United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, THURSDAY, MARCH 23, 1995 No. 54

Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. The Chaplain will now deliver the morning prayer.

PRAYER

The Chaplain, the Reverend John Lloyd Ogilvie, D.D., offered the following prayer:

Let us pray:

We begin this day on the firm foundation of the indefatigable faithfulness of God. We exclaim with Jeremiah, ''Through the Lord's mercies we are consumed, because His compassions fail not. They are new every morning; great is Your faithfulness.''—Jeremiah 3:22–23.

Almighty God, we praise You for the constancy and consistency of Your faithfulness in blessing and guiding the Senate of the United States through the years of our Nation's history. We turn to You again today and know that You will be faithful to give the women and men of this Senate exactly what is needed in each hour, each challenge, each decision. Often we become burdened with the heavy responsibilities of leadership on our shoulders. When we pray: Lord lighten the load or strengthen our backs. Your response is to strengthen us physically, intellectually, and spiritually. You never fail us; never let us down; never leave or forsake us.

Empower us to emulate Your faithfulness in our responsibilities and relationships today. May we be people on whom others can depend. Help us to say what we mean and mean what we say. We want each decision to be guided by how we perceive You would decide. Give us light when our vision is dim, courage when we need to be bold, decisiveness when it would be easy to equivocate, and hope when others are tempted to be discouraged. So we commit ourselves to be Your faithful servants, the examples of patriotism to our people, and the crusaders for Your best for our Nation. In Your holy name Yahweh and through Christ our Lord.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader, the able Senator from Indiana [Mr. COATS], is now recognized.

SCHEDULE

Mr. COATS. Thank you, Mr. President.

Mr. President, this morning the time for the two leaders has been reserved and the Senate will immediately resume consideration of S. 4, the line-item veto bill.

Under the consent agreement, any Senator with an amendment on the list will have until 10 a.m. this morning to offer that amendment. At the hour of 10 a.m., the Senate will begin 2 hours of debate on the Daschle substitute amendment.

Therefore, Members should be aware that rollcall votes will occur throughout the day and that it is the intention of the majority leader to complete action on the line-item veto bill today.

MEASURE READ THE SECOND TIME—H.R. 1158

Mr. COATS. Mr. President, I understand there is a bill on the calendar available to read a second time.

The PRESIDENT pro tempore. The Senator is correct.

Mr. COATS. I ask for the second reading of H.R. 1158.

The PRESIDENT pro tempore. The clerk will read the bill the second time.

The assistant legislative clerk read as follows:

A bill (H.R. 1158) making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes.

Mr. COATS. I object to further proceedings of this measure at this time.

The PRESIDING OFFICER (Mr. COVERDELL). The bill will be placed on the calendar.

LEGISLATIVE LINE-ITEM VETO ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 4, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 4) to grant the power to the President to reduce budget authority.

The Senate resumed consideration of the bill.

Pending:

(1) Dole amendment No. 347, to provide for the separate enrollment for presentation to the President of each item of any appropriation bill and each item in any authorization bill or resolution providing direct spending or targeted tax benefits.

(2) Abraham modified amendment No. 401 (to amendment No. 347), to require the Congress to approve the bills prior to transmittal to the President.

(3) Levin/Murkowski/Exon amendment No. 406 (to amendment No. 347), to clarify the definition of items of appropriations.

(4) Hatch amendment No. 407 (to amendment No. 347), to exempt items of appropriation provided for the judicial branch from enrollment in separate bills for presentment to the President.

(5) Daschle amendment No. 348 (to amendment No. 347), in the nature of a substitute.

(6) Exon (for Byrd) amendment No. 350 (to amendment No. 347), to prohibit the use of savings achieved through lowering discretionary spending caps to offset revenue decreases subject to pay-as-you-go requirements.

Mr. COATS. Mr. President, again, just for the information of our colleagues, under a unanimous-consent agreement, we have only until 10 a.m.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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this morning for additional amendments to be offered. Those amendments must be amendments that have been cleared and are on the list as agreed to by the unanimous-consent agreement. Those must be offered by 10 a.m., after which we will turn to 2 hours of debate on the Daschle substitute amendment.

So Members can expect votes throughout the day, but need to be aware of the fact that the time is fast running out for the offering of amendments. That time will elapse at 10 a.m. this morning.

I yield the floor.

Mr. EXON. Mr. President, I appreciate very much the Senator from Indiana outlining the procedures which are strictly in the order of what the agreement has been. Since I know of no person on the floor ready to offer an amendment, except possibly the Senator from Washington, I think it would not be out of order if we would proceed at this time if anybody wishes to offer amendments in order to receive priority before 10 o'clock. In lieu of that, I think it would be in order for statements to be made for whatever purposes.

With that, I yield the floor, as I see my colleague from the State of Washington.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 388 TO AMENDMENT NO. 347

(Purpose: To limit the rescission of items of appropriation to unauthorized appropriations)

Mrs. MURRAY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY] proposes an amendment numbered 388 to amendment No. 347.

Mrs. MURRAY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, line 7, after ''and'' insert the following: ''shall not mean appropriations authorized in a previously passed authorization bill; and,''.

Mrs. MURRAY. Mr. President, I had intended to offer this amendment, but in the interest of moving this legislation, I will ask unanimous consent, after I make a brief statement, that my amendment be withdrawn.

The amendment I was going to offer would have allowed the President to rescind all unauthorized appropriations.

I feel that this goes to the heart of the concerns of the American people about line-item legislation.

Mr. President, we need a commonsense solution to cutting out pork, while at the same time, protecting those programs the American people really care about. I want to be able to be here and fight for the people I represent.

I believe that the amendment offered at the end of yesterday's session by my good friend, the minority leader, and the distinguished Senator from Nebraska [Mr. EXON], goes a long way in achieving that commonsense solution.

Like my amendment, this approach will allow the President to cut all those 11th hour deals in conference committees. It eliminates the backroom wheeling and dealing.

Mr. President, without this amendment, the Dole substitute to S. 4 goes too far. It is a radical, unworkable approach to a difficult problem. It gives the President too much power over the American people. It is too complicated. It creates too much bureaucracy.

The substitute before us enables the President randomly to veto programs that the people's representatives in Congress debate, and compromise on, and authorize in the name of our constituents.

Yesterday I listened very carefully to the debate. I heard the comments of Senator NUNN and I heard the comments of my friend and neighbor, the distinguished Senator from Oregon [Mr. HATFIELD]. Mr. President, the chairman of the Appropriations Committee gave a stirring speech, full of wisdom and common sense about why the line-item legislation is bad public policy.

In particular, he noted the unprecedented transfer of power from the people to the White House. Mr. President, I urge our colleagues to read the speech made by the Senator from Oregon in the RECORD. I cannot support the Dole substitute—it is the breeding ground for abuse and political horsetrading.

I want to give the President the ability to line-item veto all those portions of appropriations bills that have not been through the hearing and authorization process. All those pork items contribute to our deficit.

This is the spending the American people are angry about: the unauthorized buildings, the earmarked research, and the special interest projects.

But, Mr. President, the American people are not angry about the programs that have been authorized. These come to life under the full glare of public scrutiny—everyone is given a chance to weigh in. That is why we have public witness hearings in the Appropriations Committee.

And, it is our job, Mr. President, to make tough choices and to craft compromises. Just like we do at home.

Mr. President, after all the public negotiations, after all the compromises that make up the congressional process—we cannot allow the people's wishes to be subject to the arbitrary veto pen of one person.

The Congressional Research Service tells me that it would take them days to compile the list of unauthorized appropriations in the fiscal year 1994 Transportation bill. And, I have another list from the CRS which shows that nearly $1 in $5 in the military construction account was spent on unauthorized appropriations. That is not insignificant.

Mr. President, I intend to vote for the line-item legislation proposed by my colleagues from South Dakota and Nebraska. I want to make sure my constituents' wishes are not subject to the arbitrary budget axe of the executive branch. I want to return some rationality to this debate.

Mr. President, the American people deserve a balanced budget. When I arrived at the Senate 2 years ago, I faced the daunting task of restoring some fiscal restraint to our budget—it was a budget of runaway spending. It was a budget of misplaced priorities.

And, as a member of the Budget Committee, I was tasked by my constituents to correct the way our money is spent.

That is the proper role of Congress. We, as the representatives of the people, have the obligation to form a budget. It is not the President's job to appropriate money—it is this branch's duty.

I have learned a great deal about our budget over the past 2 years. I have worked with great Senators, like the former chairman, Senator Sasser of Tennessee, and the current ranking member, the Senator from Nebraska [Mr. EXON].

Let me say, Mr. President, we are a richer country for the wisdom of my distinguished colleague from Nebraska. I look forward to working with him during the next 18 months, and I will miss his leadership when he retires from this body.

Mr. President, my friend from Nebraska knows, as I know, that crafting a budget resolution takes courage.

Reducing our deficit takes even more courage. And, I am proud of the record of the Budget Committee and the administration over the past 2 years—as you know, we have reduced the deficit by nearly $100 billion.

We did that by leveling with the American people. By making taxes fairer. By cutting more than 300 programs and totally eliminating 100 more.

That is the correct way.

Trying to attack government spending through a radical, unworkable separate enrollment bill is not.

Everyone wants to lower the deficit, which blossomed and grew during the 1980's. And, as I said, we have done a good job of it over the past 2 years.

I am afraid some of these proposals might go too far. We need to keep things in perspective. I am afraid as I look at the rescission package—these are the wrong cuts to the wrong people. And, scoring a few political points in a debate will have dire consequences for millions of average Americans. It might sound good in a debate to control the White House, but it won't feel good to the average Americans who sit around the kitchen table in my house.

Mr. President, I will support line-item legislation, but not the ill-conceived, radical amendment supported by the majority leader.

I ask unanimous consent that my amendment be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the amendment (No. 388) was withdrawn.

Mrs. MURRAY. Mr. President, I yield the floor.

Mr. COATS. 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. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 348 TO AMENDMENT NO. 347

Mr. EXON. Mr. President, in order to conserve time as much as possible and since we have only 10 minutes left, I will be glad to interrupt my remarks to accommodate any Senator with regard to bringing up a measure before 10.

If not, I thought I would make some statements that I have with regard to the matter that we will be going into controlled time on at 10 o'clock.

Mr. President, I rise in support of the Daschle substitute and urge my colleagues to support it as well. Earlier this year I joined with Senator DOMENICI in introducing S. 14, which then enjoyed the support of the majority leader, the minority leader, and, of course, the chairman of the Senate Budget Committee, Senator DOMENICI. I believed then and I continue to believe now that S. 14, or a similarly crafted bill, would be the best course of action. S. 14 is now effectively before the Senate in the form of the Daschle amendment.

As Senators know all too well, passing a line-item veto is only the beginning and not the end of the debate. We will need to go to conference with the other body, which has already passed a line-item veto bill in the form of an enhanced rescission bill quite similar to S. 4.

The facts are, the Daschle substitute essentially is S. 14 and certainly is, in my view, far superior to the Dole substitute proposal that is before the body. Unlike the Dole proposal, it was not crafted in a matter of a day or two. Unlike the Dole proposal, it has seen the light of day and was not devised primarily as a means to obtain party unity. In fact, S. 14 enjoyed bipartisan support from the very beginning, and it thus represents the middle ground in this very important debate.

In my statement yesterday, I outlined some of the concerns that I have with the Dole substitute. These concerns remain today. Those of you who may have been listening last night heard an excellent presentation from Senator LEVIN about the difficulties that will be faced by the cutting and slicing of the bills that will be required by the Dole proposal. Although it may sound rational on paper, we do not know how it will work in reality.

No Senator should vote on these proposals without hearing or reading Senator NUNN's Senate speech of last night. We all know SAM NUNN, his integrity, his courtesy, his understanding of the issues. And we should at least listen to him.

In addition, the Dole proposal raises serious constitutional questions. There are scholars who come out on each side of the issue, yet no one can deny that the question will not be fully resolved until the proposal is reviewed by the U.S. Supreme Court.

I have long supported the idea of giving our President the line-item veto power. We should do so in a manner that will most likely stand the test of constitutionality. I have been in the Senate for over 16 years, and this is the closest we have come yet to actually passing a line-item veto. We should do the job right. Mr. President, we should do so in a way that effectively covers special tax breaks and tax loopholes. We have to look at all of the pieces of our budget if we are going to solve deficits of over $200 billion annually, feeding the national debt that is rapidly rising, which is now at or near $5 trillion.

The Daschle amendment will address tax loopholes and will assure that tax giveaways receive the same scrutiny as pork in our appropriations bills. By covering more of the budget, the Daschle substitute will be a more effective tool to help our President bring some fiscal sanity to the Government. The Daschle substitute will allow the President to scale back on appropriations, while the Dole substitute does not.

Yesterday I talked about the dilemma that the President faces in signing a bill that on the whole is good but includes some bad parts. The same view would apply to individual amounts as well. I have found the Dole substitute to be an honest proposal that merits serious consideration. It took a step in the right direction by including some special tax provisions. I am pleased that the majority accepted my lockbox amendment. The Dole bill includes a sunset provision and will require Congress to review the bill in the year 2000.

In many ways the Dole substitute, as amended, comes a long ways toward S. 14. Yet I remain disappointed by the process which has been followed to bring the Dole substitute to the floor. Bipartisan cooperation was cast aside in the name of party unity. Such action is an ill wind for future cooperation in the U.S. Senate. The Daschle substitute is a reasonable and responsible solution to pork-barrel spending. The Dole proposal, with all of its questions, remains at best a shot in the dark. It might hit the mark. It might not.

The Daschle substitute will work. Once again, I urge its adoption.

AMENDMENT NO. 348 TO AMENDMENT NO. 347

The PRESIDING OFFICER (Mr. KYL). Under the previous order, the Senate will now resume consideration of amendment No. 348 on which there shall be 2 hours of debate equally divided.

Mr. EXON. I see the Senator from Georgia is on the floor.

I would simply say at this time that his remarks last night and the remarks that he is amplifying today are so important that I have asked that the remarks printed in the RECORD last night be laid on every Senator's desk because I think every Senator should know about them.

I now yield whatever time is required to the Senator from Georgia.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Georgia.

Mr. NUNN. Mr. President, I made a lengthy presentation last evening relating to the defects in this substitute that is now before us. I would like to say at the outset I believe the current practice, where rescissions come over from the President and if we take no action nothing is changed, is unacceptable. That practice gives the President, really, no authority to point out specific items in appropriations bills and to have any hope that they will be corrected if they are wasteful.

I have always contended and still contend that Presidents have enormous power if they would just veto the whole bill and then indicate to the American public what is wrong with the bill. That would put the onus on Congress to correct it. But apparently Presidents do not choose to do that.

I have listened with care in the last few days to the debate on this so-called line-item veto. There are several things I do not believe we have properly focused on. The first point that I think people need to understand is the current appropriation process. There are two types of documents that are produced by the Congress in the appropriation process, and I really do not believe the distinction between the two is commonly recognized in this Chamber.

The first document is an appropriation bill, which is passed by both Houses of Congress. It is signed into law by the President, or vetoed—usually signed. Last year's defense appropriation bill, for example, was 61 pages long. The bill is legally binding on the executive branch. It becomes law.

The second type of document is a different type of document altogether and that is the report issued by the Appropriations Committees and the report issued by the House-Senate conferees. The three reports issued, just for instance, in connection with last year's Defense bill are 853 pages, covering over 2,300 lines. The policy direction in these reports, often known as pork-barrel spending to the critics—some of it—is not binding on the executive branch.

Much of what is complained about as wasteful spending by the President and by the media and by others, including people in this body, is not even binding on the executive branch. But people do not recognize that. Not all of it, but much of it.

There is no requirement in law or Senate rule that an appropriations bill or report must contain any specific level of detail. I want to repeat that because that goes to the heart of what is wrong with this proposal. There is no requirement in law and no Senate rule, nor would they be if we passed this—there is no change here—that an appropriations bill or report contain any specific level of detail.

Mr. President, I want to repeat that. There is no requirement in law nor any Senate rule that an appropriations bill or report contain any specific level of detail. Most appropriations bills, particularly in the defense arena but not limited to defense, set forth large lump sum amounts that are not tied to specific programs, projects, or activities.

Looking to an example from last year's Department of Defense Appropriations Act, the act provided a specific sum for Army aircraft procurement, $1.164 billion. The text of the act does not require the Army to spend that money on any particular type of aircraft. Then the report comes along and indicates how the Congress expects the money to be spent. But that is a matter of political comity. It is not binding. That is the key to understanding what is wrong with this substitute proposal which we have before us.

I would say most of the defects I have pointed out do not apply to either of the bills based on rescissions. These defects do not apply to the Domenici rescission bill, which is now before us and is known as the Daschle-Exon amendment, nor to the McCain rescission bill. Most of the defects I am pointing out here this morning do not apply to either of those. I do have some problem with the McCain proposal, as I said last night, because of the two-thirds requirement and the huge, huge shift of power to the executive branch of government, but that is a different matter.

What is wrong with this proposal? This proposal is aimed at cutting out pork-barrel spending. That is the aim of it. I understand that. I share that goal. I quote directly from the Dole substitute:

> The Committees on Appropriations of either the House or the Senate shall not report an appropriations measure that fails to contain such levels of detail on the allocation of an item of appropriation proposed by that House as is set forth in the committee report accompanying such bill.

So what is it we are calling for the President to have on his desk to be able to veto out, to cut out, pork? In the words of the amendment, we are calling for such level of detail as is set forth in the committee report. There is no requirement that there be any specific level of detail in the committee report.

So what are we saying is going to be on the President's desk? Nothing, unless the Appropriations Committees choose to do it voluntarily. We are basically creating a loophole big enough to drive all the pork through that has ever passed the Congress, if the Appropriations Committees decide to move in that direction.

So that is what is wrong with this proposal. There can simply be an appropriations bill that says so many dollars for Army procurement. Then instead of having the information in a report, the Appropriations Committee can come out on the floor, and they can make a statement saying here is what we expect. And that statement would not be subject to being put in the bill. The President will not have anything to veto.

The same thing could be done on a conference report. This proposal is shooting at a target and missing it completely, unless the Appropriations Committees decide to continue to put all of it in the appropriations report and then to incorporate that in the bill, which would be an entirely voluntarily act.

So the authors of this bill are trying to reach a compromise and have totally missed the target.

Mr. President, the other big feature that is wrong with this: Let us assume for a moment that the Appropriations Committee decides that, in spite of this legislation, they are going to continue to operate with detailed reports which will invite the President of the United States to take certain actions on items which he does not like. If they do that, what they are going to do then is they are going to put all of these line items in a report. They are going to put it in a bill. It will be enrolled. We will send down to the President thousands of bills. He will get Band-Aid hands doing it. We will get candidates for the Presidency on TV, and let us see who can sign the things the quickest because that will be the criteria of who will be President. They will have to sign 10,000 or 15,000 bills a year. We will have to get a great signature guy, or gal, in there for President of the United States.

So let us assume, though, that they decide not to drive a pork truck through this huge loophole. Let us assume they do not. Let us assume they send all of these bills down there. Now guess what happens? The Department of Defense then has no flexibility for reprogramming. What that means in practical effect is, if the C–17 runs into a contractual problem or some kind of technical problem and it can spend only $500 million of a $1 billion account, the $500 million that would otherwise be available to put on readiness or pay or some other urgent need will not be able to be reprogrammed because you will have a line item in there. What does that mean? It means every time the Department of Defense, or any other Department for that matter, decides they are going to change anything on the budget—and that happens every year; that happens to the tune of billions of dollars—they could not do so. Congress has the informal procedure we call reprogramming. They send over to us a letter to let us know over a threshold what they are doing, lets all four committees sign off on it. It is not telephone; it is in writing. All four committees have to sign on it—Appropriations, and Armed Services in the case of defense. Then they are able to shift money around. That is good government. It encourages managing programs right.

What we are doing is we will now be saying they have to come over for a statutory change on every single item that is signed into law. Do you know how many bills they are going to have to come over here with every year? Hundreds of them. We struggle to get one supplemental through.

This bill here is an absolute joke. It is a joke. I really have a hard time believing we are really even considering this.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. NUNN. I yield.

Mr. BYRD. The Senator is exactly right with respect to the reprogramming requests. Every year we get committee reprogramming requests from the executive agencies. These reprogramming requests do not come to the Senate floor or the House floor. They come to the Appropriations Committee or the Armed Services Committee, or both.

The chairman of the appropriate subcommittee on the Committee on Appropriations takes a look at this, along with the ranking member, and they both sign a letter giving their approval of the reprogramming. This allows the agencies to have flexibility in dealing with matters and changing circumstances. And it is utter nonsense—nonsense—to force the Congress, and in the first place to force the agencies to have to come on bended knees to the Congress to change the law so that they can spend the taxpayers' money wisely.

It all goes to show how utterly insensible this approach is. This bill was brought in here on Monday of this week, this substitute. The Budget Committee and the Committee on Governmental Affairs, on which the distinguished Senator from Georgia sits, studied carefully S. 4 and S. 14 and sent those bills to the floor. They were put on the calendar. And neither of those bills is before the Senate.

Mr. NUNN. That is right.

Mr. BYRD. Neither of those bills is very likely to be voted on by the Senate.

But this hybrid monstrosity has been brought in here on Monday, and on the same day that this substitute was offered a cloture motion was offered, saying to the Senate we are going to have

a cloture vote on the following day but one.

Now, several flaws have already been pointed out. I pointed out the flaw, and several other Senators did, too, with respect to the presenting clause of the Constitution.

