advanced by the party that makes the motion; or

''(ii) raised by the Commission on a motion made by the Commission.

''(B) ACTION AFTER REHEARING.—Following a rehearing conducted by the Commission, the Commission shall—

''(i) render a decision of the Commission;

''(ii) issue an order; and

''(iii) serve such decision and order upon the affected parties.

''(C) FINAL AGENCY ACTION.—A decision and order made by the Commission under paragraph (2) (if no motion for a rehearing is made), or a decision and order made by the Commission upon rehearing shall constitute final agency action for purposes of judicial review.

''(4) JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review the licensing decisions and orders of the Commission.

''(i) LICENSE REGISTRY.—The Commission shall—

''(1) maintain a registry of all licenses that are granted or denied pursuant to this Act; and

''(2) make the information contained in the registry available to Indian tribes to assist the licensure and regulatory activities of Indian tribes.

''SEC. 11. REQUIREMENTS FOR THE CONDUCT OF CLASS I AND CLASS II GAMING ON INDIAN LANDS.

''(a) CLASS I GAMING.—Class I gaming on Indian lands shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

''(b) CLASS II GAMING.—

''(1) IN GENERAL.—Any class II gaming on Indian lands shall be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act.

''(2) LEGAL ACTIVITIES.—An Indian tribe may engage in, and license and regulate, class II gaming on Indian lands within the jurisdiction of such tribe, if—

''(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person; and

''(B) the class II gaming operation meets or exceeds the requirements of sections 7(c) and 10.

''(3) REQUIREMENTS FOR CLASS II GAMING OPERATIONS.—

''(A) IN GENERAL.—The Commission shall ensure that with regard to any class II gaming operation on Indian lands—

''(i) a separate license is issued by the Indian tribe for each place, facility, or location on Indian lands at which class II gaming is conducted;

''(ii) the Indian tribe has or will have the sole proprietary interest and responsibility for the conduct of any class II gaming activity, unless the conditions of clause (ix) apply;

''(iii) the net revenues from any class II gaming activity may only be used—

''(I) to fund tribal government operations or programs;

''(II) to provide for the general welfare of the Indian tribe and the members of the Indian tribe;

''(III) to promote tribal economic development;

''(IV) to donate to charitable organizations;

''(V) to help fund operations of local government agencies; or

''(VI) to comply with the provisions of section 17;

''(iv) the Indian tribe shall provide to the Commission annual outside audits of the class II gaming operation of the Indian tribe, which may be encompassed within existing independent tribal audit systems;

''(v) all contracts for supplies, services, or concessions for a contract amount equal to more than $50,000 per year, other than contracts for professional legal or accounting services, relating to such gaming shall be subject to such independent audits and any audit conducted by the Commission;

''(vi) the construction and maintenance of a class II gaming facility and the operation of class II gaming shall be conducted in a manner that adequately protects the environment and public health and safety;

''(vii) there shall be instituted an adequate system that—

''(I) ensures that—

''(aa) background investigations are conducted on primary management officials, key employees, and persons having material control, either directly or indirectly, in a licensed class II gaming operation, and gaming-related contractors associated with a licensed class II gaming operation; and

''(bb) oversight of such officials and the management by such officials is conducted on an ongoing basis; and

''(II) includes—

''(aa) tribal licenses for persons involved in class II gaming operations, issued in accordance with sections 7(c) and 10;

''(bb) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment or licensure; and

''(cc) notification by the Indian tribe to the Commission of the results of such background investigation before the issuance of any such license;

''(viii) net revenues from any class II gaming activities conducted or licensed by any Indian tribal government may be used to make per capita payments to members of the Indian tribe only if—

''(I) the Indian tribe has prepared a plan to allocate revenues to uses authorized by clause (iii);

''(II) the Secretary determines that the plan is adequate, particularly with respect to uses described in subclause (I) or (III) of clause (iii);

''(III) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved;

''(IV) the per capita payments to minors and other legally incompetent persons are disbursed to the parents or legal guardians of such minors or legally incompetent persons in such amounts as may be necessary for the health, education, or welfare of each such minor or legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

''(V) the per capita payments are subject to Federal income taxation and Indian tribes withhold such taxes when such payments are made.

''(ix) a separate license shall be issued by the Indian tribe for any class II gaming operation owned by any person or entity other than the Indian tribe and conducted on Indian lands, that includes—

''(I) requirements set forth in subparagraph (C); and

''(II) requirements that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located; and

''(x) no person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming operation conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

''(B) TRANSITION.—

''(i) IN GENERAL.—Clauses (ii), (iii), and (ix) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

''(I) such gaming operation is licensed and regulated by an Indian tribe;

''(II) income to the Indian tribe from such gaming is used only for the purposes described in subparagraph (A)(iii);

''(III) not less than 60 percent of the net revenues from such gaming operation is income to the licensing Indian tribe; and

''(IV) the owner of such gaming operation pays an appropriate assessment to the Commission pursuant to section 17 for the regulation of such gaming.

''(ii) LIMITATIONS ON EXEMPTION.—The exemption from application provided under clause (i) may not be transferred to any person or entity and shall remain in effect only during such period as the gaming operation remains within the same nature and scope as such gaming operation was actually operated on October 17, 1988.

''(C) LIST.—The Commission shall—

''(i) maintain a list of each individually owned gaming operation that is subject to subparagraph (A)(x); and

''(ii) publish such list in the Federal Register.

''(c) PETITION FOR CERTIFICATE OF SELF-REGULATION.—

''(1) IN GENERAL.—Any Indian tribe that operates, directly or with a management contract, a class II gaming activity may petition the Commission for a certificate of self-regulation if that Indian tribe—

''(A) has continuously conducted such activity for a period of not less than 3 years, including a period of at least 1 year after the date of the enactment of the Indian Gaming Regulatory Act Amendments Act of 1995; and

''(B) has otherwise complied with the provisions of this Act.

''(2) ISSUANCE OF CERTIFICATE OF SELF-REGULATION.—The Commission shall issue a certificate of self-regulation if the Commission determines on the basis of available information, and after a hearing if requested by the tribe, that the Indian tribe has—

''(A) conducted its gaming activity in a manner which has—

''(i) resulted in an effective and honest accounting of all revenues;

''(ii) resulted in a reputation for safe, fair, and honest operation of the activity; and

''(iii) been generally free of evidence of criminal or dishonest activity;

''(B) adopted and implemented adequate systems for—

''(i) accounting for all revenues from the activity;

''(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

''(iii) investigation, enforcement, and prosecution of violations of its gaming ordinance and regulations;

''(C) conducted the operation on a fiscally and economically sound basis; and

''(D) paid all fees and assessments that the tribe is required to pay to the Commission under this Act.

''(3) EFFECT OF CERTIFICATE OF SELF-REGULATION.—During the period in which a certificate of self-regulation issued under this paragraph is in effect with respect to a gaming activity conducted by an Indian tribe—

''(A) the tribe shall—

''(i) continue to submit an annual independent audit as required by subsection (b)(3)(A)(iv); and

''(ii) submit to the Commission a complete résumé of each employee hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

''(B) the Commission may not assess a fee on such activity pursuant to section 17 in excess of ¼ of 1 percent of the gross revenue from such activity.

''(4) RESCISSION.—The Commission may, for just cause and after an opportunity for a hearing, rescind a certificate of self-regulation by majority vote of the members of the Commission.

''(d) LICENSE REVOCATION.—If, after the issuance of any license by an Indian tribe under this section, the Indian tribe receives reliable information from the Commission indicating that a licensee does not meet any standard established under section 7(c) or 10, or any other applicable regulation promulgated by the Commission, the Indian tribe—

''(1) shall suspend such license; and

''(2) after notice and hearing under procedures established pursuant to applicable tribal law, may revoke such license.

''SEC. 12. CLASS III GAMING ON INDIAN LANDS.

''(a) REQUIREMENTS FOR THE CONDUCT OF CLASS III GAMING ON INDIAN LANDS.—

''(1) IN GENERAL.—Class III gaming activities shall be lawful on Indian lands only if such activities are—

''(A) authorized by a compact that—

''(i) is approved pursuant to tribal law by the governing body of the Indian tribe having jurisdiction over such lands;

''(ii) meets the requirements of section 11(b)(3) for the conduct of class II gaming; and

''(iii) is approved by the Secretary;

''(B) located in a State that permits such gaming for any purpose by any person; and

''(C) conducted in conformance with a tribal-State compact that—

''(i) is in effect; and

''(ii) is—

''(I) entered into by an Indian tribe and a State and approved by the Secretary under paragraph (2); or

''(II) issued by the Secretary under paragraph (2).

''(2) COMPACT NEGOTIATIONS.—

''(A) IN GENERAL.—

''(i) COMPACT NEGOTIATIONS.—Any Indian tribe having jurisdiction over the lands upon which a class III gaming activity is to be conducted may request the State in which such lands are located to enter into negotiations for the purpose of entering into a tribal-State compact governing the conduct of class III gaming activities.

''(ii) REQUIREMENTS FOR REQUEST FOR NEGOTIATIONS.—A request for negotiations under clause (i) shall be in writing and shall specify each gaming activity that the Indian tribe proposes for inclusion in the compact. Not later than 30 days after receipt of such written request, the State shall respond to the Indian tribe.

''(iii) COMMENCEMENT OF COMPACT NEGOTIATIONS.—Compact negotiations conducted under this paragraph shall commence not later than 30 days after the date on which a response by a State is due to the Indian tribe, and shall be completed not later than 120 days after the initiation of compact negotiations, unless the State and the Indian tribe agree to a different period of time for the completion of compact negotiations.

''(iv) INABILITY TO MEET DEADLINES FOR NEGOTIATIONS.—

''(I) NOTIFICATION.—If the State and the Indian tribe find that the State and Indian tribe are unable to commence or complete compact negotiations within the applicable time periods provided in this subsection, the Indian tribe shall notify the Secretary.

''(II) PRESENTATION OF POSITIONS.—Upon receipt of a notice under subclause (I), the Secretary shall request that the tribe and the State present their respective positions, not later than 60 days after such request, regarding—

''(aa) the gaming activities that the tribe seeks to conduct that are permissible under this Act;

''(bb) the framework for regulation of tribal gaming; and

''(cc) such other matters as the Secretary may consider appropriate.

''(B) APPROVAL OF COMPACT.—Not later than 90 days after the date of expiration of the 60-day period specified in subparagraph (A), the Secretary shall approve a compact that meets the requirements of this section, and shall publish the compact in the Federal Register. The compact shall—

''(i) include provisions—

''(I) that best meet the objectives of this Act; and

''(II) for background investigations, internal controls, and licensing that are consistent with this Act (including regulations promulgated by the Commission pursuant to section 7(c)); and

''(ii) not violate—

''(I) any provision of this Act (including regulations promulgated by the Commission pursuant to this Act);

''(II) any other provision of Federal law; or

''(III) the trust obligation of the United States to Indians.

''(C) MANDATORY DISAPPROVAL.—Notwithstanding any other provision of this Act, the Secretary shall not have the authority to approve a compact if the compact requires State regulation of Indian gaming absent the consent of the State or the Indian tribe.

''(D) EFFECT OF PUBLICATION OF COMPACT.—Except for an appeal conducted under subchapter II of chapter 5 of title 5, United States Code, by an Indian tribe or a State associated with the publication of the compact, the publication of a compact pursuant to subparagraph (B) that permits a form of class III gaming shall, for the purposes of this Act, be conclusive evidence that such class III gaming is an activity subject to negotiations under the laws of the State where the gaming is to be conducted, in any matter under consideration by the Commission or a Federal court.

''(E) EFFECTIVE DATE OF COMPACT.—Any compact negotiated under this subsection shall become effective upon the publication of the compact in the Federal Register by the Secretary.

''(F) DUTIES OF COMMISSION.—Consistent with the provisions of sections 7(c), 8, and 10, the Commission shall monitor and, if specifically authorized, regulate and license class III gaming with respect to any compact that is approved by the Secretary under this subsection and published in the Federal Register.

''(3) PROVISIONS OF COMPACTS.—

''(A) IN GENERAL.—A compact negotiated under this subsection may include provisions relating to—

''(i) the application of the criminal and civil laws (including regulations) of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity in a manner consistent with sections 7(c), 8, and 10;

''(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws (including regulations);

''(iii) the assessment by the State of the costs associated with such activities in such amounts as are necessary to defray the costs of regulating such activity;

''(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

''(v) remedies for breach of compact provisions;

''(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing, in a manner consistent with sections 7(c), 8, and 10; and

''(vii) any other subject that is directly related to the operation of gaming activities and the impact of gaming on tribal, State, and local governments.

''(B) STATUTORY CONSTRUCTION WITH RESPECT TO ASSESSMENTS.—Except for any assessments for services agreed to by an Indian tribe in compact negotiations, nothing in this section may be construed as conferring upon a State or any political subdivision thereof the authority to impose any tax, fee, charge, or other assessment upon an Indian tribe, an Indian gaming operation or the value generated by the gaming operation, or any person or entity authorized by an Indian tribe to engage in a class III gaming activity in conformance with this Act.

''(4) STATUTORY CONSTRUCTION WITH RESPECT TO CERTAIN RIGHTS OF INDIAN TRIBES.—Nothing in this subsection impairs the right of an Indian tribe to regulate class III gaming on the Indian lands of the Indian tribe concurrently with a State and the Commission, except to the extent that such regulation is inconsistent with, or less stringent than, this Act or any laws (including regulations) made applicable by any compact entered into by the Indian tribe under this subsection that is in effect.

''(5) EXEMPTION.—The provisions of section 2 of the Act of January 2, 1951 (commonly referred to as the 'Gambling Devices Transportation Act') (64 Stat. 1134, chapter 1194, 15 U.S.C. 1175) shall not apply to any class II gaming activity or any gaming activity conducted pursuant to a compact entered into after the date of enactment of this Act, but in no event shall this paragraph be construed as invalidating any exemption from the provisions of such section 2 for any compact entered into prior to the date of enactment of this Act.

''(b) JURISDICTION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.—The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the Secretary, the Commission, a State, or an Indian tribe to enforce any provision of a compact entered into under subsection (a) or to enjoin a class III gaming activity located on Indian lands and conducted in violation of any compact that is in effect and that was entered into under subsection (a).

''(c) APPROVAL OF COMPACTS.—

''(1) IN GENERAL.—The Secretary is authorized to approve any compact between an Indian tribe and a State governing the conduct of class III gaming on Indian lands of such Indian tribe entered into under subsection (a).

''(2) REASONS FOR DISAPPROVAL BY SECRETARY.—The Secretary may disapprove a compact entered into under subsection (a) only if such compact violates any—

''(A) provision of this Act or any regulation promulgated by the Commission pursuant to this Act;

''(B) other provision of Federal law; or

''(C) trust obligation of the United States to Indians.

''(3) EFFECT OF FAILURE TO ACT ON COMPACT.—If the Secretary fails to approve or disapprove a compact entered into under subsection (a) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the

compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this Act and the regulations promulgated by the Commission pursuant to this Act.

''(4) NOTIFICATION.—The Secretary shall publish in the Federal Register notice of any compact that is approved, or considered to have been approved, under this subsection.

''(d) REVOCATION OF ORDINANCE.—

''(1) IN GENERAL.—The governing body of an Indian tribe, in its sole discretion, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

''(2) PUBLICATION OF REVOCATION.—An Indian tribe shall submit any revocation ordinance or resolution described in paragraph (1) to the Commission. The Commission shall publish such ordinance or resolution in the Federal Register. The revocation provided by such ordinance or resolution shall take effect on the date of such publication.

''(3) CONDITIONAL OPERATION.—Notwithstanding any other provision of this subsection—

''(A) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in paragraph (1) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation, ordinance, or resolution is published under paragraph (2), continue to operate such activity in conformance with an applicable compact entered into under subsection (a) that is in effect; and

''(B) any civil action that arises before, and any crime that is committed before, the termination of such 1-year period shall not be affected by such revocation ordinance, or resolution.

''(e) CERTAIN CLASS III GAMING ACTIVITIES.—

''(1) COMPACTS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE INDIAN GAMING REGULATORY ACT AMENDMENTS ACT OF 1995.—Class III gaming activities that are authorized under a compact approved or issued by the Secretary under the authority of this Act prior to the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995 shall, during such period as the compact is in effect, remain lawful for the purposes of this Act, notwithstanding the Indian Gaming Regulatory Act Amendments Act of 1995 and the amendments made by such Act or any change in State law enacted after the approval or issuance of the compact.

''(2) COMPACT ENTERED INTO AFTER THE DATE OF ENACTMENT OF THE INDIAN GAMING REGULATORY ACT AMENDMENTS ACT OF 1995.—Any compact entered into under subsection (a) after the date specified in paragraph (1) shall remain lawful for the purposes of this Act, notwithstanding any change in State law enacted after the approval or issuance of the compact.

''SEC. 13. REVIEW OF CONTRACTS.

''(a) CONTRACTS INCLUDED.—The Commission shall review and approve or disapprove—

''(1) any management contract for the operation and management of any gaming activity that an Indian tribe may engage in under this Act; and

''(2) unless licensed by an Indian tribe consistent with the minimum Federal standards adopted pursuant to section 7(c), any gaming-related contract.

''(b) MANAGEMENT CONTRACT REQUIREMENTS.—The Commission shall approve any management contract between an Indian tribe and a person licensed by an Indian tribe or the Commission that is entered into pursuant to this Act only if the Commission determines that the contract provides for—

''(1) adequate accounting procedures that are maintained, and verifiable financial reports that are prepared by or for, the governing body of the Indian tribe on a monthly basis;

''(2) access to the daily gaming operations by appropriate officials of the Indian tribe who shall have the right to verify the daily gross revenues and income derived from any gaming activity;

''(3) a minimum guaranteed payment to the Indian tribe that has preference over the retirement of any development and construction costs;

''(4) an agreed upon ceiling for the repayment of any development and construction costs;

''(5) a contract term of not to exceed 5 years, except that, upon the request of an Indian tribe, the Commission may authorize a contract term that exceeds 5 years but does not exceed 7 years, if the Commission is satisfied that the capital investment required, and the income projections for the particular gaming activity, require the additional time; and

''(6) grounds and mechanisms for the termination of the contract, but any such termination shall not require the approval of the Commission.

''(c) MANAGEMENT FEE BASED ON PERCENTAGE OF NET REVENUES.—

''(1) PERCENTAGE FEE.—The Commission may approve a management contract that provides for a fee that is based on a percentage of the net revenues of a tribal gaming activity if the Commission determines that such percentage fee is reasonable, taking into consideration surrounding circumstances.

''(2) FEE AMOUNT.—Except as provided in paragraph (3), a fee described in paragraph (1) shall not exceed an amount equal to 30 percent of the net revenues described in such paragraph.

''(3) EXCEPTION.—Upon the request of an Indian tribe, if the Commission is satisfied that the capital investment required, and income projections for, a tribal gaming activity, necessitate a fee in excess of the amount specified in paragraph (2), the Commission may approve a management contract that provides for a fee described in paragraph (1) in an amount in excess of the amount specified in paragraph (2), but not to exceed 40 percent of the net revenues described in paragraph (1).

''(d) GAMING-RELATED CONTRACT REQUIREMENTS.—The Commission shall approve a gaming-related contract covered under subsection (a)(2) that is entered into pursuant to this Act only if the Commission determines that the contract provides for—

''(1) grounds and mechanisms for termination of the contract, but such termination shall not require the approval of the Commission; and

''(2) such other provisions as the Commission may be empowered to impose by this Act.

''(e) TIME PERIOD FOR REVIEW.—

''(1) IN GENERAL.—Except as provided in paragraph (2), not later than 90 days after the date on which a management contract or other gaming-related contract is submitted to the Commission for approval, the Commission shall approve or disapprove such contract on the merits of the contract. The Commission may extend the 90-day period for an additional period of not more than 45 days if the Commission notifies the Indian tribe in writing of the reason for the extension of the period. The Indian tribe may bring an action in the United States District Court for the District of Columbia to compel action by the Commission if a contract has not been approved or disapproved by the termination date of an applicable period under this subsection.

''(2) EFFECT OF FAILURE OF COMMISSION TO ACT ON CERTAIN GAMING-RELATED CONTRACT.—Any gaming-related contract for an amount less than or equal to $100,000 that is submitted to the Commission pursuant to paragraph (1) by a person who holds a valid license that is in effect under this Act shall be deemed to be approved, if by the date that is 90 days after the contract is submitted to the Commission, the Commission fails to approve or disapprove the contract.

''(f) CONTRACT MODIFICATIONS AND VOID CONTRACTS.—The Commission, after providing notice and hearing—

''(1) shall have the authority to require appropriate contract modifications to ensure compliance with the provisions of this Act; or

''(2) may void any contract regulated by the Commission under this Act if the Commission determines that any of the provisions of this Act have been violated by the terms of the contract.

''(g) INTERESTS IN REAL PROPERTY.—No contract regulated by this Act may transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists, all necessary approvals for such transfer or conveyance have been obtained, and such transfer or conveyance is clearly specified in the contract.

''(h) AUTHORITY OF THE SECRETARY.—The authority of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) shall not extend to any contract or agreement that is regulated pursuant to this Act.

''(i) DISAPPROVAL OF CONTRACTS.—The Commission may not approve a contract if the Commission determines that—

''(1) any person having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, any individual who serves on the board of directors of such corporation, and any of the stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock—

''(A) is an elected member of the governing body of the Indian tribe which is a party to the contract;

''(B) has been convicted of any felony or gaming offense;

''(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this Act or has refused to respond to questions propounded by the Commission; or

''(D) has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

''(2) the contractor—

''(A) has unduly interfered or influenced for its gain or advantage any decision or process of tribal government relating to the gaming activity; or

''(B) has attempted to interfere or influence a decision pursuant to subparagraph (A);

''(3) the contractor has deliberately or substantially failed to comply with the terms of the contract; or

''(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

"SEC. 14. REVIEW OF EXISTING CONTRACTS; INTERIM AUTHORITY.

''(a) REVIEW OF EXISTING CONTRACTS.—

''(1) IN GENERAL.—At any time after the Commission is sworn in and has promulgated regulations for the implementation of this Act, the Commission shall notify each Indian tribe and management contractor who, prior to the enactment of the Indian Gaming Regulatory Act Amendments Act of 1995, entered into a management contract that was approved by the Secretary, that the Indian tribe is required to submit to the Commission such contract, including all collateral agreements relating to the gaming activity, for review by the Commission not later than 60 days after such notification. Any such contract shall be valid under this Act, unless the contract is disapproved by the Commission under this section.

''(2) REVIEW.—

''(A) IN GENERAL.—Not later than 180 days after the submission of a management contract, including all collateral agreements, to the Commission pursuant to this section, the Commission shall review the contract to determine whether the contract meets the requirements of section 13 and was entered into in accordance with the procedures under such section.

''(B) APPROVAL OF CONTRACT.—The Commission shall approve a management contract submitted for review under subsection (a) if the Commission determines that—

''(i) the management contract meets the requirements of section 13; and

''(ii) the management contractor has obtained all of the licenses that the contractor is required to obtain under this Act.

''(C) NOTIFICATION OF NECESSARY MODIFICATIONS.—If the Commission determines that a contract submitted under this section does not meet the requirements of section 13, the Commission shall provide written notification to the parties to such contract of the necessary modifications and the parties shall have 180 days to make the modifications.

''(b) INTERIM AUTHORITY OF THE NATIONAL INDIAN GAMING COMMISSION.—

''(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Chairperson and the associate members of the National Indian Gaming Commission who are holding office on the date of enactment of this Act shall exercise those authorities vested in the Federal Indian Gaming Regulatory Commission by this Act until such time as the members of the Federal Indian Gaming Regulatory Commission are sworn into office.

''(2) TRANSITION.—Notwithstanding any other provision of law, the Commission shall exercise the authority conferred on the Commission by this Act, and until such time as the Commission promulgates revised regulations after the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995, the regulations issued under this Act, as in effect on the day before such date of enactment, shall apply.

"SEC. 15. CIVIL PENALTIES.

''(a) AMOUNT.—Any person who commits any act or causes to be done any act that violates any provision of this Act or the rules or regulations promulgated under this Act, or who fails to carry out any act or causes the failure to carry out any act that is required by any such provision of law shall be subject to a civil penalty in an amount equal to not more than $50,000 per day for each such violation.

''(b) ASSESSMENT AND COLLECTION.—

''(1) IN GENERAL.—Each civil penalty assessed under this section shall be assessed by the Commission and collected in a civil action brought by the Attorney General on behalf of the United States. Before the Commission refers civil penalty claims to the Attorney General, the Commission may compromise the civil penalty after affording the person charged with a violation referred to in subsection (a), an opportunity to present views and evidence in support of such action by the Commission to establish that the alleged violation did not occur.

''(2) PENALTY AMOUNT.—In determining the amount of a civil penalty assessed under this section, the Commission shall take into account—

''(A) the nature, circumstances, extent, and gravity of the violation committed;

''(B) with respect to the person found to have committed such violation, the degree of culpability, any history of prior violations, ability to pay, the effect on ability to continue to do business; and

''(C) such other matters as justice may require.

''(c) TEMPORARY CLOSURES.—

''(1) IN GENERAL.—The Commission may order the temporary closure of all or part of an Indian gaming operation for a substantial violation of any provision of law referred to in subsection (a).

''(2) HEARING ON ORDER OF TEMPORARY CLOSURE.—

''(A) IN GENERAL.—Not later than 30 days after the issuance of an order of temporary closure, the Indian tribe or the individual owner of a gaming operation shall have the right to request a hearing before the Commission to determine whether such order should be made permanent or dissolved.

''(B) DEADLINES RELATING TO HEARING.—Not later than 30 days after a request for a hearing is made, the Commission shall conduct such hearing. Not later than 30 days after the termination of the hearing, the Commission shall render a final decision on the closure.

"SEC. 16. JUDICIAL REVIEW.

''A decision made by the Commission pursuant to sections 7, 8, 10, 13, 14, and 15 shall constitute final agency decisions for purposes of appeal to the United States District Court for the District of Columbia pursuant to chapter 7 of title 5, United States Code.

"SEC. 17. COMMISSION FUNDING.

''(a) ANNUAL FEES.—

''(1) IN GENERAL.—The Commission shall establish a schedule of fees to be paid to the Commission annually by gaming operations for each class II and class III gaming activity that is regulated by this Act.

''(2) LIMITATION ON FEE RATES.—

''(A) IN GENERAL.—For each gaming operation regulated under this Act, the rate of the fees imposed under the schedule established under paragraph (1) shall not exceed 2 percent of the net revenues of such gaming operation.

''(B) TOTAL AMOUNT OF FEES.—The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall equal not more than $25,000,000.

''(3) ANNUAL FEE RATE.—The Commission, by a vote of a majority of the members of the Commission, shall annually adopt the rate of the fees authorized by this section. Such fees shall be payable to the Commission on a monthly basis.

''(4) ADJUSTMENT OF FEES.—The fees paid by a gaming operation may be adjusted by the Commission to reduce the amount of the fees by an amount that takes into account that regulatory functions are performed by an Indian tribe, or the Indian tribe and a State, pursuant to regulations promulgated by the Commission.

''(5) CONSEQUENCES OF FAILURE TO PAY FEES.—Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to regulations promulgated by the Commission, be grounds for revocation of the approval of the Commission of any license required under this Act for the operation of gaming activities.

''(6) SURPLUS FUNDS.—To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) exceed the limitation in paragraph (2)(B) or are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity that is the subject of the fees on a pro rata basis against such fees imposed for the succeeding year.

''(b) REIMBURSEMENT OF COSTS.—The Commission is authorized to assess any applicant, except the governing body of an Indian tribe, for any license required pursuant to this Act. Such assessment shall be an amount equal to the actual costs of conducting all reviews and investigations necessary for the Commission to determine whether a license should be granted or denied to the applicant.

''(c) ANNUAL BUDGET.—

''(1) IN GENERAL.—For the first full fiscal year beginning after the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995, and each fiscal year thereafter, the Commission shall adopt an annual budget for the expenses and operation of the Commission.

''(2) REQUEST FOR APPROPRIATIONS.—The budget of the Commission may include a request for appropriations authorized under section 18.

''(3) SUBMISSION TO CONGRESS.—Notwithstanding any other provision of law, a request for appropriations made pursuant to paragraph (2) shall be submitted by the Commission directly to the Congress beginning with the request for the first full fiscal year beginning after the date of enactment of this Act, and shall include the proposed annual budget of the Commission and the estimated revenues to be derived from fees.

"SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

''Subject to section 17, there are authorized to be appropriated $5,000,000 to provide for the operation of the Commission for each of fiscal years 1997, 1998, and 1999, to remain available until expended.

"SEC. 19. MISCELLANEOUS.

''(a) GAMING PROSCRIBED ON LANDS ACQUIRED IN TRUST.—

''(1) IN GENERAL.—Except as provided in paragraph (2), gaming regulated by this Act shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after the date of enactment of this Act, unless—

''(A) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on the date of enactment of this Act;

''(B) the Indian tribe has no reservation on the date of enactment of this Act and such lands are located in the State of Oklahoma and—

''(i) are within the boundaries of the former reservation of the Indian tribe, as defined by the Secretary; or

''(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in the State of Oklahoma; or

''(C) such lands are located in a State other than the State of Oklahoma and are within the last recognized reservation of the Indian tribe within the State within which the Indian tribe is presently located.

''(2) EXEMPTION FOR CERTAIN TRUST LANDS.—Paragraph (1) does not apply in any case in which—

''(A) the Secretary, after consultation with the Indian tribe and a review of the recommendations, if any, of the Governor of the State in which such lands are located, and any other State and local officials, including

officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands—

''(i) would be in the best interest of the Indian tribe and the members of the Indian tribe; and

''(ii) would not be detrimental to the surrounding community;

''(B) lands are taken into trust as part of a settlement of a land claim;

''(C) the initial reservation of an Indian tribe is acknowledged by the Secretary under the Federal acknowledgment process or by an Act of Congress; or

''(D) lands are restored for an Indian tribe that is restored to Federal recognition.

''(3) EXEMPTION.—Paragraph (1) shall not apply to—

''(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86–2278; or

''(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within 1 mile of the intersection of State road numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

''(4) AUTHORITY OF THE SECRETARY.—Nothing in this section may affect or diminish the authority and responsibility of the Secretary to take land into trust.

''(b) APPLICATION OF THE INTERNAL REVENUE CODE OF 1986.—

''(1) IN GENERAL.—The provisions of the Internal Revenue Code of 1986 (including sections 1441, 3402(q), 6041, and chapter 35 of such Code) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this Act, or under a compact entered into under section 12 that is in effect, in the same manner as such provisions apply to State gaming and wagering operations. Any exemptions to States with respect to taxation of such gaming or wagering operations shall be allowed to Indian tribes.

''(2) EXEMPTION.—The provisions of section 6050I of the Internal Revenue Code of 1986 shall apply to an Indian gaming establishment that is not designated by the Secretary of the Treasury as a financial institution pursuant to chapter 53 of title 31, United States Code.

''(3) STATUTORY CONSTRUCTION.—This subsection shall apply notwithstanding any other provision of law enacted before the date of enactment of this Act unless such other provision of law specifically cites this subsection.

''(c) ACCESS TO INFORMATION BY STATE AND TRIBAL GOVERNMENTS.—Subject to section 7(d), upon the request of a State or the governing body of an Indian tribe, the Commission shall make available any law enforcement information which it has obtained pursuant to such section, unless otherwise prohibited by law, in order to enable the State or the Indian tribe to carry out its responsibilities under this Act or any compact approved by the Secretary.'';

(3) by striking section 20;

(4) by redesignating sections 21 through 24 as sections 20 through 23, respectively; and

(5) by adding at the end the following new section:

''SEC. 24. DEFINITION OF FINANCIAL INSTITUTIONS.

''Section 5312(a)(2) of title 31, United States Code, is amended—

''(1) by redesignating subparagraphs (X) and (Y) as subparagraphs (Y) and (Z), respectively; and

''(2) by inserting after subparagraph (W) the following new subparagraph:

''(X) an Indian gaming establishment;''.

SEC. 3. CONFORMING AMENDMENTS.

(a) TITLE 10.—Section 2323a(e)(1) of title 10, United States Code, is amended by striking ''section 4(4) of the Indian Gaming Regulatory Act (102 Stat. 2468; 25 U.S.C. 2703(4))'' and inserting ''section 4(16) of the Indian Gaming Regulatory Act''.

(b) TITLE 18.—Title 18, United States Code, is amended—

(1) in subsections (c) and (d) of section 1166, by striking ''section 11(d)(8) of the Indian Gaming Regulatory Act'' each place it appears and inserting ''section 12(a)(2)(B) of the Indian Gaming Regulatory Act'';

(2) in section 1167—

(A) in subsection (a), by striking ''National Indian Gaming Commission'' and inserting ''Federal Indian Gaming Regulatory Commission established under section 5 of the Indian Gaming Regulatory Act''; and

(B) in subsection (b), by striking ''National Indian Gaming Commission'' and inserting ''Federal Indian Gaming Regulatory Commission''; and

(3) in section 1168—

(A) in subsection (a), by striking ''National Indian Gaming Commission'' and inserting ''Federal Indian Gaming Regulatory Commission established under section 5 of the Indian Gaming Regulatory Act''; and

(B) in subsection (b), by striking ''National Indian Gaming Commission'' and inserting ''Federal Indian Gaming Regulatory Commission''.

(c) INTERNAL REVENUE CODE OF 1986.—Section 168(j)(4)(A)(iv) of the Internal Revenue Code of 1986 is amended by striking ''Indian Regulatory Act'' and inserting ''Indian Gaming Regulatory Act''.

(d) TITLE 28.—Title 28, United States Code, is amended—

(1) in section 3701(2)—

(A) by striking ''section 4(5) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(5))'' and inserting ''section 4(17) of the Indian Gaming Regulatory Act''; and

(B) by striking ''section 4(4) of such Act (25 U.S.C. 2703(4))'' and inserting ''section 4(16) of such Act''; and

(2) in section 3704(b), by striking ''section 4(4) of the Indian Gaming Regulatory Act'' and inserting ''section 4(16) of the Indian Gaming Regulatory Act''.

SECTION-BY-SECTION SUMMARY OF THE INDIAN GAMING REGULATORY ACT AMENDMENTS ACT OF 1995

Section 1. Short Title. This section provides that this Act may be cited as the ''Indian Gaming Regulatory Act Amendments Act of 1995''.

Section 2. Amendment to the Indian Gaming Regulatory Act. This section provides that the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) is amended by striking sections 2 through 19 and inserting the following new sections:

Section 1. Short Title; Table of Contents. Subsection (a) provides that this Act may be cited as the ''Indian Gaming Regulatory Act''.

Subsection (b) sets forth the table of contents for the Act.

Section 2. Congressional Findings. This section contains seven separate findings, including the following: Indian tribes are engaged in the licensing and operation of gaming activities as a means of generating tribal governmental revenue; clear Federal standards and regulations for the conduct of Indian gaming will assist tribal governments in assuring the integrity of gaming activities; a principal goal of Federal Indian policy is to promote tribal economic development, self-sufficiency and strong tribal government; Indian tribes have the right to regulate gaming activities on Indian lands if such activities are not prohibited by Federal law and are conducted within a state that permits such gaming activities and the Congress has the authority to regulate the privilege of doing business with Indian tribes in Indian country; the regulation of Indian gaming activities should meet or exceed federally established minimum regulatory requirements; gaming activities on Indian lands has had a substantial impact on commerce with foreign nations, among the several states and with the Indian tribes; and the Constitution vests the Congress with the power to regulate commerce with foreign nations, among the several states and with the Indian tribes and this Act is enacted in the exercise of those powers.

Section 3. Purposes. This section sets forth four purposes of the Act, including the following: to ensure the right of Indian tribes to conduct gaming operations on Indian lands consistent with the U.S. Supreme Court decision in the case of California v. Cabazon Band of Mission Indians; to provide a statutory basis for the conduct of gaming activities on Indian lands as a means of promoting tribal economic development and strong tribal governments; to provide an adequate statutory basis for the regulation of Indian gaming by tribal governments to shield the gaming from organized crime; ensure that the Indian tribe is the primary beneficiary of the gaming activities and to ensure that the gaming activities are conducted fairly by both the operator and the patrons; and to declare that the establishment of independent Federal regulatory authority and minimum regulatory standards for the conduct of gaming activities on Indian lands are necessary to protect such gaming.

Section 4. Definitions. This section contains definitions for the following terms: ''applicant'', ''Advisory Committee'', ''Attorney General'', ''Chairperson'', ''Class I Gaming'', ''Class II Gaming'', ''Class III Gaming'', ''Commission'', ''Compact'', ''Electronic, Computer, and Other Technologic Aid'', ''Electronic or Electromechanical Facsimile'', ''Gambling Device'', ''Gaming-Related Contract'', ''Gaming Related Contractor'', ''Gaming Service Industry'', ''Indian Lands'', ''Indian Tribe'', ''Key Employee'', ''Management Contract'', ''Management Contractor'', ''Material Control'', ''Net Revenues'', ''Person'', and ''Secretary''.

Section 5. Establishment of the Federal Indian Gaming Regulatory Commission. Subsection (a) of this section provides for the establishment of the Federal Indian Gaming Regulatory Commission as an independent agency of the United States.

Subsection b. provides that the Commission shall be composed of 3 full-time members who are appointed by the President and confirmed by the Senate. Commission members are prohibited from pursuing any other business or occupation or holding any other office. Other than through distribution of gaming revenues as a member of an Indian tribe, Commission members are prohibited from engaging in or having a pecuniary interest in a gaming activity or in any business or organization that has a license under this Act or that does business with any person or organization under this Act. Persons who have been convicted or a felony or a gaming offense cannot serve as Commissioners. In addition, persons who have any financial interest in or management responsibility for any gaming contract or other

contract approved pursuant to this Act are also ineligible to serve as Commissioners.

Subsection (b) also provides that not more than 2 members of the Commission shall be members of the same political party and at least two members of the Commission shall be members of federally recognized Indian tribes. One member of the Commission must be a certified public accountant with at least 5 years of experience in accounting and auditing as well as a comprehensive knowledge of the principles and practices of corporate finance. One member of the Commission must have training and experience in the fields of investigation or law enforcement. Any person under consideration for appointment to the Commission shall be the subject of a background investigation conducted by the Attorney General with particular emphasis on the person's financial stability, integrity, responsibility and reputation for good character and honesty.

