

spending we have to do as a Government of a great people. We have to invest in our people's future.

Mr. INHOFE. One last comment before I leave.

Mr. BYRD. Not yet. I will yield to the Senator. I am conscious of the fact that he needs to catch a plane. But let me finish what I was about to say.

There is not only a Federal fiscal deficit but there is also an investment deficit. I was at the 1990 summit with Mr. Bush and with the Republican leadership and with the Democratic leadership in both ends of the Capitol. I said at the summit, we have an investment deficit. We need to build up our infrastructure, both human and physical. Any business or company that does not improve its plant and equipment and keep its employees trained to the new mode of manufacturing or production of things is going to go under. Business has to invest. Our country needs to invest. And spending moneys for infrastructure is wise. We just cannot cut everything.

During the Reagan years, and up to now, we have continued to cut domestic discretionary spending. It has been cut to the bone. I say to the Senator, we will have cut over the next 5 years—in the 1993 deficit reduction package, we cut Government spending. We cut domestic discretionary spending. And we put the level of spending on a 5-year downward glide. We froze it, meaning that we would not take into account inflation from year to year.

Not only that, but the amendment that was offered in the Finance Committee by Mr. EXON and Mr. GRASSLEY further cut \$26 billion below a freeze. That \$26 billion was reduced to a \$13 billion cut in conference with the other body. So we are operating below a freeze in discretionary spending.

That is not to say we cannot cut more. But we cannot take defense off the table and say we will not touch it and still balance the budget and have a tax cut. All of these goodies—if you have a tax cut at the same time—we cannot do it.

Mr. INHOFE. Will the Senator yield?

Mr. BYRD. Yes, I yield.

Mr. INHOFE. One more comment. It was not my intention to use so much of the Senator's time.

I can only say, I am going to catch a plane. I am going back to Oklahoma where real people are, where the people spoke loudly and clearly in the November 8 election when they said: We want to downsize the scope of Government; we do not want to have Government involved in our lives to the degree that Government now is involved.

You and I probably will disagree philosophically with the role of Government. But the bottom line is, and I say it one last time, we have demonstrated we cannot do it, that either we cannot or will not do it.

I have not given up. I would like to serve notice to everyone in this Chamber, I believe we will get that one additional vote because the people are now

identifying what is going on in this country and they are going to be heard.

I have the utmost respect for the Senator from West Virginia, but I suggest if you take a trip back to West Virginia, you will hear the same thing there.

Thank you.

Mr. BYRD. Mr. President, on that point, may I say to my friend, he does not need to instruct me about going to West Virginia. When he says he is going to Oklahoma where "real people are," he does not have to travel that far. West Virginia is within an hour and a half's drive. West Virginians are "real people." The people of Oklahoma are real people. The people of West Virginia are real people.

May I say to the Senator, I came here when I was a little wet behind the ears, too. For me to say to another Senator that he ought to go back to his own State and see what the people say—that is a little bit—that is stretching one's credibility a little bit.

Mr. INHOFE. I would say I appreciate the compliment, to the Senator from West Virginia, because this is the first time since I have reached the age of 60 I have been called wet behind the ears.

Mr. BYRD. Of course, a person who is 77, who has been in this body 37 years, can remember when he, this Senator from West Virginia, came here when he, too, was wet behind the ears. But I have never said to a Senator: You ought to go back to your own State and see what the people think. Leave me and my fellow West Virginians to ourselves.

Does anybody else want me to yield? I yield to the—I will either yield the floor or yield to the lady.

Mrs. HUTCHISON. Mr. President, I was just going to ask the Senator from West Virginia—I would like to make a statement totally off this subject in morning business talk. But I certainly do not want to interrupt the Senator if he is in the middle of continuing his speech on the amendment. I was really asking for a clarification of his ability to yield me some time, but I do not want to interrupt.

Mr. BYRD. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia yields the floor.

Mrs. HUTCHISON. Mr. President, I thank the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from Texas.

A STRAITJACKET FOR LILLIE RUBIN

Mrs. HUTCHISON. Mr. President, our regulatory reform debate has ranged from the sublime to the ridiculous and back. Today I would like to weigh in briefly on the side of the ridiculous.