Here we were, about to pass legislation that would give to the enrolling clerk of the originating House the authority and the power to break down an appropriations measure after it has passed both Houses in the same form, which means the conference report, and break that bill down into hundreds—as I pointed out with respect to the energy and water bill of 1995, it would be 2,000—around 2,000 small bills, ''billettes,'' and send those to the White House. The Senate and the House would not have passed any one of those bills. Neither the Senate nor the House would have passed any one of those little ''billettes,'' and they would have been sent down to the White House, and the White House would presumably sign them or veto some of them and then they would be sent back to the originating body.

I can just about guarantee the Senator that there will never be an override of any of those little bills, never be an override, and some of them may be of utmost importance to a region of the country or a few of the States or a single State.

This is the forum of the States. The States are represented in this body. It is the only forum in which the States are represented as States. And I can just about guarantee the Senator that not one of those would ever be overridden because there would not be the national interest in one of those that there may be when an entire bill is vetoed by the President. And without the national interest, I pity the poor little northeastern region of this country that can only muster a few votes in the House if the President were, for political reasons—if the President for political reasons were to veto some of the little ''billettes'' that were of vital interest to the northeast region. The northeast region, with its few votes in the House, would never be able to muster a two-thirds majority of that body to override that bill which would be of significance only to a region, or only to a few States.

When I called this measure a monstrosity, I aptly named it. I will try to search Webster to see if I can find a more accurate definition of the measure. But several flaws such as that have been found.

Now, the other side is attempting frenetically to fix those flaws that have been brought out. Just think, as the distinguished Senator from Georgia said last night, if this bill were to be before the Senate for a few more days, how many more flaws would be found.

Mr. NUNN. Mr. President, I say to my friend from West Virginia if this bill were before the Senate, understood by people in this body and the American people, we would be going back to some other bill. We would be going to a rescission bill or we would be getting on welfare. This would go back to the shop for repair.

This bill is in bad shape, and it is going to be looked on, it is going to be looked on with scorn if it passes the Senate. We are going to look silly. We are going to look like we make speeches and pass them into law instead of legislating. I would say to my friend from West Virginia there is another defect.

The Somalia date for a time certain——

Mr. BYRD. Exactly. Exactly.

Mr. NUNN. On deploying troops last year. It was the only way Congress—because the War Powers Act does not work. We know that. The Senator from West Virginia and I have alluded to that, along with the Senator from Virginia [Mr. WARNER], and others. The Somalia restriction about how long troops can be deployed abroad, the President could veto that the way the bill is right now.

Mr. BYRD. Right.

Mr. NUNN. That may be worked on. I hope that will be corrected. They just found out about it. I do not think that is what the authors intended. But the President could take the line item that had Somalia troop deployment in it and restrictions on it, veto that, spend the money—no power of the purse at all in terms of our foreign troops deployment.

Another would be the Hyde amendment. Many people in this body are very much concerned about the abortion question. When we legislate funding restrictions on abortion in this body, one way or the other, whether it is rape, incest, to protect the life of the mother, the President can take the money and veto the paragraph. Now, unless that is corrected, that is another tremendous, tremendous diminishing of congressional power and increasing the executive branch power.

Mr. BYRD. Will the Senator yield?

Mr. NUNN. I hope that will be corrected.

Mr. BYRD. In other words, the President may strip out the language that imposes a condition and make it a nonconditional appropriation.

Mr. NUNN. Right.

Mr. BYRD. Is that correct?

Mr. NUNN. That is correct. And the question now is—I know that my friends on the other side from Indiana and Arizona are going to try to correct that. The Senator from Michigan pointed out last night they are going to try to correct it. But in correcting it, can you correct it and still be able to get at earmarks? I do not think so. I think when you correct that, you are going to have to unwind the earmark language, which brings us back. This bill needs to be thought through. We are talking about serious matters here. We are not talking about something that is going to be in a 30-second ad or a bumper sticker. This is serious business.

Mr. McCAIN. Will the Senator yield?

Mr. NUNN. We are talking about the balance of power between the branches of Government. We are talking about war powers. We are talking about the power of the purse. We are talking about serious business.

Mr. McCAIN. Will the Senator yield?

Mr. BYRD. Will the Senator yield?

Mr. NUNN. I yield to the Senator from West Virginia.

Mr. BYRD. I do not intend to—this will be my last question.

Would not the President then be given a tool whereby he could use the vetoed bill and formulate policy? He would not be using the veto pen necessarily to reduce the deficit.

Mr. NUNN. Correct.

Mr. BYRD. He would be using the veto pen to formulate national policy. We are giving him that kind of power in this bill.

Mr. NUNN. The Senator is exactly right. As this bill is now written, it gives the President the ability to legislate by deletion.

Mr. BYRD. Absolutely.

Mr. NUNN. There is no doubt about it. I will tell you what else it gives the President. We passed a supplemental appropriations bill last week that had rescissions in it. Some of the President's favorite programs were cut. The Technology Reinvestment Program was cut $200 million, as I recall. Environmental restoration funds were cut. Now this proposal is intended to just let him cut spending. That is what the authors intend. I know that. But it lets him veto rescissions. If we had had this in effect last week, the President could have vetoed the deletions or the reductions in his own budget and left the increases in.

Mr. McCAIN. Will the Senator yield for a question?

Mr. NUNN. I will be glad to yield. I just have brief time remaining, and I will yield right at the end of it.

Mr. McCAIN. I am sorry that the Senator will not yield to me as he yielded to the Senator from West Virginia.

Mr. NUNN. I say to the Senator, I will yield to him when I finish my remarks. I will be glad to yield, glad to have a discussion. I know there is limited time and I have to complete my remarks.

As drafted, Mr. President, the substitute provides:

> The Committee on Appropriations of either the House or the Senate shall not report an appropriation measure that fails to contain such level of detail on the allocation of an item of appropriation as is set forth in the committee report accompanying such bill.

The whole thing is tied to the committee report, but there is no requirement for a committee report. This is an empty shell unless the Appropriations Committee decides they are just going to send a report to the President, incorporate it in a bill, have it engrossed, and give him a target to either increase or decrease spending, change policy, whatever he would like to do.

I know certain provisions are being worked out to change. We are on the floor of the Senate under a time agreement and we are now going to make fundamental changes by amendment in a bill that is flawed, badly flawed. We are going to, in the last hour, deal with questions of war powers; we are going to deal with questions of whether rescissions will be deleted. In effect, if they can delete a rescission, the President has increased the spending.

The best indictment against this approach comes from the Republican majority on the Governmental Affairs Committee, because they brought out bills that deal with rescission. The Domenici bill, now known as the Exon-Daschle bill, that is based on rescissions, does not have these flaws in it. It does not tie the President's powers to items in the committee report. If it is a letter, if it is a statement of managers, the President can delete by rescission under the Domenici bill. That is the bill we ought to be voting for.

I know the majority is going to vote against it, but the majority is going to regret this.

Look at what the majority said in Governmental Affairs Committee in their report on this bill 10 days ago. And this goes right to the heart of the way we are now proceeding under this substitute. This is a quote from the majority report of the Governmental Affairs Committee.

> It is possible, although not desirable, to apply the state budgeting system to the Federal Government and give Presidents the kind of line-item veto available to Governors. To maximize item-veto authority for the President, the details in conference reports, agency justification materials, and other nonstatutory sources could be transferred to appropriations bills. . . .

That is precisely what the substitute does, precisely.

> However, placing an item in appropriations bills would produce an undesirable rigidity to agency operations and legislative procedures.

That is a quote. Exactly what this bill does.

> If Congress placed items in appropriations bills, agencies would have to implement the bill precisely as defined in the individual items.

That is exactly what this bill does.

You talk about tying up the Department of Defense. This bill is going to do more damage to the Department of Defense than anything I can imagine. They are not going to be able to shift money on lapsed contracts or delayed contracts with the permission of Congress to pay or to have readiness to make up for critical shortfalls.

Last fall, the Republicans complained about readiness in the campaign. I share some of those concerns. We had a committee this week that reported at the request of the Senator from Arizona. Four retired generals talked about the problems with the defense budget—not enough funding for force structure, not enough funding for modernization.

Now, what are we going to do? We are going to take all of this material, if the Appropriations Committee acts in good faith, and we are going to put it into a law. They are going to have no flexibility whatsoever unless they come back for statutory changes. We are going to have the most bogged down legislative process that I can imagine in the history of this Republic. We are going to have statutory changes by the hundreds requested on every single defense bill.

Quoting again from the majority report:

> In cases where the specific amounts detailed in the appropriations statutes proved to be insufficient as the fiscal year progresses, agencies could not spend above the specified level. Doing so would violate the law.

Exactly what we are doing in this bill.

I will not quote it because I do not have the time this morning, but the House Committee on Government Reform and Oversight, the majority Republicans, said the same thing when they brought out their rescission bill.

So we have the absolute, unbelievable paradox where the majority reports of the Republicans on the Governmental Affairs Committee, in the House and the Senate, have decried the very approach that we are now about to vote on and pass. And it has all been done in the last 2 weeks.

This is not a Democratic kind of critique. This is a Republican critique of the legislation now being presented and supported by the majority.

Continuing to quote the Governmental Affairs majority report:

> Agencies and departments would have to come to Congress and request supplemental funds for some items and rescissions for others, or request a transfer of funds between accounts. Neither the Congress nor the agencies want this inflexibility and added workload for the regular legislative process.

Mr. President, I will conclude my remarks very briefly. There are at least five serious problems with the proposed substitute.

First, it contains loopholes so large that proponents of pork will be able to insulate whole barrels of pork from a Presidential veto if they choose to do so.

Second, the separate enrollment procedure would allow the President to veto funding limitations as well as funding amounts, which would inhibit the ability of Congress to address legitimate policy differences with the President. Some examples I have already given are abortion and troop restrictions on Somalia. He can veto those paragraphs. Maybe that will be changed, but it is my view that you are going to have a hard time changing that without deleting the ability of Congress to do away with earmarks, the very target the Senator from Arizona has been shooting at.

Third, this proposal permits the President to increase as well as decrease spending by allowing him to sign into law those portions of an appropriations bill that increase spending and to veto those portions of an appropriations bill that rescind or reduce pending.

In other words, if a President chose to, under this authority, he could take an appropriations bill that had been passed by the Congress and he could basically increase the amount in that appropriations bill by doing away with or vetoing the rescissions in that bill to reduce funding.

Mr. President, I hope that will be cured. But, again, on something this important, to come out here and have to cure these absolutely colossal defects in this bill in the last few hours is really a hard way for me to visualize responsible legislation occurring.

So just the opposite of what the sponsors have intended could occur.

This is just saying to the President: We think you are a whole lot better at this than we are, so we are giving you congressional authority. We are giving you the power of the purse to make decisions to increase or decrease. You do whatever you want. We want you to do it, because we have proven that we cannot.

Mr. President, the other thing this bill does not do, it does not go after the real problems with our own process—the real problems the Senator from Arizona has pointed out, earmarked funds. We could have a point of order against that. We could have a point of order against an appropriation that comes back from the conference that was not even in the House bill or the Senate bill. We could have a point of order on that. But none of that is in here.

We are basically saying, ''We cannot take care of our problems, so we are going to give the President a huge additional authority.''

Well, the result of that is, believe me, within a year, everybody will realize what we have done and then we will move away from committee reports and we will have statements by managers. And then there will not be anything for the President to veto, and we will start the process all over again, and we add to the disillusionment of the American people. They will finally ask: ''Can't you guys do anything right? We thought we were getting rid of spending, but we are not.''

That is what is going to happen if this goes into law. If this goes into law—and the President says he is going to sign whatever we send down there. That ought to frighten a few people. That ought to make us think.

It is a great pleasure to be able to vote for darn near anything, knowing the President will veto it and you can make your speeches and it is not going to go into law and you do not have to suffer the consequences and the country does not. It is another thing entirely when the President says he is going to sign it. He is going to sign what we send down there on this. And I suppose any President would because,

at least on paper, if it is abided by in good faith, we are going to give him the largest new hunk of Presidential power that we have given any President in many, many, many years.

And then, what we will do, because there are loopholes here, we will take it away by moving the pork out of the reports and moving it into speeches on the floor or statements on the floor, and we will be right back where we are with disillusionment.

Mr. President, I yield the floor.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. McCAIN. Can I ask the Senator from Indiana a question? How many years has he been on the Senate Armed Services Committee?

Mr. COATS. Six years.

Mr. McCAIN. Has he ever seen a reprogramming request?

Mr. COATS. I have not.

Mr. McCAIN. According to the distinguished ranking leader, who served for many years as the chairman, that sometimes entails billions of dollars; is that correct?

Mr. COATS. It appears that it does. In fact there is——

Mr. McCAIN. Although we never have seen them. So if you were the chairman of a committee and ranking member and you were the only one who made a decision on reprogramming, you would be very concerned if something like this—billions of dollars in transfers of funds—was under just your almost direct supervision, would you not?

Mr. COATS. I think the whole purpose of this exercise——

Mr. McCAIN. By the way, I am sorry I did not have a chance to ask the Senator from Georgia, has there ever been a reprogramming request from the Pentagon that says, ''We can't spend this money, so we would like to give it back to the taxpayers''?

Mr. COATS. Mr. President, I ask unanimous consent that I yield to the Senator from Arizona so he may ask questions of the Senator from Georgia and he may respond without having to go through this convoluted procedure. In fact, I yield the floor so the Senator from Arizona can take the floor to ask questions.

Mr. McCAIN. I appreciate the indulgence of the Senator from Georgia, who has obviously for many years been the person who decided whether billions would be transferred from one account to the other without consultation certainly with these two Senators.

Mr. NUNN. Will the——

Mr. McCAIN. Let me finish; I will ask the question. Has the former chairman ever, the distinguished ranking minority of the Senate Armed Services Committee, ever seen a reprogramming request that said, ''We can't spend this money. We'd like to give it back to the taxpayers''?

Mr. NUNN. Let me say to the Senator, all reprogrammings are approved by the majority and by the minority. That was the case when——

Mr. McCAIN. By the chairman and ranking member.

Mr. NUNN. And staff——

Mr. McCAIN. Neither the Senator from Indiana nor I were ever consulted on any of these reprogramming requests, him 6 years and me 8 years as members of the committee.

Mr. NUNN. Will the Senator yield for me to respond?

Mr. McCAIN. Yes.

Mr. NUNN. Staff has the responsibility to circulate the reprogramming request to the respective members on both sides of the aisle. On the Democratic side of the aisle, we do that. If the staff on the Republican side does not let the Republican Senators know, then if I were a Republican Senator on that committee, I would be asking the staff some very tough questions.

We let our members know about reprogramming. That is a question that is up to the Republicans because the chairman or the ranking member on the Republican side understands reprogramming requests. Many times they are pending for 3 weeks to 3 months. Many times there is tremendous discussion. We even have reprogrammings that get folded into the bill itself because they are controversial.

As the chairman of the committee, I never passed a reprogramming request, if I had any member interested on my side raise an issue, without a full discussion. That is the job of the ranking member on the Republican side and the staff.

So I think there are some tough questions that ought to be asked of the staff on the Republican side if the Senator from Indiana and the Senator from Arizona have never seen a reprogramming request. Your staff signed off on it in your name.

Mr. McCAIN. It certainly is alarming that that kind of responsibility would be placed on staff who are not elected by anybody.

Mr. NUNN. This is——

Mr. McCAIN. And the kind of a system where it is up to one or two members, the chairman and the ranking member, whether they want to notify them or not. I have never seen any formal procedure or rule in the committee that says that. In fact, in other committees, it is commonplace that a phone call be sufficient to approve a reprogramming.

Mr. NUNN. That is not the way we do it.

Mr. McCAIN. If the Senator will consider answering the question, if he has ever seen a reprogramming request from the Pentagon that said, ''We would like to not spend this money and send it back to the taxpayers who sent us the money.''

Mr. NUNN. I will say to my friend from Arizona in response to that, the committee has the duty as we see fit to turn down reprogrammings, in which case the money would not be spent, in which case the money could be reallocated to any other Department in the regular process on the budget bills and on the appropriations bills. I thought my friend from Arizona just had a hearing——

Mr. McCAIN. I am sorry the Senator does not choose to answer my question. My question is, if I may restate the question because, obviously, he did not understand it or does not choose to answer it: Did the Pentagon ever request a reprogramming and say, ''We can't spend this money in the Pentagon. We want it to go back to the taxpayers''? That is my question.

If the Senator does not choose to answer that, that is fine. But I hope I made myself clear as to what my question is.

Mr. NUNN. I understand the question completely, and I hope the Senator will listen to the answer. I can state it but I cannot comprehend it for him. Maybe I have been under a false impression. I thought the Senator from Arizona and my Republican colleagues wanted to increase the defense budget. I thought my Republican colleagues had that in their Contract With America. I thought the Senator from Arizona wanted more money for defense. And now he is saying when a C–17 program lapses, do we want to send it back to the Treasury, or do we want to put it on high defense needs? I have been under the mistaken impression that the Senator from Arizona was concerned about readiness, was concerned about modernization and felt there were deficient funds in the Department of Defense.

Mr. McCAIN. I regret the Senator from Georgia will not answer the question. He is entitled not to answer the question. I will repeat it one more time, but it is obvious—I will not waste the time of the Senate, because he is not going to answer the question. I also want to say——

Mr. NUNN. The answer to the question is the Department of Defense always on reprogrammings asks for the money to be shifted to other defense needs, and our committee has supported that.

Mr. McCAIN. Speaking of comprehension, I say again, has the Senator from Georgia ever heard of a reprogramming request where the Pentagon said, ''We can't spend this money. We'd like to give it back to the taxpayers''?

Mr. NUNN. The answer is no, because the Department of Defense has been underfunded.

Mr. McCAIN. Thank you for answering that question. I also regret the fact that the Senator from Georgia alleges that neither the Senator from Indiana nor I understand what we are doing here. The Senator from Indiana and I, for 8 years, have been involved in this issue. We know it very well. It has been before the Senate many times, including 1985.

I did not accuse the Senator from Georgia of not understanding an issue when we had different positions. I did not accuse the Senator from Georgia of

not understanding the situation in the Persian Gulf when he opposed our military involvement there.

The question is not whether we understand it, it is whether we have a legitimate difference of opinion here, and that is what it is all about.

I think that the Senator from South Dakota raised some legitimate concerns. The Senator from West Virginia did. But to allege that the Senator from Indiana and I do not understand what we are doing, I think does not elevate the debate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, some of the logic and reasoning of those who are opposing the line-item veto measure offered by the Senator from Arizona and the Senator from Indiana is curious. On the one hand, they say that the bill is flawed and that if Republicans would simply reach out and attempt to correct what they perceive to be the flaws, we will have a better bill.

They come to the floor and say, we need a line-item veto, we need to have a process in place whereby the executive branch has the option or the ability to check the excess spending habits of Congress that design spending or tax breaks that do not serve a broad purpose, and that they support that effort, but that some of the provisions of the bill, which the Senator from Arizona and the Senator from Indiana have offered, need to be modified.

When the points they make are legitimate points, because we never claimed that our bill was perfect, as no one really claims their bill is perfect—that is why we have an amendment process, that is why we have a debate process—and when a Senator from the other side who happens to want to support it but simply wants to strengthen the bill points out a particular provision that is not designed or drafted as accurately as they think it should be suggests that and we agree with them that it addresses a problem in a more accurate way, then they turn around and say, ''See, that is proof that the bill is flawed.''

Well, what are we to do? On the one hand, they criticize us because the bill, they say, is flawed and needs to be improved. On the other hand, when we say, ''OK, we'll accept that improvement, that's a legitimate improvement,'' they say, ''See, there's proof that it is flawed; therefore, we can't vote for that.'' That is circular reasoning and circular logic that this Senator finds hard to understand.

One of the points that the Senator from Georgia has made is that as the bill is currently constructed and is currently presented, policy decisions would be subject to a Presidential veto and, therefore, it would require a two-thirds override. But that issue has been debated and discussed at length. An amendment has been offered by the Senator from Michigan, Senator LEVIN, to clarify that that will not happen. It has been cosponsored by a Republican Senator, the Senator from Alaska, Senator MURKOWSKI. It has been accepted by the managers of the bill on both sides. It has been accepted by Republicans, and it is designed to clarify a provision in the original language that there is some ambiguity on, or at least some are concerned about some ambiguity. It was never the intent of the separate enrollment legislation to separate legislative language, to have legislative language vetoed by the President. Those were the dollars that are attached to it. That was debated at length. The Levin-Murkowski amendment, which is going to be accepted on both sides, clarifies any question in that regard. Yet, we find ourselves being criticized for a legislation which we have agreed to improve and accept the amendment of the very Senators who have raised the question of criticism.

So I do not understand how our opponents on this issue want us to proceed. Do they want us to work with them or not? Do they want us to improve the bill or not? Do they want us to clarify ambiguities or not? If they do—and it appears that most do—then others should not come to the floor and say, see, that points out that the bill is flawed. The Murkowski-Levin amendment protects all legislative language from being separately enrolled and vetoed. The policy language is protected. That is the intent and that is the result of the amendment which has been agreed to and will be accepted as soon as, procedurally, we can get to that point.

The Senator from Georgia also points out that if we go with the separate enrollment process, it will require an inflexibility in terms of various agencies being able to reprogram funds and, therefore, it will hideously confuse the legislative process. All it will do is change the way in which funds are able to be reprogrammed. Instead of the current practice of a phone call or a letter to a committee chairman and/or the ranking member, instead of a process which involves two, and at most four Senators out of 100, we will have a process which will involve all 100 Senators.