Subparagraph (c) provides that the President shall select a Chairperson from among the members appointed to the Commission.

Subparagraph (d) provides that the Commission shall select a Vice Chairperson by majority vote. The Vice Chairperson shall serve as the Chairperson in the absence of the Chairperson and shall exercise such other powers as may be delegated by the Chairperson.

Subparagraph (e) provides that each member of the Commission shall hold office for a term of 5 years and no member can serve more than two terms of 5 years each. The initial appointments to the Commission will be made for staggered terms, with the Chairperson serving a full 5 year term.

Subparagraph (f) provides that Commissioners shall serve until the expiration of their term or until their successor is duly appointed and qualified, unless a Commissioner is removed for cause. A Commissioner can only be removed by the President for neglect of duty, malfeasance in office or for other good cause. Any member appointed to fill a vacancy shall serve for the unexpired term of the vacancy.

Subparagraph (g) provides that two members of the Commission shall constitute a quorum.

Subparagraph (h) provides that the Commission shall meet at the call of the Chairperson or a majority of the members of the Commission. A majority of the members of the Commission shall determine any action of the Commission.

Subparagraph (i) provides that the Chairperson shall be compensated at level IV of the Executive Schedule and other members shall be compensated at level V. All members of the Commission shall be reimbursed for travel, subsistence and other necessary expenses.

Subparagraph (j) requires the Administrator of General Services to provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

Section 6. Powers of the Chairperson. Subsection (a) provides that the Chairperson is the chief executive officer of the Commission.

Subsection (b) provides that the Chairperson can employ and supervise such personnel as may be necessary to carry out the functions of the Commission, without regard to the requirements of title 5 of the United States Code relating to appointments in the competitive service. The Chairperson is required to appoint a General Counsel and may procure temporary and intermittent services or request the head of any federal agency to detail any personnel of such agency to the Commission to assist in carrying out the duties of the Commission under this Act. The Chairperson is also authorized to use and expend federal funds and fees collected pursuant to this Act and to contract for such professional, technical and operational personnel as may be necessary to carry out this Act. Staff of the Commission are to be paid without regard to the requirements of title 5 of the United States Code related to classification and pay rates.

Subsection (c) provides that the Chairperson shall be governed by the general policies of the Commission and by such regulatory decisions and determinations as the Commission is authorized to make.

Section 7. Powers and Authority of the Commission. Subsection (a) provides that the Commission shall have the power to approve the annual budget of the Commission; promulgate regulations to carry out this Act; establish fees and assessments; conduct investigations; issue temporary and permanent orders closing gaming operations; grant, deny or condition or suspend any license issued under any authority conferred on the Commission by this Act; fine any person licensed pursuant to this Act for violation of any of the conditions of licensure under this Act; inspect the premises where Class II and III gaming operations are located; inspect and audit all books and records of Class II and III gaming operations; use the U.S. mail in the same manner as any agency of the U.S.; procure supplies and services by contract; contract with state, tribal and private entities to assist in the discharge of the Commission's duties; serve or cause to be served process or notices of the Commission; propound written interrogatories and appoint hearing examiners who are empowered to administer oaths; conduct hearings pertaining to violations of this Act; collect the fees and assessments authorized by this Act; assess penalties for violations of the Act; provide training and technical assistance to Indian tribes with respect to the conduct and regulation of gaming activities; monitor and regulate Class II and III gaming; approve all management-related and gaming-related contracts; delegate any of the functions of the Commission, except for rulemaking, to a division of the Commission or a Commissioner, employee or administrative law judge.

Subsection (b) provides that the Commission reserves the right to review any action taken pursuant to a delegation of its authority. The vote of one Commissioner is sufficient to bring a delegated action before the full Commission for review. If the Commission declines to exercise the right of review, then the delegated action shall be deemed an action of the Commission.

Subsection (c) provides that after receiving recommendations from the Advisory Committee pursuant to this Act, the Commission shall establish minimum Federal standards for: background investigations; licensing; the operation of Class II and III gaming activities, including surveillance, security and systems for monitoring all gaming activity, protection of the integrity of the rules for play of games, cash counting and control, controls over gambling devices and accounting and auditing.

Subsection (d) provides that the Commission may secure from any department or agency of the Untied States information necessary to enable the Commission to carry out the Act. The Commission may also secure from any law enforcement or gaming regulatory agency of any State, Indian tribe or foreign nation information necessary to enable the Commission to carry out this Act. All such information obtained by the Commission shall be protected from disclosure by the Commission. For purposes of this subsection, the Commission shall be considered to be a law enforcement agency.

Subsection (e) authorizes the Commission to conduct such investigations as the Commission considers necessary to determine whether any person has violated, is violating or is conspiring to violate any provision of this Act. In addition, the Commission is authorized to investigate such facts, conditions, practices, or matters as the Commission considers necessary or proper to aid in the enforcement, implementation or amendment of the Act. Any member of the Commission or any officer designated by the Commission is empowered to administer oaths and to subpoena witnesses and evidence from any place in the United States at any designated place of hearing. The Commission is authorized to invoke the jurisdiction of any Federal court to require the attendance and testimony of witnesses and the production of records. The failure of any person to obey an order of a Federal court to appear and testify or to produce records is punishable as a contempt of such court. If the Commission determines that any person is engaged, has engaged or is conspiring to engage in any act or practice which constitutes a violation of this Act, the Commission may bring an action in the Federal District Court for the District of Columbia to enjoin such act or practice or refer the matter to the Attorney General for the initiation of criminal proceedings. At the request of the Commission, each Federal district court shall have jurisdiction to issue writs of mandamus, injunctions and orders commanding any person to comply with this Act and any rules or regulations promulgated pursuant to the Act.

Section 8. Regulatory Framework. Subsection (a) provides that for Class II gaming Indian tribes shall retain the right to monitor and regulate such gaming, conduct background investigations, and issue licenses in a manner which meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c) of this Act.

Subparagraph (b) provides that for Class III gaming which is conducted pursuant to a tribal/state compact, an Indian tribe or a state or both shall monitor and regulate such gaming, conduct background investigations, issue licenses and establish and regulate internal control systems in a manner which meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c) of this Act.

Subparagraph (c) provides that for Class III gaming conducted under the authority of a compact negotiated with the Secretary, such compact shall provide that the Indian tribe or other appropriate entity shall monitor and regulate such gaming, conduct background investigations, issue licenses and establish and regulate internal control systems in a manner which meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c).

Subsection (d) provides that in any case in which an Indian tribe conducts Class II gaming in a manner which substantially fails to meet the minimum federal standards for Class II gaming, then the Commission shall have the authority to conduct background investigations, issue licenses and establish and regulate internal control systems after providing the Indian tribe an opportunity to cure violations and to be heard. The authority of the Commission may be exclusive and may continue until such time as the regulatory and internal control systems of the Indian tribe meet or exceed the minimum Federal standards established by the Commission.

Subsection (d) also provides that in the case of Class III gaming, if an Indian tribe or a state, or both, fail to meet or exceed minimum Federal standards for Class III gaming

then the Commission shall have the authority to conduct background investigations, issue licenses and establish and regulate internal control systems after providing notice and an opportunity to cure problems and be heard. The authority of the Commission may be exclusive and may continue until such time as the regulatory and internal control systems of an Indian tribe or a state, or both, meet or exceed the minimum Federal standards established by the Commission.

Section 9. Advisory Committee on Minimum Regulatory Requirements and Licensing Standards. Subsection (a) authorizes the President to establish an Advisory Committee on Minimum Regulatory Requirements and Licensing Standards.

Subsection (b) provides that the advisory committee shall be composed of 7 members who shall be appointed by the President. Three members shall be members of federally recognized Indian tribes which are engaged in gaming under this Act and shall be selected from a list of recommendations submitted to the President by the Chairman and Vice Chairman of the Senate Committee on Indian Affairs and the Chairman and ranking minority member of the Subcommittee on Native American and Insular Affairs of the Committee on Resources of the House of Representatives. Two members shall represent state governments and shall be selected from a list of recommendations submitted to the President by the Majority Leader and the Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives. Two members shall be employees of the Department of Justice.

Subsection (c) provides that 180 days after the date on which the Advisory Committee is fully constituted it shall develop recommendations for minimum Federal standards for the conduct of background investigations, internal control systems and licensing standards. The committee's recommendations shall be submitted to the Committee on Indian Affairs of the Senate, the Subcommittee on Native American and Insular Affairs of the Committee on Resources of the House of Representatives, the Commission and to each federally recognized Indian tribe. The Commission and the Advisory Committee are required to give equal weight to existing industry standards, the unique nature of tribal gaming, the broad variations in the scope and size of tribal gaming activity, the inherent sovereign right of Indian tribes to regulate their own affairs and the Findings and Purposes set forth in sections 2 and 3 of this Act.

Subsection (d) provides that the Commission shall hold public hearings on the Advisory Committee's recommendations after they are received. At the conclusion of the hearings, the Commission shall promulgate regulations establishing minimum regulatory requirements and licensing standards.

Subsection (e) provides that the members of the Advisory Committee who are representatives of Indian tribes and states shall be reimbursed for travel and per diem during the performance of the duties of the Advisory Committee and while away from home or their regular place of business.

Subsection (f) provides that the Advisory Committee shall cease to exist 60 days after it submits its recommendations to the Commission.

Subsection (g) provides that the activities of the Advisory Committee are exempt from the Federal Advisory Committee Act.

Section 10. Licensing. Subsection (a) provides that licenses shall be required of gaming operations, key employees of a gaming operation, management- and gaming-related contractors, any gaming service industry, and any person who has material control over a licensed gaming operation.

Subsection (b) provides that the Commission may require licenses of management contractors and gaming operations notwithstanding any other provision of law relating to the issuance of licenses by an Indian tribe or a state, or both.

Subsection (c) provides that the Commission may issue a statement of compliance to an applicant for a license under this Act at any time that the Commission is satisfied that one or more eligibility criteria for the license has been satisfied by the applicant.

Subsection (d) provides that no gaming operation shall operate unless all required licenses and approvals have been obtained in accordance with this Act. Each management contract for a gaming operation must be in writing and filed with and approved by the Commission. The Commission may require that a management contract include any provisions that are reasonably necessary to meet the requirements of this Act. Any applicant for a license who does not have the ability to exercise any significant control over a licensed gaming operation may be determined by the Commission to be ineligible to hold a license or to be exempt from being required to hold a license.

Subsection (e) provides that the Commission shall deny a license to any applicant who is disqualified for failure to meet any of the minimum Federal standards promulgated by the Commission pursuant to section 7(c).

Subsection (f) provides that the Commission shall conduct an investigation into the qualifications of the applicant and may conduct a non-public hearing concerning the applicant's qualifications. After an application is filed with the Commission final action will be taken by the Commission to grant or deny the application not later than 90 days after completing all hearings and investigations and receiving all information required to be submitted. If an application is denied by the Commission, the applicant can request a statement of the reasons, including specific findings of fact. If the Commission is satisfied that the applicant is qualified to receive a license, then the Commission shall issue a license upon the tender of all license fees and assessments required by this Act and such bonds as the Commission may require for the faithful performance of all requirements imposed by this Act. The Commission is authorized to fix the amount of any bond it requires. Bonds furnished to the Commission may be applied by the Commission to any unpaid liability of the licensee. Bonds shall be furnished in cash or negotiable securities, by a surety or through an irrevocable letter of credit.

Subsection (g) provides that the Commission shall renew any license issued under this Act, subject to its power to deny, revoke or suspend licenses, upon proper application for renewal and the receipt of license fees and assessments. Licenses can be renewed for up to two years for each of the first 2 renewal periods and three years for each succeeding renewal period. A licensing hearing can be reopened by the Commission at any time. Any licenses in existence on the date of enactment of this Act may be renewed for a period of 18 months. Any application for renewal must be filed with the Commission not later than 90 days prior to the expiration of the current license. Upon renewal of a license, the Commission shall issue an appropriate renewal certificate.

Subsection (h) provides that the Commission shall establish procedures for the conduct of hearings associated with licensing including procedures for denying, limiting, conditioning, revoking or suspending any such license. After the completion of a licensing hearing the Commission shall render a decision and issue and serve an order on the affected parties. The Commission may order a rehearing on a decision on a motion made by a party or the Commission not later than 10 days after the services of a decision and order. Following a rehearing, the Commission shall render a decision, issue an order and serve it on the affected parties. Any licensing decision or order made by the Commission shall be final agency action for the purposes of judicial review. The United States Court of Appeals for the District of Columbia has jurisdiction to review the licensing decisions and orders of the Commission.

Subsection (i) provides that the Commission shall maintain a registry of all licenses granted or denied and shall make the information contained in the registry available to Indian tribes to assist them in the licensing and regulation of gaming activities.

Section 11. Requirements for the Conduct of Class I and Class II Gaming on Indian Lands. Subsection (a) provides that Class I gaming shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

Subsection (b) provides that Class II gaming shall be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act. An Indian tribe may engage in and license and regulate Class II gaming on the lands within the jurisdiction of the tribe if: the gaming is located within a State that permits such gaming for any purpose by any person; such gaming is not otherwise specifically prohibited on Indian lands by Federal law; and the Class II gaming operation meets or exceeds the requirements of section 7(c) and 10. With regard to any Class II gaming operation, the Commission shall ensure that: the Indian tribe has issued a separate license for each place, facility or location at which Class II gaming is conducted; the Indian tribe has or will have the sole proprietary interest and responsibility for the conduct of any Class II gaming activity, except as provided elsewhere in the Act with regard to gaming operations by Indian individuals; and the net revenues from Class II gaming may only be used to fund tribal government operations or programs, to provide for the general welfare of the Indian tribe and its members, to promote tribal economic development, to donate to charitable organizations, to help fund operations of local government agencies or to comply with section 17 of this Act. The Indian tribe is required to provide the Commission with annual outside audits of its Class II gaming operation. Such audits shall include a review of all contracts for supplies and services equal to or more than $50,000 annually, except for contracts for legal and accounting services.

Subsection (b) further provides that the Commission shall ensure that the construction and maintenance of a Class I gaming facility and the operation of the gaming shall be conducted in a manner that adequately protects the environment and public health and safety. The Commission must also ensure that there is an adequate system for background investigations on all persons who are required to be licensed in accordance with sections 7(c) and 10 and notice to the Commission by the Indian tribe of the results of the background investigation before the issuance of any license. No license may be granted to any person whose prior activities, criminal record or reputation habits and associations pose a threat to the public interest or the effective regulation of gaming.

With regard to per capita payments, subsection (b) provides that such payments may

only be made if: the Indian tribe has prepared a plan to allocate revenues to the public, governmental, economic development and social welfare purposes prescribed by this Act and the Secretary determines that the plan is adequate; the interests of minors and other legally incompetent persons are protected and preserved and the payments for such individuals are disbursed to their parents or legal guardians under a plan approved by the Secretary and the governing body of the Indian tribe; and the per capita payments are subject to Federal income taxation and Indian tribes withhold such tax.

With regard to Class II gaming operations on Indian lands which are owned by a person or entity other than the Indian tribe, subsection (b) requires the issuance of a separate license which includes the requirements of this section and requirements that are at least as restrictive as those established by state law governing similar gaming within the jurisdiction of the state within which the Indian lands are located. No person or entity, other than the Indian tribe shall be eligible to receive a tribal license to own a Class II gaming operation on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a state license to conduct the same activity within the jurisdiction of the state. Any individually owned Class II gaming operation that was in operation on September 1, 1986 shall not be barred by this Act if: it is licensed by an Indian tribe; the income to the Indian tribe from such gaming is not used for per capita payments; not less than 60 percent of the net revenues from the gaming operation is income to the Indian tribe; and the owner of the gaming operation pays an assessment to the Commission pursuant to section 17 for the regulation of such gaming. This exemption for certain individually owned games cannot be transferred to any person or entity and only remains in effect so long as the gaming activity remains within the same nature and scope as the gaming operation which was operated on October 17, 1988. The Commission is required to maintain and publish in the Federal Register a list of individually owned gaming operations.

Subsection (c) provides that any Indian tribe that operates a Class II gaming activity may petition the Commission for a certificate of self-regulation if that Indian tribe has continuously conducted such gaming activity for a period of not less than 3 years, including at least one year after the date of enactment of this Act, and has otherwise complied with the provisions of this Act. The Commission shall issue a certificate of self-regulation if it determines that the Indian tribe has: conducted its gaming activity in a manner which has resulted in an effective and honest accounting of all revenues; resulted in a reputation for safe, fair, and honest operation of the activity; been generally free of evidence of criminal or dishonest activity; and the Indian tribe has adequate systems for accounting for revenues, investigation and licensing of employees and contractors, investigation and enforcement of its gaming laws and has conducted the gaming operation on a fiscally sound basis. During any period in which a certificate of self-regulation is in effect, the Indian tribe shall continue to submit an annual independent audit to the Commission and a complete resume of each employee and contractor hired and licensed by the Indian tribe. The Commission cannot assess a fee on a self-regulated activity pursuant to section 17 in excess of one quarter of 1 percent of the net revenue from such activity. The Commission may rescind a certificate of self-regulation for just cause and after an opportunity for a hearing.

Subsection (d) provides that if the Commission notifies the Indian tribe that any license which has been issued by the tribe under this section does not meet any standards established under sections 7(c) or 10, then the Indian tribe shall immediately suspend the license and after notice and hearing to the licensee in conformity with the laws of the Indian tribe may revoke such license.

Section 12. Class III Gaming on Indian Lands. Subsection (a) provides that Class III gaming activities shall be lawful on Indian lands only if such activities are authorized by a compact that: is adopted by the governing body of the Indian tribe having jurisdiction over such lands; meets the requirements of section 11(b)(3) for the conduct of Class II gaming; is approved by the Secretary; is located in a state that permits such gaming for any purpose by any person; and is conducted in conformity with the tribal/state compact that is in effect. Any Indian tribe which has jurisdiction over the lands upon which a Class III gaming activity is to be conducted may request the state in which such lands are located to enter into negotiations for the purpose of entering into a compact to govern the conduct of Class III gaming activities. A request for negotiations shall be in writing and shall specify each gaming activity that the Indian tribe proposes for inclusion in the compact. The state shall respond to the request within 30 days of receipt. Compact negotiations shall commence not later than 30 days after the date on which a response by a state is due to the Indian tribe and shall be completed not later than 120 days after the initiation of negotiations unless the state and the Indian tribe agree to a different time period. If the state and the Indian tribe cannot commence or complete compact negotiations within the time periods provided in this Act, the Indian tribe shall notify the Secretary. After the Secretary receives the notice from the Indian tribe, the Secretary shall provide the state and the Indian tribe 60 days to present their positions on the gaming activities that are permissible, the framework for the regulation of the gaming, and such other matters as the Secretary may consider appropriate. Not later than 90 days after the date of the expiration of the 60 day period for the submission of the positions of the state and the Indian tribe, the Secretary shall approve a compact that meets the requirements of this Act and publish it in the Federal Register. The Secretary shall not approve a compact if the compact requires state regulation of Indian gaming without the consent of the state or the Indian tribe. The publication of a compact that permits a form of Class III gaming shall be conclusive evidence that such Class III gaming is an activity subject to the laws of the state where the gaming is to be conducted. Any compact negotiated under this subsection shall become effective on its publication in the Federal Register. The Commission shall monitor and, if authorized, regulate and license Class III gaming with respect to any compact that is approved by the Secretary.

Subsection (a) also provides that a compact may include provisions relating to the criminal and civil laws of the Indian tribe or the state; the allocation of criminal and civil jurisdiction between the state and the Indian tribe; the assessment by the state of the costs associated with such activities in such amounts as are necessary to defray the costs of regulating such activity; taxation by the Indian tribe of such activity in amounts comparable to the amounts assessed by the state for similar activity; remedies for breach of contract; standards for the operation of such activity and maintenance of the gaming facility; and any other subject that is directly related to the operation of gaming activities and the impact of gaming on tribal, state and local governments. Nothing in this Act may be construed as conferring on a state or political subdivision of a state the authority to impose any tax, fee, charge, or other assessment on an Indian tribe, an Indian gaming operation or the value generated by the gaming operation or any person or entity authorized by an Indian tribe to engage in a Class III gaming activity in conformity with this Act.

Nothing in subsection (a) impairs the right of an Indian tribe to regulate Class III gaming on the lands of the Indian tribe concurrently with a state and the Commission, except to the extent that such regulation is inconsistent with or less stringent than this Act. The Gambling devices Transportation Act shall not apply to any gaming activity conducted pursuant to a compact entered into under this Act. The Federal District Court for the District of Columbia shall have jurisdiction over any action initiated by an Indian tribe, a state, the Secretary or the Commission to enforce a compact or to enjoin a Class III gaming activity located on Indian lands and conducted in violation of any compact.

Subsection (c) provides that the Secretary is authorized to approve any compact between an Indian tribe and a state governing the conduct of Class III gaming on the Indian lands of such Indian tribe. The Secretary may disapprove a compact entered into under this Act only if such compact violates any provision of this Act or any regulation promulgated by the Commission or any other Federal law or the trust obligation of the United States to Indians. If the Secretary fails to approve or disapprove a compact within 45 days after the compact is presented to the Secretary for approval, then the compact shall be considered to have been approved by the Secretary, but only to the extent that it is consistent with this Act and the regulations promulgated by the Commission. The Secretary shall publish notice in the Federal Register of any compact that is approved or considered to have been approved.

Subsection (d) provides that the governing body of an Indian tribe may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized Class III gaming on the Indian lands of the Indian tribe. Such a revocation shall render Class III gaming illegal on the Indian lands of such Indian tribe. The Commission is required to publish the revocation ordinance or resolution in the Federal Register and it shall take effect upon such publication. Any person or entity operating a Class III gaming activity on the date of such revocation may continue to operate such activity in conformity with a compact that is in effect for one year from the date of publication of the revocation.

Subsection (e) provides that with regard to compacts entered into and approved by the Secretary before the date of enactment of this Act shall remain lawful during the period such compact is in effect notwithstanding any amendments made by this Act or any changes made in state law enacted after the approval of the compact. Any compact entered into after the date of enactment of this Act shall remain lawful under this Act notwithstanding any change in state law enacted after the approval of the compact.

Section 13. Review of Contracts. Subsection (a) provides that the Commission shall review and approve or disapprove any management contracts for the management of any gaming activity and any gaming-related contract unless such gaming related contract is licensed by an Indian tribe consistent with the minimum Federal standards promulgated pursuant to section 7(c).

Subsection (b) provides that the Commission shall only approve a management contract if it determines that the contract provides for: adequate accounting procedures that are maintained and for verifiable monthly financial reports prepared by or for the governing body of the Indian tribe; access to the gaming operations by tribal officials who shall have the right to verify the daily gross revenues and income derived from the gaming activity; a minimum guaranteed payment to the Indian tribe that has preference over the retirement of any development and construction costs; an agreed upon ceiling for the repayment of any development and construction costs; a contract term of not more than 5 years unless the Commission determines that a term of 7 years is appropriate based on the capital investment required and the income projections for the gaming activity; and grounds and mechanisms for the termination of the contract.

Subsection (c) provides that the Commission may approve a management contract that provides for a fee of 30% of the net revenues of a tribal gaming activity, unless the Indian tribe requests a higher fee and the Commission determines that based on the capital investment required and the income projections a higher fee is justified. In no circumstance can a management fee exceed 40%.

Subsection (d) provides that the Commission shall approve a gaming-related contract only if the Commission determines that the contract provides for: grounds and mechanisms for the termination of the contract and such other conditions as the Commission may be empowered to impose under this Act.

Subsection (e) provides that not later than 90 days after the date on which a management contract or gaming-related contract is submitted to the Commission for approval the Commission shall either approve or disapprove the contract. The 90 day period may be extended for 45 days if the Commission notifies the tribe in writing of the reason for the extension. The Indian tribe may bring an action in the Federal District Court for the District of Columbia to compel action by the Commission if it does not act in a timely manner. Any gaming-related contract for an amount of $100,000 or less which is submitted to the Commission for approval by a person who holds a valid license that is in effect under this Act, shall be deemed to be approved if the Commission has not acted to approve or disapprove it within 90 days of its submission.

Subsection (f) provides that after providing notice and hearing, the Commission shall have the authority to require appropriate contract modifications to ensure compliance with this Act or may void any contract if the Commission determines that it violates any of the provisions of this Act.

Subsection (g) provides that no contract regulated by this Act may transfer or in any other manner convey any interest in real property unless specific statutory authority exists, all necessary approvals have been obtained and the conveyance is clearly specified in the contract.

Subsection (h) provides that the authority of the Secretary under 25 U.S.C. 81 shall not extend to any contracts or agreements which are regulated pursuant to this Act.

Subsection (i) provides that the Commission may not approve a contract if the Commission finds that: any person having a direct financial interest in, or management responsibility for such contract, and in the case of a corporation, any member of the board of directors or any stockholders who hold more than 10% of its issued stock is an elected member of the governing body of the Indian tribe which is a party to the contract; has been convicted of any felony or any gaming offense; has knowingly and willfully provided materially false statements to the Commission or the Indian tribe or has refused to respond to questions propounded by the Commission; or has been determined to be a person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming. The Commission may also disapprove any contract if it finds that: the contractor has unduly interfered or influenced for its gain any decision or process of tribal government relating to the gaming activity; the contractor has deliberately or substantially failed to comply with the terms of the contract; or a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

Section 14. Review of Existing Contracts; Interim Authority. Subsection (a) provides that at any time after the Commission is sworn in and has promulgated regulations for the implementation of this Act the Commission shall notify each Indian tribe and management contractor who entered into a contract prior to the enactment of this Act that the Indian tribe is required to submit the contract to the Commission within 60 days of such notice. Any such contract shall be valid under this Act unless the Commission disapproves it under this section. Not later than 180 days after the submission of a contract for review, the Commission shall review it to determine if it meets the requirements of section 13. The Commission shall approve a contract if it determines that the contract meets the requirements of section 13 and the contractor has obtained all of the licenses required by this Act. If the Commission determines that a contract does not meet the requirements of section 13, the Commission shall provide written notice to the parties of the necessary modifications and the parties shall have 180 days to make the modifications.

Subsection (b) provides that the Commissioners who are holding office on the date of enactment of this Act shall exercise the authorities vested in the Federal Indian Gaming Regulatory Commission until such time as the members of that Commission are sworn into office. Until such time as the Federal Indian Gaming Regulatory Commission promulgates regulations under this Act, the regulations promulgated under the Indian Gaming Regulatory Act of 1988 shall apply.

Section 15. Civil Penalties. Subsection (a) provides that any person who violates this Act or the regulations promulgated pursuant to this Act, either by an act or an omission, shall be subject to a civil penalty of not more than $50,000 per day for each violation.

Subsection (b) provides that the Commission shall assess the civil penalties authorized by this Act and the Attorney General shall collect them in a civil action. The Commission may seek to compromise any assessed civil penalty. In determining the amount of a civil penalty, the Commission shall take into account: the nature, circumstances, extent and gravity of the violation; with regard to the person found to have committed the violation, the degree of culpability, any history of prior violations, ability to pay and the effect on ability to continue to do business; and such other matters as justice may require.

Subparagraph (c) provides that the Commission may order the temporary closure of all or part of an Indian gaming operation for substantial violation of this Act and the regulations promulgated by the Commission. Not later than 30 days after an order of temporary closure the Indian tribe or the individual owner of the gaming operation may request a hearing to determine whether the order should be made permanent or dissolved. Not later than 30 days after a request for a hearing, the Commission shall hold the hearing and render a final decision within 30 days after the completion of the hearing.

Section 16. Judicial Review. Any decision made by the Commission pursuant to sections 7, 8, 10, 14, and 15 shall constitute final agency decisions for purposes of appeal to the Federal District Court for the District of Columbia under the Administrative Procedures Act.

Section 17. Commission Funding. Subsection (a) provides that the Commission shall establish an annual schedule of fees to be paid to it by each Class II and III gaming operation that is regulated by this Act. No gaming operation may be assessed more than 2% of its net revenues and the Commission cannot collect more than $25 million in fees in any year. Fees are payable to the Commission on a monthly basis. The fees paid by a gaming operation may be reduced by the Commission to take into account that regulatory functions are performed by an Indian tribe, or an Indian tribe and a state. Failure to pay fees imposed by the Commission will be grounds for revocation of any license required under this Act for the operation of gaming activities. Any surplus assessments in any given year will be credited pro rata against such fees for the succeeding year.

Subparagraph (b) provides that the Commission is authorized to assess license applicants, except for Indian tribes, for the actual cost of all reviews and investigations necessary to determine whether a license should be granted or denied.

Subparagraph (c) provides that the Commission shall adopt an annual budget for each fiscal year. Any request for an appropriation pursuant to section 18 shall be submitted directly to the Congress.

Section 18. Authorization of Appropriations. This section authorizes an appropriation of $5 million for the operation of the Commission for each of the fiscal years, 1997, 1998 and 1999, to remain available until expended.

Section 19. Miscellaneous. Subsection (a) provides that in general, gaming regulated by this Act shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe unless: such lands are located within or are contiguous to the boundaries of the reservation of the Indian tribe; the Indian tribe has no reservation and such lands are located in the State of Oklahoma and are within the boundaries of the former reservation of the Indian tribe or are contiguous to other land held in trust by the United States for the Indian tribe; or such lands are located in a state other than Oklahoma and are within the last recognized reservation of the Indian tribe within the state in which the Indian tribe is presently located.

Subsection (a) further provides that the general prohibition on the use of lands taken into trust after the date of enactment of this Act for gaming does not apply if the Secretary, after consultation with the Indian tribe, other Indian tribes, state and local officials and a review of the recommendations of the Governor of the state in which such lands are located, determines that gaming on the newly acquired lands would be in the best interest of the Indian tribe and would not be detrimental to the surrounding community; or where lands are taken into trust as part of a settlement of a land claim; or the initial reservation of an Indian tribe is acknowledged by the Secretary under the Federal acknowledgement process; or where lands are restored for an Indian tribe that is restored to federal recognition.

Lastly, subsection (a) provides that nothing in this section may affect or diminish the authority and responsibility of the Secretary to take land into trust.

Subsection (b) provides that the provisions of the Internal Revenue Code with regard to reporting and withholding taxes on winnings and the provisions of the Bank Secrecy Act relating to the reporting requirements for cash transactions of $10,000 or greater will apply to Indian gaming operations which are regulated by this Act.

Subsection (c) provides that the Commission shall make available to a state or the governing body of an Indian tribe any law enforcement information it has obtained pursuant to section 7(d), unless otherwise prohibited by law, in order to assist the state or Indian tribe to carry out its responsibilities under this Act or any compact approved by the Secretary.

Section 24. Definition of Financial Institutions. This section amends section 5312(a)(2) of title 31, United States Code to include Indian gaming establishments.

Section 3. Conforming Amendments. This section provides for several amendments to titles 10, 18, 26 and 28 of the United States Code to conform them to the provisions of this Act.●

● Mr. INOUYE. Mr. President, I am pleased to join the esteemed chairman of the Committee on Indian Affairs today, in the introduction, for purposes of discussion, of a bill to amend the Indian Gaming Regulatory Act of 1988.

Mr. President, the impetus for the amendment of the Indian Gaming Regulatory Act arose a little under 3 years ago when a number of Governors of the several States called upon the President and the Congress to address the rulings of Federal district courts interpreting the act within the context of various State laws. In response, Chairman MCCAIN and I initiated a dialog involving Governors, attorneys general, and tribal leaders that we hoped would lead to a consensus with regard to the manner in which the act would be amended. Although the dialog did not yield that consensus, it did provide us with considerable guidance in formulating the amendments that we advance today for the consideration of all affected parties.

In the interim, there have been a number of rulings from the circuit courts of appeal that have clarified what has become known as the scope-of-gaming issue, and the Supreme Court has granted certiorari in litigation raising the issues associated with the 11th amendment and the doctrine of Ex parte Young. Nonetheless, the Indian Gaming Regulatory Act Amendments Act sets forth a process that does not entail litigation between State and tribal governments. In an effort to address the 10th amendment concerns of the States, the bill we introduce today removes any requirement for good-faith negotiations and provides for tribal-State compacting only if a State elects to engage in negotiations leading to a compact.

As Chairman MCCAIN has indicated, the 1995 Amendments Act provides authority for the establishment of minimum Federal standards for the regulation of Indian gaming, including background investigations, internal control and licensing standards. The States and the tribes would participate in the development of recommendations of these standards through an advisory committee, and the Federal Indian Gaming Regulatory Commission would hold hearings on those recommendations and promulgate regulations. It is in the capacity of assuring compliance with minimum Federal standards that the Commission will have a greater role to play in the area of class III gaming.

This is a matter that I believe bears some emphasis. Under existing law, the National Indian Gaming Commission's responsibilities lie primarily in the area of class II gaming. Class III gaming is regulated by the State and tribal governments. Thus, when comparisons are made by some between the regulatory capacity of Nevada or Atlantic City to the regulatory authority of the National Indian Gaming Commission, they are comparing two regulatory systems that oversee those activities that are typically associated with large casino operations with a regulatory system that is designed to monitor tribal regulation of bingo halls. I would hope that as the debate in the Congress on matters of Indian gaming proceeds, this stark disparity in the type of operation being regulated will not be lost.

Finally, in an effort to address the constitutional concerns associated with the Interior Secretary's authority to take land into trust for gaming purposes, the bill authorizes the Secretary to consult with the Governor of the State in which the land is located.

Chairman MCCAIN and I wrote to all parties in December of last year to advise them of our intent to introduce a bill to amend the Indian Gaming Regulatory Act early in the 104th session of the Congress, and to request their comments on the substitute amendment to S. 2230, a bill we introduced in the 103d session of the Congress. The National Governors Association [NGA] requested that we delay introduction of a new measure, and we indicated that we would delay introduction until March. Unfortunately, at the scheduled time of introduction, the committee has not had the benefit of the Governors' views on these matters—and so the bill we introduce today is substantially lacking in that respect. However, as Chairman MCCAIN has indicated, we look forward to working with all of the affected governments—Federal, State, and tribal—in the further refinement of this measure.

In conclusion, I want to thank the chairman of the Committee on Indian Affairs for his kind comments, and to commend him on his leadership of the committee in the 104th session of the Congress.●

By Mr. SPECTER:

S. 488. A bill to amend the Internal Revenue Code of 1986 to impose a flat tax only on the earned income of individuals and the business taxable income of corporations, and for other purposes; to the Committee on Finance.

THE FLAT TAX ACT OF 1995

Mr. SPECTER. Mr. President, I now turn to the introduction of the modified flat tax bill entitled the Flat Tax Act of 1995. This is a proposal which would simplify the filing of Federal tax returns, would provide for fairness among all taxpayers, and would stimulate economic growth in the United States. As these proceedings of the U.S. Senate are being watched on C–SPAN2, I am confident that thousands of Americans are sitting at their desks with an ear to television but an eye to their tax returns and they are poring over the complexities of the Federal tax laws.

This bill would permit the American taxpayer to file his or her return on a small, 10-line postcard. It would do so because it retains the principles of a flat tax, which have long been discussed but not really considered in sufficient depth and not acted upon by the American Congress. This flat tax would be a 20-percent rate, with deductions limited to interest on home mortgages up to $100,000 in borrowing and charitable deductions up to $2,500.

The entire return could be filled out on a simple 10-line postcard. This postcard would identify the taxpayer, specify the total amount of wages, salaries, pensions, and retirement benefits, list the deductions and exemptions, and allow taxpayers to compute their taxes on this simple postcard form.

Beyond simplicity, and the simplicity is of great importance, we now have reliable estimates that Americans spend some $5.4 billion a year on their tax returns. The Internal Revenue Service regulations have grown from 744,000 words in 1955 to some 5,600,000 words at the present time. The Internal Revenue Service is a mammoth bureaucracy, with annual spending of $13 billion on the IRS bureaucracy alone, with 110,000 employees in over 650 offices nationwide. The compliance costs to the American people are almost $200 billion a year.

We all know that the greatest impediment in confidence between the American Government and the American citizen is concern with the Internal Revenue Service. How often have you and I received those automatic computer printouts from the IRS, written them a letter, written them a second letter or multiple letters, and finally had a conference to work out some bureaucratic computer error? And most of the time, no additional tax is needed.

This legislation would liberate the American people to devote their time and energy to productive pursuits.

A second major advantage to my flat tax bill is that there would be an enormous increase in growth. This growth would occur because this flat tax would not impose any tax burden on interest, on dividends, or capital gains because

all of those items of income would have been taxed at the source; that is, at the business level.

Another benefit of the flat tax is the projected growth in the economy. From the point of view of growth, reliable estimates are that we would have an increase in the gross national product of some $2 trillion during the course of a 7-year period—an increase of some 28 percent.

We would also benefit from increased savings, which would mean that the United States of America would be less dependent on borrowing from foreign sources. These increased savings would substantially change the great imbalance we have now, where we have massive interest payments on foreign debt flowing abroad.

Additionally, in terms of fairness, there would be a lesser tax on those in the lower brackets by having an increase in the personal allowance for $16,500 for married couples filing jointly, $9,500 for single taxpayers, $14,000 for single head of households, and an exemption of $4,500 for each dependent. That would be substantially more than under the present code and would enable a family of four earning $25,500 to pay no taxes at all. A family of four earning up to $30,000 a year would pay very minimal or no taxes at all. The effective tax rate would be as low as 12.7 percent for an average projection of a family earning $100,000 a year.

This proposal is revenue neutral based upon the computations made by Professor Hall and Professor Rabushka of Stanford's Hoover Institute. They have elaborately projected a national flat tax with no deductions and are calling for a rate of some 19 percent to have tax neutrality. This bill deviates from what Professors Hall and Rabushka have proposed by having the allowance of charitable contributions of up to $2,500 a year and the deduction for interest on home mortgages with a maximum borrowing of up to $100,000 a year.

The computations provided by the Joint Tax Committee show that the cost will be $35 billion a year to the Government for the interest deduction on borrowings up to $100,000 a year, and $13 billion for the charitable contributions up to $2,500 a year. The computation is that the additional 1 percent in my flat tax above Hall and Rabushka would cover those deductions.