The dressing room of a fine women's clothing store may seem like an odd place for the EEOC to intrude in a way that perfectly illustrates regulatory excess, but that is exactly where we

find ourselves today. The firm in question, Lillie Rubin, is a successful 49-year-old business with 60 affiliates, specializing in clothes for women. But the EEOC is measuring Lillie Rubin for a new outfit, and I think it seems like more of a straitjacket than a woman's dress.

In opposition to its own regulations and its own previous decisions, the EEOC has ruled that a Lillie Rubin store in Phoenix must employ male salespeople, and it is demanding that they be allowed to work in the store's fitting rooms where female customers try on clothes. I know this does not sound like an EEOC case so much as an "I Love Lucy" rerun, but it is true.

However much our society has changed, I still believe that certain standards prevail, and I believe this dress store's customers should not be guinea pigs in a new Government experiment. I am astounded that an agency of the Government would seek to strong-arm a private business into violating basic standards in such an outrageous way. It is beyond my understanding why the EEOC would try to force a business such as Lillie Rubin to sacrifice the privacy of its customers in order to avoid Government censure.

But customer privacy is not all that Lillie Rubin would be sacrificing if it is forced to comply with this EEOC ruling. What the EEOC has concocted is a remedy that could well drive away Lillie Rubin's customers and hurt its business.

This is more than regulatory intrusion. The EEOC decision, if not reversed, will leave the company in an exposed financial position.

As a final blow, EEOC is insisting that Lillie Rubin pay for newspaper advertisements to publicize that it may be vulnerable to EEOC claims by men who have applied in the past or might in the future.

The EEOC's approach to Lillie Rubin has been highhanded and arbitrary in the extreme, and bizarre, I think, as well. According to the company, one EEOC investigator told a company representative that "Some women like it" when there are males in the dressing room when they disrobe.

Mr. President, I ask you, is that what the taxpayers of America want their hard-earned dollars to pay for from our Government employees? Is that what this Congress wants the people to whom we are delegating our authority to implement regulations to do? Of course not. I am sure President Clinton would not want an agency of his executive branch to be putting forward a policy that forces men into women's dressing rooms. Surely he realizes by now that it is impossible for one individual, regardless of how powerful, to even think that this would happen and to come to grips with the regulatory gridlock that has been created here.

I think this argues even more for a regulatory moratorium. If these kinds of things are out there happening in the real world, and if regulators are

going to this extreme, I think it is time to have a moratorium that says: Hold it. Time out. Let us bring common sense into this process and let us find out how big the problem is.

I think this Lillie Rubin example is one more in a multitude of examples that we have heard talked about on the House floor in the last few weeks, and on this floor, talking about trying to put parameters and common sense into our regulatory framework. The EEOC's treatment of Lillie Rubin is tailor made—if I could use a pun—to show how bureaucratic intrusiveness is sapping the productivity of American business and how it is costing Americans billions of dollars every year.

I hope we can put common sense into the system. I hope this just illustrates how much we need to put common sense into the system. And I hope the EEOC will hear this put in context and retreat from such a ridiculous requirement of a women's dress store to hire male salespeople and allow them into the dressing rooms.

This is something we must stop. I hope the regulatory moratorium bill will be the first step to allow us to say: Enough is enough. This is not the way our American taxpayers expect their taxpayer dollars to be used.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCIS-SIONS ACT OF 1995

The Senate continued with the consideration of the bill.

AMENDMENT NO. 331

Mr. FAIRCLOTH. Mr. President, I rise in support of the Kassebaum striker replacement amendment. I strongly support the amendment offered by the distinguished Senator from Kansas. The Executive order is one more example of the President's bypassing the legislative process to accomplish his own agenda just as he did with the Mexican bailout which has been the subject of a Banking Committee hearing this morning and it is proving to be a monetary Vietnam.

More importantly, this amendment is essential to overturn an Executive order which would unilaterally resurrect archaic labor policies that undermine our national effort to move our economy successfully into the competitive international markets of the 21st century.