We spend a great deal of time crafting an authorization for the use of funds, and we spend a great deal of time appropriating funds for that authorization. We spend a great deal of time debating those decisions on this Senate floor. Clearly, situations and circumstances change. So that it is appropriate for agencies to come forward and say that circumstances have changed, spending was greater in this area than we anticipated 6 months ago when this was negotiated, or spending is less in that area, and we would like to shift some funds from one area to the other. But what will have to take place now is that that request will have to be made available to all 100 Senators. I think that is appropriate.

If the reprogramming request was always made on an objective basis, always made for legitimate purposes, I think there might be some validity to the arguments presented here this morning. But I think we all know that they are not always made that way, that little side deals are concocted and, yes, phone calls are made; but phone calls are made after hours, and special requests are made from certain Members to other Members for—Heaven forbid—political purposes, and not necessarily for legitimate new expenditures or shifted expenditures, but made for political purposes.

Mr. MCCAIN. Will the Senator yield?

Mr. COATS. I yield to the Senator from Arizona.

Mr. MCCAIN. I ask my friend, is not the issue here programming and not reprogramming? The fact is that this may be a straw man. We are talking about whether we are going to eliminate the waste, and if we want to use the word ''pork-barrel'' spending and put some fiscal discipline in the process. Is that not really what we are talking about here? And the reprogramming issue is something that could be solved through simple changes in the rules or even in how we do business.

I agree with the Senator from Indiana that there are abuses in the reprogramming process. That is not really the fundamental issue, and I do not think we should be spun off into that relatively unimportant side issue as compared with the larger argument here. And the reason why I think both you and I are somewhat agitated is, for somebody to say that this is a joke, that this is not thought through, that we do not know what we are doing—I have never accused any opponent on this floor of not being serious about an issue, nor have I said that a proposal of theirs was a joke, nor did I accuse them of not thinking through a particular amendment when they had it on the floor.

I give them credit for having done their homework and doing what they think is for the good of their State. I think it demeans the debate for anyone, either on this side of the issue or that side of the issue, to say somebody has not thought through an issue, and to say somebody is not serious about it, and to say that what we have been working on for 6 or 8 years is a joke. I think it is wrong and it does not do anything for the debate. I would be glad to and have continued to, since last Thursday—and many years before—debate this issue on its merits, rather than demeaning the motivation or the knowledge or the experience or the talent of those who support it, as I have not those who are opposed to it are.

I ask the Senator from Indiana if he agrees that that might be a good idea for us to elevate this debate back to where it has been, frankly, up until just a short time ago.

Mr. COATS. I thank the Senator from Arizona for his comments. For Members to suggest that this is some surprise that is being sprung on Members of Congress, I simply ask, where have they been for the last decade? This issue has been debated, the merits of this issue have been debated at length on the floor. The Senator from Arizona and the Senator from Indiana have offered time after time various proposals to deal with the fundamental underlying issue.

As the Senator from Arizona has said, the fundamental underlying issue is the ability of Congress, under current law and current procedures, to spend the taxpayers' dollars either in appropriated expenditures or in tax benefits, in a way that serves no national purpose, in a way that is not made available to Members to debate and discuss and to cast their yeas or nays on that particular item. It is an egregious practice that has cost the Treasury and the taxpayers tens of billions, if not hundreds of billions of dollars. It is, as former President Harry Truman said, ''legislative blackmail.''

We all know how the process works, so we can argue some of the fine details about the current practice and what a wonderful practice it is, and we can even talk about reprogramming. But this Congress would easily adapt to and accept the requests of various agencies, if they were legitimate requests. There is nothing to prevent committees from routinely reporting out reprogramming bills en bloc by voice vote at the end of a markup and bringing it to the Senate. There is nothing to prevent routine reprogramming requests from being placed on the calendar and passing by voice vote.

But if a reprogramming request is controversial, if a Member of the Senate or a Member of the House wants to say, ''Wait a minute, what do you mean you are shifting that money from this account to that account? What do you mean there is a problem with spending on the C–17,'' maybe we ought to look into that. Why is there a problem? Do we want to routinely, on the advice of four Senators, simply say, well, that is OK; this program needs more money; let us shift it from this account to another account? Should Members of the Senate have the right to say, ''May I ask some questions about that? Can we debate that on the floor? Can we have some light shed on the reasons this reprogramming is requested?'' That is all we are seeking to accomplish with this procedure.

Again, this whole issue comes down to status quo versus change. Is there a better way to do business? Or do we want to do business the old way? Well, if business done the old way had been satisfactory, if it had not been done in a way which demeans the credibility of individual Senators and demeans the credibility of this institution, we ought to stay with it. Unfortunately, it has. It is an egregious practice that has been abused by Members of the Senate and abused by Members of the House. And, as I said before, we are not here to point fingers. We have all taken advantage of this process.

It is not to our credit that we have done so. It is a time-honored—I now call a ''time dishonored''—practice of trying to slip some goodies in for the folks back home, or for one individual, or a tax break for one person, or one special interest.

Members have spoken eloquently about that practice. We read about it in the news, hear about it on the news. It happens all the time. It is wrong. It ought to stop. We are trying to provide a tool and basis to allow it to stop.

For goodness sake, the sky is not going to fall on Federal spending if we make it a little harder to reprogram something, if, instead of just a letter that comes over or a phone call between an agency and a couple Members of Congress, if we say it will be a little bit tougher to make that decision, Congress is going to have to look at it a little bit longer, Members are going to have the right to raise a few questions and say, ''Is this a legitimate transfer?''

I think it is unfortunate that the C–17—or maybe it is fortunate—the C–17 is a program that has been in serious trouble from the beginning. I am not saying we should not have it. I support it. I think we all have the right to raise questions about whether or not money shifted from one account to bail out a problem with the C–17 is a legitimate shift of money.

There are ways in which Congress can deal with routine, legitimate reprogramming requests without tying this place in knots. For goodness sakes, we are legislators. There are legislators here who know more about how to expedite and loophole things—they have forgotten more—than this Senator can possibly learn.

My concern is not that this process is going to hamstring the process. My concern is that people in back rooms right now are trying to find end runs around what we are trying to do.

Let Members at least do something. Let Members at least make it tougher to spend the taxpayers' dollars. Let Members give the public a better opportunity to look at the way we spend. Let Members at least put our ''yes'' or ''no'' on record so that the taxpayers and our constituents can hold us accountable. Let Members end this practice of saying, ''I could not figure out what was in the bill because it was 2,000 pages long and that stuff was buried or slipped in in conference.'' Let Members make it tougher to spend money, because we have been irresponsible in the way we have spent money around here.

Mr. President, I see there are other speakers on the floor. Let me inquire of the time allocation.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Indiana has 36½ minutes remaining; the minority leader has 30½ minutes remaining.

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

Mr. DASCHLE. Mr. President, I will use my leader time to make comments on the Democratic substitute and reserve the balance of the time allotted to the substitute to the distinguished ranking member, the manager of our bill on our side, the Senator from Nebraska.

Mr. President, the Senator from Georgia raised a number of very helpful points. He makes a powerful case for the substitute that Democrats have proposed. The Senator from Indiana has understandably responded as best he could to many of these questions. The fact remains that there are serious concerns about the proposal, as well-intended as it might be, that the Republicans have offered.

The Senator from Georgia did a real service, I think, in pointing out so well what the Governmental Affairs Committee and the Budget Committee have said about these proposals. Republicans in the Senate have expressed in writing fundamental concerns about what the proposal now put forth by Senator MCCAIN and Senator COATS.

Senator NUNN has clearly recognized what others have recognized—that this proposal is flawed. As everyone probably now appreciates, it has a sunset of the year 2000. I predict this morning that this bill will not last until the year 2000, if it were to pass into law. I make that prediction. I will predict we will be back here at some point before the year 2000 to vote on a bill very similar, if not identical, to the one that we are now proposing, the so-called Domenici-Exon bill.

I say so in large measure because I think many people recognize that in spite of the fact that the other side has come a long way on a number of concerns that we have expressed over the course of this debate, very serious difficulty problems remain. First, there are loopholes in the amendment,—there is no requirement that a conference report contain a line-item level of detail. We can get around the line item almost entirely by putting the details in floor statements or letters to agency heads. We do not have to put it in detail. That is one loophole.

The alternative to that problem is to create so many separate bills, representing so many thousands of line items, that it will make the operation of every agency excessively rigid. If each item becomes separate law, the rigidity of that process becomes so cumbersome people will say it just is not going to work and the whole system will break down.

A third problem is that the President can actually increase spending under the Dole substitute by vetoing line items that actually represent rescissions or general reductions. I know that the distinguished Senator from Michigan, Senator LEVIN, is hoping to address that concern later on. Perhaps we can work something out.

Mr. President, these are very serious concerns. I hope that, as we have with many of the other concerns raised throughout the course of the last several days, we can address those prior to the time we vote on final passage, assuming the substitute is not passed. I am hopeful it will be passed. I will address my reasons for that hope in just a moment.

Let me also address some of the concerns that have, in our view, been addressed at least in part. Our conclusion was that the original tax legislation in the McCain bill that was originally proposed did not go far enough. The other side has come a long way in meeting some of our concerns in adopting a broad provision allowing the President to veto special-interest tax breaks. I read a colloquy into the floor last night between the Senator from Indiana and the Senator from New Jersey [Mr. BRADLEY] about the intention of the Senator from Indiana to broaden the scope to include the issues that were raised on many occasions on this floor by the Senator from New Jersey.

Our amendment is clear and more forceful in that regard. We will talk about that. The fact is that at least the Republicans have begun to accept the realization that we do not have a true, broad scope in our line-item authority unless we have tax breaks on the table as well.

In addition, an amendment by the ranking member of the Budget Committee has been adopted that directs all savings from the line-item veto to deficit reduction. A similar provision was in the Domenici-Exon bill but left out of the Dole substitute. Now, it is back in. We are pleased with that. Without this amendment, savings from the line-item veto could be used to pay for other Government spending. One pork-barrel project could be cut to pay for another. That will not happen now as a result of the legislation offered by the Senator from Nebraska. This was a truth-in-advertising amendment. If we promise deficit reduction, we have to deliver it. It ensures that savings from vetoes of entitlements and tax breaks go to reducing the deficit as well. So that, too, was an improvement.

Then, of course, I am pleased that the amendment by the Senator from Wisconsin was adopted to create a budget point of order against any nonemergency spending included in an emergency supplemental propositions bill. This will ensure that supplementals are truly used for emergencies and are not vehicles for extraneous projects, as we have seen in our recent defense supplemental.

There are improvements in the legislation since Monday. We can be grateful for that. The real improvement, the real opportunity to make substantive progress is to go back to where we started, to go back to what the real experts on this issue have proposed for many, many years. Senator DOMENICI, the chairman of the Budget Committee, and Senator EXON, the ranking member, have worked on this issue, as has Senator COATS, for a long time. Senator DOMENICI and Senator EXON have looked at all the alternatives and concluded some time ago that the most practical approach, the most logical way with which to address this issue is to suggest a line-item rescission.

Forty-three States, including South Dakota, already have a line-item veto. It is time for the Federal Government to adopt one as well.

That bill not only had practicality, and it was most likely to be upheld constitutionally, but it also included the broadest base of a Democratic and Republican consensus—broad bipartisan consensus that this was the approach that could actually work.

I have supported a line-item veto. I supported this concept. I cosponsored it, as did the majority leader. Many others who have cosponsored this legislation this morning or this afternoon will now have an opportunity to vote on a bill that they cosponsored. They clearly saw the wisdom in using this approach or they would not have cosponsored it.

The President has been very helpful in advocating a line-item veto, and has been helpful in moving this process forward.

When the chairman and the ranking member proposed S. 14, obviously they felt, and they had good reason to feel, that based upon broad bipartisan consensus, based upon constitutionality, based upon practicality, that we really had a bill that we have the confidence could be passed. In fact, every single Republican who voted supported this legislation in a bill that was offered last year—by a vote of 342 to 69. That was the vote. Mr. President, 169 Republican Members of the House supported a bill nearly identical to the substitute that we are offering right now. So we have every expectation that this bill has enjoyed support on a broad, bipartisan basis in the past and there ought to be no reason why we could not ensure that the same level of bipartisan support could be found again as we vote later on this afternoon.

That is really what we have all said we want. We want a line-item veto. We want one that is practical. We would like one to see broad bipartisan support when it passes. This substitute offers all of that and more. Basically, there is no secret, no mystery to how this works. I talked about this a little bit last night, but let me make sure everybody understands how simple the process is. That is really one of the advantages to our approach, it is so simple. It gives the President the authority to force Congress to vote on spending and tax provisions that he considers wasteful. That is all it does. And it sets a timeframe within which that must happen.

We all know the situation now. We all recognize that we can ignore line items as they are rescinded now. There is no requirement that Congress needs to respond. But our amendment takes care of that. Our amendment says, within a designated period of time, 20 days, the President notify Congress after passage of a spending or a tax bill of the things he wants to see cut. That is all he has—20 days. Then 2 days later a bill with the President's proposal has to be introduced and within 10 days after that, the Congress has to vote. That is it.

In 1 month's time it is all over; 20 days the President has to notify Congress. Two days later a bill is introduced. And 10 days later it is over. During that 10-day period during which Congress takes it up, we have 10 hours to deal with this issue and be done with it.

Mr. President, it is very clear. Our legislation is as simple as simple can be. It is constitutional. It is a process that would work exceedingly well. We know it will work here.

I believe our amendment has at least four advantages over the pending Republican substitute. Clearly it is more workable; clearly it is more constitutional; clearly it protects majority rule; and, finally, it leaves no question that tax breaks are on the table. It ensures that tax breaks will be subject to review just like any other form of spending.

There is no question about the simplicity argument. The Appropriations Committee has estimated that 13 appropriations bills enacted in fiscal year 1995, sent down now for 13 signatures, will require 10,000 separate minibills under the Dole amendment. So we are going to go from 13 bills to 10,000 bills in just the appropriations process alone. That is what we are talking about. Coming on the heels of the Paperwork Reduction Act, this legislation goes in exactly the opposite direction. That is, the Republican substitute belies all of our public outcry about paperwork and the concerns we have raised time and again about how we want to reduce paperwork, reduce the level of redtape, whether it is in passing bills or the effect the bills have on people afterward.

A good example, of course, is the one I have raised before. This is a 17-page appropriations bill, the Energy and Water Appropriations Act of last year. It is a bill that has 17 pages. That is all it has, 17 pages of line by line appropriations. This is a simple little document that for 200 years we have sent down to the President for signature and that is it. He signs it, he vetoes it, it is over.

Mr. President, this is 1,746 pages. This is what we are going to change it to if the Dole substitute passes. We are going to go from that 17-page bill to this. And the whole story is that when the President gets it, page by page, one after another, he has to get his pen out. He will probably have to get hundreds of pens out. But he is going to have to sign every one of these.

Of course the distinguished President pro tempore, our dear friend, Senator STROM THURMOND, will have to sign

this. The Speaker of the House will have to sign it as well. It takes three signatures, and this is what we are going to be signing: one page after another—1,746 pages. Do we really want that? Is that really paperwork reduction? Is that simplicity? Is that the kind of practical kind of legislating we all espouse? I do not think so. I really do not think we want to go to 1,746 separate signatures every time we pass a simple appropriations bill.

We have a choice of passing a small bill or a large stack of paper. That is our choice. And that is just one bill.

We have also, of course, indicated our concern about the constitutionality of the Dole substitute. The last time this issue came up in committee, the Rules Committee in 1985 voted out a similar proposal unfavorably by a unanimous vote. The separate enrollment proposal was considered then, and voted out unfavorably, with the recommendation that it should not pass, by a unanimous vote, under a Republican Rules Committee chaired by a Republican. The constitutionality was raised again and again. The view then was what we were proposing here was not only impractical but unconstitutional.

As I said, we are going to address that issue of constitutionality with the expedited judicial review and I am hopeful that at some point in the not too distant future the courts will determine for us the constitutional viability of this approach. As others, especially the distinguished Senator from West Virginia, have indicated, it is going to take more than legislative clarification for us to resolve the constitutionality questions. I am hopeful the concerns raised by the junior Senator from Michigan in his proposed amendment will address some of these concerns as well.

But the fact is that, in spite of as much legislative clarification as we can make, we are still rolling the dice when it comes to constitutionality. No one can say unequivocally that what we are now proposing will pass constitutional muster; that we have overcome all of the constitutional hurdles that have been raised over and over again in spite of the changes we have made. As I predicted, this bill will not survive until it sunsets. We will not have to wait until the year 2000 to review this again because whether it is the courts or whether it is the Congress, somebody is going to come back and say: We made a mistake. It may take that. But ultimately we are going to come back here and address it and I am sure at some point that will happen. And certainly the constitutionality question is one of the biggest reasons why I think it could happen, sooner or later.

Mr. President, the third issue has to do with majority rule. Our substitute protects majority rule. Our substitute ensures a central tenent of democracy will be here even after this legislation passes. Our amendment requires a majority of Congress to approve cuts that are proposed by the President, and that majority rule has been something we have supported for 200 years. Under the Dole alternative, the President wins, if he gets the support of just one more than a third of either House of Congress. Either House of Congress can uphold a Presidential decision. If that does not create policymaking potential, if that does not shift the balance of power towards the White House, I do not know what does. In my 16 years in Congress, I have never seen a greater opportunity for the President to become a legislator than this will provide him in the future.

So I am very hopeful that, as we consider the question of Presidential power, the balance between the legislative and the executive branches, that we recognize the magnitude of the opportunity the President will have to set policy for the first time as a result of his ability to line item any one of thousands of specific provisions that may ultimately not only affect spending but affect policy as well.

The fourth issue, as I said, affects tax break language. I indicated that the constitutionality question is unclear. The tax language is even more unclear. The tax language, in spite of the best efforts through colloquies and through changes in the legislation itself to make the tax language clear, is still ambiguous. We still are not sure what ''similarly situated'' is. I hope that we are not creating a provision that would allow us to pass special tax breaks for very small groups of people because they are ''similarly situated.''

I know no one here would support a tax break that only went to Members of Congress or to members of our staff. But under the language, that is a possibility. Under the language, ''similarly situated'' could actually mean that we are allowing tax breaks that would affect a group as small as the Members of this body or our staffs to not be subject to Presidential review.

Through the colloquy and assurances given to us by others, that is becoming less of a threat, I hope. I think we can now be somewhat confident that indeed it is the view of our colleagues on the Republican side that they want broad language here, that they anticipate having the ability or giving the opportunity to the President to review items that are broad in their scope. But it is a roll of the dice. We are not sure what they mean. The language is vague. The language in my view is convoluted. We can do better than that. The way we do it better than that is to pass the Democratic substitute.

Our language is very clear and very direct. It puts special interest tax breaks on the table, period. It is over. We can be very clear, if the Democratic substitute passes, that every special interest tax provision is going to be subject to a line-item veto. Every appropriations bill will be subject to line-item veto. There is no question there. So we will not have to roll the dice when it comes to the interpretation of tax language or constitutionality on any of those.

So, Mr. President, I do not think there is any question, I do not think there is any doubt, that the Democratic substitute is the superior alternative. I do not think Senator DOMENICI and Senator DOLE would have sponsored this legislation had they not had confidence that this is a very workable, simple, practical, constitutional solution. They would not have put their names on a bill if they did not feel that good about it. It is workable. It is constitutional. It projects majority rule. It clearly puts tax breaks on the table. It has solved the problem that we have raised now for days on this side of the aisle. It clarifies our situation while protecting our rights.

So it is that simple. We have an opportunity to vote on something that has history, to vote on something that has been carefully considered by two of our committees, the Governmental Affairs Committee and the Budget Committee. It has a history on both sides of the aisle, with our most esteemed leadership on both sides of the aisle. So without any doubt, with real expertise, our leaders on this issue have come forth and produced a document that I feel enthusiastic about, that I know will work, that I know will found to be constitutional.

So I hope that as we consider our vote, and our colleagues will come back to their original positions on this issue, come back to their original interpretation that indeed this does work well, and support the Democratic substitute.

I yield the floor.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. COATS. Mr. President, may I ask the clerk how much time remains?

The PRESIDING OFFICER. The Senator from Indiana has 36½ minutes, and the Senator from Nebraska has 19½ minutes.

Mr. COATS. Mr. President, I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Thank you, Mr. President. I appreciate the Senator from Indiana yielding.

To review the bidding here on this substitute, naturally I support the Dole-McCain-Coats line-item veto because I think it represents a better approach, the approach that the American people understand.

In the first place, in civics class in the eighth grade, we all learned that a veto requires a two-thirds override. That is what veto is all about. That is what this provision has, unlike the version offered by the distinguished minority leader, which would only require a 50-percent override. That is not what we think of when we think of a veto. So that is the first important distinction.

Second, with respect to tax breaks, it has never been the concept, in lining

out pork-barrel spending through the line-item veto, that we would add tax breaks to the line-item veto legislation. But in order to accommodate some of our friends on the other side, we did say that if there is an omnibus tax bill, and somebody decides to slip in a tax break for their friend back home, the President could strike that out just as he would an item of spending, of pork-barrel spending, because a tax break for a very limited group or individual would be similar to pork-barrel spending.

So that is included in the Republican version of the line-item veto.

But what we do not think is appropriate is to put more than necessary roadblocks in the way of reducing taxes for all Americans, as the Democratic approach would do. If we are going to give Americans a $500 child tax credit, or if we are going to provide a capital gains tax relief, or reduce the marginal rates, we think that is a matter that we ought to be promoting and not putting roadblocks in the way. The truth is that in most of these major tax changes, it is a regular bill that comes out of the House and Senate. It is subject to Presidential veto, anyway. So the President can veto it. It would require a two-thirds override by the Members of the House and Senate.