I might say the computation is necessarily inexact because the model used by the Joint Tax Committee was on a national flat tax on individuals alone while this proposal is a national flat tax on both individuals and businesses. The Hall-Rabushka proposal is very similar to the proposal made by Congressman ARMEY last year with the differences being in the allowance here for interest and charitable contributions. Also, a difference between this plan and the flat tax plan of Congressman ARMEY is that Congressman ARMEY did not provide for automatic withholding.

Mr. President, my interest in tax policy is longstanding, originating during my law school days. Some of my early practice of law included some tax work. And years ago, I published an article on the subject in the Villanova Law Review raising an issue of fairness as to the pension and profit sharing deductions for professional associations contrasted with corporations.

This is a subject where I debated my former colleague, Senator John Heinz, almost 20 years ago in our contest for the Republican nomination to the U.S. Senate in 1976 based upon legislation which he had introduced in the House of Representatives where he had suggested very substantial cuts in a good many deductions.

Mr. President, in offering this legislation, it is not cast in stone, but I think it is high time that the U.S. Senate consider in some detail the benefits of this national flat tax proposal or the modified Flat Tax Act which I am suggesting today.

The benefits are very, very substantial in terms of simplicity, growth, and fairness.

Mr. President, I ask unanimous consent that the full text of my statement be printed in the RECORD, as well as the text of the legislative proposal itself.

Mr. President, as April 15 rapidly approaches—and as I present this floor statement—millions of Americans are spending their evenings poring over page after page of IRS instructions, going through their records looking for information and struggling to find and fill out all the appropriate forms on their Federal tax returns. At the same time, a patchwork quilt of deductions, credits, and special exceptions lets some Americans pay less than their fair share of taxes. Year after year, we continue to ask the same question—isn't there a better way?

Today I am introducing legislation that provides that better way. I am introducing legislation which will fundamentally revise the present Tax Code, with its myriad rates, deductions, and instructions. Instead, the legislation I offer today would institute a simple, flat 20 percent tax rate for all individuals and businesses. It will allow all taxpayers to file their April 15 tax returns on a simple postcard. This legislation is a vital first step in simplifying our Nation's Tax Code and redirecting our collective energies toward productivity and growth. This proposal is not in stone, but is intended to move the debate forward as the first such legislation to be introduced this term in the Senate, by focusing attention on three key principles which are critical to an effective and equitable taxation system: simplicity, fairness, and economic growth.

Over the years, I have devoted considerable time and attention to analyzing our Nation's Tax Code and the policies which underlie it. I began this study of the complexities of the Tax Code 40 years ago as a law student at Yale University. I included some tax law as part of my practice in my early years as an attorney in Philadelphia. In the spring of 1962, I published a law review article in the Villanova Law Review, ''Pension and Profit Sharing Plans: Coverage and Operation for Closely Held Corporations and Professional Associations,'' 7 Villanova L. Rev. 335, which in part focused on the inequity in making tax-exempt retirement benefits available to some kinds of businesses but not others. It was apparent then, as it is now, that the very complexities of the Internal Revenue Code could be used to give unfair advantage to some; and made the already unpleasant obligation of paying taxes a real nightmare for many Americans.

I became interested many years ago in the practicality and simplicity of a flat tax as a way to reduce the burden on working Americans. My former Senate colleague, John Heinz, while he was in the House of Representatives, introduced H.R. 636, which would have eliminated numerous deductions, including the deductibility of home mortgage interest, charitable contributions, the investment tax credit, the oil depletion allowance and other exemptions, exclusions and deductions. Last fall, I had discussions with Congressmen RICHARD ARMEY, now the House majority leader, about his flat tax proposal, which he introduced as H.R. 4585. Since then, my staff and I have studied the flat tax at some length and have engaged in a host of discussions with economists and tax experts, including the staff of the Joint Committee on Taxation, to evaluate the economic impact and viability of a flat tax.

Based on those discussions, and on the revenue estimates supplied to us, I have concluded that a simple flat tax at a rate of 20 percent on all business and personal income can be enacted without reducing Federal revenues, and I offer such a bill today.

The flat tax will help reduce the size of Government and allow ordinary citizens to have more influence over how their money is spent because they will spend it and not the Government. With a simple 20-percent flat tax rate in effect, the average person can easily see the impact of any additional Federal spending proposal on his or her own paycheck. By creating strong incentives for savings and investment, the flat tax will have the beneficial result of making available larger pools of capital for expansion of the private sector for the economy—rather than more tax money for big Government. This will mean more jobs and, just as important, more better paying jobs.

As a matter of Federal tax policy, there has been considerable controversy over whether tax breaks should be used to stimulate particular kinds of economic activity, or whether tax policy should be neutral, leaving people to do what they consider best from a purely economic point of view. Our current Tax Code attempts to use tax policy to direct economic activity,

but experience under that Code has demonstrated that so-called tax breaks are inevitably used as the basis for tax shelters which have no real relation to solid economic purposes, or to the activities which the tax laws were meant to promote. Even when the Government responds to particular tax shelters with new and often complex revisions of the regulations, clever tax experts are able to stay one or two steps ahead of the IRS bureaucrats by changing the structure of their business transactions and then claiming some legal distinctions between the taxpayer's new approach and the revised IRS regulations and precedents.

Under the massive complexity of the current IRS Code, the battle between $500-an-hour tax lawyers and IRS bureaucrats to open and close loopholes is a battle the Government can never win. Under the flat tax bill I offer today, there are no loopholes, and tax avoidance through manipulations will become a thing of the past.

The basic model for this legislation comes from a plan created by Professors Robert Hall and Alvin Rabushka of the Hoover Institute at Stanford University. Their plan envisioned a flat tax with no deductions whatever. After considerable reflection, I have decided to include limited deductions for home mortgage interest on up to $100,000 in borrowing and charitable contributions up to $2,500 in the legislation I offer today. While this modification undercuts the pure principle of the flat tax, and does continue the use of tax policy to promote homebuying and charitable contributions by retaining those deductions, I believe that those two deductions are so deeply ingrained in the financial planning of American families that they should be retained as a matter of fairness and public policy—and also political practicality. With those two deductions maintained, passage of a modified flat tax will be difficult; but without them, probably impossible.

In my judgment, an indispensable prerequisite to enactment of a modified flat tax is revenue neutrality. Professor Hall advised that the revenue neutrality of the Hall-Rabushka proposal, which uses a 19-percent rate, is based on a well documented model founded on reliable governmental statistics. The bill offered today raises that rate from 19 to 20 percent to accommodate retaining limited home mortgage interest and charitable deductions. A preliminary estimate by the Committee on Joint Taxation places the annual cost of the home interest deduction at $35 billion, and the cost of the charitable deduction at $13 billion. While the revenue calculation is complicated because the Hall-Rabushka proposal encompasses significant revisions to business taxes as well as personal income taxes, there is a sound basis for concluding that the 1-percent increase in rate would pay for the two deductions. Revenue estimates for Tax Code revisions are difficult to obtain and are, at best, judgment calls based on projections from fact situations with a myriad of assumed variables. It is possible that some modification may be needed at a later date to guarantee revenue neutrality.

This legislation offered today is quite similar to the bill introduced in the House by Congressman ARMEY, which was itself modeled after the Hall-Rabushka proposal and uses much of the same legislative language as the Armey bill. The flat tax offers great potential for enormous economic growth, in keeping with principles articulated so well by former Congressman Jack Kemp. This proposal taxes business revenues fully at their source, so that there is no personal taxation on interest, dividends and capital gains. Restructured in this way, the tax code can become a powerful incentive for savings and investment—which translates into economic growth and expansion, more and better jobs, and a rising standard of living for all Americans.

In this Congress, we have so far been concerned with the work of reducing the size and cost of Government, and this is work which is vitally important. But the work of downsizing Government is only one side of the coin; what we must do at the same time, and with as much energy and care, is to grow the private sector. As we reform the welfare programs and Government bureaucracies of past administrations, we must replace those programs with a prosperity that extends to all segments of American society through private investment and job creation—which can have the additional benefit of producing even lower taxes for Americans as economic expansion adds to Federal revenues. Just as Americans need a tax code that is fair and simple, they also are entitled to tax laws designed to foster rather than retard economic growth. The bill I offer today embodies those principles.

Professors Hall and Rabushka have summarized the advantages of their proposals as follows:

> The tax on families is fair and progressive—the poor pay no tax at all, and the fraction of income that a family pays rises with income. The system is simple and easy to understand. And the tax operates on the consumption-tax principle [encourages savings; discourages consumption]—families are taxed on what they take out of the economy, not what they put into it
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> Our system rests on a basic administrative principle: income should be taxed exactly once, as close as possible to its source. Today's tax system violates this principle in all kinds of ways. Some kinds of income—like fringe benefits—are never taxed at all. Other kinds, like dividends and capital gains, are taxed twice. And interest income, which is supposed to be taxed once, escapes taxation completely in all too many cases, where clever taxpayers arrange to receive interest beyond the reach of the IRS.
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> Under our plan, all income is taxed at the same rate. Equality of tax rates is a basic concept of the flat tax. Its logic is much more profound than just the simplicity of calculation with a single tax rate. Whenever different forms of income are taxed at different rates or different taxpayers face different rates, the public figures out how to take advantage of the differential.
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> Limiting the burden of taxes on the poor is a central principle of tax reform. Some ideas for tax simplification and reform flout this principle—neither a federal sales tax nor a value-added tax is progressive. Instead, all citizens, rich and poor alike, pay essentially the same fraction of their spending in taxes. We reject sales and value-added taxes for this reason. . . .
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> Exempting the poor from taxes does not require graduated tax rates rising to high levels for upper-income taxpayers. A flat rate, applied to all income above a generous personal allowance, provides progressivity without creating important differences in tax rates. Graduated taxes automatically create differences in tax rates among taxpayers, with all the attendant opportunities for leakage. Because it is high-income taxpayers who have the biggest incentive and the best opportunity to use special tricks to exploit tax-rate differentials, applying the same tax rate to these taxpayers for all of their income in all years is the most important goal of flat-rate taxation. . . .
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> We believe that the simplicity of our system is a central feature. Complex tax forms and tax laws do more harm than just deforesting America. Complicated taxes require expensive advisers for taxpayers and equally expensive reviews and audits by the Government. A complex tax invites the taxpayer to search for a special feature to exploit to the disadvantage of the rest of us. And complex taxes diminish confidence in government, inviting a breakdown in cooperation with the tax system and the spread of outright evasion.

My plan, which like Representative ARMEY's is based on the Hall-Rabushka analysis, differs from the legislation introduced by Representative ARMEY in four key respects: First, my bill contains a 20-percent flat tax rate. Second, this bill would retain modified deductions for mortgage interest and charitable contributions, which will require a 1 percent higher tax rate than otherwise. Third, my bill would maintain the automatic withholding of taxes from an individual's paycheck. Lastly, my bill is designed to be revenue neutral, and thus will not undermine our vital efforts to balance the Nation's budget. The estimate of revenue neutrality is based on the Hall-Rabushka analysis together with preliminary projections supplied by the Joint Committee on Taxation on the modifications proposed in this bill

The key advantages of this flat tax plan are threefold: First, it will dramatically simplify the payment of taxes. Second, it will remove much of the IRS regulatory morass now imposed on individual and corporate taxpayers, and allow those taxpayers to devote more of their energies to productive pursuits. Third, since it is a plan which rewards savings and investment, the flat tax will spur economic growth in all sectors of the economy as more money flows into investments and savings accounts, and as interest rates drop. By contrast, there will be a contraction of the IRS if this proposal is enacted.

Under this tax plan, individuals would be taxed at a flat rate of 20 percent on all income they earn from

wages, pensions, and salaries. Individuals would not be taxed on any capital gains, interest on savings, or dividends—since those items will have already been taxed as part of the flat tax on business revenue. The flat tax will also eliminate all but two of the deductions and exemptions currently contained within the Tax Code. Instead, taxpayers will be entitled to personal allowances for themselves and their children: $9,500 for a single taxpayer, $14,000 for a single head of household and $16,500 for a married couple filing jointly; and $4,500 per child or dependent. These personal allowances would be adjusted annually for inflation.

In order to ensure that this flat tax does not unfairly impact low income families, the personal allowances contained in my proposal are much higher than the standard deduction and personal exemptions allowed under the current Tax Code. For example, in 1994, the standard deduction is $3,800 for a single taxpayer, $5,600 for a head of household, and $6,350 for a married couple filing jointly, while the personal exemption for individuals and dependents is $2,450. Thus, under the current Tax Code, a family of four which does not itemize deductions would pay tax on all income over $16,500—personal exemptions of $9,800 and a standard deduction of $6,350. By contrast, under my flat tax bill, that same family would receive a personal exemption of $25,500, and would pay tax only on income over that amount.

My legislation retains the provisions for the deductibility of charitable contributions up to a limit of $2,500 and home mortgage interest on up to $100,000 of borrowing. Retention of these key deductions will, I believe, enhance the political salability of this legislation and allow the debate on the flat tax to move forward. If a decision is made to eliminate these deductions, the revenue saved could be used to reduce the overall flat tax rate from 20 to 19 percent.

With respect to businesses, the flat tax would also be a flat rate of 20 percent. My legislation would eliminate the intricate scheme of complicated depreciation schedules, deductions, credits, and other complexities that go into business taxation in favor of a much-simplified system that taxes all business revenue less only wages, direct expenses and purchases—a system with much less potential for fraud, ''creative accounting,'' and tax avoidance.

Businesses would be allowed to expense 100 percent of the cost of capital formation, including purchases of capital equipment, structures and land, and to do so in the year in which the investments are made. The business tax would apply to all money not reinvested in the company in the form of employment or capital formation—thus fully taxing revenue at the business level and making it inappropriate to retax the same money when passed on to investors as dividends or capital gains.

Professors Hall and Rabushka summarize the benefits from this kind of flat taxation of business revenue as follows:

> The business tax is a giant, comprehensive withholding tax on all types of income other than wages, salaries, and pensions. It is carefully designed to tax every bit of income outside of wages, but to tax it only once. The business tax does not have deductions for interest payments, dividends, or any other type of payment to the owners of the business. As a result, all income that people receive from business activity has already been taxed. Because the tax has already been paid, the tax system does not need to worry about what happens to interest, dividends, or capital gains after these types of income leave the firm. The resulting simplification and improvement in the tax system is enormous. Today, the IRS receives over a billion Form 1099s, which keep track of interest and dividends, and must make an overwhelming effort to match these forms to the 1040s filed by the recipients. The only reason for a Form 1099 is track income as it makes its way from the business where it originates to the ultimate recipient. Not a single Form 1099 would be needed under a flat tax with business income taxed at the source.

Let me now turn to a more specific discussion of the advantages of the flat tax legislation I offer today.

SIMPLICITY

The first major advantage to this flat tax is simplicity. According to reliable studies, Americans spend approximately 5.4 billion hours each year filling out tax forms. Much of this time is spent burrowing through IRS laws and regulations, which, according to the Tax Foundation, have grown from 744,000 words in 1955 to 5.6 million words in 1994. The Internal Revenue Code annotations alone have grown to 21 volumes of mind-numbing detail and minutiae. Even those IRS forms which are intended to be simple are not—the instructions for the 1040EZ form—the so-called easy form—alone comprise 17 small-print pages.

Whenever the Government gets involved in any aspect of our lives, it can covert the most simple goal or task into a tangled array of complexity, frustration and inefficiency. By way of example, most Americans have become familiar with the absurdities of the Government's military procurement programs. If these programs have taught us anything, it is how a simple purchase order for a hammer or a toilet seat can mushroom into thousands of words of regulations and restrictions when the government gets involved. The Internal Revenue Service is certainly no exception. Indeed, it has become a distressly common experience for taxpayers to receive computerized printouts claiming that additional taxes are due, which require repeated exchanges of correspondence or personal visits before it is determined, as it so often is, that the taxpayer was right in the first place.

The plan offered today would eliminate these kinds of frustrations for millions of taxpayers. This flat tax would enable us to scrap the great majority of the IRS rules, regulations and instructions and delete literally millions of words from the Internal Revenue Code. Instead of tens of millions of hours of nonproductive time spent in compliance with—or avoidance of—the Tax Code, taxpayers would spend only the small amount of time necessary to fill out a postcard-sized form. Both business and individual taxpayers would thus find valuable hours freed up to engage in productive business activity, or for more time with their families, instead of poring over tax tables, schedules and regulations.

The flat tax I have proposed can be calculated just by filling out a small postcard which would require a taxpayer only to answer a few easy questions. The postcard would ask for the following information:

FORM 1—INDIVIDUAL WAGE TAX, 1995

Your first name and initial (if joint return, also give spouse's name and initial):

Your social security number:

Home address (number and street including apartment number or rural route):

Spouse's social security number:

City, town, or post office, state, and ZIP code:

1. Wages, salary, pension and retirement benefits:
2. Personal allowance (enter only one):
   $16,500 for married filing jointly
   $9,500 for single
   $14,000 for single head of household
3. Number of dependents, not including spouse, multiplied by $4,500:
4. Mortgage interest on debt up to $100,000 for owner-occupied home:
5. Cash or equivalent charitable contributions (up to $2,500):
6. Total allowances and deductions (lines 2, 3, 4, 5):
7. Taxable compensation (line 1 less line 6, if positive; otherwise zero):
8. Tax (20% of line 7):
9. Tax withheld by employer:
10. Tax or refund due (difference between lines 8 and 9):

Filing a tax return would become a manageable chore, not a seemingly endless nightmare, for most taxpayers.

CUTTING BACK GOVERNMENT

Along with the advantage of simplicity, enactment of this flat tax bill will help to remove the burden of costly and unnecessary government regulation, bureaucracy and redtape from our everyday lives. The heavy hand of government bureaucracy is particularly onerous in the case of the Internal Revenue Service, which has been able to extend its influence into so many aspects of our lives.

In 1994, the IRS employed over 110,000 people, spread out over 650 offices across the United States. Its budget was in excess of $13 billion, with some $7.1 billion spent annually just to administer the tax laws, and another $4 billion for enforcement. By simplifying the Tax Code and eliminating most of the IRS' vast array of rules and regulations, the flat tax would enable us to cut a significant portion of the IRS budget, including the bulk of the funding now needed for enforcement and administration.

In addition, a flat tax would allow taxpayers to redirect their time, energies, and money away from the yearly morass of tax compliance. According to the Tax Foundation, in 1994, businesses spent approximately $127 billion in compliance with the Federal tax laws, and individuals spent an additional $65 billion, for a total of $192 billion. Moneys spent by businesses and investors in creating tax shelters and finding loopholes could be instead directed to productive and job-creating economic activity. With the adoption of a flat tax, the opportunities for fraud and cheating would also be vastly reduced, allowing the Government to collect, according to some estimates, over $120 billion annually.

ECONOMIC GROWTH

The third major advantage to a flat tax is that it will be a tremendous spur to economic growth. Harvard economist Dale Jorgenson estimates adoption of a flat tax like the one offered today would increase future national wealth by over $2 trillion, in present value terms, over a 7-year period. The economic principles are fairly straightforward. Our current tax system is inefficient; it is biased toward too little savings and too much consumption. The flat tax creates substantial incentives for savings and investment by eliminating taxation on interest, dividends, and capital gains—and tax policies which promote capital formation and investment are the best vehicle for creation of new and high paying jobs, and for a greater prosperity for all Americans.

It is well recognized that to promote future economic growth, we need not only to eliminate the Federal Government's reliance on deficits and borrowed money, but to restore and expand the base of private savings and investment that has been the real engine driving American prosperity throughout our history. These concepts are interrelated, for the Federal budget deficit soaks up much of what we have saved, leaving less for businesses to borrow for investments.

It is the sum total of savings by all aspects of the U.S. economy that represented the pool of all capital available for investment—in training, education, research, machinery, physical plant, et cetera—and that constitutes the real seed of future prosperity. The statistics here are daunting. In the 1960's the net U.S. national savings rate was 8.2 percent, but it has fallen to a dismal 1.5 percent. In recent international comparisons, the United States has the lowest savings rate of any of the G–7 countries. We save at only one-tenth the rate of the Japanese, and only one-fifth the rate of the Germans, which is clearly reflected in the comparative growth rates of our economies over the last three decades.

An analysis of the components of U.S. savings patterns shows that although the Federal budget deficit is the largest cause of dissavings, both personal and business savings rates have declined significantly over the past three decades. Thus, to recreate the pool of capital stock that is critical to future U.S. growth and prosperity, we have to do more than just get rid of the deficit. We have to very materially raise our levels of private savings and investment. And we have to do so in a way that will not cause additional deficits.

The less money people save, the less money is available for business investment and growth. The current tax system discourages savings and investment, because it taxes the interest we earn from our savings accounts, the dividends we make from investing in the stock market, and the capital gains we make from successful investments in our homes and the financial markets. Indeed, under the current law these rewards for saving and investment are not only taxed, they are overtaxed—since gains due solely to inflation, which represent no real increase in value, are taxed as if they were really profit.

With the limited exceptions of retirement plans and tax-free municipal bonds, our current Tax Code does virtually nothing to encourage personal savings and investment, or to reward it over consumption. As William Schreyer wrote recently in the Harvard Business Review, ''the budget deficit is only one part of a larger national problem: the U.S. saving deficit.''

This bill will change this system, and address this problem. The proposed legislation reverses the current skewed incentives by promoting savings and investment by individuals and by businesses. Individuals would be able to invest and save their money tax-free and reap the benefits of the accumulated value of those investments without paying a capital gains tax upon the sale of these investments. Businesses would also invest more as the flat tax allowed them to expense fully all sums invested in new equipment and technology in the year the expense was incurred, rather than dragging out the tax benefits for these investments through complicated depreciation schedules. With greater investment and a larger pool of savings available, interest rates and the costs of investment would also drop, spurring even further economic growth.

Critics of the flat tax have argued that we cannot afford the revenue losses associated with the tremendous savings and investment incentives the bill affords to businesses and individuals. Those critics are wrong. Not only is this bill carefully crafted to be revenue neutral, but historically we have seen that when taxes are cut, revenues actually increase, as more taxpayers work harder for a larger share of their take-home pay, and investors are more willing to take risks in pursuit of rewards that will not get eaten up in taxes. As one example, under President Kennedy individual tax rates were lowered, investment incentives including the investment tax credit were created and then expanded, depreciation rates were accelerated, and yet between 1962 and 1967 gross annual Federal tax receipts went from $99.7 to $148 billion—an increase of nearly 50 percent. More recently under President Reagan, after his tax cuts in the early 1980's, Government tax revenues rose from just under $600 billion in 1981 to nearly $1 trillion in 1989. In fact, the Reagan tax cut program helped to bring about the longest peacetime expansion of the U.S. economy in history. There is every reason to believe that the flat tax proposed here can do the same—and by maintaining revenue neutrality in this flat tax proposal, as we have, we can avoid any increases in annual deficits and the national debt.

In addition to increasing Federal revenues by fostering economic growth, the flat tax can also add to Federal revenues without increasing taxes by closing tax loopholes. The Congressional Research Service estimates that for fiscal year 1995, individuals will shelter more than $393 billion in tax revenue in legal loopholes, and corporations will shelter an additional $60 billion. There may well be additional moneys hidden in quasi-legal or even illegal tax shelters. Under a flat tax system, all tax shelters will disappear and all income will be subject to taxation.

The larger pool of savings created by a flat tax will also help to reduce our dependence on foreign investors to finance both our Federal budget deficits and our private sector economic activity. Currently, of the publicly held Federal debt, that is, the portion was not held by various Federal trust funds like Social Security, nearly 20 percent is held by foreigners—the highest level in our history. By contrast, in 1965 less than 5 percent of publicly held national debt was foreign-owned. We are paying over $40 billion in annual interest to foreign governments and individuals, and this by itself accounts for roughly one-third of our whole international balance of payments deficit. These massive interest payments are one of the principal sources of American capital flowing abroad, a factor which then enables foreign investors to buy up American business. During the period 1980–91, the gross value of U.S. assets owned by foreign businesses and individuals rose 427 percent from $543 billion to $2.3 trillion.

The substantial level of foreign ownership of our national debt creates both political and economic problems. On the political level, there is at least the potential that some foreign nation may assume a position where its level of investment in U.S. debt gives it disproportionate leverage over American policy. Economically, increasing foreign investment in Treasury debt furthers our national shift from a creditor to a debtor nation, weakening the dollar and undercutting our international trade position. A recent Congressional Research Service report put it succinctly: ''To pay for today's capital

inflows, tomorrow's economy will have to ship more abroad in exchange for fewer foreign products. These payments will be a consequence in part of heavy Federal borrowing since 1982.'' With a flat tax in place, America's own supply of capital can be replenished, and we can return to our historic position as an international creditor nation rather than a debtor.

Professors Hall and Rabushka describe the pro-growth aspects of the flat tax in this way:

> Today's absurd system taxes entrepreneurial success at 60 percent while it actually subsidizes leveraged investment. Our simple tax would put the same low rate on both activities. A huge redirection of national effort would follow. And the redirection could only be food for national income. There is nothing wrong with shopping centers, apartment buildings, airplanes, boxcars, medical equipment, and cattle, but tax advantages have made us invest far too much in them, and their contribution to income is correspondingly low. Real growth will come when effort and capital flow back into innovation and the development of new business, the areas where confiscatory taxation has discouraged investment. The contribution to income from new resources will be correspondingly high.
>
> We project a 3 percent increase in output from increased total work in the U.S. economy and an additional increment to total output of 3 percent from added capital formation and dramatically improved entrepreneurial incentives. The sum of 6 percent is our best estimate of the improvement in real incomes after the economy has had seven years to assimilate the changed economic conditions brought about by the simple flat tax. Both the amount and the timing are conservative.
>
> Even this limited claim for economic improvement represents enormous progress. By 2002, it would mean each American will have an income about $1,900 higher, in 1995 dollars, as a consequence of tax reform.

As Professors Hall and Rabushka state it, the growth case for a flat tax is compelling. It is even more compelling in the case of a tax revision that is simple and demonstrably fair.

FAIRNESS

By substantially increasing the personal allowances for taxpayers and their dependents, this flat tax proposal ensures that poorer taxpayers will pay no tax and that taxes will not be regressive for lower and middle income taxpayers. At the same time, by closing the hundreds of tax loopholes which are currently used by wealthier taxpayers to shelter their income and avoid taxes, this flat tax bill will also ensure that all Americans pay their fair share.

A variety of specific cases illustrate the fairness and simplicity of this flat tax:

Case No. 1.—Married couple with two children, rents home, yearly income $30,000

Under Current Law:	
Income	30,000
Four personal exemptions	9,800
Standard deduction	6,350
Taxable income	13,850
Tax due under current rates	2,081
Marginal rate (percent)	15.0
Effective tax rate (percent)	6.9
Under Flat Tax:	
Personal allowance	16,500
Two dependents	9,000
Taxable income	4,500
Tax due under flat tax	900
Effective tax rate (percent)	3.0

* * * Savings of $1,181 * * *

Case No. 2.—Single individual, rents home, yearly income $45,000

Under Current Law:	
Income	45,000
One personal exemption	2,450
Standard deduction	3,800
Taxable income	38,750
Tax due under current rates	7,900
Marginal rate (percent)	28.0
Effective rate (percent)	17.6
Under Flat Tax:	
Personal allowance	9,500
Taxable income	35,500
Tax due under flat tax	7,100
Effective rate (percent)	15.8

* * * Savings of $800 * * *

Case No. 3.—Married couple with no children, $140,000 mortgage at 9%, yearly income $70,000

Under Current Law:	
Income	$70,000
Two personal exemptions	4,900
Home mortgage deduction	12,600
State and local taxes	2,000
Charitable deduction	1,400
Taxable income	49,100
Tax due under current rates	8,815
Marginal rate (percent)	28
Effective tax rate (percent)	12.6
Under Flat Tax:	
Personal allowance	16,500
Home mortgage deduction	9,000
Charitable deduction	1,400
Taxable income	43,100
Tax due under flat tax	8,620
Effective tax rate (percent)	12.3

* * * Savings of $195 * * *

Case No. 4.—Married couple with two children, $240,000 mortgage at 9%, yearly income $120,000

Under Current Law:	
Income	$120,000
Four personal exemptions	9,800
Home mortgage deduction	21,600
State and local taxes	6,000
Retirement fund deductions	6,000
Charitable deductions	2,500
Taxable income	74,100
Tax due under current rates	15,815
Marginal rate (percent)	31
Effective tax rate (percent)	13.2
Under Flat Tax:	
Personal allowance	16,500
Two dependents	9,000
Home mortgage deduction	9,000
Charitable deduction	2,500
Taxable income	78,500
Tax due under flat tax	15,700
Effective tax rate (percent)	13.1

* * * Savings of $115 * * *

Case No. 5.—Married couple, no children, $1,000,000 mortgages at 9 percent on 2 homes, $500,000 income

Under Current Law:	
Income	$500,000
Personal exemptions at this level	0
Home mortgage deductions	90,000
State and local taxes	50,000
Retirement deductions	40,000
Charitable deductions	30,000
Taxable income	290,000
Tax due under current rates	91,144
Marginal rate (percent)	39.6
Effective tax rate (percent)	18.2
Under Flat Tax:	
Personal allowance	16,500
Mortgage deduction	9,000
Charitable deduction	2,500
Taxable income	472,000
Tax due under flat tax	94,400
Effective tax rate (percent)	18.9

* * * $3,256 higher taxes * * *

The flat tax legislation that I am offering will retain the element of progressivity that Americans view as essential to fairness in an income tax system. Because of the lower end income exclusions, and the capped deductions for home mortgage interest and charitable contributions, the effective tax rates under my bill will range from 0 percent for families with incomes under about $30,000 to roughly 20 percent for the highest income groups:

ANNUAL TAXES UNDER 20 PERCENT FLAT TAX FOR MARRIED COUPLE WITH TWO CHILDREN FILING JOINTLY

Income	Taxes owed	Effective rate (percent)
$25,500	None	0
$30,000	None	0
$40,000	$1,300	3.3
$50,000	2,900	5.8
$60,000	4,860	8.1
$70,000	6,820	9.7
$80,000	8,780	11
$90,000	10,740	11.9
$100,000	12,700	12.7
$125,000	17,600	14.1
$150,000	22,600	15.1
$200,000	32,600	16.3
$250,000	42,600	17.0
$500,000	92,600	18.5
$1,000,000	192,600	19.3

Note: Assumes home mortgage of twice annual income at a rate of 9 percent and charitable contributions up to 2 percent of annual income.

My proposed legislation demonstrably retains the fairness that must be an essential component of the American tax system.

CONCLUSION

The proposal that I make today is dramatic, but so are its advantages: a taxation system that is simple, fair and designed to maximize prosperity for all Americans. A summary of the key advantages are:

Simplicity: A 10-line postcard filing would replace the myriad forms and attachments currently required, thus saving Americans up to 5.4 billion hours they currently spend every year in tax compliance.

Cuts Government: The flat tax would eliminate the lion's share of IRS rules, regulations, and requirements, which have grown from 744,000 words in 1955 to 5.6 million words in 1994. It would also allow us to slash the mammoth IRS bureaucracy of 110,000 employees spread out over 650 offices nationwide.

Promotes economic growth: Economists estimate a growth of over $2 trillion in national wealth over 7 years, representing an increase of $1,900 in personal income for every man, woman, and child in America.

Increases efficiency: Investment decisions would be made on the basis of productivity rather than simply for tax avoidance, thus leading to even greater economic expansion.

Reduces interest rates: Economic forecasts indicate that interest rates would fall substantially, by as much as two points, as the flat tax removes many of the current disincentives to savings.

Lowers compliance costs: Americans would be able to save up to $192 billion they currently spend every year in tax compliance.

Decreases fraud: As tax loopholes are eliminated and the Tax Code is simplified, there will be far less opportunity for tax avoidance and fraud, which now amounts to over $120 billion in uncollected revenue annually.

Reduces IRS costs: Simplification of the Tax Code will allow us to save significantly on the $13 billion annual budget currently allocated to the Internal Revenue Service.

Professors Hall and Rabushka have projected that within 7 years of enactment, this type of a flat tax would produce a 6-percent increase in output from increased total work in the U.S. economy and increased capital formation. The economic growth would mean a $1,900 increase in the personal income of all Americans.

No one likes to pay taxes. But Americans will be much more willing to pay their taxes under a system that they believe is fair, a system that they can understand, and a system that they recognize promotes rather than prevents growth and prosperity. The legislation I introduce today will afford Americans such a tax system.

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

S. 489. A bill to authorize the Secretary of the Interior to enter into an appropriate form of agreement with, the town of Grand Lake, CO, authorizing the town to maintain permanently a cemetery in the Rocky Mountain National Park; to the Committee on Energy and Natural Resources.

THE ROCKY MOUNTAIN NATIONAL PARK GRAND LAKE CEMETERY ACT OF 1995

Mr. CAMPBELL. Mr. President, on January 26, 1915, Congress passed legislation creating a 265,726-acre Rocky Mountain National Park. In 1892, long before the park was created, the town of Grand Lake established a small, less than 5-acre community cemetery that lies barely 1,000 feet inside the western edge of the park. Apparently, in the early 1950's, the National Park Service took notice of the cemetery and issued the town a formal special use permit, which has been renewed over the years. In 1991, Rocky Mountain National Park apparently informed the town of Grand Lake that it would issue one final 5-year special use permit.

This 103-year-old cemetery has become part of the community's heritage. Grand Lake residents have very strong emotional and personal attachments to it and need to be assured of its continued use and designation as a cemetery. The current permit is due to expire in 1996. All parties have agreed that a more permanent solution was needed to meet the needs of the community and the resource preservation and protection intended by the establishment of the park.

Existing measures available to the National Park Service, including special use permit authority, do not provide for a permanent solution that satisfies both the park and the community. In addition, special uses apparently can only be permitted for a maximum period of 5 years. Given that the town and park agree that the small cemetery is a permanent use, continued renewal of a 5-year permit is not a realistic solution.

In an effort to avoid future difficulties, park and town representatives have agreed that this legislation would offer the best solution to this problem. Authorizing the continued existence of the cemetery with specific size and boundaries within the park also protects park resources. The community has expressed a strong willingness and desire to assume responsibility for permanent management of the cemetery. This legislation would authorize the development of an agreement to turn maintenance responsibilities for the cemetery and road over to the town, resulting in a financial savings to the park. It also recognizes the cultural significance of the cemetery and its strong ties with the history of the Grand Lake area, which includes the story of Rocky Mountain National Park.

This legislation would negate the need for repeated negotiations between the community and the National Park Service, and the chance for misunderstandings. The National Park Service and Grand Lake representatives have worked long and hard on developing this proposal. Enactment of this legislation would go a long way in maintaining and enhancing the spirit of cooperation and goodwill between park and community that has been achieved during the development of this resolution.

By Mr. GRASSLEY:

S. 490. A bill to amend the Clean Air Act to exempt agriculture-related facilities from certain permitting requirements, and for other purposes; to the Committee on Environment and Public Works.

THE CLEAN AIR ACT AMENDMENT ACT OF 1995

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

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

S. 490

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

SECTION 1. DEFINITION OF POTENTIAL TO EMIT.

Section 302(j) of the Clean Air Act (42 U.S.C. 7602(j)) is amended—

(1) by striking ''(j) Except as otherwise'' and inserting the following:

''(j) MAJOR STATIONARY SOURCE AND MAJOR EMITTING FACILITY.—

''(1) IN GENERAL.—Except as otherwise''; and

(2) by adding at the end the following:

''(2) AGRICULTURE-RELATED FACILITY.—In this subsection, with respect to an agriculture-related facility, such as a grain elevator, a grain, feed, or rice mill, or a grain processing facility;

(A) AIR POLLUTANT.—With respect to particulate emissions, the term 'air pollutant' shall include only particulate matter less than or equal to 10 microns in size.

''(B) POTENTIAL TO EMIT.—

''(i) IN GENERAL.—The term 'potential to emit' means the potential of a facility to emit during a 1-year period under maximum realistic operation of the facility.

'(ii) MAXIMUM REALISTIC OPERATION.—In determining the maximum realistic operation of an agriculture-related facility, the Administrator shall consider—

''(I) the cyclical or seasonal nature of the facility; and

''(II) in the case of a facility in operation on the date of the determination, the maximum hours of operation of the facility that actually occurred during any of the preceding 5 years.

''(iii) EQUIPMENT, TECHNIQUES, AND PROCEDURES.—The Administrator shall consider the effect of control equipment, techniques, and procedures in lowering the potential to emit of an agriculture-related facility.''.

SEC. 2. EXEMPTION FROM PERMITTING REQUIREMENTS.

Section 502 of the Clean Air Act (42 U.S.C. 7661a) is amended—

(1) in the first sentence of subsection (a), by striking ''any other source (including an area source) subject to standards or regulations under section 111 or 112,''; and

(2) by adding at the end the following:

''(j) EXEMPTION.—A source shall not be subject to any regulation or requirement under this section if the source is—

''(1) not a major source; and

''(2) subject to section 111 or 112.''.●

By Mr. BREAUX (for himself, Mr. HOLLINGS, Mr. INOUYE, Mr. COCHRAN, and Mr. CHAFEE):

S. 491. A bill to amend title XVIII of the Social Security Act to provide coverage of outpatient self-management training services under part B of the Medicare Program for individuals with diabetes; to the Committee on Finance.

THE MEDICARE DIABETES OUTPATIENTS SELF-MANAGEMENT TRAINING ACT OF 1995

● Mr. BREAUX. Mr. President, diabetes is the third leading cause of death from disease in the United States. It is the leading cause of blindness in people aged 25 to 74 and the most frequent cause of nontraumatic lower limb amputations. Diabetes also greatly increases an individual's chances of succumbing to stroke or heart disease.

What is such a shame, Mr. President, is that diabetes is a condition that can generally be treated so that major complications do not occur. In some cases it can even be prevented. While there is no known cure for diabetes, individuals with the disease can lead completely normal lives—even extraordinarily productive lives—if they know how to balance their diet, get enough exercise, and manage their disease.

People with diabetes learn to take care of themselves through self-maintenance and education programs. Generally, classes are taken when an individual is diagnosed with the disease and periodically thereafter in order to keep up with the changes in their condition and to get the most up-to-date treatments available.