The President's action places at risk the integrity of our entire system of collective bargaining which is based on a delicate balance of the rights of employees to withhold their labor and the right of management to continue business operations during a strike. The President suggests that the ban on permanent replacement workers by businesses engaged in Federal contracts will lead to the more efficient performance of such contracts. This is ridicu-

lous and is totally wrong. I am convinced that by upsetting the balance between labor and management, the entire system of collective bargaining will break down resulting in more strikes, business bankruptcies, and fewer jobs.

While this Executive order is limited to Federal contracts, the intent of the President and the opponents of this amendment is clear. They seek to return this country to labor policies which history has rejected as proven failures over and over. This Executive order embodies a labor policy completely at odds with current realities in the international marketplace.

It is contrary to the interests of working Americans striving for success in a global economy where free trade is the order of the day. It panders to special union interests who seek to protect their own privileged position at the expense of other working people. And it is a cynical attempt to delay congressional consideration of the priorities which voters last November clearly indicated they were most interested in.

The Congress has on many occasions debated the merits of banning permanent replacement workers. The most recent occasion was during the last Congress when the administration's proposal to overturn a 60-year interpretation of the National Labor Relations Act was defeated by a Congress controlled by the President's own party.

Last week, the President actively fought against the balanced budget amendment. This week he issues an Executive order on striker replacement knowing that it will be used by supporters to halt congressional consideration of legislation which the administration opposes.

In November the voters spoke unmistakably about their expectations for the 104th Congress. In my opinion during the first 100 days of this Congress the electorate does not expect us to devote our time and energies to long-settled issues which were recently revisited and reaffirmed.

My colleague from Kansas has offered a reasonable proposal limited to this fiscal year. I believe that at some point during this Congress we should consider legislation which would permanently nullify the President's Executive order. At a later date I will welcome a full debate on striker replacement with those who support the President's action, but not at this time.

I encourage opponents of this amendment to allow the Senate to continue with our consideration of the defense supplemental appropriations and then proceed with other important issues such as the line-item veto, welfare reform, product liability reform, tort reform, and a regulatory moratorium.

These are the issues that last November voters expected us to consider at this time, I think, and it is time we get on with considering them at a rapid rate.

Mr. President, I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I welcome the opportunity this afternoon to address some of the issues in question that have been raised by the Kassebaum amendment and hopefully resolve the questions that have been raised so that we will be able to move beyond the Kassebaum amendment to address the underlying issue which is the appropriations which are necessary for our national defense and national security.

This particular proposal is not really appropriate on this particular measure. But it has been the desire of a number of our Members to continue the debate and discussion on the measure rather than consider the urgency of the underlying proposal.

So I welcome the chance to respond to a number of the questions that have been raised including the questions that have been raised by my friend from North Carolina in his own comments.

The argument we hear over and over is the President is changing the law, that Congress gave employers the rights to use permanent replacements and the President is taking away that right. Let us look a little closer at this argument.

In the first place, Congress never gave employers the right to use permanent replacements. The National Labor Relations Act never uses the term and it was not in the act of 1935, and it is not there today. What Congress did say was very different. Section 13 states very plainly:

Nothing in this act, except as specifically provided herein, shall be construed so as to either interfere with, or impede, or in any way diminish the right to strike, or to affect the limitations or qualifications on that right.

But nevertheless it is true that employers can use permanent replacements. If they did not get that right from Congress, where did it come from? The answer, of course, is the Supreme Court's decision in the 1938 case of Mackay Radio where the Court interpreted the act to allow the use of permanent replacements despite the statute's proscription against diminishing the right to strike. But even Mackay did not give employers the right to use permanent replacements. It merely said the National Labor Relations Act does not prohibit their use.

The Court said that the powers of the National Labor Relations Board and the act's legal machinery could not be used to stop employers from using permanent replacements. Has President Clinton changed that law or attempted to change it? No, he has not. Any Senator who will take the time to read the Executive order will see that he has not. It is still legal under the National Labor Relations Act to use permanent replacements.

There is no back pay remedy in the Executive order for workers whose jobs