So really, this argument, I think is a straw man. On most tax legislation, there will be the two-thirds override, anyway. On that which does not require that, we should not be throwing up more roadblocks in the way of tax breaks for the American people except for those that represent special interests which are taken care of.

In some respects, it seems to me that the Democrats are not willing to take yes for an answer. They wanted the issue of the tax breaks included. We did it. They wanted the so-called ''lock box'' so that any savings will be applied to deficit reduction. We did that. They want to ensure that the President could not veto rescissions. We are going to be doing that.

In other words, most of the primary concerns that were raised about the Republican version of the line-item veto have been agreed to. We are taking care of those. Let us take yes for an answer. We are willing to make this a bipartisan and better bill.

Of the issues remaining, some are I think matters of legitimate dispute. The issue of reprogramming that the Senator from Georgia mentioned I think represents a potential problem. It may be somewhat cumbersome. We will have to see whether Members of the House and the Senate are willing to deal with each other in a matter of comity and in a matter of expedition in getting these rescissions through. But there is nothing wrong with having all Members of this body consider them as opposed to just a few on the committee. So I think that is something we will have to see how it works. But it should not be a big problem.

There is the possibility that committees will not provide the specificity that is called for in the legislation. What this argument assumes is that Members of the House and Senate, in effect, will cheat; that we will decide to get around the line-item veto by not putting in the specific line items, thus for the President to veto if he does not like them.

It is possible that we could try to conjure up ways of getting around this. That is what happened with the balanced budget proposals. That is what happened with Gramm-Rudman, and with other kinds of legislation.

I suspect, however, that good faith will prevail and that the majority, which in fact favors the line-item veto and favors it working, will ensure that as this legislation does work over the next 5 years, it will be handled in such a way and will operate in such a way that the President will be given the ability to line out specific items as is the intention under the legislation.

Of course, with respect to the argument that there is a difference between the majority position here of a two-thirds override and the minority view that there should only be a 50 percent override, that there is a great deal of power being given to the President, that is a legitimate argument. Reasonable people can differ about this. That is why the sunset provision is in the legislation. This legislation does not automatically continue forever. After 5 years, it is over, and it will not be reinstituted unless we decide it was a good idea and we pass it again.

That is where this issue can be evaluated. And if Presidents have abused their authority, I am sure you will not see the Senate passing this kind of legislation again. But if Presidents have done what they should, if they have acted responsibly, then I suspect we will be reinstituting this legislation. That is what sunset is all about. We will have an opportunity to look at it.

So the bottom line, Mr. President, is really whether we want to continue to conduct business as usual or not. The American people obviously do not want us to do that. They want us to change the way Congress conducts its business and the business that it conducts. The line-item veto is a significant improvement in the way the Congress conducts its business.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I ask the Senator from Nebraska to yield me 5 minutes.

Mr. EXON. I yield 5 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I would ask the Senator from Indiana if he could answer some questions that I have.

Mr. COATS. The Senator from Indiana will be happy to try, depending on the complexity of the questions.

Mr. CONRAD. Well, the thrust of my questions goes to the issue of whether or not, with the Dole substitute, the President would be able to veto any existing entitlement spending.

Mr. COATS. The answer to that is no.

Mr. CONRAD. The answer to that is no?

Mr. COATS. No. It only applies to new spending.

Mr. CONRAD. Well, I am interested in that response because I really question whether it is right. I have here the Senate committee report on last year's VA/HUD appropriations bill. Included in this bill was budget authority and outlays for veterans' pensions and compensation. This indicates that the Senate bill contains $17.6 billion for veterans' compensation and pensions. This is mandatory spending which nonetheless gets included in the VA/HUD spending totals every year. My specific question would be, would the spending authority for veterans' pensions and compensation be enrolled separately and subject to Presidential veto under the Dole substitute separate enrollment bill?

Mr. COATS. The answer to that—if the Senator will yield, Mr. President, the answer to that is no, unless it is new spending or a change in the benefit, it would not be subject to the line-item veto.

Mr. CONRAD. Well, the difficulty I have with that answer is, I say to my colleague, these are appropriated entitlements. These are entitlements that are in appropriations bills, and the Dole substitute provides for the separate enrollment of all appropriated measures, does it not?

Mr. COATS. It does provide for the separate enrollment of all appropriated measures. But the application of the bill, application of the veto, the power given to the President only goes to the new spending or expansion of benefits available under the entitlement program.

Mr. CONRAD. So the answer as I hear it is that, even though these appropriated entitlement accounts are in appropriations bills, specifically included in appropriations, all existing entitlement spending would not be subject to Presidential veto?

Mr. COATS. The mandatory spending must go out under the law as it is currently written—mandatory spending. Only new spending is subject to the line-item veto.

Mr. CONRAD. Well, let me go further if I can. For example, then, in last year's agriculture appropriations bill there was $29 billion provided for the Food Stamp Program. Would this amount be enrolled separately and could the President veto it?

Mr. COATS. I am sorry; would the Senator restate that question?

Mr. CONRAD. There was in last year's agriculture appropriations bill $29 billion provided for the Food Stamp Program, an entitlement program, but it was an appropriated entitlement.

Would this amount be enrolled separately and could the President veto it?

Mr. COATS. The amount appropriated must go out under the existing law. The only way in which the President could veto a provision is if the underlying law were changed to increase the amount of spending as the result of an expanded or new benefit. So additional spending to meet the mandatory requirement under the law would not qualify for a line-item veto. But if there were additional spending as the result of a change in the underlying law which increased spending as a result of that change, that increase is subject to the line-item veto.

Mr. CONRAD. So the Senator is asserting that only the increase in these appropriated entitlements could be subject to Presidential veto?

Mr. COATS. I am sorry; again I was speaking to staff.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. CONRAD. I ask the Senator from Nebraska if I might have 2 additional minutes.

Mr. EXON. I grant 2 additional minutes, and then I would also like to follow up on and try to give my perspective of the very legitimate questions that are being asked.

Two more minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. I would then ask the Senator from Indiana, is the Senator from Indiana asserting that only the increase in appropriated entitlements would be subject to Presidential veto?

Mr. COATS. The entitlement could be separately enrolled and subject to a line-item veto, but the funds that were obligated to be spent under the law would have to be spent.

Mr. CONRAD. Well, that sounds to me like a contradictory answer. How could it be that the funds could be spent if the President can veto the item?

Mr. COATS. Because it is direct spending which comes directly from the Treasury, it is a protected expenditure under the law.

Mr. CONRAD. Well, I have great reservations about that answer. I would ask the Senator from Indiana, are appropriated entitlements included in the definition of ''item'' under the terms of the Dole substitute?

Mr. COATS. Any allocation of money is an item, so the answer to that is yes.

Mr. CONRAD. So then that suggests to me they would be available for Presidential veto under the terms of the Dole amendment.

Mr. COATS. The Senator from Indiana would answer as he has answered before, that is, that the mandatory spending, the amount of dollars expended to fulfill the requirements of the law under an entitlement—existing requirement of the law under an entitlement—would be spent by the Treasury in accordance with the law. The separate enrollment language relative to entitlements applies, in terms of spending, in terms of dollars that are subject to line-item veto, applies only to new spending under a change in the law which would change the benefit.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. COATS. And if that change in the benefit would require increased spending.

Mr. CONRAD. I have run out of time. I have other questions I would like to pursue. But I just say to my colleague and friend, I think we have a real legal problem with the definitions.

Mr. EXON. How much time do we have remaining on this side?

The PRESIDING OFFICER. Twelve minutes and fifty seconds.

Mr. EXON. Let me see if I can begin to clear up some of the very legitimate questions that have been asked by the Senator from North Dakota and others. I believe, with all good intentions, there has been some confusion here. And that is the problem that occurs when we have something that comes up on Monday and, boom, a cloture motion is filed against it, then the we find the bill's language locked in concrete, chiseled in stone.

Certainly, we have made some improvements on some problems in the Dole substitute. And some of the amendments that have been addressed here are likely to be accepted and to improve things.

I want to go to the heart of the matter that has been brought up by the Senator from North Dakota. I think the problem is that there has been a misinterpretation or a misunderstanding on the bill itself.

I refer to the Dole substitute bill, page 5, lines 1 through 6. ''The term 'Item' means—(A) with respect to an appropriations measure''. And down below on line (B), ''with respect to an authorization measure.''

Now, many of the questions that the Senator from North Dakota phrased and were answered by our colleague from Indiana mixed back and forth the difference between appropriations and authorizations.

I simply believe that—and I am not for a moment indicating that the Senator from Indiana is trying to mislead anyone at all—I just think there is a very legitimate difference of opinion. I suspect, when this is looked at in retrospect, most of the legal scholars will agree with the thrust being made by the Senator from North Dakota, which I think has not been fully appreciated.

If I can, let me dwell on that a little further.

The Dole substitute would require all appropriations items to be enrolled separately. Now, remember, that is enrolled separately. Among the items that it would require to be separately enrolled are appropriations for programs that many consider entitlements. Congress funds these entitlements through appropriations acts.

With respect to these appropriated entitlements, the President will be able to veto not only new entitlements, but also the funding for our existing entitlement commitments. And I think we should make that abundantly clear and have an understanding of that. If we want to do that, fine.

Mr. CONRAD. Will the Senator yield for a question?

Mr. EXON. Certainly.

Mr. CONRAD. Would not included in these categories be such things as guaranteed student loans, higher education facilities loans?

Mr. EXON. Absolutely, absolutely, absolutely. And I have seen your list. It is right down the line.

Mr. CONRAD. Medicaid, health care trust funds, Federal payments to railroad retirement accounts.

The President of the United States would be able to veto every one of these programs, every agriculture program, including rural electric and telephone loans, conservation, temporary emergency food assistance programs, Federal crop insurance corporation, all payments to veterans.

Would not all these be included?

Mr. EXON. Absolutely.

Mr. CONRAD. And yet we cannot veto the capital gains tax cut? The President cannot veto the capital gains tax cut?

Mr. EXON. He cannot do it.

Mr. CONRAD. I just say, in conclusion, it seems to me it does not make much sense.

Mr. EXON. I say to my friend from North Dakota, again, I am not sure that that is the intent of the Dole substitute, but that is what the Dole substitute does.

Mr. COATS. Will the Senator yield?

Mr. EXON. I am glad to yield on your time.

Mr. COATS. First of all, it would not make sense for the President to do that. Theoretically, he could under the bill. But it would not have the effect of changing expenditures under those entitlements because those entitlements are contractual obligations entered into by the United States and they must be paid.

First of all, I do not know why a President would want to do that, but particularly he would not want to do that because he knows it would have no legal effect. Those are entitlements that have to be paid under a contractual obligation. And while they would be separately enrolled and theoretically subject to a Presidential veto, such veto could not have legal effect because it is a contractual obligation which the Treasury must pay.

It would only apply, as it is stated, to new expenditures under entitlements or where the benefits package has been changed to expand the entitlement.

Those who suggested this argued, I believe rightfully so—and in fact many Members on the Democratic side, or those opposing this effort—that one of the original problems was that it was too narrowly drafted; it only applies to appropriated expenditures; it did not apply to targeted tax benefits and it

did not apply to entitlements, particularly the new entitlements.

So the habit that Congress has been in, even though an entitlement program is running amok with spending, we cannot begin to pay for it without incurring substantial additional debt. We keep expanding the reach of the entitlement programs and the benefits promised under the entitlement programs. We think those should be subject to a Presidential review and, if necessary, veto of that item, and Congress having a greater hurdle to cross in terms of passing that with a two-thirds veto.

Additionally, I trust that President Clinton and all the other candidates seeking that position would never seek to veto these items.

Mr. EXON. Mr. President, I thank my friend from Indiana. We are talking about fine legal points here that, unfortunately, may have to be decided by the courts at some time.

But let me give you some examples about annual appropriations bills and the enrollment process that has to do with that.

As the Senator from North Dakota has said, the President, under this bill, could veto the Commodity Credit Corporation fund, the Food Stamp Program, the Child Nutrition Program, the Guaranteed Student Loan Program, Federal unemployment benefits, Medicaid, Federal payments to railroad retirement, and a number of other programs under which individuals have legal rights to obtain benefits.

With regard to these programs, the separate enrollment procedure—now we are going back to that dog in the manger again—the separate enrollment procedure would allow the President to veto the funding for our existing commitments.

So the President could veto the funding, let us say, for Medicaid. I do not think he probably would, either, but it is a case in point, and only one. But what would the beneficiaries then do? Well, they, of course, would go to court and get an order getting the Government to pay their benefits. This money would then flow from the claims and judgments act. As a result, we would save no money whatsoever and indeed, probably spend much more on legal expenses.

All that I think it points out is how poorly drawn this proposition is. It should be given much more consideration. Rather than rushing the Dole substitute through as a solution to all of our problems we should go to a simplified, direct procedure such as the Daschle amendment, which is S. 14. Both S. 4, and the enhanced rescission bill that the House of Representatives has already passed, are better drawn and preferable to the Dole substitute we are debating here.

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator from Nebraska has 6½ minutes remaining.

Mr. EXON. I yield to the Senator from West Virginia 3 minutes.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished manager of the bill, Mr. EXON.

I take the floor at this time merely to express my support for the substitute that has been offered by Mr. Daschle. The Daschle measure provides that any rescissions that the President may recommend to the Congress will receive a vote by the Congress. The President's rescissions may be stricken but, in being stricken, the rescissions will be given a vote.

Under the current law, when the President sends up rescissions, the Congress may, by not acting, force the President to proceed with the obligations of funds, or the Congress may act. The Congress may accept some of the President's recommendations, the Congress may substitute its own rescissions, or it may do nothing, in which case, as I say, the President's recommendations will amount to nothing. And over the years, Congress has rescinded, as the record will show, more in terms of dollars than the total rescissions that have been submitted by the several Presidents in that period of time.

So the Congress has actually rescinded more moneys than have been requested to be rescinded by the Presidents. But under the Daschle substitute, a President may be assured that he will get a vote, and there is a very well-honed, expedited procedure set forth in the substitute. If at the end of the day, the conference committee is unable to meet an agreement—that is the final step—then any Member of either body may call up the President's original rescissions and offer them, and the President will be given a vote up or down.

It seems to me that is fair. The Daschle substitute does not result in any shift of power from the legislative branch to the executive. It is clear cut. It gives the President the opportunity to get a vote.

Mr. President, I yield myself 1 minute out of the 2 hours that have been yielded to me by special order.

The President is assured a vote, and it seems to me that is fair. That is fair to the President. It gives the President an opportunity, in the face of changing circumstances, to suggest certain rescissions, which perhaps the Congress will agree to.

So I am 100 percent behind the substitute by Mr. DASCHLE, and I ask unanimous consent that my name may be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, while I have the floor, where in the pecking order is my amendment?

The PRESIDING OFFICER. The Senator is advised it will come up after we adopt the Daschle amendment.

Please restate the question.

Mr. BYRD. Where in the regular order is the amendment which I have had made in order for calling up today?

The PRESIDING OFFICER. The Senator is advised that will be the next amendment following the disposition of the Daschle amendment.

Mr. BYRD. I thank the Chair. Mr. President, I ask unanimous consent that that amendment that I am qualified under the agreement to offer may be called up at such time as I wish to call it up. I do not wish it to appear in the regular order.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. COATS. Reserving the right to object, Mr. President, I wonder if I can inquire of the Senator, I want to just make sure I understand what the Senator from West Virginia has requested.

I thought I heard the Chair to say that under the regular procedure, the next order of business following disposition of the Daschle amendment would be the amendment of the Senator from West Virginia.

The PRESIDING OFFICER. The Senator is correct.

Mr. COATS. And is the request of the Senator from West Virginia that that amendment be subject to being called up in a different order at the Senator's request?

Mr. BYRD. Yes; I am not prepared to call it up next, and I merely ask that I be allowed to call it up when I am ready to call it up.

Mr. COATS. Mr. President, I would have no objection to that within the constraints of the overall agreement.

Mr. BYRD. It certainly would be within the constraints of the overall agreement.

Mr. COATS. Can I inquire of the Senator from West Virginia, will he be prepared to call up that amendment today?

Mr. BYRD. Well, I may or may not be, but I can assure the Senator that within the constraints of the overall agreement, that amendment will have to be called up before the substitute by Mr. DOLE is voted on.

Mr. COATS. Mr. President, I certainly understand that. I guess my concern is that the majority leader has indicated that it is his intent, and I think it was the agreed-upon intent of the managers of the bill as well as the minority leader, that we conclude all action on the line-item veto and bring it to final passage today.

Mr. BYRD. I do not think that was the agreement. It was my understanding it would be concluded this week. I do not think there was any assurance that action would be finalized on the line-item veto today.

Mr. COATS. Mr. President, the statement of the Senator from West Virginia is correct.

Mr. BYRD. I will just try to——

Mr. COATS. The original decision did carry through until Friday. Given the progress that we have made and the short list of amendments that was left,

I guess it was the thinking that it could be concluded today, and, obviously, many Members hope that will be the case, but it is not determined and there is no particular agreement says that it has to be.

Mr. BYRD. That is right. I have no intention of trying to lay the matter over until next week. If I had that intention, I would not have agreed to the agreement. I have no intention of that.

Mr. COATS. Mr. President, this Senator has no doubt that had the Senator from West Virginia wanted to carry this over into next week or even beyond, he certainly has the ability to do that. I take him at his word and withdraw my reservation.

Mr. BYRD. I thank the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Did the Chair put the question?

The PRESIDING OFFICER. The unanimous-consent request has been agreed to.

Mr. BYRD. I thank the Chair, and I thank all Senators.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President, I inquire as to the time remaining.

The PRESIDING OFFICER. The Senator from Indiana has 27½ minutes left; the Senator from Nebraska has 3½ minutes left.

Mr. COATS. Mr. President, earlier the minority leader, Senator DASCHLE, whose amendment is currently pending, once again made the point that the complexity of the separate enrollment process is a reason to vote against the DOLE amendment, because it would take a fairly simple, several-page piece of legislation that would be sent to the President and translate it into a stack of individually enrolled items, any one of which or several of which the President could veto.

The strength, I will suggest, of the separately enrolled procedure is the very fact that each particular item is separately enrolled into a separate bill. And the purpose of that is so that the Congress, the President, and the American public knows just exactly what is contained in this thin little booklet as to how their money is going to be spent.

It is not a matter of convenience for Congress. It will be somewhat less convenient to go to separate enrollment, although we have demonstrated that the enrolling clerk now possesses the technology through computerization to process separate enrollment in a very expeditious way. So it is not the nightmare that it might once have been. It is not the nightmare monstrosity that has been described.

I wonder what the American people would say if they were polled on the question of whether, to determine how their tax dollars are spent, they wanted a booklet of about 8 or 10 or 12 pages which talked in very broad categories, or whether they would like the ability to see how each particular item is spent, and they could pull that out and say, ''Aha.'' See, the question is not whether or not the rescission process suggested by the minority leader is more convenient; the question is not even whether or not it spends less or more money; the question is, How is that money spent? The question that the American taxpayer is raising is: How is my money being spent? They care a lot more about the details of the specific expenditure than they do the overall total, although I do not mean to suggest the overall total is not important.

So, if a rescission is brought to the floor and the claim is made that this rescission saves as much money as what the President requested, it does not answer the question of how is that money spent. And is it spent for a legitimate purpose? And so we annually run into the question of the expenditures for the Lawrence Welk Home—the studies that most Americans feel are inappropriate uses of their tax dollars, the special little projects and spending that goes to benefit maybe a particular Member of Congress and enhance his or her reelection but really does nothing for the individuals that the majority in Congress represent.

We annually have to deal with how the money is spent. So it is not just a question of how much; it is how much is being spent and is that in the taxpayers' interest? And is there accountability to the Member who has proposed such an expenditure?

Mr. President, last November, anger against this institution burned white hot. With their votes, the American people decisively demonstrated their deep frustration with the status quo. Just weeks ago, I suggest that the Senate fueled that anger and betrayed their trust by failing to pass a balanced budget amendment, demonstrating that we are an institution more concerned with preserving our power than with protecting our Nation's posterity.

That is really the issue that is before us today. Are we going to preserve the status quo? Are we going to preserve the power of spending, so that we can continue to spend the way that we have spent the taxpayers' dollars in the past? Or are we going to change the procedure so that we can be held more accountable to the American taxpayer for how we spend their dollars? That is the question that is before us under the minority leader substitute. Will this institution decide to protect our powers and preserve the status quo? Or are we willing to take bold steps to end business as usual?

The Wall Street Journal editorialized, in 1993, expedited rescission, which is the minority leader's alternative proposal before us that we will vote on shortly, an alternative to the tough measure that the President has requested, that Senator MCCAIN and I have brought forward. ''Expedited rescission,'' the Wall Street Journal said, ''is to the line-item veto what chicory-flavored water is to Colombian coffee. It may look the same, but one taste tells the difference. A true line-item veto,'' the editorial said, ''would mean that the President will receive a spending bill from the Congress and would have the right to strike out items he considered unnecessary spending. Congress could restore the spending but only by a two-thirds vote of both the House and the Senate. The push to replace the line-item veto with a sham substitute is typical of how Congress is dealing with reform in this session. It is faking it.''

The substitute that is offered by the minority leader simply does nothing to change the way in which we spend people's money. It does not alter the balance in favor of savings. The same simple majority that voted to spend the money in the first place is all that is required to continue the spending. Procedure in the minority leader's bill says that Members on this floor can take the President's rescission which, yes, does now have to be brought to a vote under expedited rescission, but with just a simple majority can strike any rescission that the President sends up. So the same majority that passed the bill in the first place can take the President's rescission and strike it.