Appropriate preventive education services for those with diabetes have the potential to save a great deal of money that would otherwise go for hospitalizations and other acute care costs. Education also saves these individuals from a great deal of unnecessary pain and suffering. Studies by the American Diabetes Association and others have shown that the Medicare program could save $2 to $3 for every $1 spent on diabetes education.

Medicare currently covers these services in inpatient or hospitalbased settings and in limited outpatient settings—specifically hospital outpatient departments or rural health clinics. Unfortunately, Medicare does not currently cover education services if they are given in any other outpatient setting, such as a doctor's office. Even the limited coverage of outpatient settings that is currently permitted under Medicare is subject to State-by-State variation according to interpretation by the program's fiscal intermediaries.

The Medicare Diabetes Outpatient Self-Management Training Act of 1995, which I am reintroducing today along with Senators CHAFEE, COCHRAN, INOUYE, and HOLLINGS, would provide for Medicare coverage for outpatient diabetes education on a consistent basis throughout the country. The bill would extend Medicare coverage of outpatient programs beyond hospital-based programs and rural health clinics. It would direct the Secretary of Health and Human Services to guarantee that coverage be available only for those services delivered through programs that meet stringent quality standards. Uniform payment would be achieved through implementation of new working guidelines.

This legislation is all about preventive medicine and is a sensible approach that should show savings for the Medicare Program in the long run. I hope that my colleagues will join me as cosponsors.

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

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

S. 491

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 ''Medicare Diabetes Outpatient Self-Management Training Act of 1995''.

SEC. 2. MEDICARE COVERAGE OF DIABETES OUTPATIENT SELF-MANAGEMENT TRAINING SERVICES.

(a) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking ''and'' at the end of subparagraph (O) (as redesignated by section 147(f)(6)(B)(iii)(II) of the Social Security Act Amendments of 1994 (Pub. Law 103–432)); and

(2) by inserting after subparagraph (O) the following new subparagraph:

''(P) diabetes outpatient self-management training services (as defined in subsection (oo)); and.''.

(b) DEFINITION.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Diabetes Outpatient Self-Management Training Services

''(oo)(1) The term 'diabetes outpatient self-management training services' means educational and training services furnished to an individual with diabetes by or under arrangements with a certified provider (as described in paragraph (2)(A)) if—

''(A) the services are furnished in an outpatient setting by an individual or entity meeting the quality standards described in paragraph (2)(B); and

''(B) the physician who is managing the individual's diabetic condition certifies that the services are needed under a comprehensive plan of care related to the individual's diabetic condition to provide the individual with necessary skills and knowledge (including skills related to the self-administration of injectable drugs) to participate in the management of the individual's condition.

''(2) In paragraph (1)—

''(A) a 'certified provider' is an individual or entity that, in addition to furnishing diabetes outpatient self-management training services, provides other items or services for which payment may be made under this title; and

''(B) an individual or entity meets the quality standards described in this paragraph if the individual or entity—

''(i) meets quality standards established by the Secretary;

''(ii) meets applicable standards developed by the National Diabetes Advisory Board, including any revision of such standards by the organizations that participated in the original development of the applicable standards; or

''(iii) is recognized by the American Diabetes Association as being qualified to furnish the services.''.

(c) CONSULTATION WITH ORGANIZATIONS IN ESTABLISHING PAYMENT AMOUNTS FOR SERVICES PROVIDED BY PHYSICIANS.—In establishing payment amounts under section 1848(a) of the Social Security Act for physicians' services consisting of diabetes outpatient self-management training services, the Secretary of Health and Human Services shall consult with appropriate organizations, including the American Diabetes Association, in determining the relative value for such services under section 1848(c)(2) of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1996.●

By Mr. CHAFEE:

S. 492. A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel *Intrepid*, to the Committee on Commerce, Science, and Transportation.

JONES ACT WAIVER LEGISLATION

● Mr. CHAFEE. Mr. President, today I am introducing legislation to issue a certificate of documentation for the vessel *Intrepid* under title 46, United States Code.

The *Intrepid* has a long and proud history in sailing, including representing the United States in the America's Cup and winning in 1967 and 1971. It is currently U.S.-owned and is the Flagship of the America's Cup Hall of Fame.

The *Intrepid* is a 12 meter yacht, 65 feet in length that was built at the Minneford Boat Yard in City Island, NY in 1967. At the time of its construction, the vessel employed the breakthrough technology of noted boat designer Olin Stephen. In a departure from the past, its design separated the keel and rudder, and added a trim tab on the trailing edge of the keel. Variations of this technology are still being used today.

Because the *Intrepid* was at one point sold to non-U.S. owners and thus became ineligible to participate in U.S. coastwise trade, the owners seek a waiver of the Jones Act. They plan to use the vessel only in limited commercial ventures, and the vessel's use will not adversely affect the coastwise trade in U.S. waters. If granted this waiver, *Intrepid*'s owners intend to fully comply with U.S. documentation and safety requirements.

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

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

S. 492

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

SECTION 1. AUTHORIZATION OF CERTIFICATE OF DOCUMENTATION.

Notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation for the vessel INTREPID, United States official number 508185.●

By Mr. CHAFEE:

S. 493. A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel *Consortium;* to the Committee on Commerce, Science, and Transportation.

JONES ACT WAIVER LEGISLATION

● Mr. CHAFEE. Mr. President, today I am introducing legislation to issue a certificate of documentation for the vessel *Consortium* under title 46, United States Code.

A recently formed Rhode Island corporation, Marine Consortium, Inc., has purchased the 102-foot Camper and Nicholson motoryacht, *Consortium*. It is a U.S. documented vessel homeported in Newport, RI, and is ideally suited for charter operation.

Because *Consortium* has a foreign built—British—hull, it cannot undertake charters in U.S. waters. Its owners seek a waiver of this Jones Act prohibition so that they may engage in

charter operations this summer and in the future.

Operation of the *Consortium* would build upon the economic vitality of Newport County. Its owners have also offered to make the vessel available at no cost to the Newport Preservation Society, the Museum of Yachting, and the Save the Bay Foundation.

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

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

S. 493

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

SECTION 1. AUTHORIZATION OF CERTIFICATE OF DOCUMENTATION.

Notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation for the vessel CONSORTIUM, United States official number 1029192.●

By Mr. JEFFORDS (for himself, Mr. LEAHY, Ms. SNOWE, Mr. KENNEDY, Mr. COHEN, Mr. GREGG, Mr. DODD, Mr. SMITH, Mr. CHAFEE, Mr. KERRY, Mr. LIEBERMAN, and Mr. PELL):

S.J. Res. 28. A joint resolution to grant consent of Congress to the Northeast Interstate Dairy Compact; read the first time.

NORTHEAST INTERSTATE DAIRY COMPACT

Mr. JEFFORDS. Mr. President, I rise today to strongly support the introduction of a joint resolution to grant the consent of Congress to the northeast interstate dairy compact. Congress is simply being asked to ratify a completed piece of legislation—legislation that passed overwhelmingly in each of the six New England States that the compact represents.

Mr. President, a great deal of time and effort has gone into creating the dairy compact, over 6 years in fact. The dairy compact represents a cooperative effort of six States working collectively to restore the traditional Federal-State balance to milk regulation. The compact has been carefully designed so that it will not adversely affect any other region of the country. Provisions have been set forth in the compact to protect the interests of farmers and processors outside the compact region. In addition, there is no cost to the Federal Government.

Mr. President, the dairy compact simply complements the Federal Milk Marketing Program. It would not supplant or replace Federal law. The compact regulates only fluid milk, which is milk for beverage use. Milk for manufacturing purposes such as cheese and ice cream would be absolutely exempt from the compact. We are talking about a very small amount of milk in a local market.

Just since 1984, almost a third of the 3,170 farms then operating in Vermont have shut down. In 1994 alone, Vermont lost 148 farms and if the downward trend of milk prices continues we will lose more this year. Vermont dairy farmers are receiving milk prices well below the cost of production. Current milk prices for farmers are as low as they were 10 years ago, yet the cost of production and price to the consumer has increased. Farmers and consumers would both benefit from the compact's ability to establish a more stable price structure for the milk they produce and purchase, removing the fluctuations in fluid milk prices, assuring the region a viable supply of locally produced milk.

The dairy compact is a unique partnership of the region's governments and the dairy industry supported by a broad coalition of organizations and people committed to maintaining the vitality of the region's dairy industry.

The joint resolution being introduced today, has strong support from both sides of the isle. All 12 Senators from the New England delegation, representing producing and consuming States have come together to cosponsor this joint resolution.

Mr. President, I can say with certainty, support for the dairy compact in New England is impressive. During the New England Governors' Conference winter meeting, all six New England Governors urged Congress to approve the dairy compact. A resolution of the New England Governors' Conference in support of congressional enactment of the northeast dairy compact was approved and signed by the chair of the New England Governors, Governor Steve Merrill of New Hampshire.

The Governors of the compact region speak for not only the farmers and consumers but for the States themselves and the rights of the States. Mr. President, the message to Congress from Governors nationwide has been clear. ''Increase the flexibility of states and support legislation that promotes state and regional policy initiatives.''

Well Mr. President, this thoroughly thought out compact provides the opportunity for a partnership between Congress and the States to strengthen this fundamental federalism movement. It maintains that the States' constitutional authority, resources, and competence of the people to govern, is recognized and protected.

Mr. President, I am certain that my colleagues will agree with me that dairy farmers deserve a fair price for their product. What does it say about our values when some of the hardest working people. our farmers, are underpaid and unappreciated? The people of New England have a right and deserve the chance to help themselves. The joint resolution that I am introducing today, along with Senator LEAHY and my colleagues from New England gives the region the tools to face the challenges of improving and stabilizing farm prices.

I urge my colleagues to respect this interstate cooperation and ratify the dairy compact.

Mr. President, I ask unanimous consent that this one page fact sheet that explains and addresses the compact appear in the RECORD.

Mr. President, I unanimous consent ask to have printed in the RECORD the resolution of the New England Governors' Conference.

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

NEW ENGLAND GOVERNORS' CONFERENCE, INC.,
Boston, MA, February 13, 1995.

Hon. JAMES M. JEFFORDS,
Washington, DC.

DEAR SENATOR JEFFORDS: I understand the Northeast Interstate Dairy Compact awaits action by the full Senate. On behalf of the New England Governors' Conference, Inc., I write to ask your help in moving the Compact bill forward as quickly as possible.

The attached Resolution of the New England Governors' Conference, Inc. was adopted unanimously at our recent meeting in Washington, D.C.

The Dairy Compact has been enacted into law by the six New England states. We hope you will support this unique experiment in cooperative federalism. This Compact is a bipartisan, state-sponsored, regional response to the chronic problem of low dairy farm prices. If successfully implemented, the Compact will stabilize our region's dairy industry and reinvigorate this crucial segment of our rural economy, without cost to the federal government or adverse impact on the national industry.

Thank you for your consideration of this matter.

Very truly yours,

WILLIAM A. GILDEA,
Executive Director.

RESOLUTION 127—NORTHEAST DAIRY COMPACT

A Resolution of the New England Governors' Conference, Inc. in support of congressional enactment of the Northeast Dairy Compact.

Whereas, the six New England states have enacted the Northeast Interstate Dairy Compact to address the alarming loss of dairy farms in the region; and

Whereas, the Compact is a unique partnership of the region's governments and the dairy industry supported by a broad and active coalition of organizations and people committed to maintaining the vitality of the region's dairy industry, including consumers, processors, bankers, equipment dealers, veterinarians, the tourist and travel industry, environmentalists, land conservationists and recreational users of open land; and

Whereas, the Compact would not harm but instead complement the existing federal structure for milk pricing, nor adversely affect the competitive position of any dairy farmer, processor or other market participant in the nation's dairy industry; and

Whereas, the limited and relatively isolated market position of the New England dairy industry makes it an appropriate locality in which to access the effectiveness of regional regulation of milk pricing, and

Whereas, the Constitution of the United States expressly authorizes states to enter into interstate compacts with the approval of Congress and government at all levels increasingly recognizes the need to promote cooperative, federalist solutions to local and regional problems; and

Whereas, the Northeast Interstate Dairy Compact has been submitted to Congress for approval as required by the Constitution;

Now therefore be it resolved That the New England Governors' Conference, Inc. requests that Congress approve the Northeast Interstate Dairy Compact; and

Be it further resolved that, a copy of this resolution be sent to the leadership of the Senate and the House of Representatives, the Chairs of the appropriate legislative committees, and the Secretary of the United States Department of Agriculture.

Adoption certified by the New England Governors' Conference, Inc. on January 31, 1995.

STEPHEN MERRILL,
Governor of New Hampshire Chairman.

THE NORTHEAST INTERSTATE DAIRY COMPACT

Was adopted with near-unanimous support by the six New England state legislatures. It is backed by the New England Governors Conference, the region's consumer groups, dairy farmers and processors.

Establishes an interstate commission authorized to regulate New England dairy farm prices. The commission would help stabilize fluid milk prices for both consumers and farmers by establishing a pricing structure which would remove the price fluctuations that currently exist.

Assures control by the region's consumer states. Four of the six compact states, Massachusetts, Connecticut, Rhode Island and New Hampshire, are milk importing states. They joined the Compact because it promotes as well as protects the consumer interest.

Complements the federal milk marketing program. It would not supplant or replace federal law.

Does not discriminate against out-of-region farmers or processors. Milk will flow into and from the Compact region in exactly the same manner as occurs under federal law. Any farmer or processor, regardless of their location, may market milk in the compact region without competitive disadvantage.

Benefits out-of-region farmers equally with New England farmers. Thirty percent of New England's milk supply is produced by New York farmers. These farmers will receive the same Compact benefits as New England farmers.

Is strictly local in effect. The Compact regulates only fluid milk. Processors purchasing milk for manufacturing purposes such as cheese and ice cream would be absolutely exempt from the Compact.

Protects against the production of surplus milk. Provisions in the Compact and the Congressional enabling legislation ensure this result.

Was given a zero score by the Congressional Budget Office. It will operate without cost to the federal government.

Mr. LEAHY. Mr. President, I rise along with my good friend from Vermont, Senator JEFFORDS, and in fact the entire New England delegation. We rise to introduce a resolution to approve the Northeast Interstate Dairy Compact.

The compact is an agreement among the six New England States that has been approved by each of our States' legislatures. It needs approval, under the Constitution, of the Congress to take effect. Its intent is simple. It would rationalize the pricing of fluid milk in the New England States so our farmers can receive a fair price and so the consumers themselves can play a role in stabilizing these milk prices.

In fact, the roots of this compact are in the country's strong tradition of federalism. On January 27, 1995, this body overwhelmingly approved the unfunded mandates bill, which is currently in the House-Senate conference committee.

Now, throughout that debate, I heard Senator after Senator talk about giving more power back to our States. They said the Federal Government should not dictate to the States what they are supposed to do without providing the money. They said the States should have constraints lifted so they could take care of their own concerns.

The New England States are concerned about the dairy farmers in our area. They want to take more control of pricing fluid milk as a minimum price that is now set by a very complicated system of Federal milk marketing orders.

So, here is a chance for the Senate to show its support of the federalist principles it espoused in the unfunded mandates bill. This measure was approved last year by the Senate Judiciary Committee with the strong support of Senator KENNEDY, and Senator COHEN, but it ended in a filibuster at the end of last year.

All we are saying from New England, is that we have gotten the Governors together, Republicans and Democrats; the Senators together, Republicans and Democrats; legislatures made up of Republicans and Democrats all came together to agree on a procedure that affects only the New England States in the pricing and sale of fluid milk. We have done all this. We now come, as the Constitution requires, to the Congress to ask for the imprimatur of the Congress, the blessing of the Congress. We can go forward and handle our own affairs without the Federal Government telling us what to do.

The New England States want to improve the way milk is priced and the compact is the way to do it. Farmers are struggling as they receive prices at or below their cost of production. While farmers struggle with low prices, the consumers have not seen any benefit. While farm prices have declined 5 to 10 percent for the last decade, retail milk prices have increased nearly 30 percent. A recent USDA study shows that stable prices will help consumers.

The compact would create a commission made up of both farmers and consumers that would have the authority to adjust and stabilize fluid milk prices. The commission could raise prices so farmers receive a fair return for their work, but there are also strong consumer safeguards. Consumers are represented from each State and it would take four of the six New England States to approve any price increase. Any State could drop out of the compact after 1 year.

The compact is designed to work in conjunction with the New England Federal milk marketing order. The compact would work just as the Federal order does with all farmers supplying the market benefitting from any price increase. Milk would move into and out of the region just as it does now.

This compact is a model of cooperation—it is a partnership between the States and the Federal Government, between dairy cooperatives and milk processors and most importantly, between farmers and consumers.

In addition to the New England Governors Association, the National Association of State Departments of Agriculture, the National Grange, the National Farmers Organization, and dairy cooperatives from many regions in the country support this compact.

The New England States are asking for nothing from this body nor the Federal treasury—just the opportunity to act in concert for their common good. In the spirit of federalism I urge my colleagues to give this opportunity to the New England States and approve this compact.

• Ms. SNOWE. Mr. President, I am pleased to join my colleagues from New England in introducing this resolution to grant the consent of Congress to the Northeast Interstate Dairy Compact. The survival of many family dairy farms in Maine and the other New England States depends on prompt passage of this legislation.

As in many other rural regions of the country, agriculture is a cornerstone of Maine's economy. Within the agricultural sector, dairy farming usually ranks second or third in cash receipts every year. The dairy industry provides not only jobs for the farmers themselves, but for the people who sell farm machinery, service the machinery, sell fuel and feed, and provide other goods and services. Dairy farms also account for large shares of the municipal tax base throughout rural Maine, making them critical contributors to local schools and essential town services.

Unfortunately, all is not well in the Maine dairy industry. In 1978, Maine had 1,133 dairy farms. By 1988, that number had declined to 800. In 1991, there were 680. And by 1994, the number dwindled further to 606.

This precipitous decline in the number of dairy farms can be attributed to several factors, most notably to the fact that dairy prices are very low while costs remain high, and these same circumstances are driving farmers in other New England States out of business as well. In Maine, the average cost of producing milk is $17 per 100 pounds. The June 1994 Federal order price in the Northeast was $16.23 per hundred. For August of 1994, the market order price declined to $14.49. In 1993, the average milk price in the Northeast declined by 54 cents per hundred.

Milk prices simply have not increased in concert with production. Whereas the retail price for a gallon of milk in 1991 was $2.20 a gallon, that same gallon still retailed for $2.20 a

gallon in 1994—without adjusting for inflation.

Another contributing factor in the loss of dairy farms is price volatility. Prices can decline by $2 per hundred in less than 3 months. These price swings add serious uncertainty to a farmer's daily existence, making it difficult for the farmer to plan strategically or to raise capital when needed.

The State of Maine attempted to address this serious problem by establishing a dairy vendor's fee that stabilized the price that farmers in Maine received for their milk. The vendor's fee enjoyed the strong support of both farmers and consumers in Maine, but a Federal court struck it down in 1994 as a violation of interstate commerce. According to the Maine Department of Agriculture, the inevitable result of the court's action will be an accelerating decline in family dairy farms.

Faced with similar problems throughout the region, the six New England States banded together to develop a joint regional solution. They negotiated an interstate dairy compact that will ensure a more reasonable and stable price for dairy farmers in the region. But it is a pricing program that also protects the interests of consumers in the region. As evidence of the balance and fairness achieved by the compact, both the net-producing and net-consuming States in the region all approved it with strong support.

The compact creates a regional commission which has the authority to set minimum prices paid to farmers for fluid, or class I milk. Delegations from each State comprise the voting membership of the commission, and these delegations in turn will include both farmer and consumer representatives. The minimum price established by the commission is the Federal market order price plus a small over-order differential that would be paid by milk processing plants. This over-order price is capped in the compact, and a two-thirds voting majority of the commission is required before any over-order price can be instituted.

Mr. President, until the court struck down the Maine dairy vendor's fee, milk in my State was priced by a mechanism that is similar to that which could be utilized by the compact commission. Maine's experience was uniformly positive. Farm prices were stable, and they were higher, but only modestly higher. No farmers got rich on the minimal adjustment provided by the over-order price under the vendor's fee program. It helped them keep their heads above water. Dairy processors and vendors maintained their business, and consumers did not see any significant increases in the price of milk. It was a win-win proposition for everyone in Maine, and I am confident that the compact will achieve the same success throughout New England without violating the Constitution's interstate commerce clause.

Although the compact affects only the participating States, the cosponsors decided to remove any doubt by including language in the resolution that provides explicit assurances to farmers and processors in States outside the region. These assurances further specify that the over-order price can only be established for class I fluid milk, that no new States can join the compact without the formal approval of both Houses of Congress, that out-of-region farmers who sell milk in the compact region will get the same price as farmers in the region, that the commission's pricing authority is strictly limited, and that the commission must develop a plan to ensure that over-order prices do not lead to increases in production.

In the debates held so far in this Congress, and surely in the debates to come, we have heard and will hear many Members argue that the States are often best-positioned to solve their own problems, and that they should be allowed to do so without interference from Washington. I couldn't agree more.

With the Northeast Interstate Dairy Compact bill being introduced today, Senators will have an opportunity to match words on this concept with deeds. The compact represents a regional response to a regional problem. It affects only those States that belong to the compact. Why should the Federal Government deny the States an opportunity to solve their own problems? The answer is that we shouldn't. We should praise the States for their self-reliance and ingenuity. I hope that Senators will recognize the value in this kind of State-based problem-solving, and support the compact when it comes to the floor for a vote.●

ADDITIONAL COSPONSORS

S. 22

At the request of Mr. DOLE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 22, a bill to require Federal agencies to prepare private property taking impact analyses.

S. 96

At the request of Mr. HATCH, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 96, a bill to amend the Public Health Service Act to provide for the conduct of expanded studies and the establishment of innovative programs with respect to traumatic brain injury, and for other purposes.

S. 198

At the request of Mr. CHAFEE, the names of the Senator from Kentucky [Mr. MCCONNELL] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 198, a bill to amend title XVIII of the Social Security Act to permit medicare select policies to be offered in all States, and for other purposes.

S. 241

At the request of Mr. D'AMATO, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 241, a bill to increase the penalties for sexual exploitation of children, and for other purposes.

S. 250

At the request of Mr. MCCONNELL, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 250, a bill to amend chapter 41 of title 28, United States Code, to provide for an analysis of certain bills and resolutions pending before the Congress by the Director of the Administrative Office of the United States Courts, and for other purposes.

S. 256

At the request of Mr. DOLE, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 295

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

S. 302

At the request of Mrs. HUTCHISON, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 302, a bill to make a technical correction to section 11501(h)(2) of title 49, United States Code.

S. 332

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

S. 388

At the request of Ms. SNOWE, the names of the Senator from Tennessee [Mr. THOMPSON] and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of S. 388, a bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes.

S. 390

At the request of Mr. KYL, his name was added as a cosponsor of S. 390, a bill to improve the ability of the United States to respond to the international terrorist threat.

S. 391

At the request of Mr. CRAIG, the names of the Senator from South Dakota [Mr. PRESSLER], the Senator from Utah [Mr. BENNETT], the Senator from Alaska [Mr. STEVENS], the Senator from North Carolina [Mr. FAIRCLOTH], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of S. 391, a bill to authorize and direct the

Secretaries of the Interior and Agriculture to undertake activities to halt and reverse the decline in forest health on Federal lands, and for other purposes.

S. 426

At the request of Mr. SARBANES, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 426, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia, and for other purposes.

SENATE RESOLUTION 82—TO PETITION THE STATES TO CONVENE A CONFERENCE OF THE STATES

Mr. BROWN (for himself and Mr. HELMS) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 82

Whereas Article I of the Constitution of the United States of America provides that the Congress is vested with the authority to lay and collect taxes, to pay the debts of the United States, to borrow money on the credit of the United States, and to appropriate money from the Treasury;

Whereas for the past quarter century Congress has been unable to balance the Nation's budget in any year;

Whereas the President of the United States has submitted a budget which increases the deficit in future years;

Whereas Members of Congress have been unable to agree on language for an Amendment to the Constitution which would require a balanced budget; and

Whereas Congress has therefore attempted to deny the several States of the United States the opportunity to vote on a Constitutional Amendment requiring a balanced budget: Now, therefore, be it

Resolved, That Congress hereby petitions the several States of the United States of America to convene a Conference of the States for the express and exclusive purpose of drafting an Amendment to the Constitution of the United States requiring a balanced budget and prohibiting the imposition of unfunded mandates on the States, and that such States then consider whether it is necessary for the States to convene a Constitutional Convention pursuant to Article V of the Constitution of the United States in order to adopt such Amendment.

SENATE RESOLUTION 83—RELATIVE TO THE FEDERAL BUDGET

Mr. FEINGOLD (for himself and Mr. BUMPERS) submitted the following resolution; which was referred to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other committee have 30 days to report or be discharged:

S. RES. 83

Whereas the Federal budget according to the most recent estimates of the Congressional Budget Office continues to be in deficit in excess of $190 billion;

Whereas continuing annual Federal budget deficits add to the Federal debt which soon is projected to exceed $5 trillion;

Whereas continuing Federal budget deficits and growing Federal debt reduce savings and capital formation;

Whereas continuing Federal budget deficits contribute to a higher level of interest rates than would otherwise occur, raising capital costs and curtailing total investment;

Whereas continuing Federal budget deficits also contribute to significant trade deficits and dependence on foreign capital;

Whereas the Federal debt that results from persistent Federal deficits transfers a potentially crushing burden to future generations, making their living standards lower than they otherwise would have been;

Whereas efforts to reduce the Federal deficit should be among the highest economic priorities of the 104th Congress; and,

Whereas enacting across-the-board or so-called middle class tax cut measures could impede efforts during the 104th Congress to significantly reduce the Federal deficit:

Now, therefore, be it

Resolved, That it is the Sense of the Senate that reducing the Federal deficit should be one of the nation's highest priorities, that enacting an across-the-board so so-called middle class tax cut during the 104th Congress would hinder efforts to significantly reduce the Federal deficit.

Mr. FEINGOLD. Mr. President, today I am pleased to join with the senior Senator from Arkansas [Mr. BUMPERS] to submit a resolution expressing the sense of the Senate that enacting an across-the-board or so-called middle-class tax cut during the 104th Congress would hinder efforts to reduce the Federal deficit.

Mr. President, though I would certainly like to support a tax cut measure, especially one that provides a Well Deserved tax break to middle-class Americans, supporting that kind of proposal is simply not responsible right now, especially given the recent developments with respect to the balanced budget amendment.

During a month of telling debate on the proposal, we have not done one thing that will actually help us achieve the widely shared goal of a balanced budget.

Mr. President, it is time we did.

We have been making some headway in reducing the deficit.

President Clinton's 1993 deficit reduction package was a critical turning point in our fight to reduce the deficit, and we are now in the third straight year of progressively lower deficits.

However, we need to do more, and I firmly believe we not only undermine those needed future efforts but could also jeopardize the progress we have already made if we rush along now and do tax cuts.

Mr. President, let me emphasize that my opposition to tax cuts is bipartisan—the tax cut proposals of both parties are wrong.

I publicly opposed the President's proposed tax cuts the same day he even announced them.

An I think opposition to the tax cuts proposals of both parties has bipartisan support.

In fact, I would like to take this opportunity to publicly thank the Senator from Oregon [Mr. PACKWOOD], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Maine [Mr. COHEN] for their support of a similar effort that I made as part of the debate on the balanced budget amendment.

Their support was particularly heartening, and I think it reveals a growing consensus that deficit reduction must be a higher priority than tax cuts right now.

As part of his fiscal year 1996 budget, the President, has proposed about $63 billion in tax cut over the next 5 years, and that is a figure that grows to $174 billion over 10 years.

Even more troubling the Republican contract with America has proposed tax cuts totaling $196 billion over 5 years and the whopping figure of $704 billion over 10 years.

To me, all of those figures represent the cost of a lost opportunity.

The President's tax cuts are part of his budget package, and he has indicated that they are more than offset by $184 billion in spending cuts.

And at least some of those supporting the Republican Contract With America tax cut package have indicated they too would be offsetting the cost of those tax cuts with spending cuts.

However, even if they are fully offset—I hope we would agree that to be an absolute minimum requirement—we would do much better to forego those tax cuts.

Eliminating the President's tax cut proposals, while doing nothing else to his budget, would result in $72 billion in additional deficit reduction over the next 5 years—the $63 billion in foregone tax cuts plus $9 billion in interest savings.

Just doing that, and nothing more, would produce a Federal budget deficit of $170 billion in fiscal year 2000, $24 billion lower than the $194 billion projected as part of the President's budget.

In fact, the figures for the Contract With America tax cuts are very dramatic.

Assuming spending cuts are produced to offset that tax cut package, and then assuming we decided not to adopt those tax cuts, doing nothing else to the President's budget would result in $217 billion in additional deficit reduction over the next 5 years—$196 billion in foregone tax cuts plus $21 billion in interest savings.

Just doing that, and nothing more, would produce a Federal budget deficit of $114 billion in the year 2000, $80 billion less than what the President projected.

Over 10 years, just under this scenario, we would save $178 billion in interest costs alone by not adopting the Contract With America tax cut package, and could produce $882 billion in deficit reduction.

Let me conclude by noting that tax cut proposals are grounded in the old politics of the free lunch—promise the people a tax cut and a balanced budget.

It is the kind of politics that created the fiscal mess which now confronts us and undermined the American people's faith in their Government.

By resisting calls for tax cuts, we not only help alleviate pressure on the deficit, we also can begin to restore the lost confidence of the American people in their elected officials.

I hope other members will join Senator BUMPERS and me in persuading a majority of the Senate that it is irresponsible to cut taxes as we are trying to reduce the deficit and balance the Federal budget.

SENATE RESOLUTION 84—RELATIVE TO THE 150TH ANNIVERSARY OF FLORIDA STATEHOOD

Mr. MACK (for himself and Mr. GRAHAM) submitted the following resolution; which was considered and agreed to:

S. RES. 84

Whereas Florida became the first State explored by Europeans when Ponce de Leon led a Spanish expedition that made landfall along the east coast in the year 1513;

Whereas Pedro Menendez de Aviles, captain-general of an invading fleet, ousted the French settlement, Fort Caroline, at the mouth of the St. Johns River, proclaimed Spanish sovereignty over Florida, and on September 8, 1565, established St. Augustine, the oldest city in the United States;

Whereas Spain, France, and England played a significant role in the development and exploration of early Florida;

Whereas President James Monroe proclaimed the Adams-Onis Treaty in which Spain ceded Florida to the United States on February 22, 1821, and appointed General Andrew Jackson as the first provisional governor of Florida;

Whereas on March 30, 1822, the United States Congress created a territorial government for Florida, following the pattern set in the Northwest Ordinance of 1787 by providing for public education and orderly political steps toward greater self-government and eventual statehood as population increased;

Whereas 56 delegates representing the 30 counties of Florida assembled in 1838 in the Panhandle town of St. Joseph to frame the first constitution of the territory in preparation for Florida statehood, who were mainly planters and lawyers, were from 13 of the 26 States then in the United States and 4 foreign countries, included only 3 natives from Florida, included 3 delegates who would later become United States Senators, included 2 governors, and included 5 members of the Florida Supreme Court;

Whereas a bill to admit Florida as a State passed the House of Representatives on February 13, 1845, and the Senate on March 1, 1845;

Whereas President John Tyler signed a bill making Florida a State on March 3, 1845, making Florida the 27th State to be admitted into the United States;

Whereas Friday, March 3, 1995, marks the 150th anniversary of Florida becoming a State;

Whereas the admission of Florida to the United States has proved to be of immense benefit both to the United States and to the State of Florida;

Whereas 96 citizens of Florida have served the United States and Florida in the House of Representatives;

Whereas 30 citizens of Florida have served the United States and Florida in the United States Senate;

Whereas numerous citizens of Florida have served in the executive, judicial, and legislative branches of the Federal Government;

Whereas citizens of Florida have fought and died in service to the United States, and 22 citizens of Florida have won the United States highest award for bravery, the Congressional Medal of Honor, protecting freedom in the United States;

Whereas Florida is the fourth largest State and is rich in natural resources and talented people;

Whereas Florida, home of the Everglades National Park, is blessed with great natural beauty, clean waters, pure air, and extraordinary scenery;

Whereas Florida is a world leader in agriculture, commercial fishing, education, financial services, horse breeding, high technology, manufacturing, phosphate production, and tourism;

Whereas Cape Canaveral, location of the first United States satellite launch and the first manned spaceship flight to the Moon, continues to play a vital and leading role in the exploration and discovery of outer space by the United States;

Whereas a special postage stamp saluting the Sesquicentennial of Florida will be circulated throughout the United States during 1995; and

Whereas Florida is proud of its heritage and looks forward to its future: Now, therefore, be it

Resolved,

SECTION 1. SALUTE BY THE SENATE.

The United States Senate salutes the State of Florida on the sesquicentennial anniversary of Florida becoming a State Friday, March 3, 1995.

SEC. 2. COMMEMORATION BY CONGRESS.

The Senate calls on the joint Congressional leadership of Congress to agree on an appropriate time and manner to honor the State of Florida, in recognition of the achievements of all the men and women who have worked hard to develop Florida into a great State, from pioneer days to modern times.

SEC. 3. COMMEMORATION BY THE PRESIDENT.

The Senate calls on the President to issue a Presidential message calling on the people of the United States and all Federal, State, and local governments to commemorate the sesquicentennial anniversary of Florida becoming a State with appropriate ceremonies and activities.

SEC. 4. COPIES OF RESOLUTION.

The Secretary of the Senate shall send this resolution to the Florida Congressional delegation, the Governor of Florida, the National Archives, and the Florida Archives.

Mr. MACK. Mr. President, this week marks the anniversary of a very special event in the history of my State.

One hundred and fifty years ago on the 1st of March 1845, the U.S. Senate passed a bill admitting Florida to the Union as the 27th State. President John Tyler signed the bill into law on March 3, 1845.

Tomorrow, March 3, 1995, the State of Florida will celebrate its sesquicentennial.

Florida has a rich history stretching nearly five centuries.

The search for gold and glory brought Spanish explorer Juan Ponce de Leon to Florida during the Easter season of 1513.

He and his crew disembarked between present-day St. Augustine and Cape Canaveral to claim the land in the name of the King of Spain. Ponce de Leon called this new land Florida—a Spanish word meaning ''full of flowers.''

From discovery in 1513 to early 1821, Spain, France, and England played significant roles in Florida's exploration and development.

During the territorial period—1821 through 1845—Florida became one of the major cotton producing areas of the region. The struggle for statehood was a major political issue in Washington and throughout the territory of Florida.

David Levy (Yulee), who later became Florida's first U.S. Senator, led the fight to bring Florida into the Union.

Florida's admission to the Union and the contributions of its citizens have proven to be of immense benefit both to the United States and to the State of Florida.

As the United States has grown and prospered Florida has become a world leader in agriculture, commercial fishing, education, financial services, horse breeding, high technology, manufacturing, phosphate production, and tourism.

More than 20 million tourists visit Florida each year to experience the Sunshine State's great natural beauty, her pristine beaches, clean waters, pure air, and extraordinary scenery.

Each region of Florida has its own unique identity. There are vivid contrasts between the excitement of Cape Canaveral and Disney World, the cosmopolitan feel of south Florida, the tropical world of the Florida Keys, the natural beauty of the west coast, the mystery that is the Everglades, the citrus and cattle country of central Florida, and the deep South culture of north Florida and the panhandle.

The marvelous diversity of those who have migrated to Florida seeking a better life for themselves and their families have made the State a microcosm of America itself.

The dedication and innovation of Floridians, both past and present, inspire all of us in Florida as we prepare our State for the challenges of the 21st century.

AMENDMENTS SUBMITTED

THE DEPARTMENT OF ENERGY RISK MANAGEMENT ACT

LOTT AMENDMENT NO. 316

(Ordered referred to the Committee on Energy and Natural Resources.)

Mr. LOTT submitted an amendment intended to be proposed by him to the bill (S. 333) to direct the Secretary of Energy to institute certain procedures in the performance of risk assessments

in connection with environmental restoration activities, and for other purposes; as follows:

At the end of the bill add the following:

SEC. 8. JUDICIAL REVIEW.

Any decision, regulatory analysis, risk assessment, hazard identification, risk characterization, or certification provided for under this Act is subject to judicial review in the same manner and at the same time as the underlying final action to which it pertains, in accordance with chapter 7 of title 5, United States Code. All data, estimates, information, reports, studies, explanations, and similar materials upon which any decision, regulatory analysis, risk assessment, hazard identification, risk characterization, certification, or peer review is based shall be made part of the administrative record for purposes of judicial review.

Sec. 12. Peer Review.

(1) PEER REVIEW BY INDEPENDENT EXTERNAL PEER REVIEW PANELS.

a. INITIATION OF PEER REVIEW.—The head of the Office of information and regulatory Affairs of the Office of management and Budget may initiate a peer review under this section if he or she determines that such peer review is advisable because the assessments or analyses to be reviewed are matters of major importance due to their potential for direct or indirect health, safety, or environmental or economic impacts or because they would establish an important precedent.

b. ESTABLISHMENT AND MEMBERSHIP OF PANELS.—Peer reviews shall be conducted by panels consisting of members appointed by the head of the agency which conducted the risk assessment and cost-benefit analysis, in consultation with the head of the Office of Information and Regulatory Affairs of the Office of management and Budget, the head of the Office of Science and Technology Policy, and other concerned Federal agencies, and officials of any affected state and local governments. Separate panels shall be established to review the benefits portion of the cost-benefit analysis; the cost-benefit review panel shall review the benefits portion of the cost-benefit analysis in consultation with the risk assessment review panel. Peer review panels shall be established within 90 days after a determination under subsection (a). Members of the panels shall—

1. be recognized and credentialed experts in the appropriate disciplines;

2. have recent professional experience conducting a risk assessment, an assessment of the cost of a regulation, or an assessment of the benefits of a regulation, as applicable to the panel for which they are selected;

3. have filed and made publicly available financial disclosure forms; and

4. have not been involved in a recent comprehensive analysis of the substance, condition, or activity under review, and have not recently taken a public position on the risks or costs to be reviewed.

c. TERMINATION.—A peer review panel shall terminate upon submission of the report with respect to the risk assessment or cost-benefit analysis for which the panel was established.

d. STANDARDS APPLICABLE TO PEER REVIEW.—

1. all peer reviews of the risk assessments conducted pursuant to this section shall have the purpose of determining whether the agency's risk assessment complies with the principles set out in this Act;

2. all peer reviews of cost-benefit analyses conducted pursuant to this section shall have the purpose of determining whether the cost-benefit analysis meets the standards set out in this Act.

e. COMPLETION PRIOR TO JUDICIAL REVIEW.—If the head of the Office of information and Regulatory Affairs has initiated the peer review process pursuant to subsection a, or states in writing that initiation of the process is under consideration by that office, no suit for judicial review of a risk assessment or cost-benefits analysis or related agency action may be brought until after the peer review process has concluded or such official determines not to initiate the process; provided, however, that if such official does not indicate a determination within 30 days after stating that such matter is under consideration, a judicial review suit may be brought and the official will not thereafter have the authority to issue a determination to initiate the process.