Although the title of the minority leader's bill is the Legislative Line-Item Veto Act, this is false advertising. There is no veto contemplated anywhere in the bill, none whatsoever. The President is given the chance to veto spending, and Congress is not forced to muster the two-thirds to override the veto.

In 1992, former President Reagan said, ''There is talk that the congressional leadership may offer the new President expedited rescission authority. This will not do the job,'' he said. ''Although it would permit the President to strike budget-busting expenditures, they could easily be reinstated by a simple majority vote of the Congress. A true line-item veto,'' President Reagan said, ''must require a two-thirds vote to override. Not only does the substitute fail to give the President veto power over spending accounts, it does little to address the failures of the Impoundment and Control Act.''

Since 1974, Congress' record on acting on Presidential impoundments has been embarrassing. The minority leader said as much. By simple inaction, we have ignored tens of billions of dollars in Presidential requests for rescission or impoundment authority. It has been the will of Congress not to act. It has been the will of Congress to fail to act. And Members of the minority leader's party have as much as said so. They have come down here and said, ''We have to stop the current practice.'' The problem is, their bill will not stop the current practice. All the substitute does is expedite a vote. It does nothing to change the presumption in favor of savings. It takes no step toward restoring the impoundment powers which the President exercised prior to 1974. And

since 1974, we have seen rescission after rescission after rescission of the President rejected by this Congress.

The separate enrollment legislation before us, on the other hand, would restore authority to the President. It would allow him to veto spending and require two-thirds of both Houses to override it. The substitute offered by the minority retains the current procedures, with the one exception that Congress could no longer bury the impoundments, but they must vote.

Quite frankly, Mr. President, their idea is too little too late. Nothing but the threat of a true line-item veto has even prodded their opposing our efforts into a vote on expedited rescission. Where were they when Senator MCCAIN and I were on the floor year after year after year offering enhanced rescission, offering some way to deal with the problem that they all admit exists? A handful of Democrats—you can count them on one hand—were supporting our efforts. Now it is only the legitimate, real threat of a true line-item veto that brings them to the floor saying, ''We are for line-item veto, we are just not for your line-item veto. Let us do it our way.'' Well, their way basically continues the practice that brought us to this place in the first place.

They have never brought up, since my time in Congress and in the Senate—or Senator MCCAIN's time in Congress and the Senate—a freestanding bill. The majority leader, Senator Mitchell, never brought up a freestanding bill to deal with this problem. Expedited rescission does nothing to restore power to the Executive which Congress grabbed in 1974. Congress, which chose to spend the money in the first place, retains complete control under expedited rescission.

The only argument for expedited rescission is that it might shame the Congress with a public vote. But the time for shame is over. With a $4.8 trillion debt, with our children facing a lifetime tax rate that is unconscionable, shame is simply not enough. We are already shamed. We need more than a sense of shame; we need to give the Executive power to challenge our spending habits. We need a true line-item veto. I urge my colleagues to reject the amendment offered by the minority leader and vote for a true line-item veto.

Mr. President, may I inquire how much time remains?

The PRESIDING OFFICER. The Senator from Indiana has 13½ minutes and the Senator from Nebraska has 3½ minutes.

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

Mr. McCAIN. Mr. President, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I would like to thank the junior Senator from Arizona for a very detailed exposition of our position on this pending amendment.

Have no doubt, this is probably the crucial amendment of this debate because we are back, frankly, where we were at the beginning of this year, when a line-item veto was going to become a reality, very frankly, because of the results of the November 8 election.

As the Senator from Indiana pointed out, he and I, for the last 8 years, have attempted time after time to bring the line-item veto up for debate and amendment. If there was a better idea on that side as to how to do what the distinguished Democratic leader has said, and that is, that we all want a line-item veto, it is rather amazing to me that we were never able to get a line-item veto to the floor of this Senate for consideration. Each time, it was blocked on a parliamentary tactic called a budget point of order, which prohibited Members from bringing up the amendment.

With all due respect to my friend from South Dakota, I wish that he had taken this attitude some years ago. I believe that we would have saved the American people billions and tens of billions of dollars in waste and pork-barrel spending.

We really are, Mr. President, getting down to the crucial aspect of this entire issue, as the Senator from Indiana said, whether a legislative line-item veto will mean the definition that is written in the Constitution of what a veto is, a two-thirds vote by both Houses to override the President's veto, or whether it will simply be a majority vote in either House.

Mr. President, the argument that the majority vote in either House will do the job flies in the face of the experience that I have had for many years now, as I have come down here and tried to eliminate clearly, clearly, wasteful and unnecessary spending that is devoted to the interests of a few, rather than the interests of the American people.

I will provide for the RECORD at some point the many times I have come here and lost amendments to try to remove these incredibly unacceptable appropriations, many times in the most egregious manner, stuffed in in conference between the two bodies, never being brought up in either House.

Last year, in the VA/HUD conference report, there was a couple hundred million dollars stuffed in at the very end, none of which we had ever had any opportunity to scrutinize or look at.

Mr. President, that practice will stop. That practice will stop. Just by bringing it to the attention of the Senate and by seeking a majority vote to overturn it, it is clear that my efforts and others, the Senator from Indiana and others, have been unsuccessful. It took a majority vote of both in order to put it in; it seems to me that a majority vote of one House would clearly keep it in.

We really are talking about what a line-item veto really is, whether we are going to make it—as the President of the United States has stated—a strong line-item veto which he supports. I am a little disappointed that my friends on the other side of the aisle do not support the President of the United States on their own party's position.

I would also like to say, Mr. President, that the debate we have been involved in on this issue—especially the thoughtful comments by the Senator from South Dakota and the very thoughtful and indepth questioning on the part of the Senator from West Virginia—I believe, has made a record here that will help the people in the future if we pass this legislation—I believe we will—as to the exact meaning of this legislation, what it entails, and what is circumscribed by it.

I think it has been a very healthy debate. I look forward to obviously concluding action on this bill in a reasonable time, but at the same time I think that perhaps the entire body and maybe the Nation have been illuminated and informed by this very significant debate.

I want to say, again, I respect the views of the Senator from West Virginia. I know that they are deeply held beliefs. I respect the views of the Senator from South Dakota. I know they are deeply held. We have a fundamental difference of opinion here as to whether the executive branch should have power restored to it. This, in my view, was taken away in 1974.

This is really, fundamentally, what this is all about. I believe that the November 8 election clearly showed that the American people are sick and tired of business as usual in the Congress. If we pass this legislation, especially after having failed to pass the balanced budget amendment, I think that we will at least restore some confidence in the American people, recognizing that it is no panacea. The only real panacea, as even the Senator from Georgia said, is we have to discipline ourselves. I do not see how in the past we have been able to discipline ourselves without the necessary tools to do so.

Mr. President, I would also like to talk about the fact that there are ways to get around this. Mr. President, there are ways to get around every law we pass. There is no better example of that than the War Powers Act. This body passed the War Powers Act and then repassed it over the veto of the President. We routinely ignore it.

I have no doubt, if the Congress of the United States wants to ignore the line-item veto, they can somehow find ways to get around it. What kind of message is that we would send to the American people?

The intention of the legislation is clear. The provisions of the legislation are clear. No, I cannot guarantee the American people that we will comply. But I suggest that if we do not comply with laws that we pass, as we have not with the War Powers Act, we do it at

great risk not only to the institution, but to the entire system and fundamentals of democracy, which is the expectation of the people that sent their representatives to Washington that we would comply with the laws that we pass.

Mr. President, I want to thank my friend from Indiana. I want to thank the other participants in this debate, and I look forward to continuing it after we finish this vote. I do not think there should be any doubt in the minds of my colleagues that this is really the crucial vote of this debate.

Mr. President, I might suggest to the Senator from Nebraska we might move to a vote. I think we planned around noontime, anyway.

Mr. EXON. May I inquire how much time is left on each side?

The PRESIDING OFFICER. The minority side has 3½ minutes; the majority side has 6 minutes.

Mr. EXON. I will use at least 3 minutes, and then maybe we can move on.

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

Mr. EXON. Mr. President, Let me sum up, if I might, in the remaining time. I will simply say, Mr. President, that although I did not support S. 4 in its original form—which was very much akin to what came over from the House of Representatives—I would be far more satisfied with S. 4 in its original form than with what has been put together in a hasty fashion, as demonstrated by the lengthy debate and many amendments that have been accepted with regard to the Dole substitute.

I will simply say that I suspect that there are few times in the history of the Congress of the United States when the Congress of the United States is about to give, in rather shabby fashion, give away the prerogative to the President of the United States.

Maybe if this passes, if the Dole amendment finally passes, we could clean it up in some legitimate way in the conference between the House and Senate.

I simply say I cannot understand how any true conservative could want to give away, to the extent that the Dole substitute as originally proposed would give away the authority of the powers of the purse, to the President of the United States, whoever that President is.

Let me sum up some of the advantages of the substitute offered by Senator DASCHLE, which is the original Domenici-Exon bill. Our substitute allows the President to veto part of an appropriation, giving the President added flexibility. Theirs does not. Our substitute allows the President to veto pork that is caused by colloquies on the floor and other mechanisms, including measures put in the conference report but not forwarded into the language in the statutes. Theirs does not. Our substitute has a clear, broad definition of tax loopholes that plainly covers all tax loopholes. The Dole substitute would allow the President to veto the existing obligation of appropriated entitlements, leading to legal challenges. The Dole substitute raises constitutional concerns that do not exist with regard to our substitute. And our substitute provides an orderly procedure. No 10,000 bills, no new burdens on the President or the Congress or the Members of the Congress who have to sign those bills, in contrast to the Dole substitute which would make a hash of the legislative process.

In closing—and I ask for an additional 1 minute if necessary——

The PRESIDING OFFICER (Mr. ASHCROFT). Without objection, it is so ordered.

The Senator has 30 seconds.

Mr. EXON. In closing, let me say that there are so many things that have not been considered. In a short period of time, we have come up with so many shortcomings. One of the most important, I think, was demonstrated by Senator NUNN when he talked about the action of the Senate not long ago with regard to the issue in Somalia. Here was a situation where we felt that Somalia should be put behind us. We put in an appropriation and we said that appropriation could be used, but the troops had to be removed by a specific date—let us say April 1, I do not remember what the date was. Under the Dole substitute, the President could have simply kept the money, vetoed out the April 1 date, and all of the outreach and control that legitimately is found in the legislative body would go out the window. I do not think that is what they intended, but that is what happens when you put together legislation in the fashion that this was put together.

I hope we approve the Daschle substitute.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I would just point out to my colleague from Nebraska, the pending Levin-Murkowski amendment will make adjustments to take care of the problems which have been highlighted time after time here. That is why we have bills for consideration. That is why we go through an amending process, to improve legislation. If we did not do that, then clearly a bill would be deemed perfect and we would not even have to pass it through the floor of the Senate.

The fact is, though, this legislation was not hastily put together. It has been considered in its various aspects for many, many years dating back to 1867, I believe it was, when a Member of Congress from West Virginia proposed a similar separate enrolling legislation.

We would be glad to consider other amendments which would further improve this legislation, but we are going to get down to, in this vote, whether it is a two-thirds majority to override a veto of the President by both Houses or not. That is really the fundamental question that is being asked when we consider the Daschle amendment.

I might remind my colleagues, that amendment was overwhelmingly rejected by the other body in the form of the Stenholm amendment.

Mr. President, I find no further need for time, I say to my friend from Nebraska.

I yield to the distinguished majority leader.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, I thank both my colleague from Arizona and my colleague from Indiana. I have been watching at home on C–SPAN, while they have been here in the evening, the remarkable work they have been doing. I appreciate it very much. No one on this side has worked harder and longer than the Senator from Arizona and the Senator from Indiana on what I think now is within reach. That is the good news.

The good news is, while we may disagree on how to achieve it, I think it appears we are about ready to give the authority that should be provided. I guess the disagreement is really what constitutes a line-item veto. Our proposal would require certain items in appropriation, authorization, or tax bills to be enrolled as a separate act, clearly allowing the President to veto these items. And these vetoed measures are then available for consideration by Congress as any other vetoed measure is today. We can choose to override or not.

In the case of the Daschle proposal, the distinguished Democrat leader, there are fast-track procedures for consideration of the President's proposals to rescind, but unlike our proposal, a simple majority can defeat the President's efforts. Is the Daschle proposal better than current law? Probably yes, on the margin, as it does require us to at least consider the rescission. But it also only takes a majority to defeat. In the case of our proposal, the President's action stands unless two-thirds of us overturn that exact decision up or down, yes or no. No confusion. I believe this is a much stronger test.

Separate enrollment is not simple. I acknowledge that. But I believe we should give the President, be it this President or any other President, the opportunity to use this authority. If it is abused, if the executive branch takes the opportunity to subvert our intentions, we can remove this new authority as we have granted it. Of course, there is a sunset of the year 2000, so we have the time between now and then to see how the process works.

Is our substitute perfect? Probably not. But I believe it is much stronger and moves us much further in the right direction. I hope we may defeat the Daschle proposal. Then I am assuming, according to my conversations with the Democratic leader, we will conclude action on this bill today. That is my understanding and the understanding of the Democratic leader, and I

would like to conclude action on it by mid-afternoon so we can move to the self-employed tax measure and complete action on that tomorrow. Then, on Monday, move to the modified moratorium on regulations.

Mr. LEAHY. Mr. President, I commend the Democratic leader for his substitute line-item veto amendment. It strikes the worst features of Senator MCCAIN's version of a line-item veto and the majority leader's separate enrollment version. Instead, it adds the best features of Senator DOMENICI's and Senator EXON's original version of a line-item veto.

The Daschle amendment restores majority rule to the line-item veto process. Under this amendment, the President would have 20 days after signing an appropriations bill or a revenue bill to send Congress a draft bill cancelling any line item. Congress then would have 10 days to vote on the rescissions bill.

If Congress passes the bill by a simple majority and it is signed by the President, all savings must go to reducing the deficit.

This procedure honors the intent of our Founders by embracing the fundamental principle of majority rule.

By contrast, the McCain bill and the Dole substitute would undermine this fundamental principle by imposing a three-fifths supermajority vote in both houses to overturn a line-item veto.

Our Founders rejected such supermajority voting requirements on matters within Congress' purview.

James Madison condemned supermajority requirements in Federalist Paper No. 58. Madison warned that:

> In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority.

Unfortunately, the McCain bill and the Dole substitute would do exactly what Madison warned against—it would transfer power to a minority in either the House or Senate.

Moreover, supermajority requirements hurt small States, like Vermont, by upping the ante to take on the President.

No matter how worthy a project, it will be difficult for States with only a few Members to overcome a line-item veto.

Under Senator McCain's proposal and Senator Dole's substitute, it would require Members from small States to convince two-thirds of Members in each House to override the President's veto for the sake of a project in another Member's district.

With Vermont having only one Representative in the House, why would other Members risk the President's wrath to help us with a project vetoed by the President?

The Daschle amendment keeps the power of the purse with Congress—where it belongs.

As the ranking member of the Foreign Operations Subcommittee of the Appropriations Committee, I am frequently called upon to travel abroad. When I visit emerging democracies, one of the universal praises I hear about our system of checks and balances is the power to spend residing in the legislative branch, not the executive.

Many officials from new democracies believe that a legislature's power over the purse is the best weapon to fight the tyranny of a dictatorship.

The McCain line-item veto and the Dole substitute hand over the spending purse strings to the President.

The President would have no burden of persuasion while a Member would have the Herculean task of convincing two-thirds of his or her colleagues in both Houses to care about the vetoed project. It is truly a task for Hercules to override a veto. Just look at the record—of the 2,513 Presidential vetoes in our history, Congress has been able to override only 104 times.

The McCain and Dole supermajority veto procedures would fundamentally change the balance of powers between the two branches and result in a massive shift of power to the executive branch from the legislative branch.

The Daschle amendment, on the other hand, maintains the constitutional balance between the executive and legislative branches.

For a Presidential rescission to become effective, both Houses of Congress must approve it within 10 days. The burden is on the President to convince a simple majority in both the House and Senate to agree to his line-item veto. The President is guaranteed a vote, and Congress is forced to consider the rescission.

If the President cannot convince a majority of us that a targeted project is unnecessary and frivolous, then his veto should fail.

Like Senator DOMENICI's original version, this substitute line-item veto will sunset at the end of the 1998 fiscal year. I strongly support a sunset provision since any line-item veto legislation is like walking on Mars—it has never been done before.

Let us try it out for a few years and see what happens.

Senator DASCHLE has improved the original Domenici-Exon bill. The Daschle substitute protects Social Security—America's true contract with its senior citizens. The Daschle amendment exempts the administrative expenses of Social Security from a line-item veto.

But the most significant feature of the Daschle amendment is that it closes a multi-billion-dollar loophole in the McCain bill and Dole substitute.

The McCain bill ignores tax break loopholes. And the Dole substitute has such a convoluted definition of tax breaks that no one knows which tax loopholes the President may strike.

The Daschle substitute fixes these flaws by giving the President clear authority to target for repeal all wasteful tax benefits in revenue bills.

I find it ironic that the proponents of the McCain bill and now the Dole substitute—who claim that their line-item veto is the only version that will effectively cut pork-barrel programs—are afraid to give the President the ability to cut pork-barrel tax breaks too. Why should the President be given the power to veto spending for school lunches and not for tax deductions claimed by businessmen for three-martini lunches?

Whether pork-barrel spending is in a program or in a tax break, it is still wasteful. To paraphrase Gertrude Stein: A pork barrel is a pork barrel is a pork barrel.

Over the years, big business and other special interests have lobbied hard for tax subsidies for specific industries. And, unfortunately, they have been successful on occassion.

These wasteful special interest tax subsidies do not increase economic growth. To the contrary, wasteful special interest tax subsidies only add to our deficit, which puts a drag on our whole economy.

Like an old-fashioned pork sausage, it is amazing what is in our Internal Revenue Code. Let me give you an example of the corporate pork in our tax laws today.

Our tax laws allow U.S. firms to delay paying taxes on income earned by their foreign subsidiaries until the profit is transferred to the United States. Many U.S. multi-national corporations naturally drag their feet when transferring profits back to their corporate headquarters to take advantage of this special tax break.

But the millions of small business owners—who make up over 95 percent of businesses in my home State of Vermont—do not have the luxury of paying their taxes later by parking profits in a foreign subsidiary. The bipartisan Joint Committee on Taxation estimates that the U.S. Treasury will lose close to $6 billion from this tax loophole over the next 5 years.

The Progressive Policy Institute, a middle-of-the-road think tank, along with the liberal Center On Budget And Policy Priorities and the conservative Cato Institute, recently identified 31 tax subsidies that will cost U.S. taxpayers almost $102 billion over the next 5 years. A few of these subsidies have merit, but many more are just plain wasteful.

Robert Shapiro, the author of the report, concluded that ''tax subsidies, like their counterparts on the spending side, reduce economic efficiency.* * *'' Budget experts on the right, center and left all agree that pork-barrel tax loopholes are just as wasteful as pork-barrel programs.

Not only does the Daschle amendment vastly improve the McCain bill

and Dole substitute, but it also would clear up a murky area in the line-item veto bill that recently passed the House. In the House passed version, H.R. 2, the President has authority to veto targeted tax benefits, which are defined as providing a Federal tax deduction, credit or concession to 100 or fewer beneficiaries.

Is this definition of targeted tax benefits a practical joke by our House colleagues? I can think of only a handful of tax breaks that fit into this very narrow definition.

In fact,the nonpartisan Congressional Budget Office agreed that defining targeted tax breaks in such a limiting manner would produce laughable savings.

The CBO, in typical understatement, said that repealing a tax break that benfits fewer than 100 people is unlikely to generate large savings.

This extremely limited definition would protect almost all wasteful tax loopholes and invite tax evasion.

Any accountant or lawyer worth his or her high-priced fee will be able to find more than 100 clients who can benefit from a tax loophole. If more than 100 taxpayers can figure out a way to shelter their income in a tax loophole, the President would not be able to touch it.

The bigger the loophole in terms of the number of people who can take advantage of it, the safer it is from being cut.

The Daschle amendment gives the President real authority to go after wasteful tax breaks. Under the Daschle substitute, every wasteful tax break would get the same Presidential scrutiny as every wasteful program.

I believe the Daschle amendment embraces the best parts of various versions of a line-item veto. It honors majority rule.

It keeps the power of the purse with Congress while still giving the President new authority to target wasteful spending. It protects Social Security. And it gives the President authority to target all future tax loopholes for repeal.

The Daschle line-item veto substitute is a reasonable and comprehensive measure. I urge my colleagues to adopt it.

Mr. PRYOR. Mr. President, I rise today to speak for a moment on behalf of the line-item veto proposal that the minority leader has offered. I support this reasonable alternative to the so-called separate enrollment line-item veto legislation. Just one of a number of problems with the separate enrollment measure is that it makes funds for operating the Social Security Administration vulnerable to the President's line-item veto authority.

It is clear that the public expects us to protect the integrity of the Social Security System for current beneficiaries and for the millions of current workers and employers worried about the future of Social Security. The majority leader's separate enrollment proposal would not protect Social Security. A provision, however, in the Democratic substitute would exempt moneys used to administer the Social Security program from the President's line-item veto power.

This provision is almost identical to an amendment that I successfully offered to one of the line-item veto bills during our recent Governmental Affairs Committee markup. This amendment was unanimously accepted. The Democratic proposal simply states that,

> The term ''budget item'' means an amount, in whole or in part, of budget authority provided in an appropriation Act except to fund direct spending programs and the administrative expenses of Social Security.