(2) Procedures for Peer Review.

a. SUBMISSION TO PANEL.—Within 30 days after the establishment of a peer review panel, the head of the Federal agency shall submit to the panel all data and testing (including the details of the methodology) used by the agency for the assessment and analysis.

b. REPORT AND RECOMMENDATIONS.—

1. IN GENERAL.—Within 180 days after the date on which the head of the Federal agency submits data and testing under subsection a, each peer review panel shall transmit to the head of the agency a report and recommendations on whether the agency's risk assessment or cost-benefit analysis meets the applicable standards and principles specified in this Act.

2. CONTENTS.—A report and recommendations under this subsection shall either conclude that the agency's assessment or analysis meets the applicable standards, or shall set out its views on any significant deficiencies and its recommendations on how those deficiencies should be corrected.

3. COMMENTS AND APPENDIX.—Each peer review report and recommendations under this subsection shall include—

(A) all conclusions and recommendations supported by a majority of the members of the peer review panel submitting the report; and

(B) an appendix which sets forth the dissenting opinions that any peer review panel member wants to express.

c. OPENNESS OF PROCESS.—The proceedings of peer review panels under this section shall be subject to the relevant provisions of the Federal Advisory Committee Act 5 USC App. (1988), PL 92–463.

(3) Consideration and Incorporation of Peer Review Recommendations.

If a majority of a peer review panel established under this subtitle concludes that a risk assessment or cost-benefit analysis does not meet the applicable standards, the assessment, analysis or proposed major rule shall not be issued in final form unless the head of the agency either revises the risk assessment to include the findings and recommendations of the peer review panel and makes the recommended revisions or explains clearly the scientific basis for disagreeing with any of the panel's recommendations and not revising the assessment.

(4) Matters Requiring Peer Review.—At a minimum, there shall be submitted for peer review—

a. all major rules

b. all entries in the Integrated Risk Information System (IRIS), and the Toxic Release Inventory.

c. any risk assessment which has been used as a scientific rationale for regulatory actions by local or state governments.

SEC. 13. ADDITIONAL DEFINITION.

In this Act:

(11) SCIENTIFICALLY OBJECTIVE AND UNBIASED.—The term ''scientifically objective and unbiased'' means that the risk assessment, risk characterization or communication have not been significantly influenced by policy or value judgments or preferences, and that it clearly and accurately relates its descriptions and conclusions regarding risk (or absence of risk) to data or knowledge, including negative data, that are based on empirical observations, measurements, or testing that meet generally accepted scientific standards, and are substantially reproducible by similarly experienced scientists analyzing the same data independently.

SEC. 14. TOXIC RELEASE INVENTORY (TRI).

(1) Notwithstanding any other provision of Chapter 116, of Title 42, United States Code, the Administrator, Environmental Protection Agency may by rule add a chemical to the list described in Section 11023(c) only after the Administrator makes a risk assessment determination that the chemical causes significant adverse human health effects at concentration levels that are reasonably likely to exist beyond the facility site boundaries, the probability of exposure and potential harm to local residents.

(2) a. In making the risk assessment determination, the Administrator shall take into account the nature and frequency of the releases, the actual concentration, and the frequency of use of the chemical in general commerce.

b. The principles for risk assessment within this act should be applied to future listings on the Toxic Release Inventory.

(3) A chemical shall be deleted if the Administrator determines no later than 60 days after the enactment of this provision that based on the record there is insufficient evidence to establish the criteria described in this section.

(4) A chemical shall be deleted if the Administration, within 180 days of receipt of a petition described in Section 5, does not prepare a risk assessment as described in Section 5 which determines that the chemical causes significant adverse human health effects at concentration levels that are reasonably likely to exist beyond the facility site boundaries, the probability of exposure and potential harm to local residents.

SEC. 15. USE OF APPROVED RISK ASSESSMENTS.

The Administrator, Environmental Protection Agency shall not conduct or perform, or require any person to conduct or perform, as a condition for issuance of any permit, license, or any other form of approval (or condition to operate), any type of risk assessment that is not explicitly required as a condition for the issuance of such a permit, license, or approval by existing statutory or final regulatory provisions. The Administrator, Environmental Protection Agency shall not implement or enforce such a condition in any way nor deny or condition a permit, license, or approval based upon the results of such a risk assessment or the failure to conduct or perform such a risk assessment.

SEC. 16. "SEC 627. OF AMENDMENT 230—REGULATIONS; PLANS FOR ASSESSING NEW INFORMATION."

Change paragraph (b)(1) to read:

Review of the risk assessment, risk characterization, or risk communication for any major rule or issuance used by states or local governments as a scientific basis for regulatory action promulgated or prepared prior to enactment or prior to issuance of a final regulatory requirement by subsection (a) of this section shall be conducted by the head of the agency on the written petition of a person showing a reasonable likelihood that—

(A) the risk assessment is inconsistent with the principles set forth in section 625 and 626;

(B) the risk assessment produces substantially different results;

(C) the risk assessment is inconsistent with a rule issued under subsection (a);

(D) the risk assessment does not take into account material significant new scientific data or scientific understanding.

Mr. LOTT. Mr. President, I rise today to speak for the purpose of submitting an amendment to the Department of Energy Risk Management Act which was referred to the Senate Committee on the Energy and Natural Resources for consideration.

Mr. President, I send to the desk an amendment to the Department of Energy Risk Management Act (S. 333), and ask unanimous consent that it be printed in the RECORD.

First, let me say this is the year and this is the Congress that will establish a genuine link between real risks, as defined by sound science, and responsible public policy to address risk.

This will be done by including scientific data and an openness in the regulatory process. My solution is based on citizen involvement. So why do we hear all of these distortions and exaggerations reporting that America's health and safety will be placed in jeopardy and sacrificed. These emotional and often irrational overstatements are just not true.

What is so threatening about requiring knowledgeable scientists, who are independent of the Government, to participate in a peer review of the science? It makes sense to me to ensure that science-based rules are supported by scientist. But clearly, opponents of this provision believe that scientists are the problem. I find this curious. Peer review will certify the Government's practices. It replaces an unchecked monopoly over risk assessment methodologies with participation of scientists from academia.

What is so threatening about requiring the science to be unbiased and objective? I guess opponents of this legislation really want rules to have a bias which supports their political agenda. Accurate science must get in their way. How distressing. I said it last month on the Senate floor when S. 333 was introduced, but it is important to repeat the thought. Maybe those who like the flawed status quo really can be characterized as backing regulations which indeed are cavalier and arbitrary.

What is so threatening about requiring products listed on the Toxic Release Inventory [TRI] to actually be dangerous or, for that matter, even toxic? Presently, chemicals are listed simply because they appear frequently in the environment. In fact, many chemicals on the list are not toxic. EPA knows they are not. EPA has let the TRI misrepresent the toxicity of chemicals and permitted unnecessary anxiety within local communities. This is terrible public policy. Also, what is the problem in requiring a Federal agency to act promptly? To list or delist needs a fixed public schedule. Maybe it is too much to ask an agency to be responsive to American citizens.

What is so threatening about judicial review? Opponents complain that risk assessments would not be constructed by the courts. OK. That is better than what America has now. Currently, risks are set by arrogant bureaucrats who are invisible and not accountable to the public. At least in a court room risk decisions will be made in a public forum. The American people hold their courts in high esteem, and perhaps public participation is necessary to save risk assessment.

What is so threatening about emphasizing the need of State and municipal participation in setting priorities for addressing their health and safety risks? Providing a structured methodology for making difficult budgetary choices regarding health and safety matters would be helpful. Both the officials and the citizens can understand the risks they face together. And jointly they will be involved in selecting the risks to address. Cost benefit provisions will be a useful rational for public policy goal setting and in allocating funding.

What is so threatening about preventing abuse through indirect risk assessments? In the words of EPA's own Science Advisory Board, indirect risk assessment suffers from a general lack of measured input and very little validation of the models. By requiring that only approved risk assessments, we are saying that Federal agencies will only use assessments subjected to the rigors of this legislation. In fact, EPA has no legal basis to proceed with indirect risk assessments. Does it make scientific sense to let EPA hold permits and licenses hostage without the marketplace having its due process? Does it make sense for EPA to first demand and then use data which is short on scientific validation? Both are legally and scientifically reprehensible. We are a land governed by laws—not by bureaucrats who are not accountable to the public. Besides, Federal agencies must not regulate by press release.

The cost-benefit provisions of this legislation are important to evaluate regulatory effectiveness. This is especially useful since public funds are scare and finite. And, because governmental intrusion into our private lives must be minimized to only genuine risk. But the sad truth is the Government's decisions and actions are rarely cost effective. In fact, I recently read an article where an EPA official said that regulatory ''efficiency is not of great importance.'' For him, his colleagues and this administration it may not be; but to millions of American taxpayers who pay the bills it is a big deal.

The importance of risk assessment and risk communication with public participation can not be underscored. This is especially true when we consider that billions and billions of taxpayer dollars are spent annually by all levels of government to deal with risk.

I believe the public has lost confidence in the Government's science. I further believe this has hurt the credibility of existing environmental and health rules. Saving an owl which is endangered in two States by destroying 30,000 jobs; only to discover this bird is thriving in a number of other States is not good science—it is an agenda. Ruining an entire apple harvest with a rush to judge without science on alar is not good science—it is regulatory abuse. Both illustrate a Government unchecked. That is what this legislation is about—provide an opportunity to challenge the Government.

Nothing in this amendment or the basic bill is excessively prescriptive. On the contrary, my legislative purpose is to ensure consistency and technical value when risk assessments are prepared. I firmly believe my legislative efforts will improve both the quality and visibility of risk assessment.

It is time to deal with scientific controversies surrounding the extrapolations of maximum tolerated dose to minuscule doses, animal to human etc. Many of the Government's regulatory actions will not stand up to public scrutiny—this is not the fault of this legislation. No, this is an error caused by Government's arrogant false science. I am for environmental, health and safety rules which address real problems, not regulatory abuse supporting a nonscientific agenda.

Risk assessment is a powerful tool which has been abused for years by a political agenda. No—it has been exploited. Both public confidence and public funds have been squandered chasing nonscientific solutions and nonrisks. Now is the time to transform our environmental and health policies with accountable scientific judgment.

Risk assessment reforms will help settle environmental and health decisions with science and technology, not with a political agenda. It will not eliminate controversies but it will open up the process to public participation. It will not end environmental laws, as we now know them. What it will do is make sure that the right information is on the table in the right form and at the right times to best incorporate both economic and ecological consequences in the decision making process.

My approach, through the basic bill (S. 333) and with this amendment, is to demand rigorous, consistent and continuous inclusion of the public in the development of health and safety public policy. Using a deliberative and transparent process has merits which exceed all the complaints I have heard from opponents who say it would create burdens.

My approach will strengthen our public policies, not destroy them. All I am mandating is sound science. I am not mandating bureaucratic burdens. If sound science principles are followed there will be no hassles or problems.

However, I am not terribly sympathetic for a Federal agency which misbehaved and manipulated the public trust. They have placed burdens and expenses on Americans through false risks and unnecessary anxiety. This type of regulatory zeal must be stopped.

Plain and simple; this legislation will identify the underlying scientific assumptions used in the risk assessments so that all concerned parties can evaluate the judgments and conclusions. This process allows for full and open public debate which will neither threaten our democracy nor the health and safety of the American public who we all serve.

Opponents want to dismiss any risk assessment legislation as a form of technospeak to justify the destruction of the environment and health rules. But this ''sky-is-falling'' complaint strategy is spurious and disingenuous. This legislation will not remove one environmental or safety rule. It will, however, require the assumptions, methodologies and extrapolations to be part of the public record. Only if science supports different conclusions can the foundation for the rules be challenged.

I urge my colleagues to look at S. 333, the basic legislation which was introduced by Senators MURKOWSKI and JOHNSTON last month and this amendment. Both focus on removing risk misinformation and restoring public confidence in our rulemaking process. I believe it deserves your support.

It is time to get past partisan bickering and exaggerations.

It is time to end the false debate on the value of risk assessment and cost benefit analysis.

It is time to focus our health and safety policies with sound risk assessment methodologies.

It is time for Congress to act.

I thank my colleagues for their consideration.

NOTICE OF HEARING

COMMITTEE ON VETERANS' AFFAIRS

Mr. SIMPSON. Mr. President, I wish to announce publicly that the Committee on Veterans' Affairs will hold a hearing on Thursday, March 9, 1995, at 10 a.m. in SR–418, Russell Senate Office Building.

The committee has two purposes for holding this hearing. First, we will receive testimony on the nomination of Mr. Dennis M. Duffy to be the Department of Veterans Affairs' Assistant Secretary for Policy and Planning. Mr. Duffy currently serves as VA's Deputy Assistant Secretary for Congressional Liaison.

Second, the committee will hear testimony from officials of three Federal entities—the Department of Veterans Affairs; the Department of Labor, Veterans Employment and Training Service; and the Court of Veterans Appeals—on those entities' proposed budgets for fiscal year 1996. We also intend to receive testimony from representatives of veterans' service organizations concerning the fiscal year 1996 budget for veterans programs.

The committee would be pleased to receive written statements from members of the public concerning these matters. Such statements may be submitted to the Committee's offices. Members of the public may also contact Mr. William F. Tuerk, the committee's general counsel, if they have questions or need information concerning the subject matter of this hearing.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet immediately after the vote on the balanced budget amendment on Thursday, March 2, 1995, to consider the following nominations:

Sheila Cheston to be the general counsel of the Air Force;

Josue Robles, Jr. to be a Commissioner on the BRAC;

Herschelle Challenor to be a member of the National Security Education Board; and

Vincent Ryan to be a member of the board of directors on the Panama Canal Commission.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 2, 1995, at 3:30 p.m. to hold a hearing regarding United States Policy toward Iran and Iraq.

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

ADDITIONAL STATEMENTS

F–22 ELECTRONIC COMBAT EFFECTIVENESS TESTING

• Mr. D'AMATO. Mr. President, what is it about F–22 electronic combat effectiveness testing that terrifies Air Force?

The fiscal year 1995 Senate Defense Appropriations Report 103–321 included the following language:

> The Committee is concerned that the F–22 test and evaluation master plan [TEMP] may not include sufficient electronic combat effectiveness testing before the onset of production. The Committee believes that it is important for the F–22 to demonstrate its capabilities in an offensive air superiority mission against a full array of likely threats. Those threats should include a modern integration air defense system, at a minimum on a simulated basis to the extent practicable, affordable, and cost effective.
>
> Therefore, the Committee directs that no more than 65 percent of the funds provided for the F–22 program for fiscal year 1995 may be obligated until the Assistant Secretary of the Air Force (acquisition) submits to the congressional defense committees a report outlining the cost and schedule impacts on the F–22 program, and the technical and operational advantages and disadvantages, of revising the TEMP to include significantly more thorough electronic combat effectiveness testing before initiation of: (1) pre-production vehicle procurement; (2) commitment to low-rate initial operational test and evaluation.
>
> This report shall include, as a baseline, thorough electronic combat testing at the real-time electromagnetic digitally controlled analyzer and processor [REDCAP] and the Air Force electronic warfare evaluation simulator [AFEWES], and an installed system test facility with a capable wide-spectrum radio frequency generator that is interfaced for real-time control from remote facilities and a high capability dome, visual system cockpit simulator.
>
> The report also shall identify the funding required between fiscal years 1996–99 to allow the electronic combat test facilities cited in the preceding paragraph to thoroughly undertake effectiveness testing on integrated avionics suites.

This report requirement was retained in Conference, though, as a courtesy of the House colleagues, the fence was dropped.

Well, March 1, 1995 has come and gone, but no report; however, there has been an interesting development. On February 28, 1995, the Air Force base closure and realignment recommendations were made public. The Air Force operates 10 major test and evaluation [T&E] facilities with a combined budget in fiscal year 1995 of $1.722 billion. Not one was recommended for closure; but two very small T&E facilities with a combined fiscal year 1995 budget of less than $20 million were recommended for closure: the Real-time Electromagnetic Digitally-Controlled Analyzer and Processor [REDCAP] and the Air Force Electronic Warfare Evaluation Simulator [AFEWES], the very facilities where Congress directed the Air Force to consider conducting F–22 electronic combat effectiveness testing. What is the Air Force afraid of?

The one facility mentioned in the Senate report that was not closed, the installation system test facility, belongs to the Navy. Apparently, the Air Force could not get at it.

The most perplexing thing about the aversion of the Air Force to proper testing of the F–22 is that the B–2 program is about to undertake tests at the REDCAP very similar to those being avoided by the F–22. The B–2 test program has been thorough to the point of exhaustive. Is the B–2 successful because it was thoroughly tested, or was it successful so it is being thoroughly tested? Either way, what lesson can we draw about the F–22?

When our needs are so many, and money so short, Congress can ill-afford to buy a pig in a poke. Congress gave the Air Force the opportunity to prove its claims regarding the F–22. The Air Force responded by trying to eliminate the facilities that could have rendered a judgment on the effectiveness of the F–22, Obviously, the Air Force has something to hide. If they will not test it, we will not buy it. Come budget

time, I will lead the fight to strike F–22 funds.●

GREEK INDEPENDENCE DAY

● Mr. LAUTENBERG. Mr. President, I rise to support Senate Resolution 79, the resolution designating March 25, 1995, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. The resolution also asks the President to issue a proclamation calling upon the people of the United States to observe the designated day with appropriate ceremonies and activities.

March 25, 1995, marks the 174th anniversary of the beginning of the revolution which freed the Greek people from the Ottoman Empire. It is fitting that we celebrate this day together with Greece in order to reaffirm the common democratic heritage of Americans and Greeks.

The ancient Greeks forged the very notion of democracy, placing the ultimate power to govern in the people. As Aristotle said, ''If liberty and equality, as is thought by some, are chiefly to be found in democracy, they will best be attained when all persons alike share in the government to the utmost.''

Because the concept of democracy was born in the age of the ancient Greeks, all Americans, whether or not of Greek ancestry, are kinsmen of a kind to the ancient Greeks. America's Founding Fathers drew heavily upon the political and philosophical experience of ancient Greece in forming our Government. For that contribution alone, we owe a heavy debt to the Greeks.

The common heritage which we share has forged a close bond between Greece and the United States, and between our peoples. And it is reflected in the numerous contributions made by present-day Greek-Americans in New Jersey and across the country to our American culture.

I urge my colleagues to support this resolution as a tribute to these contributions, past and present, which have greatly enriched American life.●

TRIBUTE TO TOM AND GANIA TROTTER

● Mr. MURKOWSKI. Mr. President, I am pleased to pay tribute today to two eminent Alaskans, Tom and Gania Trotter, on the occasion of their retirement after many years of dedicated service to higher education in America, but most recently in their roles as president and associate to the president for development at Alaska Pacific University.

F. Thomas Trotter is a native of Los Angeles, CA. After serving in the U.S. Army Air Corps in World War II, he attended Occidental College and received his Ph.D. from Boston University. He served in numerous ministerial and faculty roles, and was elected to be the first dean of the School of Theology at Claremont College. In 1973, Dr. Trotter became general secretary of the Board of Higher Education and Ministry of the United Methodist Church. In this post, he gave oversight to 128 colleges and universities related to the denomination. During his administration, significant international programs were established including a United States-Japan consortium and the establishment of a new university in Zimbabwe. He has been the director of several businesses, including the Third National Bank of Nashville, is the recipient of 10 honorary degrees, and is a trustee of Dillard University. Dr. Trotter is the author of ''Jesus and The Historian'' and ''Loving God With One's Mind.''

Gania Demaree Trotter, a native of Anaheim, CA, is also a graduate of Occidental College and received an M.A. in Student Personnel Administration from Columbia University. A gifted musician, Mrs. Trotter was a choral director in California schools and churches and a member of the Robert Shaw Collegiate Chorale. She was director of development for the Blair School of Music of Vanderbilt University and is an experienced higher education administrator.

Dr. Trotter began his service to Alaska Pacific University as a trustee in 1974, and in 1987, he was selected as its eighth president. He worked diligently to improve curriculum design and financial growth. He introduced new undergraduate and graduate programs and thawed the ice curtain when he forged an agreement between APU and Far Eastern University in Vladivostok, Russia. The Carr Gottstein academic building, which has been a wonderful addition to the campus, was designed and constructed under President Trotter's careful oversight. During his tenure, Alaska Pacific University has been recognized in several national publications for its academic excellence.

Gania Trotter has supported the university and its mission with energy and grace both in development and community awareness. She has cultivated important relationships which will benefit the university and its students for many years to come. Mrs. Trotter has further distinguished herself in Alaska through her creative enthusiasm and civic involvement, most notably in the symphony, opera, and Catholic social services.

Tonight in Anchorage, several hundred friends and colleagues will gather to honor Tom and Gania for their years of selfless dedication to the education of Americans, a gift that will last for generations. I join many others in offering my sincere gratitude and best wishes to both of them.●

LINCOLN, LABOR AND THE BLACK MILITARY: THE LEGACY PROVIDED

● Ms. MOSELEY-BRAUN. Mr. President, William B. Gould IV—the Chairman of the National Labor Relations Board [NLRB]—celebrates the end of the first year of his first term today.

Mr. Gould recently delivered a speech entitled, ''Lincoln, Labor, and the Black Military: The Legacy Provided,'' that makes an important contribution to the celebration of Black History Month. This speech analyzes President Abraham Lincoln's legacy on the development of democratic institutions and the protection of human rights in the United States. More specifically, this speech highlights the Great Emancipator's views on labor and the right to strike which were founded on the belief that ''All people could improve themselves and thus arise out of their station if opportunity were afforded them.''

Our Nation held its first, officially recognized, Black History Month in 1976. In reality, of course, the event dates back to 1926, when Carter G. Woodson, the noted historian and author, selected February to honor the achievement of black Americans because it was the month in which both Abraham Lincoln and Frederick Douglass were born.

There are still some who would simply like to forget the ugly history that surrounds race relations in this country, and who question the need for a month set aside to reflect on the accomplishments of African-Americans. But for me, each year the month of February provides me with an occasion to look back and survey the triumphs of African-Americans, often against overwhelming odds. It gives me a chance to give thanks to those who have gone before me, and who paved the way for me. And, more importantly, it provides me with the opportunity to reflect not only on how far we have come, but also on how far, in many respects, we still have to go.

Having spoken in favor of his nomination on the Senate floor 1 year ago today, I am pleased to see that Mr. Gould—the first African-American chairman of the National Labor Relations Board—also recognizes the importance of celebrating President Lincoln's birthday and Black History Month.

I am also encouraged by the fact that Mr. Gould continues to reaffirm his commitment to promoting ''The right of employees to band together for the purpose of protecting or improving their own working conditions, to join unions, to engage in collective bargaining, and to be free from various forms of discrimination.''

Mr. President, I would like to conclude my remarks by urging my colleagues to read Mr. Gould's speech and by wishing Mr. Gould all the best as he continues to serve his country as chairman of the National Labor Relations Board.

I ask that the text of Mr. Gould's speech be printed in the RECORD.

The speech follows:

LINCOLN, LABOR AND THE BLACK MILITARY: THE LEGACY PROVIDED

I heard the glad tidings that the Stars and Stripes have been planted over the Capitol of the Confederacy by the invincible Grant. While we honor the living soldiers who have done so much we must not forget to whisper for fear of disturbing the glorious sleep of the men who have fallen. Martyrs to the cause of Right and Equality.—Diary of William B. Gould, April 15, 1865

These are the words of my great-grandfather written 130 years ago at the time of Appomattox. They reflect the thoughts and passion of one of our country's black naval veterans of the Civil War and his commitment to the military initiatives waged by President Lincoln.

It is meet and right that we come here this evening to honor the memory of Abraham Lincoln, the sixteenth President of the United States, properly known throughout the world as the Great Emancipator. The New World's central political and social achievements, the Emancipation Proclamation which President Lincoln authored, transcends the ages and future generations. And his ideas about democracy and the rights of all people constitute the central vision of the American democratic system today.

As the sons of Union officers who fought in the Civil War, you know better than most that this 186th anniversary of Lincoln's birthday marks anew the ongoing struggle to free our country from the legacy of the odious institution of slavery so that all people may live out their lives and fulfill their aspirations without the actuality or fear of arbitrary limitation.

One of my law professors used to say that the ''greatest constitutional decision ever rendered occurred when Pickett's charge failed at Gettysburg.'' The legacy of Appomattox and all that led to its resonates throughout our society to this evening here in Washington as part of the unceasing struggle against all arbitrary barriers which afflict mankind.

And both Gettysburg and Appomattox produced the great Civil War amendments to the Constitution, which reversed the infamous Dred Scott decision in which the Supreme Court declared blacks to be property constitutionally. The amendments, in turn, have provided our country with the historical framework for both the Supreme Court's great Brown v. Board of Education, 1954 ruling condemning separate but equal as a denial of equal protection and also the modern civil rights movement as well as the legislation that it produced. Similarly, Title VII of the Civil Rights Act of 1964, our most comprehensive anti-discrimination legislation relating to the workplace, is a lineal descendant of the previous century's developments.

I am not a Lincoln or Civil War scholar. Indeed, I find the amount of literature about both subjects to be daunting—and, accordingly, I know that you do not expect a scholarly examination of President Lincoln from me. But there are matters which have and do involve me both practically and professionally with Lincoln and his times.

The first is that I am the fourteenth Chairman of the National Labor Relations Board and, as such, administer an agency and interpret a statute which both seek to implement some of Lincoln's most basic views on labor.

The second is that I am the great-grandson of the first William Benjamin Gould who, along with seven other ''contraband'' (seized property—the appellation which General Benjamin Butler gave to escaped slaves) set sail in a small boat from Cape Fear, North Carolina and boarded the *USS Cambridge* on September 22, 1862, the day that President Lincoln announced his intent to issue the Emancipation Proclamation. You will know that the Proclamation states in relevant part:

''And I further declare and make known, that such persons of suitable condition [the freed slaves held by those in rebellion], will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.''

And thus it was that William B. Gould joined the United States Navy and served as landsman and steward on the North Atlantic Blockade and subsequently served on vessels visiting Britain, France, Belgium, Portugal and Spain, chasing the Confederate ships which were built by their undercover allies.

In 1864 the American Minister Charles Francis Adams had notified the British government that if the *Alabama* and the *Georgia*—two iron clad ''rams'' built by the British for the Confederacy—were allowed to go to sea, this would be construed by the United States as a declaration of war. William B. Gould sailed with the steam frigate *Niagara* for the European station to join other vessels such as the *Kearsarge* to keep, in my great-grandfather's words, a ''sharp lookout'' for these vessels. The *Niagara's* destination was the Bay of Biscay where she eventually engaged in battle.

William B. Gould's service ended on September 29, 1865 when he made the following entry in his diary:

''*At the Navy Yard [Charlestown, Massachusetts] at five Oclock I received my Discharge being three years and nine days in the service of Uncle Samuel and glad am I to receive it . . . [pay] of four hundred and twenty four dollars. So end my service in the Navy of the United States of America.*''

I did not know the first William B. Gould for he died—in Dedham, Massachusetts where he resided from 1871 onward—thirteen years before my birth. I did not know my grandfather, William B. Gould, Jr., a Spanish-American War veteran, for he was to die nine years later in 1932. But the third William B. Gould was my greatest inspiration in my most formative years—and my belief is that the values and culture which he attempted to transmit to me where very much a part of the lives of the first two gentlemen to whom I have referred.

Truly then, President Lincoln's views and policies have had a major impact upon my own life.

As Chairman of the National Labor Relations Board, I have a responsibility to implement a statute which promotes the right of employees to band together for the purpose of protecting or improving their own working conditions, to join unions, to engage in collective bargaining and to be free from various forms of discrimination. This statute, enacted as part of President Franklin D. Roosevelt's New Deal in 1935, is one of the country's proudest achievements, expressing the policy that the protection of ''the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection'' should be encouraged.

In recent years, a number of scholars and critics, like myself, took note of the fact that the statute has not been working well in implementing these objectives because of poor administrative processes and ineffective remedies. Some of these matters can be and are being cured by us at the Board and some can be only addressed by Congress. I hope to do what I can to make continued progress in the former category before I depart from Washington and return to California a few years down the road when my term ends.

I enthusiastically support the views contained in the preamble and have made my position known in books, articles, and speeches. In many respects, the fundamentally similar views of President Lincoln were a precursor of our own 1935 legislation.

Recall what Lincoln said to the New York Workingmen's Democratic Republican Association on March 21, 1864:

''The strongest bond of human sympathy, outside of the family relation, should be one uniting all working people, of all nations, and tongues and kindreds.''[1]

As the Presidential campaign of 1860 unfolded, Lincoln stated his philosophy in these terms:

''When one starts poor, as most do in the race of life, free society is such that he knows he can better his condition; he knows that there is no fixed condition of labor for his while life . . . I want every man to have the chance—and I believe a black man is entitle to it—in which he *can* better his condition—when he may look forward and hope to be a hired laborer this year and the next, work for himself afterward, and finally to hire men to work for him! That is the true system.''[2]

In the same speech, Lincoln makes clear that the right to strike is integral to a democratic society, a policy reflected in the language of Sections 7 and 13 of the National Labor Relations Act and in the Norris-LaGuardia Act of 1932 which preceded it. Just a few weeks ago, President Clinton took note of one of our law's limitations in his statement criticizing the Bridgestone/Firestone Company's use of permanent striker replacements, noting that such tactics show the need to enact legislation prohibiting such a denial of the fundamental right to strike.

It bears note that Lincoln's view of labor and the right to strike ran against the tide of laissez-faire thinking which predominated in the previous century—thinking which has reared its head again toward the close of this century, one of its forms being the repressive striker replacement weapon of which President Clinton spoke. President Lincoln supported the right to strike and spoke out in the spring of 1860 in support of a well-organized strike conducted by the boot and shoe workers in New England. Lincoln regarded the right to strike by free labor as a ''virtue, not a failing, of free society,'' as G.S. Boritt has written in *Lincoln and the Economics of the American Dream*.[3]

Boritt also notes that during the Civil War several delegations of strikers from the Machinists and Blacksmiths Union of New York visited the White House and spoke to the President about their position. States Boritt:

''The labor representatives took great comfort from their interview, reasoning that although their employers refused to deal with them, Lincoln received them. 'If any man should again say that combinations of working men are not good,' they concluded, 'let them point to the Chief Magistrate.' They even quoted the President as saying 'I know that in almost every case of strikes, the men have just cause for complaint.' It is rather likely that the union men quoted Lincoln correctly.''[4]

Of course, Lincoln's view of labor was closely related to his view of slavery. Again, in 1860 he said: '''Owned labor' would compete with free labor so as to 'degrade' the latter.'' And, in an earlier and lengthy speech to the Wisconsin State Agricultural Society in Milwaukee on September 30, 1859,

Footnotes at the end of article.

he noted that the so-called ''mud-sill'' theory was that a hired laborer is ''fatally fixed in that condition for life'' and thus his condition is the same as that of a slave.[5]

But as Lincoln noted, this theory proceeded upon the assumption that labor and education were incompatible and that one could not improve oneself and one's family through free labor. Lincoln's view was antithetical to all of this. He held the view that workers should be able to rise to new horizons.

And this view is closely related to another held by the President which has similar contemporary implications. Because Lincoln believed that all people could improve themselves and thus rise out of their station if opportunity were afforded them, unlike other proponents of the rights of labor, he did see the working class as a well-defined unit, notwithstanding his endorsement of its use of the strike to defend its interests and act jointly in its dealings with employers. To some extent, said Professor Boritt, Lincoln shared the view that there was a harmony between the capital and labor and that it ought to be promoted so as to enhance the ability of workers to rise out of their class.

Again, these views resonate with us today as Congress considers proposals to enhance employee participation and proposed amendments to the National Labor Relations Act which will achieve this goal. I believe that President Lincoln would be sympathetic with contemporary efforts to promote employee involvement in the workplace and thus enhance our industry's global competitiveness—so long as such reforms do not interfere with the ability of the workers and unions to defend their own positions, a proposition that I have long advanced.[6]

The view that an individual was not ''fatally fixed'' in a particular condition forever constitutes the philosophy which prevailed in the Civil War and through the Emancipation Proclamation and the enactment of the Thirteenth Amendment which Lincoln sponsored before his assassination. Again, this is reflected anew in last month's State of the Union address by President Clinton when, in advocating new minimum wage legislation, he said that the worker who works must have his ''reward'' and that the job of government is to ''expand opportunity . . . to empower people to make the most of their own lives. . . .''

This is what is at the heart of modern democracy and the Bill of Rights for workers in the private sector which are contained in the National Labor Relations Act and similar statutes. And this has been the assumption behind the struggle for equality which has attempted to make good on the promise of emancipation in the previous century.

My great-grandfather, a mason who worked with his mind and hands and established a business as a contractor, employing other workers in Dedham, Massachusetts, benefited from the above-noted philosophy and the quoted portions of the Emancipation Proclamation. Said William B. Gould on March 8, 1863, two months after its issuance:

''Read . . . the Proclamation of Emancipation . . . verry [sic] good.''

The policy, of course, had evolved in fits and starts. As Benjamin Quarles has noted in ''The Negro in the Civil War,'' General Butler was the first to devise a policy of acceptance of blacks who wanted to fight with the North.[7] This was, as Quarles noted, the most ''insistent'' problem faced by the Lincoln Administration in 1861 and 1862. It emerged, as he has noted, after the Union defeat at Bull Run which was attributable ''in part to the Confederate military defenses constructed by slaves. . . .''

Congress enacted legislation which provided for the forfeiture of all slaves whose masters had permitted them to be used in the military or naval service of the Confederacy. Quarles notes that the 1861 legislation ''strengthened the hand of the small band of Union officers from the beginning had been in favor of freeing the slaves.'' Two military initiatives—one designed by John C. Fremont in July 1861, ''The Pathfinder,'' and the other undertaken by Major General Dave Hunter in the summer of 1862—were both rescinded by Lincoln out of his concern with preserving the allegiance of the border states.

The confiscation Act enacted on July 17, 1862, declaring free all slaves who were owned by those in rebellion was the next step in the process. This had the effect of increasing the number of fugitives in whom the United States Navy expressed a particular interest so as to make use of the information that they could provide about enemy locations and movements. As summer became fall the problem became more ''insistent.''

Three days after my great-grandfather boarded the U.S.S. *Cambridge* came this report of Commander G.H. Scott regarding the blockade of Wilmington:

''Fourteen contrabands have reached the '*Monticello*' and '*Penobscot*' and several the '*Cambridge*' within a few days, and as the vessels have not room for them, will you please direct what disposition shall be made of them?''

We know what disposition was made of William B. Gould. On October 3, 1862, he said:

''All of us shipped today for three years, first taking the Oath of Allegiance to the Government of Uncle Samuel.''

Thus, he, and eventually I, benefited from both the Confiscation Act and the new policy expressed in the Emancipation Proclamation which was not to be effective for another three months. His service was made possible because of it. This was then his opportunity—and his observations, hopes and views are chronicled in the diary which he kept between 1862 and 1865.

On the perils of the seas and their storminess, he says:

''[T]he gale still blows fresh and the seas running very [sic] high. We shipped several through the night and one—fill'd the Ward Room with Water. I have got ducked awfully last night. It was worth something to be upon the Deck. Although there is much danger in a storm there is something very sublime to hear the roar of the storm. The hissing of the Waves, the whistling of the Rigging and the Cannon like report of the torn sail and above all the stern word of the commander and the—sound of the boatswain's pipe all adds to the grandeur of the scene. For there is something grand in a storm. Allnight with eager eyes both Officers and Men paced the deck watching our Foretopsail, feeling in a measure secure as long as we could sail at all. It has it stood through the night. There was no sign of the storm abateing [sic]. All the galley fire is out and nothing to eat is the cry and almost nothing to wear on account of the Water. Shine out fair sun and smote the Waves that we may proceed on our course and all be saved.''

And on December 25 and December 27 of 1862, he had this to say about the loneliness of his work off New Inlet:

''This being Christmas I think of the table at home . . . cruised around as usual. Fine weather but very lonesome in the absence of news and we all had the Blues.''

While on the North Atlantic Blockade with the U.S.S. *Cambridge* he says on November 17, 1862:

''A sail was reported close under the land right ahead. We gave chase. When within range of our boat we told them good morning in the shape of a shot for her to heave to.''

But then he describes the difficulties that arose:

''To this [the shot] they took no notice. We sent another which fell under her stern . . . the ship stood for the Beach. Shot after shot was set after her but they heeded not . . . we immediately manned the first cutter and sent her . . . to board and destroy her. We also sent two boats to lend assistance . . . [after sending a line to these boats so that they could return to the main ship] . . . they got the Boat all ready to come out when a body of Rebel Soldiers dashed over the hill at the double quick and all were prisoners. We could see them from the ship marching off our men and dragging the boats after them. We lost eleven men and three officers. Rather a bad day's work.''

But the fortunes of war were not all negative as testified to by him in this entry in the summer of 1864 off Portugal:

''[W]e made a steamer and stood for her. She kept on her course without any until we got within 5 miles of her when she suddenly changed her course. We beat to Quarters and Fired a shot. She showed the English collors [sic]. We Fired another. When she came to be boarded her and found her to be the Rebel Privateer 'Georgia' from Liverpool on her way to refit a cruiser. But the next cruise that she makes will be for Uncle Samuel . . . this capture makes a crew feel verry [sic] proud.''

While in the English Channel:

''[W]e took on board an English Pilot who brought the thrice glorious news of the sinking of the 'Alabama' by 'Kearsarge' off Cherbough. . . . [A]lthough we have been disappointment to us in not getting a shot at the 'Alabama' we are satisfied that she is out of the way.''

And in 1864 while serving on the *Niagara* he said about the people that he saw in Spain:

''[I]t looks very strange in this country which nature have lavished with riches that there should be so many Poor People.''

And again on the shameful treatment of black soldiers on his ship:

''Yesterday about 900 men of the Maryland (colored) regiment came on board (they being transferred to the Navy) and took dinner then departed for Portsmouth, New Hampshire. They were treated very rough by the crew. They refused to let them eat out of the mess pans and call them all kinds of names. One man [had] his watch stolen from him by these scoundrels. In all they were treated shamefully.''

On the proposed colonization of blacks to Africa or the Caribbean:

''We see by the papers that President [Johnson] intimates colonization for the colored people of the United States. This move of his must and shall be resisted. We were born under the Flag of the union and never will we know no other. My sentiment is the sentiment of the people of the States.''[8]

All of this ended in 1865 and provided William B. Gould with his chance at life. Sometimes I think about his thoughts as he walked the streets of Wilmington a young man and what would have been had he stayed in North Carolina and the events of those four critical years had not taken place. Most certainly his great-grandson would not be here today addressing you as Chairman of the National Labor Relations Board.

I am privileged to have this opportunity in 1995 to contribute to the public good in the most inspirational and progressive Administration in Washington since the 1960's—one which is unabashedly committed to the principles of those who fell 130 years ago.

My hope is that I can reflect well upon the first William B. Gould and the chance that he made for me by rising out of his ''fixed station,'' to use Lincoln's words, and I am all

too aware of the limitations of time as we move rapidly toward a new millennium.

As William B. Gould said on December 31, 1863, in New York harbor:

''We are obliged knock off on the account of the storm. It blew very hard from South East. The old year of '1863' went out furiously as if it was angry with all the world because it had finished the time allotted to it. Sooner or later we must follow.''

My first major impression during my first trip outside of the United States in 1962, as a student at the London School of Economics, is of the grand and majestic statute of President Lincoln which sits in Parliament Square today. Now I live in Washington within a mile of the great Lincoln Memorial in which his brooding historical omnipresence is made so manifest.

You and I, the entire nation and the world honor President Lincoln and his policies tonight. Both personally and professionally they are with me always as is the legacy provided by him and so many others in what my great-grandfather called:

''[T]he holiest of all causes, Liberty and Union.[9]

FOOTNOTES

[1] Basler, Roy P., Editor, *The Collected Works of Abraham Lincoln*, Volume VII, page 259, (1953)

[2] Ibid. Volume IV, pp. 24–5.

[3] Boritt, Gabor S., *Lincoln and the Economics of the American Dream*, page 184, (1978).

[4] Ibid., page 185.

[5] Basler, Roy P., Editor, *The Collected Works of Abraham Lincoln*, Volume 111, pp. 477–8 (1953).

[6] Of course, I advanced such ideas in the context of proposals for comprehensive labor law reform. See W. Gould, Agenda for Reform: The Future of Employment Relationships and the Law, pp. 109–150 (1993).

[7] B. Quarles, *The Negro in the Civil War*, pp. 59–61, 64 (1953). On blacks in the U.S. Navy see generally, D. Valuska, *The African American in the Union Navy: 1861–1865*, (1993).

[8] Of course, President Lincoln had earlier proposed colonization within the context of compensated emancipation.

[9] Dairy May 6, 1864. The full text actually states, ''[H]eard of the departure of one battalion of the 5th Regiment Massachusetts Cavalry from Camp Meigs for Washington, D.C. May God protect them while defending the holiest of all causes, Liberty and Union.'' As William B. Gould III wrote in an entry adjacent to the diary: ''Camp Meigs was in Readville, Massachusetts, about two miles east of where William B. Gould made his home at 303 Milton Street, East Dedham, Massachusetts.''●

TRIBUTE TO JANIE G. CATRON

● Mr. MCCONNELL. Mr. President, it should surprise none of her acquaintances that when Janie Catron retired from my office, her farewell statement was motivational as well as emotional. For those of us who have known and worked with Janie for years, her parting words were an affirmation of her remarkable drive and sense of purpose. For those whose association with her is relatively recent, it was a memorable primer on how to succeed through hard work.

Janie Catron was, officially, my eastern Kentucky field representative from the beginning of my first term in the Senate until her retirement this winter. But her official title did not do justice to the work she did. Janie was not just my representative in eastern Kentucky, she was the region's representative in my office. And she remains the staunchest advocate of that very special place. Anyone without a personal grounding in eastern Kentucky need only spend time with Janie to know that the people and the area are extraordinary.

I will not soon forget our travels over Appalachian mountain roads, the stunning vistas—notably unmarred by guardrails—framed by Janie's keen insight and observations as we drove to meet with constituents. Staffers, present and former, will long treasure the tours she arranged and the hospitality she and her husband, Frank, provided at their home in Corbin.

Janie fostered much of the cohesiveness which has made our office more than simply a collection of individuals. She has worked to instill a sense of shared purpose, responsibility, and loyalty. In fact, loyalty was the thrust of her farewell statement. It is a quality she has personified through deeds as well as words. It was never more evident than the day last November when she summoned the strength to speak through grief and deliver a stirring eulogy in the Mansfield Room during a memorial service for a member of our staff. In reflecting on this aspect of Janie, one could substitute the term ''love'' for loyalty because it is so clearly evident in her actions and achievements. Loyalty to and love of nation, state, party, family, friends and colleagues—a hallmark of Janie Catron and, if she has anything to say about it, qualities she will impart on others.

Born and reared in Pulaski County, KY Janie has stated that she was born a Democrat but changed her registration upon marrying a Republican. She has often said that she became a Republican by convenience and remained one out of conviction. As anyone who knew her would expect, however, Janie was not just a registered Republican—she was an outspoken, unabashed, active big-''R'' Republican. This was rather bold in a State where, until recently, Republican were an endangered species.

Mr. President, on March 11, Janie Catron will be duly recognized when she is inducted into the Fifth Congressional District Republican Hall of Fame. When she receives this honor at the Fifth District Lincoln Day Dinner she will joining other notables such as the legendary Kentucky Senator John Sherman Cooper and Congressman Tim Lee Carter. It is a distinction well-deserved.

I am honored to have been associated with Janie these many years. Her departure leaves a void in my office that probably never will be filled because, by force of her personality and energy, Janie created a niche. I am confident that I speak for my entire office when I say we miss her and wish her well in future endeavors.●

TRIBUTE TO CHIEF RICHARD E. RILEY

● Mr. LAUTENBERG. Mr. President, I rise today to pay my respects to Chief Richard E. Riley who recently retired from the Morris County Prosecutor's Office.

Chief Riley retired after a long career in public service. He began his service in 1963 as a patrolman in the Dover Police Department. In 1968, he was appointed as an investigator with the Morris County Prosecutor's Office. In 1980, he was promoted to sergeant, and finally in 1990, he was appointed chief of investigations.

Throughout his long and distinguished career, Chief Riley was always known as a scrupulous investigator and a man of great integrity. He was best known for his work in the area of investigations, and received statewide respect for his diligent work in investigating the 1992 murder of Exxon executive Sidney Reso.

Chief Riley approached that very public investigation in the same way he approached all his work—with care, with compassion, and with meticulous concern for details.

Over the years, Chief Riley has been recognized repeatedly for his hard work and his tireless commitment to the safety of Morris County residents.

In 1974, he received a Prosecutor's Citation for Armed Robbery Investigation. In 1981, he received a Unit Command Citation for Gambling Investigation. In 1982, he received a Prosecutor's Command Citation for Narcotics Investigation.

He has also been honored with a Good Conduct Award, a Chief's Achievement Award and a Distinguished Service Award. And in 1985, Chief Riley was named Officer of the Year.

Mr. President, the retirement of Chief Riley will leave a great void in the Morris County Prosecutor's Office. But I know that his legacy of investigative excellence will live on in the office and throughout Morris County for many years to come.

We in New Jersey are very proud to count among our midst men and women like Chief Riley, who are committed to public service, to public safety and to the quality of life in our State.

I wish Chief Riley a very restful and exciting retirement, and I personally thank him for all he has done for the people of New Jersey.●

MEMORIALIZING WILLIAM LEONARD BLOCKSTEIN

● Mr. FEINGOLD. Mr. President, I rise to pay tribute to William Leonard Blockstein who died last week at age 69.

Bill was professor emeritus at the University of Wisconsin-Madison following a notable career there. Prior to his retirement in 1991, he was the Edward Kremers professor of pharmacy in the School of Pharmacy, clinical professor of Preventive Medicine in the Medical School, and professor and director of the health sciences unit of university extension.

Bill published over 400 papers on pharmacy education, continuing professional education, health planning, and consumer health education, and edited or coedited 15 books. In 1985, he received the American Pharmaceutical Association's Joseph P. Remington Medal, pharmaceutical science's most prestigious award.

But as distinguished a scientist as he was, Bill was an even better human being.

As one of his colleagues from the University of Wisconsin noted, Bill was a good friend to everyone. Marge Sutinen, the women he planned to marry this July, said that Bill was one of the most charitable men in the community, and indeed, his charity and friendship had no limits.

I had known Bill for years when I asked him to be the first senior intern in my Senate office, and he kindly consented. Though he did spend time advising me on health care issues—a subject on which he had considerable expertise—as many Members understand, working in a Senate office, especially as an intern, does not always involve the most glamorous of work. Bill, a nationally recognized scientist and emeritus professor at the University of Wisconsin pitched in on every task, cheerily helping out younger staffers and interns with any and all office chores.

Bill loved art, and was an avid supporter of the arts. He loved to travel, and I understand he was planning to travel to Sweden and Great Britain later this year. He was active in Friendship Force, a group that combined his altruism and desire for fellowship with that enthusiasm for travel.

He enjoyed being out with people, and especially loved to go dancing. He found pleasure in the cloths he wore—often proudly sporting a new tie or shirt around the office to the delight of the rest of us.

Bill's obvious pleasure in these and other things was contagious. It was simply not possible to be in the same room and not be infected by his enthusiasm.

Bill suffered more than his share of personal tragedy, including the death of his wife Liesl, killed by a drunk driver in 1986. But throughout that and other tragedies, Bill said that it was important to celebrate life every day.

He did just that.

No one did a better job of living than Bill Blockstein. I shall miss him a great deal.●

RETIREMENT OF DR. MORGAN R. REES

● Mr. CHAFEE. Mr. President, I wish to pay tribute to an outstanding civil servant. On February 28, 1995, Dr. Morgan R. Rees, Deputy Assistant Secretary for Planning, Policy and Legislation at the U.S. Army Corps of Engineers Civil Works, retired after a long and distinguished career of Federal service.

Dr. Rees joined the Army Corps of Engineers in 1969 as a Civil Engineering Project Manager in the New England Division. From 1973 to 1981, he served as the Chief of the Regulatory Branch in the New England Division. In 1981, Dr. Rees became the Chief of the Regulatory and Policy Section, Civil Works Directorate, Office of the Chief of Engineers. The following year, he was named Assistant for Regulatory Programs in the Office of the Assistant Secretary for Civil Works. Dr. Rees was promoted again in 1986 to the position of Deputy Assistant Secretary for Planning, Policy and Legislation.

Mr. President, as many in the Senate are aware, Dr. Rees played a major role for the Army in the passage of the landmark Water Resources Development Act of 1986. I have worked with him on the passage of each Water Resources Development Act since then. Dr. Rees' career record reflects the professionalism and dedication found at the U.S. Army Corps of Engineers.

I want to commend him for his many valued contributions to the Army, the Congress of the United States, and the Nation. On behalf of the Committee on Environment and Public Works, I want to wish him the very best in his future endeavors.●

PREVENTIVE ACTION IN BURUNDI

● Mr. FEINGOLD. Mr. President, in the past few months, political violence between Hutu rebels and the Tutsi-dominated military has intensified in the small Central African nation of Burundi.

Extremist Tutsi gangs, seeking to destabilize the Hutu government, have been carrying out dead city operations, where residents are ordered to remain at home or shut down business, or risk violent attacks. Grenades are exploding in crowded city centers, including one which recently blew up a bus, and another which killed many civilians in a schoolyard. Scores of civilians have been murdered, and a Hutu provincial Governor, Fidele Muhezi, was assassinated on January 26. The U.N. High Commissioner for Refugees says that over 60,000 people have fled to Tanzania, including 30,000 last week alone.

These are tragedies in any context. In Burundi, they bear eerie resemblances to what happened in neighboring Rwanda in April of last year, which of course exploded in the bloodiest genocide ever recorded, in real time, on television. Given the close ties between the tribes in both countries, events in Rwanda influence happenings in Burundi.

Like Rwanda, Burundi's population is roughly 85-percent Hutu and 15-percent Tutsi. Like Rwanda, there is a long history of Hutu-Tutsi violence. Like Rwanda, the parties in Burundi have been pursuing peace through a power-sharing arrangement and democratic means. In Burundi, the agreement brought elections in which a Hutu was chosen President, but the Tutsis continued to dominate the military.

Already violence has erupted once since the peace process began when, in October 1993, President Melchoir Ndadaye was assassinated by Tutsis, and in retribution by both sides, up to 50,000 people were slaughtered. Almost 10,000 more people have died in ethnic violence since then. The current cycle of violence further threatens the peace plan. For example, the Tutsi opposition party has called for the coup d'etat of the Government. This recent spate of violence is a result of extremist Tutsis, with little or no popular support, trying to seize power from Hutus, which they cannot get through democratic means.

For months, observers have been warning that Burundi will go the route of Rwanda if order and justice are not restored. Pierre Buyoya, the former Tutsi military ruler who initiated the democratization programs in Burundi, in fact, states in the Washington Post on February 6 that ''Things are worse in Burundi than they were in Rwanda in April.'' Scholars have documented that historically, violence in Rwanda has foreshadowed violence in Burundi, and vice-versa.

A major reason this violence is so frightening is that many of the individuals responsible for the assassination of President Ndadaye and the subsequent killings have never been prosecuted. This impunity only reinforces the use of violence as a legitimate political tool, and could effectively help extremists achieve their goals.

In an effort to help contain this mounting chaos and to build democracy in Burundi, the United States should request the U.N. Security Council to establish a judicial commission of experts. This commission would assist the Burundi Government to investigate President Ndadaye's assassination and the mass murders in 1993. Legal officers, investigators, and judges from countries with legal systems similar to Burundi's, such as Mali, could work in this commission. A strengthened Burundi judicial system would demonstrate that there is no impunity for such heinous political crimes. International assistance is needed to do it.

I want to applaud the administration for its high-level attention to this problem. I commend President Clinton's personal plea on the Voice of America to the people of Burundi, urging them to ''say no to violence and extremism'' and work toward peace. I am also pleased that National Security Adviser Tony Lake and Secretary of State Warren Christopher have publicly expressed their concerns about Burundi and called for diplomatic intervention. These are calls which carry significant weight in Burundi, and if successful, will have contributed to prevention of a potentially horrible conflict. I want to make sure that they will get public credit for their efforts.

Given the histories and the lessons of the very recent past, the United States and the international community should be responsive to calls for help when another Central African nation is on the brink of disaster. We have offered rhetoric that early preventive action can save millions of lives and billions of dollars later. Conflict resolution and preventive diplomacy is a new mantra in international relations. And it should be. Here is an opportunity to listen to the warning signs and respond in some way.

If we do, Burundi may be able to stem the recent spate of violence and continue its move toward democracy. If we do not, then Burundi risks becoming another Rwanda.●

SALUTING 150TH ANNIVERSARY OF FLORIDA STATEHOOD

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 84, submitted earlier by Senators MACK and GRAHAM, which would salute the 150th anniversary of Florida's statehood, and that the resolution be considered and agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table; that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

So the resolution was agreed to.

The preamble was agreed to.

The resolution (S. Res. 84) and its preamble are as follows:

S. RES. 84

Whereas Florida became the first State explored by Europeans when Ponce De Leon led a Spanish expedition that made landfall along the east coast in the year 1513;

Whereas Pedro Menendez de Aviles, captain-general of an invading fleet, ousted the French settlement, Fort Caroline, at the mouth of the St. Johns River, proclaimed Spanish sovereignty over Florida, and on September 8, 1565, established St. Augustine, the oldest city in the United States;

Whereas Spain, France, and England played a significant role in the development and exploration of early Florida;

Whereas President James Monroe proclaimed the Adams-Onis Treaty in which Spain ceded Florida to the United States on February 22, 1821, and appointed General Andrew Jackson as the first provisional governor of Florida;

Whereas on March 30, 1822, the United States Congress created a territorial government for Florida, following the pattern set in the Northwest Ordinance of 1787 by providing for public education and orderly political steps toward greater self-government and eventual statehood as population increased;

Whereas 56 delegates representing the 20 counties of Florida assembled in 1838 in the Panhandle town of St. Joseph to frame the first constitution of the territory in preparation for Florida statehood, who were mainly planters and lawyers, were from 13 of the 26 States then in the United States and 4 foreign countries, included only 3 natives from Florida, included 3 delegates who would later become United States Senators, included 2 governors, and included 5 members of the Florida Supreme Court;

Whereas a bill to admit Florida as a State passed the House of Representatives on February 13, 1845, and the Senate on March 1, 1845;

Whereas President John Tyler signed a bill making Florida a State on March 3, 1845, making Florida the 27th State to be admitted into the United States;

Whereas Friday, March 3, 1995, marks the 150th anniversary of Florida becoming a State;

Whereas the admission of Florida to the United States has proved to be of immense benefit both the United States and to the State of Florida;

Whereas 96 citizens of Florida have served the United States and Florida in the House of Representatives;

Whereas 30 citizens of Florida have served the United States and Florida in the United States Senate;

Whereas numerous citizens of Florida have served in the executive, judicial, and legislative branches of the Federal Government;

Whereas citizens of Florida have fought and died in service to the United States, and 22 citizens of Florida have won the United States highest award for bravery, the Congressional Medal of Honor, protecting freedom in the United States;

Whereas Florida is the fourth largest State and is rich in natural resources and talented people;

Whereas Florida, home of the Everglades National Park, is blessed with great natural beauty, clean water, pure air, and extraordinary scenery;

Whereas Florida is a world leader in agriculture, commercial fishing, education, financial services, horse breeding, high technology, manufacturing, phosphate production, and tourism;

Whereas Cape Canaveral, location of the first United States satellite launch and the first manned spaceship flight to the Moon, continues to play a vital and leading role in the exploration and discovery of outer space by the United States;

Whereas a special postage stamp saluting the Sesquicentennial of Florida will be circulated throughout the United States during 1995; and

Whereas Florida is proud of its heritage and looks forward to its future: Now, therefore, be it

Resolved,

SECTION 1. SALUTE BY THE SENATE

The United States Senate salutes the State of Florida on the sesquicentennial anniversary of Florida becoming a State Friday, March 3, 1995.

SEC. 2. COMMEMORATION BY CONGRESS.

The Senate calls on the joint Congressional leadership of Congress to agree on an appropriate time and manner to honor the State of Florida, in recognition of the achievements of all the men and women who have worked hard to develop Florida into a great State, from pioneer days to modern times.

SEC. 3. COMMEMORATION BY THE PRESIDENT.

The Senate calls on the President to issue a Presidential message calling on the people of the United States and all Federal, State, and local governments to commemorate the sesquicentennial anniversary of Florida becoming a State with appropriate ceremonies and activities.

SEC. 4. COPIES OF RESOLUTION.

The Secretary of the Senate shall send this resolution to the Florida Congressional delegation, the Governor of Florida, the National Archives, and the Florida Archives.

MEASURE READ THE FIRST TIME

Mr. DOLE. Mr. President, I understand that Senate Joint Resolution 28, introduced earlier today by Senator JEFFORDS, is at the desk.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the resolution for the first time.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 28) to grant consent of Congress to the Northeast Interstate Area Compact.

Mr. DOLE. And I now ask for its second reading.

Mr. FORD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The second reading will occur on the next legislative day.

ORDERS FOR FRIDAY, MARCH 3, 1995

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10 a.m. March 3, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, and the time for the two leaders be reserved for their use later in the day; that there then be a period for the transaction of morning business not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein not to exceed 5 minutes each, with the following exceptions: Senator CRAIG, 1 hour; Senator DASCHLE, 30 minutes; Senator LIEBERMAN, 20 minutes; Senator GRAHAM of Florida, 15 minutes; Senator GRAMS, of Minnesota, 5 minutes.

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

PROGRAM

Mr. DOLE. Mr. President, for the information of all my colleagues, the next item the Senate is expected to consider is S. 244, the Paperwork Reduction Act. One amendment is expected to be offered. However, that amendment will not be available until Monday. Therefore, the Senate will conduct morning business only during tomorrow's session of the Senate. No rollcall votes will occur during Friday's session of the Senate.

Mr. FORD. Will the leader yield?

Could he give any indication of what Monday might be?

Mr. DOLE. I may be able to do that in the morning.

Mr. FORD. All right, fine. There is some interest in that.

Mr. DOLE. I think it depends on what happens on the Paperwork Reduction Act, and I will be able to make that announcement hopefully early tomorrow so people, if we do not have votes Monday, can make plans.

Mr. FORD. I thank the leader.

RECESS UNTIL 10 A.M. TOMORROW

Mr. DOLE. Mr. President, if there is no other business to come before the Senate, and no other Senator is seeking recognition, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 6:07 p.m., recessed until Friday, March 3, 1995, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 2, 1995:

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

ALTON W. CORNELLA, OF SOUTH DAKOTA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

REBECCA G. COX, OF CALIFORNIA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

GEN. JAMES B. DAVIS, U.S. AIR FORCE, RETIRED, OF FLORIDA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

S. LEE KLING, OF MARYLAND, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

BENJAMIN F. MONTOYA, OF NEW MEXICO, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

WENDI LOUISE STEELE, OF TEXAS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

JOSUE ROBLES, JR., OF TEXAS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

EXTENSIONS OF REMARKS

SMITHSONIAN SLAPS OUR HEROES IN THE FACE

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. SOLOMON. Mr. Speaker, it is tragic that a museum funded by public dollars dare revise our history and distort the facts surrounding the use of atomic bombs on the Japanese cities of Hiroshima and Nagasaki in World War II. While this was an extreme use of force, it was used reluctantly against a mischievous and unyielding empire. It is certainly appropriate to include this exhibit regardless of the present sentiment toward such weapons since it culminated in the end of the war and placed the United States at the forefront of the free world.

Indeed, Mr. Speaker, if the Smithsonian wanted to revise the *Enola Gay* exhibit, they might start by acknowledging this action actually saved many American, and even Japanese, lives for that matter. In fact, as we paid tribute to the marines who fought the historic battle of Iwo Jima this past week, Mr. Harwit and others at the Smithsonian would have done well to ask these survivors the likelihood of a Japanese surrender without use of these devastating bombs. Then, Mr. Speaker, they could ask these heroes if the Japanese would have been likely to surrender upon being faced with a massive and superior invasion force.

As supposed historians, these people need not ask such insulting and embarrassing questions, but simply look at the facts. Clearly, the Japanese actions at Iwo Jima and other island invasions indicated they would not give up until the last of them was killed. Now, I ask the learned scholars at the Smithsonian, what kind of toll would have been extracted by an invasion of the Japanese mainland? I for one cringe to think of the loss of lives such an act would have rendered and would be ashamed to face those who gave their lives at places like Iwo Jima. After all, Mr. Speaker, these heroes directly enabled the air raids which ultimately broke the Japanese will and allowed democracy to triumph over imperialism.

Mr. Speaker, at this time I would like to submit an editorial from the spring 1995 edition of the Marine Corps League describing the insult such irreverent action is to our service people.

SMITHSONIAN'S INSULT

Fifty years ago this August the United States dropped the atomic bomb that forced Japan to surrender, ending World War II. Fifty-four years ago come December 7, the Japanese made their sneak attack on Pearl Harbor that caused the United States to enter World War II. The two events cannot be separated. Without the first event, there could not have been the second. And any historian—or museum—who views it otherwise is either ignorant or deceitful. But when that museum is the Smithsonian's Air and Space Museum and the historian is its director, Martin Harwit, the ignorance and the deceit are shameful.

The Smithsonian's planned exhibit of the *Enola Gay* is so blatantly distorted that it insults every American Marine, Sailor, and Soldier who fought in the Pacific. In World War II Marines did not suffer insults gladly from the enemy. Neither should we do so today from Smithsonian revisionists like Mr. Harwit.

We join the American Legion and other veterans organizations in condemning the Smithsonian's planned *Enola Gay* exhibit. We echo the statement by U.S. Representatives Peter Blute, Sam Johnson, and Stephen Buyer that Harwit should be fired. We endorse the Washington Post editorial that calls for the Smithsonian to clean up its mess.

If it does not, Congress should shut off the millions the Smithsonian gets every year from taxpayers like us. That wouldn't be too high a price to pay for being insulted, would it? After all, we did win the war, didn't we?

—*The Editors*

IN RECOGNITION OF PAUL E. FITZPATRICK

HON. JACK QUINN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. QUINN. Mr. Speaker, I rise today in recognition of Paul E. Fitzpatrick. Mr. Fitzpatrick is a constituent who represents the very best of community spirit and activism.

Paul Fitzpatrick has been recently honored as the first ward Irishman of the Year. This award, with its admirable criteria and distinguished history, is a testament to Mr. Fitzpatrick's achievements.

The Irishman of the Year award has been received by the likes of former mayor of Buffalo, James Griffin, and former Doorkeeper of the House of Representatives, James T. Molloy.

Mr. Fitzpatrick is employed as a recreational therapist at the West Seneca Developmental Disabilities Service Office. in this position, Mr. Fitzpatrick provides recreational and leisure activities for the developmentally disabled both on the campus of the developmental center and in various community settings.

In addition to helping disadvantaged youths, Mr. Fitzpatrick is the head coach of the Timon-St. Jude varsity football team. Mr. Fitzpatrick has won over 100 games and successfully led his teams to 11 division championships.

On the football field and off, Mr. Fitzpatrick has proven himself to be a dedicated community activist always willing to help others. His countless successes and his years of service are evidence of his sincere devotion to bettering the community.

EULOGY FOR DETREVILLE ELLIS

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. MONTGOMERY. Mr. Speaker, on January 31, 1995, E. DeTreville Ellis, colonel, U.S. Army (retired) was buried at Arlington National Cemetery. He was buried with full military honors, most appropriate for a man who served his country with great distinction for so many years.

At the time of his death, Colonel Ellis was 104 years of age, the oldest living graduate of West Point. General Eisenhower and General Bradley were two of his classmates—the class of 1915. He also was a graduate of the University of South Carolina, Harvard Business School, the Command and General Staff School, and the Army War College.

During World War I, Colonel Ellis served in the 2d Cavalry on the Mexican border and as assistant chief of staff with the 10th Infantry Division. In World War II, he served in the Office of the Assistant Secretary of War. He was commanding officer of the European Quartermaster Depot during the Berlin Airlift. He received the Army Commendation Ribbon with Oak Leaf Cluster. Colonel Ellis retired from active duty in 1950.

Mr. Speaker, DeTreville Ellis was a unique individual. He lived his life to the fullest, always helping others. He loved the military and West Point. But most of all, he loved his family and many friends. Survivors include a sister, Julia Hamlin, Summerville, SC; a son-in-law, Tracy E. Mulligan, Jr., Chevy Chase, MD; two grandsons, Tracy Ellis Mulligan and John R. Mulligan, both of Silver Spring, MD; six great-grandchildren, Tracy, Rebecca and Joseph Mulligan and Sharon, Christopher and Dennis Mulligan, and a host of nieces, nephews, cousins and friends. He will be greatly missed.

The following eulogy, written by Colonel Ellis' grandson, Tracy Ellis Mulligan, was delivered by U.S. Army Chaplain, Maj. Stephen D. Turner, at the Fort Myer Chapel, January 31, 1995:

EULOGY FOR E. DETREVILLE ELLIS, COLONEL, USA (RET.), MARCH 12, 1890–JANUARY 22, 1995

It is altogether fitting that the funeral service for E. DeTreville Ellis be held in an Army chapel. It is even more fitting that there be many people in attendance, those from his roots in South Carolina, from West Point, from his wife's family, from the Army, from the organizations in which he participated and from the friends and family with which he was so involved.

He was born on James Island, South Carolina at a time when the leaders of the business, of government and of the military were veterans of the Civil War.

He went to a one room schoolhouse, by horse and buggy, studied by kerosene lanterns and knew an extended family including his Ellis and Lebby grandparents. At Age 16½ he went to college at the University of South Carolina in Columbia, working to pay his way through and graduating in 1910.

He won a competitive examination for entrance to the United States Military Academy at West Point. Among the 164 who graduated in the class of 1915 were Generals Eisenhower and Bradley. All of whom were in F Company, all of whom were imbued with the West Point creed of Duty, Honor, Country.

Three days after graduation, he married Laura Harris, a yankee from Pittsburgh, and they ''pulled together in double harness'' until her death in 1974. It might be noted that Mrs. Ellis taught Chaplain Miller, presiding here today, at his 2nd grade Sunday school class.

After graduation, he served in the combat arms of the Army, first in the 2nd cavalry, and then in the infantry. While in the sixteenth cavalry on the Mexican border, he commanded and trained, as he put it with quiet humor, ''a troop of 108 men who had never seen a horse and 108 horses who had never seen a man.'' It became among the best troops in the regiment.

After World War I, he transferred to the Quartermaster Corps, held responsible positions in the Army, and attended the various schools until his retirement in 1950. He graduated from the Industrial College, the Command and General Staff School, the Army War College, and the Harvard Business School, developing associations he maintained for many years. He also played a great deal of polo. Two assignments which he recalled as highlights were service in the Assistant Secretary of War Office for 3½ years just prior to World War II, where he was involved in the inner workings of the Army, and as Commanding Officer of 20,000 people of the European Quartermaster Depot in Giessen Germany just after WW II.

Upon retirement, he invested wisely in the stock market, which gave him the ability to travel widely and continue his life long involvement with people. He returned to South Carolina each year, visiting relatives of various and increasing generations, West Point classmates, and Army friends. He even visited those descendants who served in the Navy, although he naturally continued to root for Army in the annual football game.

While in his 70's, he wrote two books on the family history, including genealogy, pictures and extracts of hundreds of family letters and documents going back beyond the American Revolution. His forward states, ''This book was started for my daughter, grandsons, nieces, nephews and their families in order that they might learn something about their ancestors and the part they played in the history of the States and Country during the past 3½ centuries''. He presented copies of his books to hundreds of people, refusing any payment.

He and his wife, Laura, maintained an extensive correspondence over many decades. These included not only his generation but those of the new one, two, and three generations of family and friends. He typically typed on a portable typewriter, retaining a carbon copy and any incoming correspondence. He placed his correspondence, tens of thousands of documents, at the South Carolina Library in Columbia for posterity.

He was always involved with people, especially at important points in their lives. He was secretary and scribe of his West Point class, and was on the Board of Directors of the Army Mutual Aid Association. He helped numerous widows and their children in burial arrangements including many at Arlington, social security affairs, and other matters associated with the loss of a loved one. Valuing education, he began in 1921 to help family members through college.

He began polo while at West Point and while he was an expert horseman, he drove cars from the Model T Ford until he gave up driving at age 96. In the 1960's and 70's, when younger relatives arrived at his annual June 15th anniversary parties with long hair and beards, he welcomed them, and conversed about history. Perhaps they were similar in appearance to the Civil War veterans of his boyhood. When he received a microwave oven at age 101, he learned to use it, saying it was a good invention. On his last night in a nursing home, at age 104, he exercised in his wheelchair, conversed with family and went to dinner in the dining room. He was a man who adapted to change. He survived the loss of his wife, Laura Harris Ellis, and remarried, at age 91, Winnie Robinson, widow of a classmate. He survived all of his West Point classmates and became the oldest living graduate in the history of West Point.

DeTreville Ellis brought people together, was involved with their lives in the daily happenings and in their significant events.

It is altogether fitting that there are people here from family—nephews, grandchildren, son-in-law, grand-nephews, niece, great grand-nieces, great grand-nephews, great grandchildren, cousins—West Point, the Army, neighbors and friends.

He lived the values of Duty, Honor, Country and of family. The people with whom he was involved, who knew him and those who knew of him were enriched by his presence.

IN SUPPORT OF THE BUREAU OF ATF

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. SCHUMER. Mr. Speaker, the Bureau of Alcohol, Tobacco and Firearms and its professional law enforcement agents have come under vicious, unfounded attack in recent weeks.

These attacks are driven by those who oppose the programs that this Congress has enacted into law and directed ATF to administer. Foiled by their inability to repeal or block those programs, these forces have directed their blind rage against the thousands of men and women at ATF who risk their lives to do their duty loyally, faithfully, and lawfully every day.

I would ask that the following statement of the Director of ATF, John Magaw, be entered into the RECORD to help add some semblance of balance and fairness to this tragic, ongoing slander:

STATEMENT FROM DIRECTOR MAGAW

In the last few months, the Bureau of Alcohol, Tobacco and Firearms has endured more than its usual share of controversy and criticism. One radio talk show host, who calls himself his listener's ''favorite convicted felon'', talks up shooting our agents in the head. The debate prior to a recent vote by the House of Representatives on the exclusionary rule was set up to make the vote look like a vote of fealty to the National Rifle Association.

Today (March 1) the NRA ran a full-page ad in the Washington Post accusing ATF of ''abuses that range from intimidation and harassment to confiscation or destruction of property, entrapment, fabrication of criminal charges, even deadly assault.''

The NRA may speak as it wishes and how it spends their money is between its leadership and its members. However, absolute respect for their right to do something does not include respect for what is said. Nor should the use of the ''Big Lie'' technique go unanswered.

ATF has a long and proud history of working effectively in some of the most controversial areas of public policy and law enforcement. A by-product of that experience is an openness to all parties, and a willingness to listen to fair criticism while letting defamation pass us by.

The America public gets a 35 to 1 return on every dollar it spends on ATF—just in revenue collections. For that dollar, they get an entirely integrated enforcement effort that collects taxes, regulates major industries and enforces criminal statutes. Each function provides skills, knowledge and abilities that directly promotes the efficiency of the others. In just one firearms program, focusing on armed career criminals, ATF has prevented nearly 4 million crimes and the loss to potential victims of $11 billion.

Our enforcement efforts take place in a system of checks and balances that are designed and function to protect the rights of all citizens.

There is a balance of agencies to protect against too great an accumulation of power. Prosecutors and judges form levels of independent review and approval. Juries of citizens try the facts. Media and interest groups watch. Within ATF there is a separate Office of Inspection and at Treasury, an Inspector General. Congress and the Administration oversee and question our performance. ATF is not outside that spectrum, but honored to be a part of it.

In fiscal year 1994, ATF recommended nearly 10,000 criminal defendants for prosecution. Who were they?

47% were convicted felons; 49% were involved in drug-trafficking; 25% had prior violent histories.

They were gang members and gun-runners, bombers and arsonists. They were the enemies of law abiding Americans—gun owners or not. Over 80 percent of them will be convicted and those convicted will serve their time. The armed career criminals I spoke of earlier are serving 27,000 years of mandatory imprisonment.

While dangerous criminals may well dread having ATF investigate them, the legal industries ATF regulates recognize that the bureau understands and recognizes their position as a legal and legitimate industry. The firearms industry in particular is a partner of American law enforcement in enabling ATF to trace the guns used in crime.

Most of all, our peers in law enforcement know us as open, efficient, cooperative, and supportive partners.

In the past decade, AFT agents have served over 10,000 search warrants. Not one of them has led to any finding of constitutional violations by an employee acting outside the scope of his or her authority.

When I came to ATF, I had nearly three decades of law enforcement service in the Ohio State Patrol and the United States Secret Service behind me. What I found in ATF were hard-working, committed, talented women and men with a particular focus on the most dangerous offenders in the Nation. No amount of advertizing will change the truth about how well and honorably they serve their fellow citizens—no matter how much you spend on it or how big you make it.

TRIBUTE TO THE SHOREFRONT JEWISH COMMUNITY COUNCIL

HON. JERROLD NADLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. NADLER. Mr. Speaker, I rise today to pay tribute to a truly remarkable organization, the Shorefront Jewish Community Council, as they celebrate their 20th anniversary.

The council aids and assists over 13,000 people a year. The resettlement activities of the council have integrated scores of emigres from the former Soviet Union into American society and work force. The actions of the Shorefront Jewish Community Council have also contributed to a revitalization of many area neighborhoods.

I would also like to congratulate the excellent work of the staff and volunteers of the council led by their president, Harry Schwartz, and executive director, Judah H. Klein.

At a time of fiscal restraint, neighborhood organizations will play an ever-increasing role in aiding those in need. I am fortunate to have the Shorefront Jewish Community Council to work with residents of the Brooklyn shorefront, an area which I represent.

Mr. Speaker, I would ask my colleagues to join me in honoring the Shorefront Jewish Community Council on this momentous occasion. I would also ask my colleagues to join with me in paying tribute to the honorees of the council's 20th anniversary brunch, Aileen R. Golden, who will be receiving the Advancement of Education Award, and Hyman Cohen as Man of the Decade.

TRIBUTE TO HUGH A. WESTBROOK

HON. CARRIE P. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mrs. MEEK of Florida. Mr. Speaker, I rise today to honor a dear friend of many years, a man of great compassion and vision and one of south Florida's truly outstanding citizens: Hugh A. Westbrook.

Hugh started his career as a pastor for 10 years in North Carolina and Florida. He is an ordained United Methodist minister wit a master's of divinity degree from Duke University and a bachelor of arts degree from Emory University. He served as a hospital chaplain specializing in the care of terminally ill patients and their families.

He was also an instructor and associate dean at Miami-Dade Community College, where he collaborated in the development of an innovative curriculum in death education that emphasized studies leading to a better understanding of the psycho-social issues surrounding death.

Hugh Westbrook went on to found Hospice, Inc., and was instrumental in the passage by the Florida State Legislature of the statue that provided for the licensing of hospices in Florida and the establishment of the first standards of quality for the care of terminally ill people—standards that are still used today. He was also cochair of the National Hospice Education Project, which played a key role in the approval by Congress, in 1982, of Medicare reimbursement for hospice services.