Under the separate enrollment proposal new direct spending for Social Security would be subject to the line-item veto. But my primary concern is about the annual appropriation that is used to administer the Social Security program. These funds, for the most part, come from the Social Security trust funds, are reviewed annually, and are appropriated by the Appropriations Committees of the Congress. The President, armed with line-item veto authority, could eliminate, or by leveraging a veto, limit these administrative funds.

As it currently stands, the Social Security Administration's operating budget is over $5 billion. The greatest portion of these funds come from the Social Security trust funds and are used to administer the Social Security retirement and disability programs. Operating expenses for these two programs represent only 0.9 percent of total program costs, but are the key to effective distribution of Social Security payments and efficient operation of the Social Security system. If we don't have sufficient operating funds to properly fulfill the mission of the Social Security Administration, we fail to honor our commitment to protect Social Security.

One of the many functions carried out by the Social Security Administration is to make sure that beneficiary checks are correctly calculated and promptly mailed out. This is vital to the 42.6 million recipients of Social Security who deserve to get their benefits on time and also to receive the right benefit amount. In my State alone, according to the Social Security Administration, 489,330 Arkansans receive Social Security benefits. This is 20 percent of the Arkansas population. I can only imagine the outcry and confusion if these citizens were to not receive their benefits on time due to a President's line-item veto of Social Security.

Administative funds also ensure that citizens who apply for benefits under the disability program are reviewed for eligibility and that benefit denials can be appealed. But perhaps even more importantly, these operating funds are also used to conduct continuing disability reviews. These reviews are conducted to determine if individuals continue to be eligible for disability benefits, and, if not, to terminate them from the rolls.

Just yesterday the Subcommittee on Social Security of the Senate Finance Committee held a hearing on the growth in the Social Security disability program. This growth stems, in part, from the lack of resources the Social Security Administration currently has to conduct these important reviews. The resources provided for the Social Security Administration are important to ensure that benefits only go to those individuals who are truly eligible.

In fact, the General Accounting Office has estimated that administrative budget cuts at Social Security have resulted in significant reductions in disability reviews and that the failure to conduct these reviews will cost the trust funds $1.4 billion over 5 years.

Proper administrative funding also means that we can combat fraudulent Social Security claims. Social Security is not immune to fraud and abuse. Without proper funding, it is possible that there could be an increase in fraudulent claims filed by citizens that will try to cheat the system.

Mr. President, before the committee mark-up of the line-item veto legislation my amendment was endorsed by the American Association of Retired Persons. I have a letter from the AARP which makes several important points that I would like to emphasize today. They point out, and I quote, that ''Social Security is a self-financed program and does not contribute one penny to the deficit.'' They also state ''since Social Security takes in more revenue than is needed to pay benefits, Congress deliberately took it off budget in order to shield it from unwarranted reductions.'' I ask that the full text of this letter be printed in the RECORD following my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. PRYOR. Mr. President, by exempting Social Security administrative funds as incorporated in the Democratic amendment, we can honestly tell the American people that their Social Security checks are secure and that administrative functions and services will not be interrupted, reduced, or eliminated.

EXHIBIT

AMERICAN ASSOCIATION OF RETIRED PERSONS, AARP,
Washington, DC, March 2, 1995.

Hon. DAVID H. PRYOR,
U.S. Senate,
Washington, DC.

DEAR SENATOR PRYOR: The American Association of Retired Persons (AARP) supports your amendment to S. 4, the ''Legislative Line Item Veto Act of 1995,'' that would ensure that Social Security is exempt from the line item veto. Although AARP believes a limited line item veto or other mechanism that allows for appropriate Congressional review may be warranted to help control unjustified tax breaks or spending programs,

we strongly believe that the administrative expenses of the Social Security Administration (SSA) should be excluded for the following reasons:

Social Security is a self-financed program that does not contribute one penny to the deficit. In fact, since Social Security takes in more revenue than is needed to pay benefits, Congress deliberately took it off budget in order to shield it from unwarranted reductions.

SSA's administrative expenses are financed from the Social Security trust funds. These trust funds are financed by the payroll tax contributions workers and their employers make.

SSA's administrative costs are already less than 2 percent. Further cuts could harm the agency's ability to meet its obligations.

Cutting SSA's administrative costs does not always lead to savings. Past underfunding had forced the agency to reduce the number of Continuing Disability Reviews (CDR) it conducts. The General Accounting Office (GAO) estimates that SSA's failure to conduct CDRs will cost the trust funds about $1.4 billion over 5 years.

AARP appreciates your commitment to the welfare of older Americans and the protection of Social Security. If we can be of further assistance, please do not hesitate to call me, or have your staff call Evelyn Morton of our Federal Affairs Department at (202) 434–3760.

Sincerely,

JOHN ROTHER,
Director,
Legislation and Public Policy Division.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I move to table the Daschle amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. EXON. Mr. President, before we call for that, could we maybe make an agreement here on what we have left, I ask my friend?

Mr. MCCAIN. I will be glad to.

Mr. EXON. According to my list, we have the amendment left by Senator BYRD, which we talked about a few moments ago. He reserves the right to call that up sometime today or tomorrow.

We have the amendment offered by——

Mr. MCCAIN. May I interrupt my friend for a minute?

Mr. EXON. Is that right?

Mr. MCCAIN. It is the understanding on this side of the aisle, articulated by the majority leader, the agreement between the majority leader and Democratic leader was that we could conclude this bill today. So we may have to discuss that.

Mr. EXON. I would certainly say, at least one of the principles in this—I understood there was a goal to conclude this today. But I believe Senator BYRD is absolutely correct that when he did not object earlier, the gentlemen's agreement was we would finish it this week. So I would say, despite any agreement that might have been entered into by the majority leader and minority leader, that did not receive unanimous consent and therefore would not be binding. Is that right?

Mr. MCCAIN. I will yield to the majority leader on that one.

Mr. DOLE. It may not be binding, but this is an understanding the two leaders had. We will just leave it at that.

Mr. EXON. I think Senator BYRD could adequately defend himself on that.

Mr. DOLE. I am certain he could.

Mr. EXON. I will not do so. Suffice it to say the Byrd amendment then, whenever it is called up, is one remaining.

The Levin and Murkowski, two amendments, have now been combined into one, so we have that one left in addition to Byrd.

Mr. MCCAIN. It is my understanding also—I think it is my understanding that is acceptable to both sides. Is that your understanding?

Mr. EXON. That is correct. So that should be easily taken care of.

Then we have the Hatch judiciary amendment that has not yet been disposed of and will likely require a vote. Is that the Senator's understanding?

Mr. MCCAIN. Yes, it is.

Mr. DOLE. If it is pursued.

Mr. EXON. And as far as I know, that is all I have on my list. Does the Senator have anything else?

Mr. MCCAIN. Yes, I would say to my colleague from Nebraska, the Abraham amendment, which I also believe would be accepted by both sides.

Mr. EXON. I missed that. I think that is agreed to also. We are pretty close.

Mr. MCCAIN. Could I then say to my friend from Nebraska, without taking much more time of the body, obviously we could finish this today with great ease, perhaps by mid-afternoon. So I hope the Senator from West Virginia might appreciate that and help us move forward. But, as my colleague said, that is an issue that the Senator from West Virginia would want to discuss.

Does that complete our colloquy?

The PRESIDING OFFICER. The Chair rules there was a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO TABLE AMENDMENT NO. 348

The PRESIDING OFFICER. Under the previous order, the question occurs on the motion to table amendment No. 348, offered by the minority leader, Mr. DASCHLE.

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 who desire to vote?

The result was announced—yeas 62, nays 38, as follows:

[Rollcall Vote No. 112 Leg.]

YEAS—62

Abraham	Cochran	Frist
Ashcroft	Cohen	Gorton
Bennett	Coverdell	Graham
Bond	Craig	Gramm
Bradley	D'Amato	Grams
Brown	DeWine	Grassley
Burns	Dole	Gregg
Campbell	Domenici	Hatch
Chafee	Faircloth	Hatfield
Coats	Feinstein	Heflin
Helms	Lugar	Shelby
Hollings	Mack	Simpson
Hutchison	McCain	Smith
Inhofe	McConnell	Snowe
Kassebaum	Murkowski	Specter
Kempthorne	Nickles	Stevens
Kennedy	Packwood	Thomas
Kerry	Pressler	Thompson
Kyl	Robb	Thurmond
Lieberman	Roth	Warner
Lott	Santorum	

NAYS—38

Akaka	Exon	Mikulski
Baucus	Feingold	Moseley-Braun
Biden	Ford	Moynihan
Bingaman	Glenn	Murray
Boxer	Harkin	Nunn
Breaux	Inouye	Pell
Bryan	Jeffords	Pryor
Bumpers	Johnston	Reid
Byrd	Kerrey	Rockefeller
Conrad	Kohl	Sarbanes
Daschle	Lautenberg	Simon
Dodd	Leahy	Wellstone
Dorgan	Levin	

So the motion to lay on the table the amendment (No. 348) was agreed to.

Mr. EXON. Mr. President, I move to reconsider the vote.

Mr. COATS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENT NO. 401, AS FURTHER MODIFIED TO AMENDMENT NO. 347

Mr. ABRAHAM. Mr. President, I call up my amendment No. 401, and I have a further modification of my amendment, which I send to the desk.

The PRESIDING OFFICER. Is there objection to the modification of amendment No. 401 by Senator ABRAHAM? Without objection, the amendment is so modified.

The amendment (No. 401), as further modified, is as follows:

On page 3, line 17, strike everything after word ''measure'' through the word ''generally'' on page 4, line 14 and insert the following in its place: ''first passes both Houses of Congress in the same form, the Secretary of the Senate (in the case of a measure originating in the Senate) or the Clerk of the House of Representatives (in the case of a measure originating in the House of Representatives) shall disaggregate the items as referenced in Sec. 5(4) and assign each item a new bill number. Henceforth each item shall be treated as a separate bill to be considered under the following subsections. The remainder of the bill not so disaggregated shall constitute a separate bill and shall be considered with the other disaggregated bills pursuant to subsection (b).

(2) A bill that is required to be disaggregated into separate bills pursuant to subsection (a)—

(A) shall be disaggregated without substantive revision, and

(B) shall bear the designation of the measure of which it was an item prior to such disaggregation, together with such other designation as may be necessary to distinguish such measure from other measures disaggregated pursuant to paragraph (1) with respect to the same measure.

(b) The new bills resulting from the disaggregation described in paragraph 1 of subsection (a) shall be immediately placed on the appropriate calendar in the House of origination, and upon passage, placed on the appropriate calendar in the other House. They shall be the next order of business in

each House and they shall be considered and voted on en bloc and shall not be subject to amendment. A motion to proceed to the bills shall be nondebatable. Debate in the House of Representatives or the Senate on the bills shall be limited to not more than 1 hour, which shall be divided equally between the majority leader and the minority leader. A motion further to limit debate is not debatable. A motion to recommit the bills is not in order, and it is not in order to move to reconsider the vote by which the bills are agreed to or disagreed to.

Mr. ABRAHAM. Mr. President, the purpose of the modification is to address technical concerns which were raised by the distinguished Senator from West Virginia and others.

These concerns pertain to whether parts of a bill that do not constitute an item under the definition set out in the substitute would have to be disaggregated. The effect of this modification is to make clear that only new direct spending or new targeted tax benefits must be disaggregated.

Mr. President, I thank the distinguished Senator from West Virginia for raising questions that led to this clarification. And I wish to thank my colleagues from Indiana and Arizona for their willingness to work with me on this matter.

Mr. President, I yield the floor

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I call for regular order with regard to the Levin amendment No. 406.

Mr. President, I remind my colleagues that this amendment addresses the enrollment restrictions and limitations.

I notice the presence of the Senator from New Mexico, Senator BINGAMAN, on the floor. I know that he wishes to address this amendment. I also note that the sponsor of the amendment, Senator LEVIN, is here, and I believe Senator MURKOWSKI, who is a cosponsor, was here a moment ago.

I yield the floor.

The PRESIDING OFFICER. The pending question is the Abraham amendment, which is amendment No. 401.

Mr. EXON. I request that be temporarily laid aside.

The PRESIDING OFFICER. Is there objection?

Mr. McCAIN. Reserving the right to object.

Does the Senator from Nebraska intend to take up the Abraham amendment?

Mr. EXON. The Abraham amendment is being temporarily laid aside at the request of myself on behalf of Senator BYRD, who wishes to address it before it is voted on. I suspect that we will have a chance to voice vote that, but there has been a request on this side to address it before we proceed.

Mr. McCAIN. I thank the Senator.

I do not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 406 TO AMENDMENT NO. 347

The PRESIDING OFFICER. The pending question is now on amendment No. 406, offered by the Senator from Michigan.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I just had a few questions to ask to try to understand amendment No. 406. I was hoping to address those questions to one or any of the sponsors. I note the Senator from Michigan is here. He has previously indicated he would be glad to try to respond to these questions.

So let me just state those questions and then, if the Senator from Michigan or anyone else would want to respond, I would appreciate it.

Let me first just put this in some context, because I am trying to understand the bill that is pending and also understand it in light of this amendment.

As I understand the bill that is pending, it essentially tries to focus in on items of appropriation and provides that an item of appropriation has to be separately enrolled and sent to the President in separate form so that the President has the discretion to either sign or veto that item of appropriation.

I recognize that it is both items of appropriation, and then it is direct spending and one other matter which is covered.

But I guess my concern is this: When we get back to the finding of what an item of appropriation is, what does the term ''item'' mean? We say that it means any numbered section, any unnumbered paragraph, any allocation or suballocation of an appropriation.

And then the amendment that we are now discussing tries to write in an exception to that and say, as to items of appropriation, that an item:

Shall not include a provision which does not appropriate funds, direct the President to expend funds for any specific project, or to create an express or implied obligation to expend funds and—

(i) rescinds or cancels existing budget authority;

(ii) only limits conditions, or otherwise restricts the President's authority to spend otherwise appropriated funds; or;

(iii) conditions on an item of appropriation not involving a positive allocation of funds by explicitly prohibiting the use of any funds.

That is complicated to me, Mr. President. I may be the only Member of the Senate who has difficulty understanding that, but, I have to tell you, I have some difficulty.

Let me just ask a couple of questions.

First of all, what happens to all of these that we are talking about here, all the items which are not included in the definition of items? For example, what happens to the limits, conditions, or other restrictions on the President's authority to spend otherwise obligated funds?

If those are not to be enrolled as separate items and sent to the President for his signature, what does happen to them? Is there anybody—the Senator from Michigan or anyone else—who would like to respond to that question?

Mr. LEVIN. Let me first back up and then attempt to answer the Senator's question.

The problem that this amendment addresses is that there are many items under the definition in the bill which are not spending items, which are not items where Congress is adding on funds, where we are not appropriating money, but where we are restricting or rescinding or limiting, where we are saying, ''None of the funds appropriated in this bill may be spent to keep troops'' in a certain country after a certain date, or where we are saying, ''No more than,'' a certain amount of dollars, ''can be spent on travel,'' or we are saying, ''None of the money that has been appropriated here can be spent on first-class travel,'' or where we are saying, ''Not to exceed,'' a certain amount, ''could be spent on consultants.''

Where Congress in an appropriations bill, which we do all the time, is restricting the use of funds by the executive branch or limiting the use of funds by the executive branch, if those restrictions and limits are items, then to give the President that special veto power, if he uses it, will not save the Treasury any money but will give the President more flexibility exactly the opposite way than we intend.

So we will have failed in restricting the use of funds and we will not have benefited the Treasury one dollar. That is the problem that is sought to be addressed by this amendment.

So in order to avoid at least some of that, as much as we can, as much as we were able to get cleared and support on, what we are saying is, in the cases enumerated here, those are not to be treated as separate items. That is the background of it.

The Senator then says, ''Well, how will they be treated?'' I have a twofold answer. One is that they will be attached to the item to which they relate.

For instance, if you say, ''Here is $10 million, HUD, but no more than $1 million may be spent for'' a particular purpose, the ''but not more than $1 million for'' a particular purpose, would then, my intention is, be attached to the larger item. It would not be an allocation or a suballocation in the words of the bill. It would be connected to the larger item that otherwise it would be separated from.

Now, if for some reason you cannot do that—and there may be circumstances that you cannot do that—then, as I understand the bill, there will be a place where all the items that are not separated out and separately enrolled will be packaged together. I do not know what that paragraph would be called, but there will necessarily be such a paragraph, and these items would then be part of that paragraph.

Let me say to my friend from New Mexico, I have a lot of problems with this bill and with the separate enrollment. I think we are going to find very soon that this is not going to work very well for lots of reasons. And I think one of them is going to be the enrollment process itself and the fact that then, after they are separately enrolled under the Abraham amendment, they would come back to us, they are unamendable, up or down, so forth, and we are going to be sending the President a thousand bills to sign instead of one. I do not know how the President can even veto an appropriations bill under this approach. If he wants to veto the whole appropriations bill, there is no bill to veto. He would have to veto 1,000 bills.

Mr. McCAIN. Will the Senator yield for a question?

Mr. LEVIN. Yes.

Mr. McCAIN. Back on the question that the Senator from New Mexico asked, can I ask him for a practical example and how this amendment would address it, if that would be agreeable?

Mr. LEVIN. I will be happy to accept that, but I want to be sure first that I have done the best job I can in addressing the Senator's question.

I happen to agree with, I think, the thrust of the questions, that we are going to have a huge amount of practical problems, in any event, I believe, with the separate enrollment process. What my amendment may do is create an additional—could be—an additional practical problem so that there will be 51 practical problems instead of 50. But what it is aimed at is a very critical substantive point, and that is the power of the purse of the U.S. Congress.

We have used the power of the purse throughout history to be sure that the President did not exceed certain limits that the Congress has set. We do it all the time. We say, ''No later than'' a certain date. ''None of the funds in this bill may be used to keep troops in Somalia after'' a certain date. That is an absolutely essential congressional power, and we should not give that up.

We are giving up some power in this bill in order to gain some money for the Treasury, in order to limit spending which Congress asks. So there is a tradeoff. Are we willing to give the Executive additional power in order to reduce the additional spending which Congress sometimes puts in appropriations bills? But in these cases in this amendment, there is no additional spending. This is limits on spending. This is where we rescind spending. This is where we restrict spending, and in those cases, it hopefully is not our intention to be giving power to the President to override our policy where there is no gain to the Treasury.

So my answer is twofold: One, that the intent of this amendment is that the restriction be connected to the appropriation item it refers to, and where that is impossible, that it would then be packaged with any other parts of that bill before it became subbills and pieces of bills, and so forth.

I tried to answer the question, and I now yield to the Senator.

Mr. McCAIN. I do not want to take the time of the Senator from New Mexico. A couple of practical examples have been raised. For example, I ask the Senator from Michigan, suppose that the appropriations bill said $10 million for aid to El Salvador but no funds for any military training.

Mr. MURKOWSKI. I wonder if the Senator from Arizona will allow me to answer that question as a cosponsor of this amendment. I have a specific example that will hopefully enlighten and address that question.

On a defense appropriations bill, say we have a provision that provides funding for the Department of Defense for military personnel, $75 billion, provided that none of the funds appropriated will be available to deploy United States Armed Forces to participate in the implementation of a peace settlement in Bosnia unless previously authorized by Congress.

Under the Dole substitute, the President basically gets two bills. The first would be a bill to appropriate $75 billion for military personnel. The second would bar United States troops in Bosnia peacekeeping. The President can sign bill 1 and veto bill 2. He, thus, will be able to receive the $75 billion without restriction and can send troops to Bosnia without congressional approval.

Under the amendment of the Senator from Michigan and myself, the President gets one bill. Since the restriction in the appropriations bill completely bars the use of any funds in Bosnia peacekeeping, the President gets only one bill which contains the appropriation of $75 billion and the Bosnia restriction.

So that is the intent and an example specifically. The President must either sign the bill and accept the Bosnia restriction, or he must veto the bill and not have the $75 billion available.

Mr. BINGAMAN. Mr. President, can I just ask a follow-up question?

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, where in the amendment or the bill does it say what the Senator from Alaska just described? As I see it, the condition that none of the funds in this bill can be spent to support activities in Bosnia, or whatever the condition would be, might just as easily be separately enrolled, along with a lot of other conditions.

I do not see why you could not have, as a result of this process, in the defense area, for example, 2,000 bills go to the President. Each one of those would be bills that qualified under the definition in here for ''item.''

Then you could have another bill go to the President which incorporated all of the various conditions that Congress has put on the President in the expenditure, and one of them would say you cannot do anything more to enforce the Endangered Species Act. We adopted that last Thursday. Another would say you cannot spend more on the B–2. Another would say you cannot go into Bosnia. We can add those together and put them into a bill—I think that is permitted under this—and send it to the President and the President could veto it. He gets his money and he does not get any restrictions. What is wrong with that? Does it say that cannot be done?

Mr. MURKOWSKI. It is in the amendment as offered by the Senator from Michigan and myself, specifically stating that ''conditions on an item of appropriation not involving a positive allocation of funds by explicitly prohibiting the use of any funds.'' That is the amendment.

Mr. BINGAMAN. But, Mr. President, the condition that we are talking about has to be enrolled someplace, if it is going to become law. It has to be sent to the President if it is going to become law, and he has to sign it if it is going to become law. I am just asking, is there anything in this amendment or this bill which keeps us, the Congress—or the appropriators, more specifically, because they are the ones who determine this—from just saying, OK, we are going to take all of these restrictions and we are going to package them together and send them up there and call them a bill, just like we call each item a bill? That would be a natural thing to do if we want to get it to the President for signature.

Mr. LEVIN. If the Senator will yield, is he saying that right now we could do that, and this amendment does not prevent that same thing from happening?