Mr. Speaker, Hugh Westbrook will be celebrating his 50th birthday on March 17, and I want to extend to him warm greetings and best wishes on this important occasion. Hugh has had a major impact on south Florida and the Nation during his first 50 years. I am frankly looking forward to seeing what he will accomplish in the next 50.

HONORING MARJORIE JAYSON

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. GILMAN. Mr. Speaker, I am pleased to focus the attention of our colleagues the upcoming annual dinner of the Hastings-on-Hudson Chamber of Commerce in my congressional district.

This year, the special guest of honor will be an outstanding woman who has given of herself for many years. Marjorie Jayson is an individual who has especially devoted herself to make Hastings-on-Hudson a community which is the envy of the Nation.

Marjorie, who is 90 years young, was a special education teacher who taught hearing-impaired children how to lip read and helped those with speech impairments. She was also a fourth and fifth grade teacher.

Marjorie, who is affectionately known as ''Marge'' to her many friends and admirers, has also served as a Girl Scout troop leader, a leader in the Soroptimist Club, the First Reformed Church, in the Women's Club, and as a library volunteer.

One of her former students, Hastings resident Rose Egiziaco, said:

> Mrs. Jayson is a real sweetheart, a very caring, compassionate person. Her students were her children; each one of us was very special to her. She gave us the self-esteem we needed. In her book, we all could achieve and we did. She is truly an elegant lady. Many of her former students still have contact with her; that alone tells you how much she means to us.

The Hastings-on-Hudson Chamber of Commerce was well advised to choose Marjorie Jayson as their Citizen of the Year, not only because of her outstanding contributions, but also because this annual dinner dance raises a great deal of funding for high school scholarships. The Hasting-on-Hudson Chamber presents these scholarships once a year in honor of the Citizen of the Year, and $35,000 in scholarships have been given since the program was initiated in 1982.

Mr. Speaker, I invite my colleagues to join with us in saluting Marjorie Jayson, a superb person, teacher, and citizen, and in congratulating the Hastings-on-Hudson Chamber of Commerce for having the wisdom to honor this most sterling daughter of their community.

TRIBUTE TO THE CENTENNIAL COMMUNITY OF FRASER, MI

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. BONIOR. Mr. Speaker, this coming Sunday, March 5, 1995, the people of the city of Fraser, MI, are celebrating the centennial of the city's incorporation. The Village of Fraser was incorporated on that day in 1895.

One hundred and thirty-seven years ago, in 1858, Alexander James Fraser saw an opportunity to establish a village when he learned that the Chicago, Detroit, and Grand Trunk Railroad Co., was planning to build a railroad line between Detroit and Port Huron. Since it was common practice to build a station approximately every 10 miles, Fraser purchased 80 acres and was successful in persuading the railroad to build a depot on his land. The Fraser Depot and the surrounding land became known as the Village of Fraser. Although the depot became a center for transportation and communication, Fraser's hopes of building a thriving subdivision were not successful in his lifetime.

The community surrounding Fraser's Depot had became a booming business district by 1895. It has continued to grow and Fraser's 80-acre village is now 4 square miles. This thriving suburban community is home to nearly 14,000 people and although it is considered a residential suburb of Detroit, Fraser continues to be home to many successful businesses.

The members of the Fraser Historical Commission are proud of their community and are planning at least one event each month during this centennial year to celebrate the anniversary. I am proud to have the privilege of representing the people of Fraser and wish them success with each event.

As I said, the city is marking its year long centennial celebration with a birthday party this Sunday. I am looking forward to attending and ask that my colleagues join me in wishing a happy 100th birthday to the city of Fraser. May the next 100 years continue to be prosperous.

INTRODUCTION OF THE LOCAL GOVERNMENTS FLOW CONTROL ACT OF 1995

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. SMITH of New Jersey. Mr. Speaker, on Tuesday, February 28, MIKE OXLEY and I introduced the Local Governments Flow Control Act of 1995 (H.R. 1085) with the bipartisan support of several of our colleagues. This is the latest step toward providing relief for hundreds of communities nationwide who face enormous financial and long-term waste management burdens as a consequence of the Supreme Court's Carbone versus Clarkstown, New York decision.

As you know, that court decision interpreted the dormant Commerce Clause of the U.S. Constitution in such a way that it invalidated flow control laws which local governments

have used over the past decades as an effective waste management tool. In fact, flow control has enabled communities in more than 40 States to meet the Federal mandates of the Resource Conservation and Recovery Act [RCRA] in a cost-effective, safe, and efficient manner.

Since the Court decision, these communities have found themselves seriously overburdened. Because they needed to secure revenue bonds to finance costly, but highly advanced waste technologies, these communities now face a total outstanding debt of more than $10 billion. Several communities have already seen their credit ratings downgraded as a result of this debt—including five counties in my home State of New Jersey. And they are likely to be joined by others as investment services weigh the consequences of Congress' inability to swiftly grandfather their flow control authority.

You may recall that I introduced legislation on the first day of the session as a legislative remedy. That bill—the Community Solvency Act (H.R. 24)—is the identical text of legislation approved by the House by unanimous consent on October 7, 1994. The substance of H.R. 24 and that which Mr. OXLEY and I have now introduced (H.R. 1085) is largely the same; but the 11th-hour drafting style of H.R. 24 has been enormously improved in the Local Governments Flow Control Act of 1995.

This new bill represents the same strong commitment to local governments as its predecessor. Those communities which had practiced flow control or had made significant commitments of time, resources, and money—as specifically defined in both bills—toward implementing flow control are still grandfathered. They will be able to maintain the integrated waste systems which they have labored to establish in an effort to meet the waste treatment and disposal needs of their residents in a cost effective, safe, efficient, and environmentally sound manner.

This new bill also represents our dedication to the principles of competition and a free and open market. All communities will be required to meet strict needs test analyses—to prove that flow control can meet the needs of the community better than an entirely unfettered market—and detailed competitive designation processes—to ensure that there is no unfair discrimination against any private or public sector market participant.

Finally, where the Local Governments Flow Control Act represents a vast improvement over its predecessor is in its simplicity. The numerous cross references and redundant phrases have been eliminated and replaced with definitions and well-ordered sections making this bill far easier to read and comprehend. Furthermore, those sections of the bill which had been ambiguous and a possible invitation to future litigation have been clarified.

This fine-tuning has brought the substance of the bill even closer to the position which several private sector waste companies are now supporting. Both Mr. OXLEY and I believe that this bill is truly a compromise which can benefit all parties at the negotiating table—local governments, Wall Street, private sector waste companies, and recycling interests.

Yesterday, I presented this bill to the Senate Subcommittee on Superfund, Waste Control and Risk Assessment during a hearing held on this matter and interstate waste control. I pointed out in my testimony that, particularly for my home State of New Jersey, the two issues are linked. Within the span of two decades, New Jersey went from the top importer of other States' waste to the No. 2 exporter. Twenty-five years ago, the State instituted a carefully designed waste management statute based on the premise of flow control. This statute places a strong emphasis on recycling efforts and integrated waste systems which are managed by the counties of the States, either individually or through interdistrict agreements.

One of the key objectives of New Jersey's waste management laws is self-sufficient waste management by the year 2000. The State is well on the way to its goal. Recycling is close to 60 percent in parts of the State and averaging 50 percent overall. Upon completion of two projects already in the works when the Carbone decision was handed down, the State expects to be capable of treating and disposing approximately 88 percent of its waste within its own boundaries. When the plan has been fully implemented, the State expects to export only 5 percent of its solid waste; thereby addressing through its own initiative the concerns of Midwestern States which are seeking to close their borders to other States' waste.

However, as I previously noted, flow control is the linchpin to the success of the New Jersey system. Without that authority, we can no longer be confident of meeting our worthy goals.

I urge you to join Chairman OXLEY, Mr. PALLONE, Mr. MINGE, Mrs. ROUKEMA, Mr. SAXTON, and me in cosponsoring the Local Governments Flow Control Act of 1995 and in the effort to provide prompt passage through the Congress of this important and necessary relief for local governments.

WESTMINSTER CELEBRATES SIXTH NATIONAL CHAMPIONSHIP

HON. RON KLINK

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. KLINK. Mr. Speaker, I rise today to congratulate Westminster College, in New Wilmington, PA, the 1994 NAIA Division II Football National Champions.

The Westminster Titans finished the 1994 season with a trip to the NAIA national championship game in Portland, OR, on Saturday, December 17, 1994. They won the national championship by defeating the defending national champions, Pacific Lutheran University, by a score of 27 to 7.

Winning has long been a tradition at Westminster, and this year marks the 100th year of football at the college. Over the past 100 years, Westminster has set numerous NAIA Division II records. They have 6 Division II titles; 9 championship game appearances, including 5 in the last 7 years and 2 straight; 15 playoff appearances, including 8 straight; and 30 playoff victories. All of these are NAIA bests.

In addition to the success of the team, several individuals were honored by being named to the NAIA Football All-American Team. They include Andy Blatt—running back—and Brian Germanoski—defensive tackle—named as first team selections; Craig Mills—inside line backer—as a second team choice; and Tim NcNeil—defensive back-wide receiver, Nate Armstrong—offensive tackle, Sean O'Shea—quarterback, and B.J. Hoening—defensive tackle—all earning honorable mention. Head coach, Gene Nicholson, was also named 1994 NAIA Division II Football National Coach of the Year.

I commend the Titans on their successful season, in this, their 100th year of football, and look forward to another century of continued success.

TRIBUTE TO THE 90TH ANNIVERSARY OF GAINES COUNTY

HON. LARRY COMBEST

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. COMBEST. Mr. Speaker, I rise to salute Gaines County, TX, as they celebrate their 90th anniversary. In October 1905, Gaines County was officially organized. This new county was named for James Gaines, an original signer of the Texas Declaration of Independence, whose fierce spirit of independence, strength, and steadfastness was exemplified by the early settlers of Gaines County.

West Texas and the Permian Basin area have a rich and varied heritage, beginning with the native Americans and Mexicans who roamed the Llano Estacado and continuing through current day with the ranchers and farmers who thrive in modern-day Gaines County. When ranchers first arrived, cattle and sheep roamed the fertile grasslands of the area, and even today these animals provide a livelihood for many who live there. After the ranchers, the farmers arrived, and experienced the difficulties of west Texas agriculture. The farmers, too, survived hard times when they discovered rich soil beneath the sandy surface. This fertile soil is the very reason that today Gaines County is the leading cotton and peanut producing county in the State of Texas.

The farming and ranching industries of Gaines County should in no way overshadow the rich oil supply which makes Gaines County one of Texas' major oil suppliers. In light of the severe challenges that the oil industry has faced in recent times, the nature of this profession has changed dramatically, and the people of Gaines County are working to meet these ever-changing needs.

For 90 years, Gaines County has persevered through hardship and adversity to become a strong and thriving community. In the next 90 years, I am confident the county will continue its growth and expansion and remain a wonderful place to live, work, and raise families.

H.R. 1022

HON. DAVID MINGE

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. MINGE. Mr. Speaker, on February 28, 1995, Mr. JOHNSON of South Dakota submitted comments regarding H.R. 1022, the Risk Assessment and Cost-Benefit Act. I share Mr.

JOHNSON's views and wish to restate them for the record. I voted for H.R. 1022 yesterday as a means of allowing the debate to continue. Like Mr. JOHNSON, I find the bill flawed and in need of much improvement by the Senate or conference committee. If the bill is not improved, I will not be able to vote for its final passage. Overall, I support the general thrust of requiring risk assessment and cost-benefit tests for Federal regulations. However, like the gentleman from South Dakota, I believe that the current version of this legislation will lead to costly increases in Federal bureaucracy and litigation, and possibly pose a risk to public health and safety. The House leadership seems more concerned about making political statements with this bill than in crafting legal language that would actually serve the public interest. I am optimistic, however, that this issue will receive more deliberate and responsible consideration in the Senate, and I believe it should now be moved to the Senate for that consideration. Again, I want to make it clear that like Mr. JOHNSON, I will not vote for final passage of this legislation unless significant improvements have been made.

TRIBUTE TO ROBERT D. CLARK

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. FAZIO of California. Mr. Speaker, I rise today to honor a selfless community leader and constituent, Mr. Robert Clark. For 25 years, Mr. Clark served as general manager of the Glenn-Colusa Irrigation District [GCID]. He was also secretary to the district's board of directors.

His job was a difficult one, and he carried it out with incredible success and professionalism. Water is an extremely important resource, especially to the farmers and ranchers in agricultural-rich California. Back home, my constituents depend on this all-important resource for their livelihood and for the lives of a country that depends on the nourishment from their agricultural product.

Mr. Clark was responsible for ensuring water delivery to approximately 175,000 acres of land. He was in charge of mitigating all of the problems associated with water delivery, and let me tell you from firsthand experience the headaches are, indeed, many. I have worked with Mr. Clark and the GCID board of directors on difficult and ongoing issues such as salmon protection, riffle restoration, and dredging.

In this time of intense struggle for balance among environmental protection and water and land use, Mr. Clark was a rational and calm voice. His constant demeanor was remarkable considering that he supervised water deliveries to over 20,000 acres in three national wildlife refuges. On his watch, GCID irrigated up to 140,000 acres in fertile agricultural land.

Among his most notable accomplishments, was a $20 million rehabilitation program for the district's main canal system, including the construction early last decade of a new pump station. That effort added capacity and increased the security of the water distribution system.

Mr. Clark also accomplished the refinement of hydraulic measurement within the district, which led to the implementation of more equitable water distribution to water users.

In addition to his work at GCID, Mr. Clark has participated in professional water resource activities, worked as an international consultant in the irrigation field and served as a director of the Water Education Foundation.

Mr. Speaker, I ask my colleagues to join me today in honoring Mr. Clark for his many years of service to the Glenn-Colusa Irrigation District. Personally, I will miss him very much. I wish him much happiness and continued success in all his future endeavors.

KCPT PRESIDENT SPEAKS OUT ON PUBLIC BROADCASTING

HON. KAREN McCARTHY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Ms. McCARTHY. Mr. Speaker, with the House of Representatives on the verge of considering rescissions legislation that would cut Federal funding for the Corporation for Public Broadcasting by 15 percent in 1996 and 30 percent in 1997, I commend to my colleagues a statement recently prepared by William R. Reed, the president of KCPT—channel 19, which is Kansas City's public television station.

Bill's statement, which is a response to common reasons given for the elimination of Federal funding for public broadcasting, follows:

REASONS GIVEN FOR THE ELIMINATION OF FEDERAL FUNDING FOR PUBLIC BROADCASTING

(By Bill Reed)

1. Public broadcasting funds liberal and controversial programs with federal dollars. Taxpayers' money should not be used for these purposes.

While KCPT does not receive large numbers of complaints about our political coverage, those received come equally from both left and right. For example, KCPT received many calls from liberals who were upset that McNeil/Lehrer devoted a large amount of time interviewing Senator Dole and Congressman Gingrich. And on the other side, we hear complaints about Bill Moyers' alleged liberal bias. But on balance, I believe KCPT is perceived by most viewers to be apolitical or non-political, as we should be. I think that McNeil/Lehrer is the most balanced program covering political issues on television anywhere.

PBS is aware of this criticism, and I have heard that staff are taking steps to ensure more internal balance in individual programs, rather than relying on balance over a series of programs. PBS President Ervin Duggan's proposed Democracy Project, which is coverage of the 1996 national elections, will have an emphasis on fairness and balance.

The statement that public television occasionally airs controversial programming is true, and the program of controversy last year was Armistead Maupin's Tales of the City, a six-hour series about San Francisco in the mid 1970s.

Before KCPT aired Tales, Dave Welsh, Vice President for Broadcasting, Katherine Soden, Director of Programming, and I viewed the series at least twice. The decision to air the series was not an easy one because we knew that it would be controversial—it contained strong language, drug use, homosexual relationship and some brief nudity (and no sex or violence). But it was also brilliant television with a legitimate look at a specific time and place in our history. The series was a moral tale with the central character, Mary Ann, a young women from the Midwest who did not give in to the lifestyles of that time—the drug use and the promiscuity—because of her values. Tales of the City was more a story about the emptiness of lives lived without commitment, without a moral core, than anything else.

KCPT received about 200 telephone calls and letters about the series—about 100 for and 100 against. Congress, however, reportedly received over 100,000 postcards as a result of a national campaign by the American Family Association and its president, the Reverend Donald E. Wildmon, against the series.

Even if one did not like the series, should funding be eliminated because of six hours of programming? What about the other 5,994 hours KCPT airs each year? Obviously, Tales and other potentially controversial programs raise some profound questions. Should KCPT censor programs if we think they might be controversial, even if they are good television dealing with legitimate issues? What about individual choice? And what about the ''off'' button? But these questions, as they relate to this series, anyway, may be moot. PBS has decided not to fund a sequel to Tales of the City.

2. We should privatize public television.

One of public television's strengths is that it serves many specialized audiences: Sewing programs, the old Lawrence Welk shows, cooking programs, GED programming, gardening programs, carpentry programs, how-to-fix-up-your-house programs, and painting programs. All these target audience programs would disappear because there simply are not large enough audiences to support them with commercial advertising.

Programming currently airing on Discovery, Arts and Entertainment and Nickelodeon cable channels attract smaller audiences than on public television, but they continue to exist financially because those channels are owned by large corporations with a financial interest in the success of cable television as a larger business. For example, Nickelodeon is owned by Viacom, Inc., which also owns the MTV and VH–1 cable channels. While there are commercials on those channels, they are also supported by the cable companies' carriage fees and their owners' subsidies. None of those three cable channels is making a profit—they are loss leaders for the cable companies. But, to the public and to members of Congress, the impression is that those channels are making it in the marketplace because they see commercials on them, and everyone knows that commercial television is a successful business. That is not true for all cable channels, but that news is seldom reported because the cable channels not making profits continue to operate.

To privatize public television means that we would have to at least break even to continue to exist, which would be impossible if we continue to broadcast the special audience programs that we are currently carrying. Privatization would mean, as we know, common-denominator programming to serve large enough audiences to attract enough commercials to bring in the revenues to break even or to make a profit. Privatization would be the end of what we call public television today. And, privatization would mean another commercial television station (and probably another commercial radio station) in Kansas City. Do we need another one? Would it even be financially feasible?

Finally, the original FCC intent in reserving television channels was to create educational television services across the country that would be delivered by television stations that did not have to make a profit to exist. Privatizing public television would take away from the public the one television channel that has been established to provide programming and services that otherwise would not be available on commercial television.

3. Federal funding for public broadcasting is an involuntary tax.

Since we do not vote directly on what programs and projects are funded with tax money, it follows that all federal programs are funded with involuntary tax funds.

The federal government, through the Federal Communications Commission (FCC), licenses commercial television and radio stations, allowing them to use the public airways to distribute programs, to sell advertising to pay for those programs and to return dividends to the owners of those stations. Each of us pays for the advertising costs on commercial radio and television every time we buy one of the products advertised—and we pay far more than the one dollar per year per citizen (the amount paid each year in tax support of public broadcasting) in increased costs for those products. How about that involuntary tax?

4. When there were only three commercial television networks, there were reasons to provide support for an alternate public television service, but cable television has eliminated that need with services such as the Discovery Channel and Arts and Entertainment available for adults and Nickelodeon for children.

Nationally, over 36 percent of all television households do not subscribe to cable television because either they cannot afford to or they have chosen not to (cable television is available to over 95 percent of all television households). Public television, of course, is free to anyone with a television set, while cable users pay a monthly fee.

While Discovery and Arts and Entertainment are excellent cable networks, they do not provide the breadth of service that viewers receive from KCPT—public affairs programs, children's fare or educational services, all part of KCPT's daily schedule of services.

Discovery, Arts and Entertainment and Nickelodeon provide no local programs or services. Compare these services to KCPT's City Watch; Marquee, Viva, Kansas City!; Kansas City Week in Review; specials such as our coverage of the Mid-West Health Summit; Women's Health issues; political coverage and debates; A great Current Running, a 90-minute documentary on Charles Gusewelle's epic trip down the Lena River in Siberia; KC Crossroads, a 60-minute pilot now being considered for funding by CPB as a national series featuring jazz and blues from the Kansas City area; and Ain't Seen Nothin' Like It Since, a 90-minute documentary on the world champion Kansas City Monarchs of the former Negro Baseball League; and our outreach efforts such as Sesame Street Pre-School Education Project (PEP); GED on TV; The Ready to Learn Project; Outstanding Community Kids; Break the Mold Teacher Awards; and Act Against Violence, an anti-violence outreach project now in the planning stages.

In a speech last March, Nickelodeon's president, Geraldine Laybourne, announced a $30 million three-year initiative, demonstrating, according to her, the breadth of Nick's commitment to children's programming. The fact is that public television invests over $16 million each year on children's programming, or an average of $48 million over three years (not including local expenditures on children's programming). She went on to say that Nickelodeon could concentrate on creating entertaining children's programming, while PBS had to incorporate education into its children's shows—thereby making them dull programs. Preschoolers are drawn to PBS programs far more than commercial children's shows precisely because they so effectively combine fun with learning. Our mission is not to offer fun for fun's sake—cable and broadcast commercial television offer that—but fun programs that also help children love to learn. Experts agree on the importance of developing basic learning skills at an early age, the skills that ultimately enable children to succeed in school and interact socially.

Discovery, Arts and Entertainment and Nickelodeon have no responsibilities to the local communities receiving their programming nor is any revenue generated for their services returned to those communities. KCPT $5.3 million budget is spent primarily in the greater Kansas City area. KCPT pays local companies for janitorial services, electricity, maintenance and other services. KCPT employs 65 people who receive $2 million in salaries. In fact, KCPT is the only locally owned telecommunications organization serving the greater Kansas City area. KCPT's Board of Directors come from the communities served by the station and are responsible to those local communities for KCPT's operations.

5. Public television's educational services are no longer needed because cable and satellites are available to deliver those services.

Once again localism and commercial-free programming are keys in addressing this statement KCPT serves 350,000 K–12 students in Kansas and Missouri each year. The instructional television programs for that service are selected by the teachers who will use them. KCPT also has a staff of resource specialists for hands-on training for the teachers, and more than 300 hours of training each year is provided by these staff.

In designing our on-line computer support system for our teachers and students, Link 19, local components of the service were created in response to the needs of the schools in the area KCPT serves.

KCPT is now constructing an electronic training facility that will enable us to help teachers master the use of telecommunications in the classroom and improve the quality of education in our community.

KCPT initiates numerous local outreach activities including Sesame Street PEP; GED on TV; Outstanding Community Kids; Breaking the Mold awards for outstanding teachers; women's health-care outreach programming; and reducing violence in our youth campaign.

Local components of the Ready to Learn project, to begin January 16, 1995, are being developed with the advice of over twenty community organizations that are part of KCPT's Ready to Learn Advisory Council.

The National Teacher Training Institute provides a two-day training workshop with college credit for in-service development for more than 100 K–12 faculty on an annual basis in math and science education.

SUMMARY

Federal funds for KCPT are matched by nine community dollars for every one federal dollar—a good return on investment by any measurement. All federal support for public broadcasting amounts to about one dollar per year per person. Are there any other federal programs you know about that return on that small investment all that public broadcasting does? Support for public broadcasting is an example of a federal program that works, a private/public partnership that returns quality national and local educational and informational programs and services not available anywhere else.

COMMEMORATING TEXAS INDEPENDENCE DAY

HON. HENRY BONILLA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. BONILLA. Mr. Speaker, today, commemorates Texas' independence from a despotic government. During the Texas revolution, 1835–36, Texians, as they called themselves, struggled, fought, and ultimately achieved a victory over a much larger foe. These freedom loving men, women, and children sacrificed their all in the pursuit of liberty. One of the greatest symbols of the ultimate sacrifice for Texas freedom—the Alamo—is in my hometown of San Antonio, TX.

The Alamo, originally a mission inhabited by European priests and their native American flock, still stands in tribute to the 189 fallen defenders.

Many of the defenders of the Alamo were natives of other American States. Represented and well honored are men from Alabama, Georgia, Kentucky, Vermont, Massachusetts, Mississippi, Ohio, Pennsylvania, Illinois, Louisiana, New Jersey, North Carolina, South Carolina, Virginia, Missouri, Maryland, Arkansas, and New York and the Volunteer State of Tennessee. To my fellow members from these States—Texas and Texans are grateful for their sacrifice.

Let us also not forget that amongst those who died defending the cradle of Texas freedom and who fought along side of such famous names as Travis, Bowie, and Crocket were Spanish surnamed, native born ''Tejanos.'' These Tejanos were proud to fight for a just cause. I am proud of their legacy and I am proud of my Texas heritage.

Remember the Alamo! Viva Los Tejanos! Long Live the Lone Star State, and God Bless America!

A WELL EARNED DAY OF RETIREMENT

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. VISCLOSKY. Mr. Speaker, I would like to take this opportunity to mark March 3, 1995, as the retirement day for four employees of the United Steelworkers of America. This is a well-earned day of retirement and celebration for Leonard Hickey, Gayle Cody, R.L. Pace, and Catherine Hatch, whose distinguished careers in the labor movement have made their communities and Nation a better place to work and live.

Leonard ''Len'' Hickey, United Steelworkers of America, district 31, assistant director, was born in Muddy, IL, and began working, in 1952, at the Taylor Pipe Works in 1952. A heater at Bethlehem Steel's Burns Harbor plant, Len was elected as the first president of Local Union 6787. He later served in negotiations with Bethlehem and National Can. Len's

career is distinguished by his leadership on issues of fair pay, incentives, and winning union members the respect of their employers.

Gayle A. Cody, United Steelworkers of America, district 31, executive secretary to Director Parton, was born in East Chicago, IN, and began working at the Hammond Times. Gayle started her career with the USWA, district 31 in 1966. She served as a USWA secretary under four previous directors prior to becoming the executive secretary under current director, Jack Parton. During her 29 years of service Gayle has been involved in all major areas of USWA activities.

R.L. Pace, United Steelworkers of America, district 31, subdistrict director, was born in Hub, MS, and was drafted into the Army in 1953. In 1956, he moved to Chicago, joined the National Guard's First Battalion 178th Infantry, and began working at Burton Auto Springs. He was promoted to staff representative in 1969, and has held a number of offices—including president, in Local 6183. In 1984, he was appointed to the position of subdirector of sub 4 and graduated from Northeastern Illinois University in 1985.

Catherine Hatch, United Steelworkers of America, district 31, secretary to Director Parton, was born in Gary, IN. She began working at the Post Tribune and started with the Steelworkers in 1954. She worked for both Local 2697 and Local 6787. She started at the district 31 office in 1986 working as secretary in organizing, PAC, and education departments. Catherine has handled the finances and records for district 31 since 1993.

On this special day I offer my heartfelt congratulations. Their families and communities can be proud of the contributions that each individual has made. Their work in the labor movement has made America work. I wish each of them a long, happy, and productive retirement.

DRUG DECRIMINALIZATION IN HOLLAND HAS INCREASED CRIME AND ADDICTION

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. SOLOMON. Mr. Speaker, let me commend to you the following article written by a distinguished doctor and chairman of the International Drug Strategy Institute, Eric A. Voth, M.D. Dr. Voth advocates retaining tough drug laws to guard against rising crime and experimentation. Citing Holland as an example, the legalization of drugs has resulted in greatly increased crime and addiction. The only way to combat the increase of drug use in this country is to stand firm against recent attempt by prodrug groups to mute public awareness. These groups attempt to disguise the dangers of drug abuse and consequently jeopardize future generations.

REPEATING HISTORY'S MISTAKES

The international drug policy debate rages regarding decisions whether to fundamentally change drug policy toward legalization or decriminalization of drug use, or to remain with restrictive policies. If we examine two examples of softening of drug policy, we will find ample reason to continue with restrictive policy.

In the mid to late 1970's during the Carter administration, drug policy visibly softened. Several states decriminalized marijuana, and in fact Alaska legalized marijuana. Drug policy ''specialists'' in their infinite wisdom supported the flawed concept called ''responsible use'' of drugs as a way that users could maintain personal use of drugs and avoid the ravages of addiction and physical problems.

Permissive drug policy originated with organizations like the National Organization for the Reform of Marijuana Laws. President Carter's drug policy advisor Peter Bourne, as well as others like Arnold Trebach, Mathea Falco, Peter Reuter, Mark Kleiman helped to press for the lenient policy.

Interestingly, during that time the use of marijuana and other drugs drastically increased. Use also increased in adolescents despite the fact that drugs never become legal or decriminalized for that age group. The use of marijuana among high school students in Oregon during decriminalization was double that of the national average. National averages of marijuana use among high school seniors increased to 50% of seniors having used in the previous year, and 10.7% used daily.

Ultimately, parents began to object to the rampant use of drugs, especially marijuana, among their children. In the early 1980's the ''parents''' anti-drug movement began. Because of the drastic failure of lenient drug policies, steady pressure was exerted at national and local levels for restrictive drug policies. A huge national wave of high quality research, grassroots prevention organizations, and tightening of drug laws began.

Predictably, the use of drugs among ''recreational'' users dropped. High school seniors use of marijuana dropped to 23% of seniors using within the last year and 2% using on a daily basis. The use among hard addicts did not drop.

Strangely the cry has been sounded by some that the drug war did not work. That outcry, however, was almost exclusively being sounded by individuals who favored legalization or decriminalization back in the 1970's. The same individuals who called for soft policy in the earlier era are calling for the new harm reduction policy today. Hidden within such policy is the intent to gain decriminalization of drugs.

Holland has decriminalized drugs and tried harm reduction. Since the softening of drug policy there, shootings have increased 40%, robberies 62%, and car thefts 62%. This experiment which was meant to decrease organized crime has resulted in an increase in organized crime families from 3 in 1988 to 93 today. The number of registered marijuana addicts has risen 30% and the number of other addicts has risen 22%.

The major difference between today and the 1970's is that the prolegalization effort is more organized and better funded. The millionaire Richard Dennis from Chicago has given millions to the drug legalization effort. Billionaire George Soros has given $6 million to the Drug Policy Foundation to help seek legalization of drugs. He created the Open Society Fund which in turn funds Mathea Falco's Drug Strategies organization. Steadily, these groups put a happy and acceptable face on the idea of drug legalization or decriminalization. Their public relation campaign has softened public attitudes. Moves such as full page ads in national newspapers suggesting alternatives to drug policy are examples. Organized efforts at such ideas as hemp as a fiber alternative, medical marijuana, needle exchanges, therapeutic LSD, and others pervade the media. The Internet is bristling with pro-drug talk groups discussing recent drug experiences and how and where to obtain drugs.

In the face of these facts, the holdovers from the 70's drug policy makers are still asking for lenient drug laws. A substantial number of today's addicts started their use under the lenient policies of the 1970's. We have had our experience with decriminalization, and it is time that we recognize it and put that concept to bed.

The only hope for drug policy is a concerted effort of drug prevention which upholds the notion of no drug use, drug interdiction, and drug treatment. If we soften our hold on an already vexing problem, we will lose the war.

IN RECOGNITION OF JAMES T. MOLLOY

HON. JACK QUINN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. QUINN. Mr. Speaker, it is with a profound sense of honor and with great pleasure that I rise today in recognition of James T. Molloy, the former Doorkeeper of the House of Representatives.

Mr. Molloy was born in Buffalo, NY, on June 3, 1936. He graduated from Canisius College with a bachelor of science in 1958. From there, Mr. Molloy began a career filled with worthwhile and successful endeavors. Of these, the most important is his family, consisting of his wife, Roseanne, and daughter, Amy.

Over his long and distinguished career, James Molloy has exhibited a tireless dedication to public service. He has served as a marine fireman with the Buffalo Fire Department, a school teacher in Buffalo and Lackawanna schools, and as the Chief Finance Officer for the House of Representatives. In 1974, Mr. Molloy was elected by the 94th Congress to serve as Doorkeeper of the House. He was unanimously reelected as Doorkeeper by each succeeding Congress through the 103d Congress.

Over the past 30 years, James Molloy has been involved in countless activities. He is a member of the International Association of Firefighters, International Brotherhood of Longshoremen, National Association of Legislative Assistants, and chairman of the Board for the Wright Patman Congressional Federal Credit Union.

Among his many distinctions, Mr. Molloy has received the Outstanding Citizen Award from the New York State AFL–CIO in 1986, the President's Award from the New York State Federation of Police in 1986, and Roll Call's Man of the Year Award in 1990.

The many awards given to James Molloy fail to capture the essence of what he has done. Whether it be helping kids get jobs in Washington, finance their education, or just taking the extra time to show them the Capitol, James Molloy has consistently been there for the young people of Buffalo.

As Doorkeeper of the House, James Molloy introduced numerous Ambassadors, Prime Ministers, and Presidents. However, this did not cause him to lose touch with the many friends and family members both here in Washington and at home in Buffalo. For more than 20 years, the people of Buffalo had a friend in Washington in James Molloy.

H.R. 450

HON. DAVID MINGE

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. MINGE. Mr. Speaker, on February 24, 1995, Mr. JOHNSON of South Dakota submitted comments regarding the Regulatory Moratorium bill, H.R. 450. I share Mr. JOHNSON's views and wish to restate them for the record. Like Mr. JOHNSON, I believe that H.R. 450 is deeply flawed. I voted for this bill last Friday with the understanding that I will not support the conference report unless the legislation is significantly improved by the Senate or conference committee. I share Mr. JOHNSON's concern that as it now stands, H.R. 450 could result in massive confusion and an enormous amount of unnecessary litigation. It is also possible that if the current language is contained in the final version of this bill, it would interfere with a wide range of needed agricultural rulemaking involving turkeys, hogs, corn, and soybeans. I also share my colleague's concern that depending on the outcome of litigation, the existing language could interfere with rulemaking needed on behalf of the ethanol fuels industry.

The process by which Federal laws are crafted is often perceived as overly heavy-handed, rigid, and inefficient. I am optimistic that this legislation can be modified as it progresses through the legislative process so that its shortcomings are corrected. Unless significant modifications are made, I will not vote for this bill when it returns to the House for final consideration.

FURADAN REGULATION NOT AFFECTED BY REGULATORY MORATORIUM

HON. EARL POMEROY

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. POMEROY. Mr. Speaker, it is my understanding that the intent of the Government Reform and Oversight Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs is to exclude the Environmental Protection Agency Final Rule at 40 CFR part 180 titled, ''Pesticide Tolerances for 2,3-Dihydro-2,2-Dimethyl-7-Benzofuranty-N-Methylcarbamate,'' from H.R. 450, a bill that imposes a moratorium on the implementation of regulations issued between November 20, 1994, and the enactment of risk assessment/cost benefit analysis legislation, or December 31, 1995, whichever comes first.

North Dakota has been granted a time-limited tolerance on Furadan CR–10 for use on canola. Furadan CR–10 is considered the most effective insecticide used to control the flee beetle, one of the major threats to canola in North Dakota.

North Dakota produces more canola than any other State and supports canola crushing facilities. Canola is a region-specific crop that when crushed produces one of the healthiest and highest demanded industrial use and edible use oils on the market today.

The initiative by the Environmental Protection Agency [EPA] enables canola producers in North Dakota and a handful of northern tier States to sell Furadan-treated canola seed to ''Canola Crushing Processors'' within the United States. Prior to the tolerance, canola producers were required to export treated canola seed to foreign processors, mostly in Canada.

It is my understanding that the regulation meets at least one of the general exclusions established in H.R. 450.

Specifically, the definition of a ''rule'' excludes the ''granting or recognizing an exemption, granting a variance or petition for relief from regulatory requirement, or other action relieving a restriction * * * or taking any action necessary to permit * * * [the] use of a substance or product.''

In addition, H.R. 450 specifies that the term ''regulatory rulemaking action'' excludes:

Rulemaking actions that are ''limited to repealing, narrowing, or streamlining a rule, regulation, or administrative process or otherwise reducing regulatory burdens.''

Additionally, based on H.R. 450, it would appear that should the Office of Management and Budget be asked to determine whether to exclude or exempt this regulation from the moratorium, that it should do so.

FURADAN REGULATION NOT AFFECTED BY REGULATORY MORATORIUM

HON. DAVID M. McINTOSH

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. MCINTOSH. Mr. Speaker, it has been brought to my attention that a handful of northern tier States are concerned about whether an Environmental Protection Agency [EPA] time limited tolerance on furadan CR–10 for use on canola would be affected by H.R. 450, the Regulatory Transition Act of 1995.

It is the intent of the drafters of H.R. 450 to exclude from the regulatory moratorium agency exemptions and other actions that relieve a restriction on the use of a product or process. The EPA Final Rule at 40 CFR Part 180 titled, ''Pesticide Tolerances for 2,3-Dihydro-2,2-Dimethyl-7-Benzofuranty-N-Methylcarbamate,'' fits that exception.

Additionally, the furadan regulation might also satisfy the streamlining exception to the moratorium to the extent it streamlines the burden on producers and growers of canola seeds.

Thus, it is intent of the drafters of H.R. 450, that should the Office of Information and Regulatory Affairs be asked to determine whether to exclude or exempt this regulation from the moratorium, that the regulation should be excluded.

FAIRNESS FOR FILIPINO WORLD WAR II VETERANS

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. FILNER. Mr. Speaker, I join today in a bipartisan effort with the gentleman from New York, Congressman BENJAMIN GILMAN, chairman of the House Committee on International Relations, to introduce the Filipino Veterans Equity Act of 1995.

Today, we recall the brave members of the Filipino Army who obeyed the order of the President of the United States during World War II. They fought side by side with U.S. forces against a common enemy. They served and died defending the American flag in the epic battles of Bataan and Corregidor and through 4 long years of enemy occupation. They were as much as part of our fighting forces as were soldiers drafted from the States.

But, soon after World War II ended, the 79th Congress enacted the Rescission Act of 1946, denying Filipino Veterans not only the benefits, but also the recognition they so richly deserved. For far too many years, Filipino Veterans have been waiting for the benefits they earned, the benefits that go automatically to other veterans who were exposed to similar hardships. A grave injustice has been done—and now is the time for us to correct this injustice.

Even President Harry S. Truman, who signed the Rescission Act, said it did not release the United States from its obligation to provide for the heroic Filipino Veterans who sacrificed so much during the war. He believed it was a moral obligation of the United States to look after the welfare of the Filipino Veterans—and so do I, and so do my colleagues who join me today in cosponsoring this legislation.