Mr. BINGAMAN. Yes, we could do that now. This amendment, as I read it, and this bill, as I read it, calls for the separate enrollment of the specific dollar allocations or appropriations, so that the President can cross out the allocations or appropriations. There are a lot of conditions we stick into appropriations bills which are not tied to a specific allocation or appropriation. When we adopted, last Thursday, the prohibition against doing anything more to enforce the Endangered Species Act—or whatever the precise language of the Hutchison amendment was—why would that not be a separate item?

Mr. LEVIN. This amendment does not cure that problem.

Mr. BINGAMAN. So you are saying that there are conditions which would be enrolled separately from the appropriation itself and which would go to the President, and he could either defer to the Congress and say they do not want me to do anything more on the Endangered Species Act, therefore, I will sign their bill; or he could say, I am going to veto that part and use the money that they have appropriated as I see fit?

Mr. LEVIN. Well, the amendment addresses those situations where there is

a limitation, a condition, or a restriction on the President's authority to spend otherwise appropriated funds. If there is no appropriated fund in that bill, then it could not be attached to that. You would not be addressing the problem the Senator raises. But that exists right now. That is a problem that exists right now. This amendment does not solve, at all, all of the problems with this bill, or all of the circumstances under which we now legislate. What this does is what I have described.

If we say to the President, here is $100 billion for the United States Army, and none of these funds may be used to have any of these soldiers in Somalia after a certain date, this would require, under this amendment, that the restriction on the funds in that bill be connected to it, or else we are giving the President power without any benefit to the Treasury. If you allow him to veto the restriction, he then has the $100 billion unrestricted, the Treasury has not gained a penny, and we have lost our policy.

The Congress will have ceded to the President that power of the purse, with no financial benefit whatsoever. And I happen to have great problems with the Dole substitute. There are all kinds of problems, I believe, with the separate enrollment which this amendment does not solve, including, I believe, the one the Senator from New Mexico has come up with. If we are going to have separate enrollments, which I oppose—I think they are unconstitutional, unwise, and everything else—at least we should not be giving up the power of the purse, where there is no benefit to the Treasury, where it is a restriction on spending.

I have used the example—and I will use it again—where we give an agency money and say: This is for your general operations, but you may not spend more than $10 million on consultants. I do not think there is any intent—there should not be in this amendment, and I will make sure there is no intent—to let the President separately veto the restriction on the use of consultants and then have all the money without such restriction.

(Ms. SNOWE assumed the Chair.)

Mr. BINGAMAN. Madam President, let me once again go at this and see if I am clear. I am concerned about this. Under the existing procedure—and it has lots of flaws, and I am as critical of it as many in this body are—we send the President a bill and it has money appropriated and it has conditions attached, and those are all together; the President either takes it or leaves it and, clearly, there are major deficiencies with that system.

What I am concerned about with this amendment and this new bill that we are talking about here is that we are requiring that the dollar figures be separately presented as bills. And it would seem logical to me that if those are all items that are separately presented, any conditions we want to attach to the expenditure might be a separate bill, as well, might be presented as a separate bill, and we might put them all together. I do not know what we would call it, but that might be the result. The President would have the choice of vetoing each and every appropriation, and then he would be presented with sort of a catch-all remainder kind of a bill which has all these conditions in it. And there would be a great incentive on the part of the President to say, ''I will sign everything but the conditions. I do not like Congress telling me what to do. They do not know anything about Bosnia up in Congress.''

Mr. McCAIN. If the Senator will yield, I do not believe Congress would be so foolish as to enroll it that way because it would leave it as a target. The Congress would enroll the restricting language along with the money, so that the President had no choice. I cannot imagine that the Congress, if they wanted restrictions enforced, would have one line item with the money and some in a different paragraph—although the language of the Senator from Michigan also provides for that, as well.

So this bill provides for the fencing language, and the amendment provides for the fencing language that affects that appropriation to go together and be inseparable.

Mr. LEVIN. Madam President, if I may ask the Senator from New Mexico a question. In my colloquy, which is going to be made a part of the RECORD, with the Senator from Alaska, we make it clear that where you cannot connect a restriction to an appropriation, it would be put in the kind of package that the Senator from New Mexico describes. There is no other way to do it. But why should we, because there is no alternative but to do it that way. Where there is no appropriation to connect the restriction, why should we give up the congressional power to restrict, limit, and rescind the use of funds, where there is no benefit to the Treasury, just because it is impossible to add all restrictions to an appropriation? To connect all of the limits to an appropriation does not mean we should not try where there is an appropriation in the bill to do so?

Mr. BINGAMAN. Well, Madam President, let me try to put this in into specifics here, and see if I understand it. As I understand it, what the Senator from Illinois and the Senator from Arizona are saying is that if we put a general restriction on a bill which cannot be tied to a specific appropriation, then that could be, or should be, separately enrolled as another bill, along, perhaps, with other restrictions.

Mr. LEVIN. Madam President, the restrictions which are not tied to specific appropriations would necessarily have to go in somewhere.

Mr. BINGAMAN. So they would go into another bill, which the President could either sign or veto, so that any condition that is not tied to a specific appropriation would be there for the President to sign or veto as he saw fit.

Mr. LEVIN. The Senator is correct.

Mr. BINGAMAN. And there would be some incentive.

Mr. LEVIN. The Senator is correct.

Mr. BINGAMAN. Let me ask the Senator from Michigan another question: Taking the example that the Senator from Arizona was referring to, suppose in the defense appropriation bill we were to say, ''Of the funds appropriated in this bill, not more than $100 million can be spent by the Department of Defense to go into Bosnia unless and until the President certifies to the Congress''—whatever. That would be the provision.

Now, the Senator is saying that would be separately enrolled if we had that kind of a reference to a specific amount of money, which was the top amount that could be spent out of a much larger appropriation?

Is that a separate item which would then be enrolled?

Mr. McCAIN. Madam President, if I might say, the conditions that would be tied to any specific amount of money are inseparable.

Mr. LEVIN. Inseparable.

Mr. BINGAMAN. Madam President, my question, though, the money reference in the example I just gave is not a reference that appropriates money.

We have a bill that says we will give the Department of Defense $250 billion; that is the appropriations language. Then we put in a provision that says not more than $100 million of the funds appropriated in this bill can be spent for activities in Bosnia.

Is that a separate item?

Mr. McCAIN. That is correct, but if it has restricted language associated with it, then that language is associated with it, also.

Wherever there is a line where money is mentioned, that is a separate item.

Mr. BINGAMAN. That, to my mind, would be a restriction. That would be a limit or condition or otherwise restrict the President's authority to spend, because it would say, ''You cannot spend more than $100 million.''

Mr. LEVIN. Of money appropriated herein.

Mr. BINGAMAN. To do anything—of money appropriated herein—to do anything in Bosnia, and we are saying that is something that would not be submitted to the President as a separate bill.

Mr. LEVIN. That is correct.

Would the Senator want it to be?

Mr. BINGAMAN. I do not know. I am trying to understand what the President is ultimately going to be presented with.

Mr. LEVIN. I have a lot of problems with this bill, as the Senator knows, for exactly that same reason. It is our effort here to tie the restriction to the appropriation.

Mr. BINGAMAN. Madam President, if that is the case that we are trying to tie the restriction to the appropriation so as to keep the President from

vetoing the legislation separately, what is meant by the phrase ''otherwise appropriated funds''?

It says here, ''only limits, conditions, or otherwise restricts the President's authority to spend otherwise appropriated funds.'' Does that mean I can put a restriction in the defense bill which relates to funds appropriated in the energy and water appropriations bill? Is that what that means?

Why do we intend to exempt from this separate enrollment process limits, conditions, and restrictions on the President's authority to spend otherwise appropriated funds? Why is that? I do not understand.

Mr. LEVIN. The provision that the Senator is referring to is not a provision which appropriates funds. If it were, it would have to be separately enrolled.

Mr. BINGAMAN. So the point is not to require that the limits and conditions and restrictions on the President's authority apply to funds appropriated in other bills; it is rather to require that the limits, conditions, and restrictions on the President's authority instead apply to funds that are in a separately enrolled portion of the bill. Is that what it is?

Mr. LEVIN. If they are already together, then there is no need for this paragraph. This paragraph only says that we will not separately enroll the restriction where we can link it to an appropriation. If we cannot link it to an appropriation, if it is in another bill, it will then have to either be separately enrolled or packaged as a separate enrollment.

There is no cure for that problem under the current law. That is a problem which exists in our current law, that we restrict in one appropriation bill the President's authority to spend money in another appropriation bill. This does not solve that problem. It does not worsen the problem.

In other words, this does not do a lot of the things that I think the Senator would like to see done. It does not do a lot of the things I would like to see done. What it does do is make sure that where there is a restriction on an appropriation in a bill, that we do not separate the restriction from the appropriation, because then again we would be giving up a power over the purse for no advantage to the Treasury.

Where we can do that, we should do that.

Mr. BINGAMAN. Madam President, let me go at this slightly differently. And I am not trying to delay my colleagues here. I do have legitimate questions that I wanted to ask.

If I could get one other example for the Senator from Michigan to respond to. Considering this option, ''Of the $1 billion appropriated for research and development, not more than $100 million shall be spent on'' a specific project. Is that an earmark? I guess that is the question. Even though it does not mandate that $100 million be spent, it is a strong signal by the Congress that we intend that $100 million be available and spent. Is that an earmark which we are trying to eliminate by this legislation?

Mr. LEVIN. The language of the amendment is that if it does not create an expressed or implied obligation to spend the $100 million, then the answer would be ''no.''

Now, in my judgment, the way that was read, the answer would be ''no.''

Mr. BINGAMAN. So the view of the Senator from Michigan is that that kind of a proviso does not constitute an implied obligation to expend those funds?

Mr. LEVIN. That is right.

Mr. BINGAMAN. Let me ask, on the third subsection of this where it talks about—again, we are trying to define items and saying that items do not include conditions—language which ''conditions on an item of appropriation not involving a positive allocation of funds.''

Madam President, my concern is that I thought all items of appropriation were, by definition, positive allocations of funds. That is what I thought an appropriation was. It was an allocation of funds for a purpose.

Here we are saying that we are not going to include in the definition of item language which ''conditions on an item of appropriation not involving a positive allocation of funds. * * *'' I do not understand that language. It sounds to me entirely contradictory. I am obviously missing something.

Mr. MURKOWSKI. If I may respond, it is the implied purpose that no money can be spent. It says ''not involving a positive allocation of funds and explicitly prohibiting the use of any funds.'' Does that answer the question?

Mr. BINGAMAN. Madam President, I guess I still have a concern in talking about language that ''conditions * * * an item of appropriation not involving a positive allocation of funds.'' I did not know there were any items of appropriation that did not involve positive allocations of funds. I thought——

Mr. MURKOWSKI. If I may respond, my example given on the Department of Defense of $75 billion provided that none of the funds appropriated be available to deploy Armed Forces to participate in implementation. None of the funds.

Mr. McCAIN. May I add to that? It refers to any ''conditions on an item.'' Not to the item, I say to the Senator from New Mexico; any ''conditions on an item of appropriation not involving a positive allocation of funds.''

There are many conditions that are placed that do not have anything to do with allocation of funds. We are talking about the condition, not the item, in the amendment.

Mr. BINGAMAN. All right. Let me ask one other question here, Madam President, just to try to get a clear notion. The language of the amendment talks about language which ''rescinds or cancels existing budget authority.'' I guess I have two questions on that.

What do we mean by ''existing'' and what do we mean by ''budget authority''? Are we talking about just this current fiscal year's rescissions? And, if so, is it appropriate to just limit or just exclude from the definition of ''item'' rescissions of budget authority? Or should we also be excluding from the definition of ''items'' rescissions of appropriations, as well?

Mr. LEVIN. First of all, to answer question No. 1, it is not limited to the current year. Second, appropriations, as I understand it, are a budget authority. The words ''budget authority'' include appropriations, I am informed by the technical experts here on our staff. It surely is intended to include appropriations.

Mr. BINGAMAN. So it would not be limited just to the current fiscal year; is that correct, Madam President?

Mr. LEVIN. That is correct.

Mr. BINGAMAN. And therefore a 5-year budget resolution is what would be the determining factor, is that right, in whether or not a rescission would be exempt from the definition of ''item'' for purposes of this section?

Mr. LEVIN. It would cover the rescission of existing budget authority for whatever year that it has been adopted.

Mr. BINGAMAN. OK.

Madam President, I have delayed the Senate long enough. Let me just conclude by making a general statement.

I think what we are faced with, with this amendment—and I think it is a conscientious effort by the Senator from Michigan and the Senator from Alaska to come up with some way of sorting out a separation of the appropriating process from the policymaking process. That is what they are trying to do here, as I understand it. They are trying to preserve to the Congress the ability to make policy while granting to the President dramatic new powers with regard to the actual appropriating of funds or the prevention of funds from being appropriated. That is what I understand is going on.

I think it is very, very difficult to sort those things out. I think it is very difficult to grant to the President one power and reserve to the Congress the accompanying power—which is what this amendment is trying to do. I think it may go a short distance in getting us to that, but I think the grant of authority, if the bill which is pending before us is adopted, as I gather it is going to be—the grant of authority is broad and the President, I think, would find that he has very broad authority to countermand policy decisions by the Congress through the use of this new veto power that we would be granting in this legislation.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, first let me say I agree with my friend from New Mexico. This is an effort here to

not give to the President, to avoid giving to the President, power which does not lead to a reduction in spending. The purpose of the line-item veto is to try to give the President additional authority over spending where the Congress adds spending. But where the Congress is restricting spending, limiting spending, rescinding spending, conditioning spending for policy purposes that we believe are good and valid, we surely do not want to give the President the veto authority over those restrictions, limitations, conditions, and rescissions.

The Senator from New Mexico is exactly right. That is the purpose of this amendment.

I do not support the underlying substitute to which this amendment will hopefully be attached. I think we are going to create an absolute nightmare for the legislative process, for the executive branch, in splintering up an appropriations bill into all kinds of shards and little pieces. But it appears clear that is what the Senate is about to do. I do not support that approach.

But if we are going to do that, for heaven's sake, let us not go beyond the purpose of a line-item veto, which is to give the President, presumably, the authority to veto additional spending. Let us not give the President the authority to wipe out our restrictions on spending. Let us not give the President that additional authority to wipe out our conditions on spending, our rescissions of spending. There is no reason to do that.

While this only cures one of the problems, in my book, with the underlying substitute—and there are plenty of others that give me cause to oppose the underlying substitute—I think we surely ought to do this much, and do what we can to avoid unintended consequences.

I believe the sponsors of the underlying substitute support this because it is not their intention to give the President authority to wipe out our restrictions on spending and our rescissions of spending. Since that is not, I hope, their intent, we can do the best we can to correct the bill in this regard. But without this amendment, the bill would give the President a separate piece of a bill, of an appropriations bill, and that piece would have just the limitation or just the restriction or just the condition, allowing the President to separately veto that and then to be able to spend all of the money without restriction.

So I think the Senator from New Mexico pointed out what the purpose of the amendment is and is accurate in saying it does not solve a number of additional problems. I would agree with him. But it does solve some of the problems. I hope it will be adopted.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Madam President, I would like to thank Senator BINGAMAN for bringing these issues to the attention of this body as we are considering it. I think there will be significant questions. As the Senator from New Mexico pointed out, this is a very significant and fundamental change in the way that business is done. So these examples, and the questions that are in the RECORD, I think, will be helpful when we proceed—I put that perhaps a little too optimistically—when we proceed to implement the line-item veto. I thank the Senator from New Mexico.

I would like to point out that, as I said earlier, we have proved to anyone's satisfaction here that the Congress can ignore or violate any law that it passes. The most outstanding example, of course, is the War Powers Act. The Congress of the United States, over the veto of the President of the United States, passed the War Powers Act. We routinely ignore that legislation—routinely; perhaps one of the most fundamental principles of the separation of powers as embodied in our Constitution.

So I am fully aware that if the Congress wants to violate this law when we pass it, they can. They can find loopholes. They can find ways around it. But this language in the Levin-Murkowski amendment I think makes it very clear that the President of the United States cannot and should not be able to veto an item of condition or money—moneys that the Congress appropriated under those conditions, and be able to separate the two. I think this amendment is very clear in that direction.

Senator LEVIN very thoughtfully points out other problems he has with the bill. I think many of those problems are legitimate. I had a long exchange yesterday with Senator BYRD, who raised some legitimate concerns.

But I believe there are two ways to look at this legislation. One is to go at what the intent is, what the language is, what I think is very clear and has been interpreted on this floor as to what it is. Or we can go at it and say we will find some loopholes here and we will appropriate $50 billion—$234 billion for defense, period; or maybe even break it up into the Army, Navy, Marine Corps, and Air Force.

We can also better shape legislation so the intent of legislation is clear, so it is very easy to enroll and, frankly, Madam President, with some of the extraneous matter taken out of it which I believe will make these bills much smaller than they are today, because I do not think we get away with some of the items that are now put in which some of us only discover weeks or months after the passage of the legislation. Items that are put in in conference between the two bodies, no Members except those members of the conference, a small number of people, ever see until we are presented with that legislation, and we only have two choices: yes or no, up or down on that bill. That is not what the participation of Members of the body in shaping legislation is all about, in my view.

So I again want to thank the Senator from Michigan. I think it is particularly interesting that the Senator from Michigan opposes this bill, yet he is willing to spend an enormous amount of time and energy in trying to make this bill better.

My sincere appreciation goes to the Senator from Michigan for his attempts and for what I think he and the Senator from Alaska have done. Frankly, that is what the amending process on the floor of the Senate is all about: to make legislation better. The Senator from Michigan saw a potential serious problem. I believe that his amendment addresses the vast majority of it.

Madam President, I yield.

Mr. LEVIN. Madam President, let me thank my friend from Arizona, first of all, for his comments and for his support. I want to thank Senator MURKOWSKI because he also noted a very significant problem with this approach. We worked out this common solution to it.

I thank Senator EXON for his cosponsorship and support.

Madam President, I also thank the Senator from New Mexico. He raises some very important questions which will help create a record which, hopefully, will in turn help to implement this legislation, if it is ever passed.

I yield the floor.

Mr. MURKOWSKI. Madam President, I have worked with the distinguished senior Senator from Michigan, Senator LEVIN, in developing some examples of the implications of amendment No. 406. I think these examples provide our colleagues with a clearer picture of the limitations that will be imposed on enrolling line items.

Mr. LEVIN. I appreciate the help of my colleague from Alaska in developing these examples and I believe they reflect our intent in drafting this amendment.

Example I: Absolute funding prohibition as part of an appropriation; a Defense appropriations bill contains a provision that provides:

Funding for the Department of Defense: For military personnel $75 billion: Provided that none of the funds appropriated be available to deploy United States Armed Forces to participate in the implementation of a peace settlement in Bosnia unless previously authorized by Congress. Under the pending substitute, the President would be presented with two bills:

Bill 1 appropriates $75 billion for military personnel.

Bill 2 bars United States troops in Bosnia peacekeeping.

The President can sign bill 1 and veto bill 2. He thus will be able to receive the $75 billion without restriction and could send troops to Bosnia without congressional approval.

Under our amendment, the President receives one bill:

Since the restriction in the appropriations bill completely bars the use of any funds in Bosnia peacekeeping,

the President would receive only one bill which contains the appropriation of $75 billion along with the Bosnia restriction. The President must either sign the bill and accept the Bosnia restriction or he must veto the bill and not have the $75 billion available.

Example II: Funding Prohibition as a Free Standing Provision; other limits and conditions on appropriations are frequently placed at the end of an appropriations bill. For example, in last year's Commerce, Justice appropriations bill, provisions were included prohibiting the expenditure of funds for specific purposes including: publicity and propaganda purposes not authorized by the Congress; expenditures for consulting services that are not a matter of public record; the purchase of certain equipment outside the United States; and the implementation of certain EEOC harassment guidelines based on religion.

Similarly, last year's Defense appropriations bill contained provisions prohibiting the expenditure of any funds for specific purposes, including: To build a specific radar system; to establish or support a specific type of maintenance support activity for the B–2 bomber; or to carry out specified research projects involving the use of animals.

Other examples of limits and conditions on appropriation that are free standing sections within an appropriations bill include last week's Defense supplemental bill passed by the Senate. Section 108 contains a requirement that none of the funds appropriated by the act may be made available for operations in Haiti more than 60 days after the date of enactment, unless the President complies with specified reporting requirements.

Under the substitute, as originally drafted, each of these limitations would be placed in a separate bill, and could be vetoed by the President. For example, the President could sign the supplemental appropriation bill providing the money for operations in Haiti and veto the limitation.

Under our amendment, the general limitations in a bill would not be items, and would be enrolled together in a single bill. Thus the limitation on funds for Haiti would not be a separate item. Because it pertains to multiple appropriations, it would be enrolled with the general limitations described above.

Example III: Limitation and conditions; a VA–HUD bill appropriates $350 million for research and development activities including procurement of laboratory equipment and supplies and repair and renovation of facilities. A proviso in that bill states that no more than $55 million of these funds shall be available for procurement of laboratory equipment. The proviso does not mandate that money be spent on laboratory equipment. Nor should it be considered as creating an express or implied obligation to expand funds. It only provides that if the administration chooses to spend money on such equipment, it can expend no more than $55 million.

The President would receive only one bill containing the $350 million appropriation along with the restriction limiting the amount of money that can be expended for procurement of laboratory equipment.

Similarly, a provision stating that ''not to exceed $8,000'' of an overall appropriation may be expended for official reception and representation expenses would be enrolled with the appropriation that is so limited, and not as a separate bill.