The bullets in World War II did not ask if their target was an American or a Filipino soldier. In 15 years, there will no longer be any of these veterans left alive. Many, until their dying day, were asking, ''Do we deserve the 1946 Rescission Act? Didn't we suffer the same suffering as the American soldier fighting the same war?''

We must act and we must act now.

I am especially pleased that two of my colleagues from San Diego County are joining with me today in recognizing the contribution of the World War II Filipino Veterans, Congressmen BRIAN BILBRAY and RANDY ''DUKE'' CUNNINGHAM.

I urge all my other colleagues to join me in recognizing these brave soldiers and in granting them the benefits they earned and deserve.

CONGRATULATIONS TO FERMILAB

HON. J. DENNIS HASTERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. HASTERT. Mr. Speaker, I rise today to inform my colleagues of a scientific milestone, announced this afternoon at Fermi National Accelerator Laboratory in Batavia, IL.

Today, physicists at the laboratory, which is located within my district, announced the discovery of the subatomic particle called the top quark, the last of the six basic building blocks predicted to exist by current scientific theory.

Mr. Speaker, this discovery demonstrates the prominent role the United States and Fermilab play in the field of high energy physics. In addition, it is clear that Fermilab's Tevatron accelerator has established itself as the world's preeminent site for high energy physics research.

The men and women who have contributed to the success of the work of the CDF and DZERO experiment collaborations are to be congratulated. I would also note the positive role played by the Department of Energy in funding this continuing research, and the efforts of Universities Research Associations, Inc. in the operation of Fermilab. We can also not overlook the contributions of the National Science Foundation as well as scientists and additional funding to the project from some 12 other nations worldwide.

Fermilab's success can be shared by all of us in this House who have supported high-energy physics research by our votes. We additionally can be proud that we have assured Fermilab's continued leadership in this field through our support for construction of the main injector.

Mr. Speaker, I am proud today to congratulate Dr. John Peoples and the excellent staff at Fermilab for another great contribution to the advancement of science. They are a valuable research and education resource for the world, this Nation, and my home State of Illinois.

TRIBUTE TO JESSE J. LEWIS, JR.

HON. EARL F. HILLIARD

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. HILLIARD. Mr. Speaker, Jesse J. Lewis, Jr., was a graduate of Miles College, where he obtained a B.S. degree in business administration. He continued his concern for education throughout his life, attending numerous executive continuing education programs at colleges and universities around the country.

Mr. Lewis began his illustrious advertising and communications career in 1979 with Jesse J. Lewis & Associates, where he held several important positions. Under his direction, clients won numerous prestigious awards for advertising, including a telly which is awarded for regional and local television advertising. His unrelenting dedication and leadership enabled his clients to grow and succeed.

In addition to marketing and communications expertise, Jesse worked extensively in the production field. He was chief engineer at the New London Record Studios, where he supervised the production of radio spots, jingles, and custom music for local and national clients.

As a member of the board of directors for the Police athletic Team, the Alabama Ballet Theater, and the Magic City Art Connection, Jesse was actively involved in civic and social work throughout Alabama. He was a member of the National Association of Marketing Developers, the Urban League, the Birmingham Area Musicians Association, and the Metropolitan Business Association. He was also chairman of Special Projects for Toys for Tots, and chairman of the Birmingham Crime Commission.

Jesse passed away suddenly due to a tragic car accident on February 26, 1995. He is survived by his loving mother, Helen; his devoted father, Jesse Lewis, Sr., former president of Lawson State Community College and publisher of the Birmingham Times newspaper; and his brother, James Lewis.

Jesse Lewis, Jr., contributed immeasurably to the communications and business area of the African-American community of Birmingham, as well as to the constructive relationships with diverse business entities for the State of Alabama. Jesse will be greatly missed by family and friends. However, the legacy he leaves behind shall preserve an indelible impression for all of us who came to know and love him.

1994 NARCOTICS CERTIFICATIONS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. HAMILTON. Mr. Speaker, I would like to call to my colleagues attention the President's certifications on cooperation by major narcotics producing and transit countries for 1994, Presidential Determination 95–15.

The Foreign Assistance Act of 1961 requires that the President withhold 50 percent of the assistance allocated to those countries that are major producers of narcotics or major transit countries until he has certified that those countries are either fully cooperating with the United States on narcotics issues or that the national interests of the United States require continued assistance. Countries that are not certified become ineligible to receive virtually all forms of U.S. foreign assistance.

I would like to commend the Clinton administration for its honest attention to the certification requirement. The spirit and the letter of the law had been ignored by successive administrations for many years, largely because of unrelated political concerns. In contrast, the Clinton administration has consistently made objective assessments of the performance of the 29 countries subject to certification on the very important issue of controlling the production and trafficking of narcotics.

I would particularly note the President's decision this year to use the waiver authority of the Foreign Assistance Act to continue to provide assistance to Colombia, despite problems in our narcotics cooperation in 1994. While this decision may have some political consequences in our bilateral relationship with Colombia, it was the right decision. In my opinion, our cooperation with Colombia last year fell short of that which would have justified full certification. However, as the source of over 80 percent of the world's cocaine, and given the enormous threat to Colombia posed by narcotics trafficking, United States national interests are best served by continuing to work with the Colombian Government to address this problem.

Some may argue that addressing the drug problem overseas is a waste of time and money. However, I believe that any effective, comprehensive national drug control program must have an international component. All of the cocaine and heroin in America comes from overseas. We cannot deal with this problem only by trying to stop the drugs at the borders. If we ignore the source and transit countries, the volume of drugs coming to America will increase exponentially.

I believe that we need to do more domestically to reduce the demand for these drugs, and give our law enforcement agencies adequate tools to address the violence that is so often associated with narcotics trafficking. But we also need to attack the production and transit of drugs overseas.

Once again, I commend the administration for its effort in this area and urge my colleagues to review this year's certifications.

INTRODUCTION OF THE EMPLOYMENT ENHANCEMENT REFORM ACT

HON. WILLIAM H. ZELIFF, JR.

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. ZELIFF. Mr. Speaker, I rise today with my colleague JOHN KASICH and 25 of our colleagues to introduce legislation to improve Federal job training.

The present job training situation is a boondoggle of Federal bureaucracy. Hundreds of programs with different rules and administrative structures confuse the people they are intended to help and waste taxpayer money. Currently, States bear the brunt of the conflicting rules, regulations, and definitions from this senseless bureaucracy, and it is there that we must address the reform.

The Employment Enhancement Reform Act will simplify and streamline the flow of Federal job-training dollars to the States to better serve unemployed Americans and hasten their reentry into the work force. The act consolidates over 90 Federal job training programs into one flexible block grant program.

This discretionary block grant will be distributed to the States by formula at the direction of the Secretary of Labor using the formula from the Joint Training Partnership Act. States will have one set of job training definitions and regulations to implement, and one funding stream to monitor. The result: more resources devoted to job training services and fewer dollars being wasted on administrative costs.

My bill will make the broken Federal job training program cheaper, more effective, more efficient, and more flexible. Today each of these 90 programs have different rules, regulations, and definitions. A youth can be any age from 14 to 30. On-the-job training participants have different eligibility rules and reimbursement rates depending on individual programs. This causes chaos for participants, administrators, and auditors.

Instead of hundreds of program regulations, States will have one set of job training definitions and regulations to implement, and one funding stream to monitor. They will have one State-established set of standards and definitions for program success rather than the multitude we have today. The responsibility for financial and programmatic audits will lie with State Governors. Federal philosophies and biases will no longer be mandated over State management of these programs. States will be responsible for demonstrating that funds are being spent effectively and efficiently to implement the goals.

Consolidating the programs will create a pool of funds totaling approximately $11 billion. From this pool: $7.6 billion—70 percent—would go to the States through formula grants; $539 million—5 percent—would be distributed

by the Secretary to States containing populations of a national, rather than a State concern; $2.7 billion—25 percent—would go to deficit reduction.

Our legislation assures that States have the flexibility to target job-training funds where they are most needed. States will work in partnership with private industry to provide training that supports the labor markets that exist in that State—rather than be subject to nationwide labor markets and fund distributions that have nothing to do with their State.

This act also repeals the 0.2 percent FUTA [Federal Unemployment Tax] surtax, adopted in 1976 and intended to be temporary. This repeal demonstrates to businesses that some Members of Congress are conscious of the mandates imposed by the Federal Government. This provision also takes another small step toward reducing the cost of regulation to business and encourages job growth.

The benefit to the Federal Government of a single, more efficient job training effort is a reduction in the deficit by approximately $7 billion over 5 years.

The end result, Mr. Speaker, will be a program driven by results. More resources can be devoted directly to effective job-training services that put people back to work, and fewer dollars will be wasted on administrative costs

These reforms are necessary to give Americans the skills our economy needs to grow and to get our welfare recipients back to work and back into the economy. State Governors are eager to develop partnerships with private industry and build successful programs. This legislation will make our job-training dollars work better and put people back to work. I urge my colleagues to join us in this effort.

I enclose a summary of my legislation.

EMPLOYMENT ENHANCEMENT REFORM ACT

The States shall use the money appropriated to the State's discretion with the following requirements:

POPULATIONS

The states will continue to serve the populations that were previously served by the consolidated programs and those that will benefit from the services. Those populations are: Disadvantaged Adults, Dislocated Workers, Veterans, Displaced Homemakers, Disadvantaged Youths, Persons with Disabilities and those requiring vocational education.

STATE COUNCIL

The Federal Government recognizes the benefits of coordination between government and business in the areas of job creation and worker retraining. States are encouraged to establish one coordinating council to facilitate worker transition from job to job or from unemployment to employment.

The council should advise the Governor and state legislatures as to emerging economic and employment trends, job creation opportunities, and other employment and job training needs.

APPLICANT PROCESS

States shall centralize the intake of service applicants (those in need of job training/placement assistance) to facilitate the coordination of social services, of which job placement and employment skills are a part.

States are encouraged to utilize the concept of ''one-stop-shop'' as a means of facilitating centralization.

PROFILING

The state shall be required to profile/evaluate all participants in programs funded under this law, to determine participation eligibility. The profiling should include an evaluation of the candidate's employment readiness. Since profiling is already done for unemployment benefits, this should not be an added burden on states.

States, as part of the profiling process, shall determine, broadly, the readiness of each candidate to enter the job market. These candidates shall be defined as:

(a) Job-ready and in need of placement services; (b) job-ready but in need of minor skills enhancement; (c) non-job-ready and in need of remedial education and/or major skill enhancement. Job skills should be addressed after the candidate has demonstrated an education equivalent to a high school degree.

PROGRAM SUCCESS

Success for those participants needing job placement services shall be determined by continuous employment for a period of time of no less than six months, of at least 35 hours per week, with wages of no less than 65% of the immediate previous wage level.

Success for those participants needing minor skill enhancement shall be:

(a) Demonstration of proficiency of skill areas assessed as deficient followed by full time employment; or (b) full time employment for a period of time of no less than 6 months, of at least 35 hours per week, with wages of no less than 65% of the immediate previous wage level.

Success for those participants in need of remedial education shall be:

(a) Demonstration of proficiency in education and skills commensurate with a high school degree followed by full time employment; or (b) full time employment for a period of time of no less than 6 months, of at least 25 hours per week, with wages of no less than 65% of the immediate previous wage level.

STATE RESPONSIBILITIES/REPORTING REQUIREMENTS

The States shall report to the Secretary of Labor at the end of the first full fiscal year after date of enactment and annually, by fiscal year, thereafter:

(a) Total number of applicants for employment services, total number of applicants provided some form of service, and the post evaluation determination of each served applicant (i.e. was applicant job-ready, in need of minor skill enhancement, or in need of remedial education/major skill enhancement).

(b) Total number of successes for each post evaluation determined group.

(c) Length of time, from time of profiling to time of job placement, for all applicants during fiscal year.

(d) An accounting of disbursement of appropriated funds.

(e) Report findings of audits performed during reporting period.

Given sufficient notice of request, States shall provide any and all additional information requested by the Federal Government.

SECRETARY OF LABOR'S RESPONSIBILITIES

If after consecutive reporting cycles, a state has failed to demonstrate continued aggregate progress to the success of the program, the Secretary of Labor shall abrogate funding in part or in whole to that state. States will have an opportunity to appeal this decision and such factors as natural disaster or severe economic downturn could be considered as justification for renewed funding.

The Secretary of Labor shall annually report to Congress the results of the Secretary's program oversight.

FURTHER RESTRICTIONS/REQUIREMENTS

None of the funds from this program shall be used for stipends or direct payments to participants for participation in the program except for needs-based transportation costs. However, participants are not excluded from collecting funds from other programs.

The Secretaries of Labor will jointly administer 5% of the funds of this Act for Indian tribes and migrant worker populations. The funds should be distributed according to the specific populations.

States are encouraged to disregard gender in aiding the applicant, and allow applicants to participate in education and job search for non-traditional occupations.

DEFICIT REDUCTION

This proposal generates approximately $7 billion in deficit reduction over five years.

TAX CUT

The ''temporary'' 0.2 percent FUTA surtax is repealed, demonstrating to businesses that some members of Congress are conscious of the mandates the Federal Government imposes and are willing to reduce the cost of labor to business to encourage job growth.

EARNED INCOME TAX CREDIT AWARENESS

During the profiling and evaluation process of each participant, the participant will be informed if they are eligible for the Earned Income Tax Credit and will be encouraged to receive the Earned Income Tax Credit on a monthly, rather than yearly, basis. This is to help increase the monthly income of eligible participants.

Daily Digest

HIGHLIGHTS

Senate rejected Balanced Budget Constitutional Amendment Resolution.

Senate

Chamber Action

Routine Proceedings, pages S3311–S3438

Measures Introduced: Fourteen bills and four resolutions were introduced, as follows: S. 480–493, S.J. Res. 28, and S. Res. 82–84. **Pages S3389–90**

Measures Reported: Reports were made as follows:

Special Report on the legislative and oversight activities during the 103d Congress by the Senate Committee on Veterans' Affairs. (S. Rept. No. 104–11)

H.R. 889, making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, with amendments. (S. Rept. No. 104–12) **Page S3389**

Measure Passed:

Florida Statehood Anniversary: Senate agreed to S. Res. 84, saluting Florida on the 150th anniversary of Florida statehood. **Page S3437**

Measure Rejected:

Balanced Budget Constitutional Amendment: By 65 yeas to 35 nays (Vote No. 98), two-thirds of Senators voting, a quorum being present, not having voted in the affirmative, Senate failed to pass H.J. Res. 1, proposing a balanced budget amendment to the Constitution of the United States. **Pages S3311–14**

Subsequently, a motion was entered to reconsider the vote (Vote No. 98) by which the resolution failed of passage. **Page S3314**

Nominations Confirmed: Senate confirmed the following nominations:

Alton W. Cornella, of South Dakota, to be a Member of the Defense Base Closure and Realignment Commission for a term expiring at the end of the first session of the 104th Congress.

Rebecca G. Cox, of California, to be a Member of the Defense Base Closure and Realignment Commission for a term expiring at the end of the first session of the 104th Congress.

General James B. Davis, United States Air Force, Retired, of Florida, to be a Member of the Defense Base Closure and Realignment Commission for a term expiring at the end of the first session of the 104th Congress.

S. Lee Kling, of Maryland, to be a Member of the Defense Base Closure and Realignment Commission for a term expiring at the end of the first session of the 104th Congress.

Benjamin F. Montoya, of New Mexico, to be a Member of the Defense Base Closure and Realignment Commission for a term expiring at the end of the first session of the 104th Congress.

Wendi Louise Steele, of Texas, to be a Member of the Defense Base Closure and Realignment Commission for a term expiring at the end of the first session of the 104th Congress.

Josue Robles, Jr., of Texas, to be a Member of the Defense Base Closure and Realignment Commission for a term expiring at the end of the first session of the 104th Congress. **Page S3438**

Messages From the House: **Page S3389**

Measures Referred: **Page S3389**

Communications: **Page S3389**

Executive Reports of Committees: **Page S3389**

Statements on Introduced Bills: **Pages S3390–S3426**

Additional Cosponsors: **Pages S3426–27**

Amendments Submitted: **Pages S3428–31**

Notices of Hearings: **Page S3431**

Authority for Committees: **Page S3431**

Additional Statements: **Pages S3431–37**

Record Votes: One record vote was taken today. (Total–98) **Page S3314**

Recess: Senate convened at 12 noon, and recessed at 6:07 p.m., until 10 a.m., on Friday, March 3, 1995.

(For Senate's program, see the remarks of the Majority Leader in today's RECORD on page S3437.)

Committee Meetings

(Committees not listed did not meet)

EMERGENCY SUPPLEMENTAL APPROPRIATIONS—DEFENSE

Committee on Appropriations: Committee ordered favorably reported, with amendments, H.R. 889, making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995.

APPROPRIATIONS—TRANSPORTATION

Committee on Appropriations: Subcommittee on Transportation and Related Agencies held hearings on proposed budget estimates for fiscal year 1996 for the Department of Transportation, receiving testimony from Federico Peña, Secretary of Transportation.

Subcommittee will meet again on Thursday, March 9.

AUTHORIZATION—DEFENSE

Committee on Armed Services: Committee resumed hearings on proposed legislation authorizing funds for fiscal year 1996 for the Department of Defense and the future years defense program, receiving testimony from Shelia E. Widnall, Secretary of the Air Force; and Gen. Ronald R. Fogleman, USAF, Chief of Air Force Staff.

Committee will meet again on Tuesday, March 7.

NOMINATIONS

Committee on Armed Services: Committee ordered favorably reported the nominations of Sheila Cheston, of the District of Columbia, to be General Counsel of the Department of the Air Force; Herschelle Challenor, of Georgia, to be a Member of the National Security Education Board, Department of Defense; and Josue Robles, Jr., of Texas, to be a Member of the Defense Base Closure and Realignment Commission.

SECURITIES LITIGATION REFORM

*Committee on Banking, Housing, and Urban Affairs:*Subcommittee on Securities held hearings on proposals to reform the process of securities litigation, including S. 240, receiving testimony from Senators Dodd and Domenici; Marc E. Lackritz, Securities Industry Association, J. Carter Beese, Jr., Center for Strategic and International Studies, and Nell Minow, LENS Inc., all of Washington, D.C.; James F. Morgan, Morgan, Holland Ventures Corporation, Boston, Massachusetts, on behalf of the National Venture Capital Association; George Sollman, Centigram Communications Corporation, San Jose, California, on behalf of the American Electronics Association; and Christopher J. Murphy III, 1st Source Corporation, South Bend, Indiana, on behalf of the Association of Publicly Traded Companies.

TELECOMMUNICATIONS

*Committee on Commerce, Science, and Transportation:*Committee held hearings to examine United States telecommunications policy reform issues, receiving testimony from Anne K. Bingaman, Assistant Attorney General for Antitrust, Department of Justice; Larry Irving, Assistant Secretary of Commerce for Communications and Information; Kenneth Gordon, Massachusetts Department of Public Utilities, and Lee L. Selwyn, Economics and Technology, Inc., both of Boston, Massachusetts; Peter W. Huber, Manhattan Institute, Bethesda, Maryland; George Gilder, Discovery Institute, Tyringham, Massachusetts; Clay T. Whitehead, Clay Whitehead Associates, McLean, Virginia; Henry Geller, Markle Foundation, Washington, D.C.; and John W. Mayo, University of Tennessee, Knoxville.

Hearings were recessed subject to call.

NUCLEAR WASTE POLICY

Committee on Energy and Natural Resources: Committee held hearings on proposals to revise certain provisions of the Nuclear Waste Policy Act of 1982 to provide for the safe disposal of high-level nuclear waste, including S. 167, S. 429, S. 443, and S. 473, receiving testimony from Senator Bryan; Hazel R. O'Leary, Secretary of Energy; Nevada Governor Bob Miller, and Nevada State Senator Raymond D. Rawson, both of Carson City; Mayor Kevin Phillips, Caliente, Nevada; Cameron McRae, Nye County Board of Commissioners, Tonopah, Nevada; Kris Sanda, Minnesota Department of Public Service, St. Paul, on behalf of the Nuclear Waste Strategy Coalition; Emmit George, Iowa Public Service Commission, Des Moines, on behalf of the National Association of Regulatory Utility Commissioners; Samuel K. Skinner, Commonwealth Edison Company, Chicago, Illinois, on behalf of the Nuclear Energy Institute; and Bill Magavern, Public Citizen, Washington, D.C.

Hearings were recessed subject to call.

ENDANGERED SPECIES

Committee on Environment and Public Works: Subcommittee on Drinking Water, Fisheries and Wildlife held oversight hearings on the implementation of Section 7 of the Endangered Species Act by the Forest Service and the National Marine Fisheries

Service, receiving testimony from James R. Lyons, Under Secretary for Natural Resources and Environment, and Jack Ward Thomas, Chief, Forest Service, both of the Department of Agriculture; and Douglas K. Hall, Assistant Secretary for Oceans and Atmosphere, and Rolland A. Schmitten, Assistant Administrator for Fisheries, both of the Department of Commerce.

Subcommittee will meet again on Tuesday, March 7.

MIDDLE INCOME TAX CREDIT

Committee on Finance: Committee held hearings to examine proposals to reduce taxes for middle-income Americans, focusing on a $500-per-child tax credit, a reduction in the marriage penalty, and a deduction for education and job training expenses, receiving testimony from Gary L. Bauer, Family Research Council, C. Fred Bergsten, Competitiveness Policy Council, Daniel J. Mitchell, The Heritage Foundation, and Robert J. Shapiro, Progressive Policy Institute, all of Washington, D.C.; and Deborah H. Schenk, New York University Law School, New York.

Hearings were recessed subject to call.

IRAN AND IRAQ

Committee on Foreign Relations: Subcommittee on Near Eastern and South Asian Affairs held hearings to examine United States policy towards Iran and Iraq, receiving testimony from Senator McCain; Joseph S. Nye, Assistant Secretary of Defense for International Security Affairs; Robert H. Pelletreau, Assistant Secretary of State for Near Eastern Affairs; Anthony H. Cordesman, Georgetown University, James Placke, Cambridge Energy Research Associates, and Graham Fuller, Rand Corporation, all of Washington, D.C.; and Daniel Pipes, *Middle East Quarterly*, Philadelphia, Pennsylvania.

Subcommittee will meet again on Tuesday, March 7.

BUSINESS MEETING

Committee on Governmental Affairs: Committee ordered reported the following bills:

S. 4, to grant the power to the President to reduce budget authority, without recommendation; and

S. 14, to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for the expedited consideration of certain proposed cancellations of budget items, without recommendation, with an amendment.

AUTHORIZATION—ARTS AND HUMANITIES

Committee on Labor and Human Resources: Subcommittee on Education, Arts and Humanities concluded hearings on proposed legislation authorizing funds for programs of the National Foundation on the Arts and Humanities Act of 1965, focusing on the National Endowment for the Humanities, after receiving testimony from Sheldon Hackney, Chairman, National Endowment for the Humanities, National Foundation on the Arts and the Humanities; Victor R. Swenson, Vermont Council on the Humanities, Hyde Park; David A. Berry, Essex County College, Newark, New Jersey, on behalf of the Community College Humanities Association; Alberta Arthurs, Rockefeller Foundation, and Barry R. Gross, National Association of Scholars, both of New York, New York; and Walter Berns, American Enterprise Institute, Washington, D.C.

FEDERAL DISABILITY PROGRAMS

Special Committee on Aging: Committee concluded hearings to examine the growth in the Supplemental Security Income and Social Security disability programs and the disincentives toward work and self-sufficiency that exist in the Federal disability programs, after receiving testimony from Jane L. Ross, Director, Income Security Issues, Health, Education, and Human Services Division, General Accounting Office; Mary Jane Owen, National Catholic Office for Persons with Disabilities, Carolyn Weaver, American Enterprise Institute, Gerben DeJong, Georgetown University School of Medicine, and Edward Eckenhoff, National Rehabilitation Hospital, all of Washington, D.C.; Sally Satel, Yale University, New Haven, Connecticut; Ann DeWitt, Maine Disability Determination Services, Augusta; and Bob Cote, Denver, Colorado.

House of Representatives

Chamber Action

Bills Introduced: Twelve public bills, H.R. 1109–1120, and one resolution, H.J. Res. 73, were introduced. **Pages H2583–84**

Report Filed: The following report was filed as follows:

H.R. 956, to establish legal standards and procedures for product liability litigation, amended (H. Rept. 104–64, Part I). **Page H2583**

Franklin Delano Roosevelt Memorial Commission: The Speaker appointed Representative Lewis of California to serve as a member of the Franklin Delano Roosevelt Memorial Commission on the part of the House. **Page H2490**

Private Property Protection: House began consideration of amendments on H.R. 925, to compensate owners of private property for the effect of certain regulatory restrictions; but came to no resolution thereon. Consideration of amendments will resume on Friday, March 3. **Pages H2495–H2566**

Pending when the Committee of the Whole rose was the Mineta amendment to the Canady substitute that seeks to increase the threshold for payment of compensation from a 10 percent to a 20 percent loss in property value. **Pages H2562–66**

Agreed to the Canady amendment in the nature of a substitute, as amended by the Tauzin amendment, that specifies that compensation would be required in cases where the affected portion of a private owner's property loses at least 10 percent of its value; states that it is Federal policy that no law or agency action should limit the use of privately owned property so as to diminish its value; directs Federal agencies to ensure that their action will not have such results; requires the Federal Government to purchase the portion of a property affected be an agency action, at fair market value, if the loss in value exceeds 50 percent and the owner so requests; and limits the scope of the bill's compensation requirements (agreed to by a recorded vote of 301 ayes to 128 noes, Roll No. 190). **Pages H2502–30**

Rejected:

The Porter amendment to the Canady substitute that sought to require that compensation not be paid to any Federal agency that has performed a private property impact analysis for the particular regulation or other agency action (rejected by a 186 ayes to 241 noes, Roll No. 191); **Pages H2530–49**

The Schroeder amendment to the Canady substitute that sought to require that any compensation paid to property owners be reduced by an amount equal to any increase in the value of the same property that resulted from other agency action; **Pages H2549–51**

The Goss amendment to the Canady substitute that sought to increase the threshold for payment of compensation from a 10 percent to a 30 percent loss in property value (rejected by a recorded vote of 210 ayes to 211 noes, Roll No. 192); and **Page H2551–56**

The Wyden amendment to the Canady substitute that sought to restrict any activity likely to diminish the fair market value of any private homes and clarify the meaning of "private home" (rejected by a recorded vote 165 ayes to 260 noes, Roll No. 193). **Pages H2556–61**

H. Res. 101, the rule under which the bill is being considered, was agreed to by a yea-and-nay vote of 271 yeas to 151 nays, Roll No. 189. This rule was debated on Wednesday, March 1. **Pages H2494–95**

Committees to Sit: It was made in order that the following committees and their subcommittees be permitted to sit on Friday, March 3, during the proceedings of the House under the five-minute rule: Committees on Commerce, Economic and Educational Opportunities, Judiciary, and Transportation and Infrastructure. **Page H2567**

Senate Messages: Messages received from the Senate today appear on page H2489.

Quorum Calls—Votes: One yea-and-nay vote and four recorded votes developed during the proceedings of the House today and appear on pages H2494–95, H2529–30, H2548–49, H2555–56, and H2561. There were no quorum calls.

Adjournment: Met at 10:00 a.m. and adjourned at 11:44 p.m.

Committee Meetings

EMERGENCY SUPPLEMENTAL/RESCISSION APPROPRIATIONS; AND SUPPLEMENTAL APPROPRIATIONS

Committee on Appropriations: Began markup of the following: Emergency Supplemental/Rescission, Fiscal Year 1995; and Supplemental Appropriations for Fiscal Year 1995.

COMMERCE, JUSTICE, STATE AND JUDICIARY APPROPRIATIONS

Committee on Appropriations: Subcommittee on Commerce, Justice, and State and the Judiciary, and Related Agencies held a hearing on the Secretary of

State. Testimony was heard from Warren M. Christopher, Secretary of State.

LABOR, HHS, EDUCATION APPROPRIATIONS

Committee on Appropriations: Subcommittee on Labor, Health and Human Services, Education and Related Agencies held a hearing on Postsecondary Education. Testimony was heard from David Longanecker, Assistant Secretary, Postsecondary Education, Department of Education.

MILITARY CONSTRUCTION APPROPRIATIONS

Committee on Appropriations: Subcommittee on Military Construction held a hearing on Navy/Marine Corps Military Construction. Testimony was heard from Robert B. Pirie, Jr., Assistant Secretary of the Navy (Installations and Environment), Department of Defense.

TRANSPORTATION APPROPRIATIONS

Committee on Appropriations: Subcommittee on Transportation, and Related Agencies held a hearing on Amtrak. Testimony was heard from Jolene M. Molitoris, Administrator, Federal Railroad Administration, Department of Transportation; and Thomas M. Downs, President and Chairman of the Board, National Railroad Passenger Corporation (Amtrak).

TREASURY, POSTAL SERVICE, GENERAL GOVERNMENT APPROPRIATIONS

Committee on Appropriations: Subcommittee on Treasury, Postal Service, and General Government held a hearing on Federal Labor Relations Authority, Merit Systems Protection Board, Mo Udall Foundation, Office of Government Ethnics and on U.S. Tax Court. Testimony was heard form Phyllis N. Segal, Chair, Federal Labor Relations Authority; Ben Erdreich, Chairman, Merit Systems Protection Board; Terrence L. Bracy, Chairman, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation; Stephen D. Potts, Director, Office of Government Ethics; and Lapsley W. Hamblen, Chief Judge, U.S. Tax Court.

VA, HUD AND INDEPENDENT AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Veterans' Affairs and Housing and Urban Development, and Independent Agencies held a hearing on Court of Veterans Appeals. Testimony was heard from Frank Q. Nebeker, Chief Judge, U.S. Court of Veterans Appeals.

FINANCIAL SERVICES MARKETS—CURRENT STATE AND FUTURE

Committee on Banking and Financial Service: Subcommittee on Capital Markets, Securities and Government-Sponsored Enterprises held a hearing on the Current State and Future of the Financial Services Markets. Testimony was heard from public witnesses.

HUD SECURITY CONTRACTS AND COMPANIES AFFILIATED WITH NATION OF ISLAM

Committee on Banking and Financial Service: Subcommittee on General Oversight and Investigations held a hearing regarding security contracts between the HUD and HUD related entities, and companies affiliated with the Nation of Islam. Testimony was heard from Henry Cisneros, Secretary of Housing and Urban Development; Jules Polonetsky, member, Assembly, State of New York; and public witnesses.

MISCELLANEOUS MEASURES

Committee on Economic and Educational Opportunities: Subcommittee on Workforce Protection approved for full Committee action amended the following bills: H.R. 246, to repeal the Service Contract Act of 1965; and H.R. 500, to repeal the Davis-Bacon Act.

FEDERAL WORKFORCE RESTRUCTURING STATISTICS

Committee on Government Reform and Oversight: Subcommittee on Civil Service held a hearing on Federal Workforce Restructuring Statistics. Testimony was heard from Nancy R. Kingsbury, Director, Federal Human Resource Management Issues, GAO; James B. King, Director, OPM; and Alice M. Rivlin, Director, OMB.

CITIES—FINANCIAL CRISIS

Committee on Government Reform and Oversight: Subcommittee on the District of Columbia held a hearing on other cities in financial crisis. Testimony was heard from Johnny C. Finch, Assistant Comptroller General, General Government Division, GAO.

CAPITAL BUDGETING

Committee on Government Reform and Oversight: Subcommittee on Government Management, Information and Technology held a hearing on Capital Budgeting. Testimony was heard from Representatives Mineta and Thornton; the following officials of the County of Fairfax, Virginia: Katherine Hanley, Chairwoman, Board of Supervisors; and William Leidinger, Executive; Thomas McMahon, Director of Finance Division, New York City Council; and public witnesses.

OVERSIGHT—U.S. POSTAL SERVICE

Committee on Government Reform and Oversight: Subcommittee on Postal Service continued hearings on general oversight of the U.S. Postal Service. Testimony was heard from Edward J. Gleiman, Chairman, Postal Rate Commission.

Hearings continue March 8.

UNITED STATES-CHINA IPR AGREEMENT

Committee on International Relations: Subcommittee on Asia and the Pacific and the Subcommittee on International Economic Policy and Trade held a joint hearing on the United States-China IPR Agreement: Implications for United States-Sino Commercial Relations. Testimony was heard from Charlene Barshefsky, Deputy U.S. Trade Representative; Peter Tomsen, Acting Assistant Secretary, East Asian and Pacific Affairs, Department of State; and public witnesses.

DEFENSE AUTHORIZATION

Committee on National Security: Continued hearings on fiscal year 1996 national defense authorization. Testimony was heard from Gen. George A. Joulwan, USA, Commander in Chief, U.S. European Command, Department of Defense.

Hearings continue March 8.

TRENDS IN FEDERAL LAND OWNERSHIP AND MANAGEMENT

Committee on Resources: Held an oversight hearing on ''Trends in Federal Land Ownership and Management.'' Testimony was heard from John Anderson, Associate Director, Natural Resources Management Issues, Resources, Community, and Economic Development Division, GAO.

NSF BUDGET

Committee on Science: Subcommittee on Basic Research continued hearings on the NSF Fiscal Year Budget, Part II. Testimony was heard from public witnesses.

SBA'S PROCUREMENT PROGRAM REVIEW

Committee on Small Business: Held a hearing to review the SBA's Procurement Program. Testimony was heard from the following officials of the SBA: Philip Lader, Administrator; and Robert Neal, Associate Deputy Administrator; Anthony DeLuca, Small and Disadvantaged Business, Department of the Air Force; and public witnesses.

GSA CAPITAL INVESTMENT PROGRAM REFORM AND RELATED MATTERS

Committee on Transportation and Infrastructure: Subcommittee on Public Building and Economic Development held a hearing on GSA Capital Investment Program Reform legislation and related matters. Testimony was heard from Roger Johnson, Administrator, GSA; Gaston Gianni, Jr., Associate Director, GAO; and public witnesses.

Hearings continue March 6.

IMPROVE THE NATIONAL HIGHWAY SYSTEM AND ANCILLARY ISSUES RELATING TO HIGHWAY AND TRANSIT PROGRAMS

Committee on Transportation and Infrastructure: Subcommittee on Surface Transportation continued hearings on legislation to Improve the National Highway System and Ancillary Issues Relating to Highway and Transit Programs. Testimony was heard from the following officials of the Department of Transportation: Federico Peña, Secretary; and Rodney Slater, Federal Highway Administration; Lt. Gen. Kenneth R. Wykle, USAF, Deputy Commander in Chief, U.S. Transportation Command, Department of Defense; and public witnesses.

WELFARE REFORM

Committee on Ways and Means: Continued markup of welfare reform legislation.

Will continue tomorrow.

SIGNALS INTELLIGENCE

Permanent Select Committee on Intelligence: Met in executive session to hold a hearing on Signals Intelligence. Testimony was heard from departmental witnesses.

COMMITTEE MEETINGS FOR FRIDAY, MARCH 3, 1995

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Appropriations, Subcommittee on VA, HUD, and Independent Agencies, to hold hearings on proposed budget estimates for fiscal year 1996 for the National Credit Union Administration, the Neighborhood Reinvestment Corporation, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation—Inspector General, 9:30 a.m., SD–138.

Subcommittee on Foreign Operations, to hold hearings on proposed budget estimates for fiscal year 1996 for foreign assistance programs, focusing on security cooperation in Europe, 10 a.m., SD–192.

House

Committee on Appropriations, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, on National Agricultural Statistics Service, 10:30 a.m., 2362A Rayburn.

Subcommittee on Commerce, Justice, and State and the Judiciary, and Related Agencies, on Review of Departmental Management with Chief Financial Officers, 9:30 a.m., H–309 Capitol.

Subcommittee on Energy and Water Development, on NRC, 10 a.m., and on Federal Energy Regulatory Commission, 11 a.m., 2362B Rayburn.

Subcommittee on Interior and Related Agencies, on National Gallery of Art, and on John F. Kennedy Center for the Performing Arts, 10 a.m., B–308 Rayburn.

Subcommittee on Labor, Health and Human Services, Education and Related Agencies, on Research, Statistics and Libraries, 10 a.m., 2358 Rayburn.

Subcommittee on Transportation, and Related Agencies, on Trust Fund Status and Expenditures, 10 a.m., 2358 Rayburn.

Subcommittee on Treasury, Postal Service, and General Government, on National Archives and Records Administration, 10 a.m., H–163 Capitol.

Committee on Commerce, Subcommittee on Commerce, Trade, and Hazardous Materials, oversight hearing on the trade implications of foreign ownership restrictions on telecommunications companies, 9:30 a.m., 2123 Rayburn.

Committee on Economic and Educational Opportunities, Subcommittee on Postsecondary Education and Training, to continue hearings on training issues, 10 a.m., 2175 Rayburn.

Committee on International Relations, hearing on U.S. Assistance Programs for Economic and Political Reform and Dismantling of Weapons of Mass Destruction in the NIS, 10 a.m., 2172 Rayburn.

Committee on the Judiciary, Subcommittee on Immigration and Claims, oversight hearing on work site enforcement of employer sanctions, 9:30 a.m., 2237 Rayburn.

Committee on Rules, to consider the following: H.R. 988, Attorney Accountability Act of 1995; and H.R. 1058, Securities Litigation Reform Act, 10 a.m., H–313 Capitol.

Committee on Transportation and Infrastructure, Subcommittee on Surface Transportation, hearing on Disposition of the ICC's Motor Carrier Functions, 10 a.m., 2167 Rayburn.

Committee on Ways and Means, to continue markup of welfare reform legislation, 9 a.m., 1100 Longworth.

Next Meeting of the SENATE

10 a.m., Friday, March 3

Senate Chamber

Program for Friday: After the recognition of five Senators for speeches and the transaction of any morning business (not to extend beyond 1 p.m.), Senate may begin consideration of S. 244, Paperwork Reduction Act.

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m., Friday, March 3

House Chamber

Program for Friday: Complete consideration of H.R. 925, Private Property Protection Act.

Extensions of Remarks, as inserted in this issue

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