Example IV: Implicit obligation to spend; the same legislation as in example II appropriates $350 million for procurement of laboratory equipment, supplies, repair and renovation of facilities contains a proviso that three research facilities be constructed in a particular State at a cost of no more than $30 million. Such a condition would not be covered under our amendment. That's because the proviso requires the construction of such facilities and therefore implicitly obligates the expenditure of funds.

The President would receive two bills. One would contain the $350 million appropriation for laboratory equipment, supplies, repair and renovation of facilities. The second bill would contain the provision specifying that three research facilities be constructed in a particular State at a cost of no more than $30 million. The President could sign or veto the first bill and could sign or veto the second bill.

Mr. EXON. Madam President, I thank my friend and colleague from Michigan. I think this is a very, very good amendment. It certainly does not cover all of the concerns I have in this area, but a considerable number of those concerns.

I am very pleased to be a cosponsor of the amendment, and once again I appreciate my colleague's attention to the details. I think the amendment makes the proposition, although I still have some concerns, much more palatable. I thank him for offering the amendment. I believe we are ready to act on it.

I yield the floor.

Mr. McCAIN. Madam President, I was admonished yesterday by the distinguished Senator from West Virginia that it is not appropriate to say I move the amendment. I do not say that. But I note that there is no further debate at this time as far as I can tell.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 406) to No. 347 was agreed to.

Mr. McCAIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. EXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCAIN. Madam President, I say to my colleague and friend from Nebraska that it is my understanding, now that this amendment has been taken care of, that Senator HATCH is now ready to propose an amendment. I believe that he may decide to withdraw that amendment.

Then remaining, as far as I can ascertain, will be the Abraham amendment which I believe Senator BYRD wanted discussed, and then finally the Byrd amendment itself.

So perhaps we could notify the Senator from West Virginia that his involvement on the two remaining amendments will be what remains after Senator Hatch finishes.

Mr. EXON. We will certainly tell the Senator from West Virginia what is taking place so that he will be fully advised. My conversations with him indicated that he may want to make some comments with regard to the amendment that is going to be discussed by our colleague from Utah.

Also, the Senator from Arizona is correct. I believe very likely we could agree to the Abraham amendment that Senator BYRD wanted to talk on. I do not know what his position is. But he wants to talk on it. After we dispose in some fashion of the Hatch amendment, the only thing, as the Senator from Arizona said, that I know of is the Abraham amendment that Senator BYRD wishes to address, and the Byrd amendment itself. I think that indicates that we have moved in great fashion by working together in moving this. We are much further along than most of us thought we would be on Tuesday last.

Mr. McCAIN. I thank my friend from Nebraska for his totally cooperative spirit in this effort. Perhaps Senator BYRD would want Senator ABRAHAM on the floor when he discusses his amendment. So perhaps we can coordinate that.

Mr. EXON. Senator ABRAHAM told me about one-half hour ago that he, by necessity, had to leave the Hill and would be back in about an hour, which I thought would be around 2 o'clock or something like that. He asked me to tell Senator BYRD that he was sorry that he had to leave. So we will pass along the information to Senator BYRD on the fact that Senator ABRAHAM will be back around 2, and whether or not he wants to come up and talk about the next business, the amendment by the Senator from Utah, and we will see that all parties are properly advised.

I yield the floor.

Mr. McCAIN. Madam President, I note the presence of the distinguished chairman of the Judiciary Committee on the floor.

I yield the floor.

Mr. HATCH addressed the chair.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 407 TO AMENDMENT NO. 347

Mr. HATCH. Madam President, I call up amendment No. 407.

The PRESIDING OFFICER. That amendment is the pending question at this time.

Mr. HATCH. I thank the Chair.

Madam President, my amendment to the Dole substitute version of S. 4 excludes items of appropriation for the judicial branch from enrollment as separate measures prior to presentment to the President. It provides instead that items of appropriation for the judicial branch shall be enrolled together in a single measure. This amendment would help ensure the independence of the judiciary from the executive branch, and would not detract from what this bill seeks to accomplish.

The amendment is designed to protect the judicial branch from attempts by the President to influence or punish the judiciary—or otherwise undermine its independence as a co-equal branch of Government—through exercising the line-item veto power with respect to particular judicial appropriations. While I would hope that no President would think to exercise the line-item veto in such a manner, it remains a very real threat that we can easily safeguard against at this stage through adopting this amendment.

The amendment I propose would do that by excluding items of appropriation for the judicial branch from enrollment as separate measures for presentment to the President. The exception would cover all salaries and expenses related to the operation and administration of the Federal courts. The exception would not extend to courthouse construction, which does not appear in the judiciary's budget and which would remain subject to the line-item veto. Under my amendment, if any of the covered items appeared in an appropriations measure, those items would be enrolled together into a single measure.

The amendment is carefully crafted to avoid creating a loophole through which other expenses could be shielded from the line-item veto. A budgetary item would only qualify for the exception from separate enrollment if it is for one of the functions of the judiciary as those are listed or described in the current appropriations act. Thus, Congress could not seek to hide an item from the line-item veto by slipping it into the judiciary's budget.

I believe that the judiciary needs this protection. In the absence of this exception, the judicial branch would be particularly vulnerable to the President's whim. In one form or another, the executive branch is the largest litigator in the Federal courts. Federal courts frequently weigh in on the legality of executive branch action. It is not difficult to appreciate how the judicial branch would be vulnerable to the line-item veto because of that. Perhaps more important, the judiciary would be relatively powerless to defend itself compared with the legislature. Although a President could conceivably use the line-item veto to target particular functions of the legislative branch, Congress would have a keen interest in defending itself against such a veto if it believed the veto unwise, and would have at its disposal the direct means through which to override a Presidential veto. The judicial branch, however, cannot defend itself.

John Adams stated that ''The judicial power ought to be distinct from both the legislative and executive, and independent upon both, so that it may be a check upon both.'' Just as the judiciary is separate from the executive and legislative powers in our constitutional system, so its independence should be safeguarded through the budgetary process on which it depends.

Current law already protects the judiciary's budget from Presidential action, in large part to insulate the judiciary from political manipulation through the budget process. By statute [31 U.S.C. §1105(b)], the Judicial branch's budget is accorded protection from Presidential alteration. When the President transmits a proposed Federal budget to Congress, the President must forward the judicial branch's proposed budget to Congress unchanged. That process has been in operation since 1939. It was adopted in part because of unilateral action taken by the executive branch in the 1930's to cut the judiciary's funding. The Chairman of the Judicial Conference, Chief Judge Gilbert Merritt of the U.S. Court of Appeals for the Sixth Circuit, testified before the Senate Governmental Affairs Committee, that in the 1930's executive branch action forced the firing of court staff and cut in half the salaries of judges' secretaries. That kind of action to influence our Federal judges cannot be tolerated, and it should not be allowed to creep back into the system.

Under the present system, that does not mean that the judiciary is immune from budget cuts. The judiciary must independently justify its budget to Congress, and must operate within the budget appropriated for it. It would continue to do so under the amendment I propose. In addition, Congress would continue to be as free to legislate the judiciary's budget under my amendment as it is today. The President would also remain free to veto the Judiciary's entire budget. To subject the judiciary's budget to separate enrollment, however, risks undermining the current approach—and the balance of power between the executive and judicial branches—and risks exposing the judiciary to targeted, politically motivated retaliation. The President should not be permitted to veto specific appropriations for the judiciary where those appropriations have been carefully shielded from Presidential alteration in the first place.

Moreover, an exception for the judiciary would have virtually no impact on the Federal budget. The entire budget for the judiciary is two-tenths of 1 percent of the entire Federal budget. While the judiciary could be devastated by the line-item veto if portions of its budget were subject to separate enrollment, subjecting it to the line-item veto could not possibly have any significant impact in terms of budget reduction.

Normally, I would say subject every line item covered by the bill to Presidential veto. But I believe that an exception for the judicial branch is uniquely warranted on principle. The judiciary is a separate and co-equal branch of Government that does not have the institutional power to look after itself under separate enrollment. The Congress can safeguard itself through the use of the veto override process. The judiciary, however, possesses no similar safeguard.

To be sure, Congress would have the authority to override a veto of any item in the judiciary's budget. I feel very strongly, however, that the judiciary should not be placed in the position of depending on that action. That is too slender a reed on which to rest the independence of the judiciary. This amendment will better ensure the judiciary's independence and protect it as a co-equal branch of Government.

Mr. President, my amendment does not alter the basic operation of the underlying legislation. Nor would its adoption be a precedent justifying other exceptions: no other entity or part of our system of Government funded by Congress stands on the same footing as the Federal Judiciary, a co-equal branch of the central Government.

I hope my colleagues will join me in acknowledging the status of the judiciary as a branch of Government co-equal in status to the Congress and the President, and will support this amendment.

Let me give my colleagues a hypothetical which illustrates my concern. It involves private property rights.

The U.S. Court of Appeals for the Federal Circuit is a separate line item, currently at $13 million. Among other matters, this court currently handles all appeals in property rights cases under the takings clause of the fifth amendment. Suppose this court hands down a string of cases favoring property owners, and against the Federal Government. Suppose further that this angers the President. Without my amendment, he could veto the $13 million line item—with the exception of the salaries of the judges, which the constitution protects, return it to Congress, and object that the item should be reduced to $10 million, citing, not the private property rights cases, but some ostensible good Government, cost-saving reason. Now, Congress can either override the veto or pass a new bill giving this court only $10 million, hampering its ability to function. Or worse yet, the President could veto it all and just take the whole $13 million.

What is likely to happen? Most Americans, and probably most Members of Congress, have never heard of this court. No one is going to get worked up about this unknown court and $3 million. The judges of the court

are hamstrung from speaking frankly and accusing the President of undermining them because he dislikes their opinions—that gets them too involved in the political process.

We do not want judges moving back and forth in accordance with every blink or whimsy of the President of the United States or the Congress also. We want judges judging things on the merits, the way they should be judging matters.

Moreover, if enough congressional members of the President's party share his disapproval of how this court has ruled on these matters, a two thirds override will not happen. Congress will be forced to cut the court's budget and the independence of the judiciary has been undermined.

If all of the judicial branch's appropriations are in one bill, however, including the Supreme Court, the other courts of appeal, the district courts, and so on, the President couldn't get away with this. We all know what the Supreme Court and the other courts do. If the President wanted to tamper with the Court of Appeals for the Federal Circuit, he would have to veto the Supreme Court's funding and the funding of all of the other Federal courts. This would alarm people. I doubt very much that a President would veto a $2.7 billion bill for the sake of knocking out $3 million for this obscure court. If he does so, I think Congress would override it so the Supreme Court, for example, is able to function.

I make this argument only in defense of a coequal branch of Government which has no direct means of protecting itself. I am not being critical of the line-item veto in other contexts, and I will support it.

I understand that Senator BYRD would like to speak on this amendment, so I will yield the floor at this time before making any further motions on it.

Mr. BYRD addressed the chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. It is my understanding that the distinguished Senator from Wyoming [Mr. SIMPSON] wanted to speak as if in morning business for 10 minutes. Would it be agreeable——

Mr. HATCH. That is certainly agreeable with me.

Mr. BYRD. With the Senator from Utah? If Mr. SIMPSON would like to come down now, I would like to ask some questions of the distinguished Senator from Utah but I do not want to be in a position of keeping Mr. SIMPSON waiting. If it does not inconvenience the distinguished Senator from Utah, I would be happy to wait until the Senator from Wyoming makes his statement.

Mr. HATCH. That will be fine. I need to go to another meeting for a few minutes anyway. And I will come right back as soon as I am through.

Mr. BYRD. All right.

Could we get the yeas and nays on the Senator's amendment now?

Mr. HATCH. I would prefer to wait, holding out on the yeas and nays for just a short period.

Mr. BYRD. Very well.

Mr. HATCH. If the Senator desires them, we will get them.

Mr. BYRD. Very well.

Madam President, the distinguished Senator from Utah has to be off the floor for a few minutes to attend a press conference. I would prefer that he be here. I do have a few things to say about this amendment and I have some questions to ask. So I would prefer to suggest the absence of a quorum and give the Senator an opportunity to attend the press conference.

In the meantime, if the distinguished Senator from Wyoming [Mr. SIMPSON] could be contacted, he perhaps could make his statement before further discussion on this amendment.

So, unless the distinguished Senator from Arizona or any other Senator wishes to speak, 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. ROTH. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, I rise in support of the Hatch-Roth amendment. This amendment would exempt portions of the budget used to support the Federal judiciary from the line-item veto by directing that the entire appropriation for the judicial branch be enrolled in a single bill.

From the outset, I want to make it clear that I support the idea of the line-item veto. I believe that it is important to give the President the authority to selectively eliminate expenditures of taxpayer funds which are not in the public interest. I believe the legislation we are considering will do that, and that this legislation is a big step toward fiscal responsibility.

But when it comes to the funding of the Federal judiciary, we are dealing with very sensitive constitutional issues. An independent Federal judiciary was so important to the Founders that the Constitution itself not only gives Federal judges lifetime tenure, it specifically prohibits any reduction of salary during a Federal judge's term of office.

Our amendment would exempt the Federal judiciary from the line-item veto. Unless this amendment is adopted, the vast majority of the judiciary's appropriations would be subject to a line-item veto by the President. Only the salaries of article II and bankruptcy judges and retirement-related programs would be excluded.

If the Founders were concerned enough about the independence of the Federal judiciary to prohibit reductions in salary during a judge's tenure, we ought now to be extremely cautious about giving the executive branch the power to exert pressure on the judicial branch by the withholding funds for necessary judicial staff salaries, equipment or communications, for example. Of course, I am not asserting that this President, or any President, would use the line-item veto authority granted by this bill to exert such improper pressure, but the fact is that the power to do so would exist under this bill. We should keep in mind that the Executive branch always has more lawsuits pending in the Federal courts than any other litigant.

Since 1939 the Budget and Accounting Act has provided that requests for appropriations for the judicial branch shall be submitted to the President and transmitted by him to Congress ''without change'' [31 USC 1105 (b)]. This legislation was adopted because of the inevitable conflicts that arose in having the Department of Justice cut funds requested by the judiciary before the judicial budget was submitted to Congress. That legislation is still in effect. It seems anomalous to prohibit the executive branch from changing the judiciary's budget prior to submission to Congress, but then to give the President unilateral authority to revise an enacted budget.

Does this mean that if our amendment is adopted the Judiciary gets a free ride to spend as much as it likes? Of course not. The judicial budget would still be subject to congressional approval and Presidential veto, just as it is now. Moreover, it should be noted that the judiciary's budget does not include funding for courthouse construction. Budget requests and appropriations for building construction are within the province of the executive branch and the Congress, and are not affected by our amendment since the judiciary has no role in the funding of such construction.

For all these reasons, this amendment makes a great deal of sense. It is the prudent and responsible thing to do, and I urge its adoption.

Madam 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. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ABRAHAM). Without objection, it is so ordered.

Mr. BYRD. Mr. President, the amendment by Mr. HATCH reads as follows:

On page 3, line 21, after ''separately'' insert ''except for items of appropriation provided for the judicial branch, which shall be enrolled together in a single measure. For purposes of this paragraph, the terms 'items of appropriation provided for the judicial branch' means only those functions and expenditures that are currently included in the appropriations accounts of the judiciary, as those accounts are listed and described in the Department of Commerce, Justice, and State, the Judiciary, and Related Appropriations Act.''

May I ask the very distinguished chairman of the Judiciary Committee, the author of this amendment, why are we seeking to exempt the judiciary from the four corners of the measure that has been introduced by Mr. DOLE as a substitute for S. 4?

Why do we seek to exempt the judiciary from the reaches, from the requirements of the substitute? Why should the judiciary be exempted? I know these are questions that not many Senators are very likely to come to the floor and ask, but I think they should be asked. I would like to have the distinguished Senator's response to that question.

Mr. HATCH. I think it is a good question. Of course, keep in mind that the judiciary is one of the three separated powers in our Constitution. The executive branch of Government has plenty of power under this amendment to veto the line items. The legislative branch has the power to send the appropriations bills and other bills to the executive branch in and of its own; if items are vetoed, the legislative branch can defend itself by, of course, overriding that veto. The judicial branch, however, has no power under the line-item veto in comparison with the other two.

Without a judicial branch exception to separate enrollment, the judiciary is more vulnerable than the other two coequal branches of Government.

Under the line-item veto, the judiciary could be highly vulnerable to targeted budget cuts if its budget were subject to separate enrollment. Congress, as I have said, can protect itself from such use of the line-item veto through the legislative process in overriding a Presidential veto. The judiciary, however, does not have the means to protect itself.

In order to preserve the judiciary's place as a coequal branch of Government, the appropriations items in the judiciary's budget should be excluded from separate enrollment and should instead be enrolled as a separate measure.

Let me just say this. The exception that we are asking for—and I am a supporter of the line-item veto measure before this body—the exception I am asking for would cover all salaries and expenses related to the operation and administration of the Federal courts. It would not extend to courthouse construction, which does not appear in the judiciary's budget, and which would remain subject to the line-item veto.

Under my amendment, if any of the covered items appeared in an appropriations measure, those items would be enrolled together into a single measure.

We feel we have carefully crafted the amendment to avoid creating loopholes through which other expenses could be shielded from the line-item veto. A budgetary item would only qualify for exemption from separate enrollment if it is for one of the functions of the judiciary as those are listed and described in the current appropriations act.

Thus, Congress could not seek to hide an item from a line-item veto by slipping it into the judiciary's budget. We feel this is an appropriate thing to do since the judicial branch of Government is a co-equal, separate branch of Government and is supposed to be kept out of politics.

If, for instance, we allow line-item vetoes on salaries and the administration of the courts, then it seems to me almost impossible to keep the judges out of politics. That is not the direction we want to go. And, frankly, I think this an appropriate amendment under those circumstances.

Mr. BYRD. Well, Mr. President, I certainly respect the views of the distinguished Senator in this area, as well as in all other areas. I have had a long and cordial association with the distinguished Senator from Utah that extends over a period of many years. I sat on the Judiciary Committee at one time with the Senator, and he is a very distinguished chairman of that committee.

But here we are, we are purporting to send to the President legislation that will allow the President to veto any one, or more, of the hundreds, perhaps even thousands of minibills—or ''billettes,'' as I prefer to call them—which will flood the President's desk as a result of the requirements of this substitute by Mr. DOLE.

It seems to me that all of the branches of Government should be governed equally in the enrollment of ''billettes,'' thus giving the President an opportunity, if he thinks there should be reduced expenditures in any of the accounts, with respect to any of the items, allocations, suballocation sections or paragraphs. It seems to me that the taxpayers would expect to be fully protected with reference to all three branches of Government and not just two, not just the executive branch and the legislative branch.

For all practical purposes, I would imagine that the President, in lineiteming the ''billettes,'' will probably not be very severe with respect to items that are in the executive branch. If the judicial branch is to be exempted, then it further seems to me that the legislative branch is the one branch of the three that is going to feel the fall of the scimitar, the fall of the ax. It is going to be the object of the wet veto pen of a President.

So while I realize that most Senators, maybe all except one, will vote for this amendment—I start out by presuming that I will be the only Senator that will vote against it. I presume all of the other Senators will vote for it. But that does not trouble me in the least. I have been in that situation before. I cannot believe that justice is being done in relation to this hurriedly written substitute, which was apparently cut and pasted together over the spread of a few hours, brought in here, laid down on Monday of this week, and upon which immediately was trained the cloture-motion gun. I cannot believe that justice is really being done with this piece of legislation on such short notice and under such limitations of the time.

I agree with the Senator and recognize what he says with respect to the independence of the judiciary. I fully agree with the need for the judiciary to be independent. I do not quarrel with that at all. The constitutional Framers thought likewise, and rightly and wisely. There is nothing we can do with regard to the salaries of judges. Under the Constitution, they cannot be reduced. And I call attention to history in this regard, which is anathema, apparently, to a good many Members of the legislative branch. I am not just restricting my statement to this House. But history is something that, if we read it all, it must be a revisionist history. It cannot be the history that I studied. It cannot be Muzzey's history, because that history is not politically correct. Muzzey. The very first sentence of Muzzey says: ''America is the child of Europe,'' or something to that effect. Of course, that is politically incorrect today to say that. But inasmuch as you cannot teach an old dog new tricks, I still believe in Muzzey.

I studied Muzzey by the old kerosene lamp back in the hills of West Virginia, Mercer County. I memorized my history lessons at night by the light of that old kerosene lamp. So I remember that the Founding Fathers decided that the judiciary should be independent, and they were preeminently correct in that they had studied history also, and they, I am sure, noted that in the English Bill of Rights—which started, may I say to the distinguished Senator from Alabama [Mr. HEFLIN], the English Declaration of Rights became the English Bill of Rights in 1689. In that English Declaration of Rights, there were certain provisions to which William III of Orange and Mary II had to agree before Parliament would make them joint sovereigns. Can you imagine that? Can you imagine Parliament saying to these two eminent personages, ''You will have to agree to this Declaration of Rights before we, the Members of Parliament, will enthrone you. Before we will put that crown on your heads, you will have to agree with these provisions, one of which is that judges shall enjoy life tenure. They cannot be derobed or defrocked or lose their capacity as judges just by the whim and fancy of the king. They are there on their good behavior.'' So William and Mary agreed to the provisions that were laid out in that Declaration of Rights.

Another provision in the Declaration of Rights was that the Members of Parliament had the right of speech, right to free speech. They could not be questioned in any other place. We have the same provisions in our own Constitution to protect us, the Members of the U.S. Senate. We can say whatever we want on this floor. I can criticize the

President of the United States, and there is not a thing he can do about what I say. There is not a thing anybody else can do about it. I have the right of freedom of speech right here on this floor, and I have no compunction with criticizing, in a constructive way, a king, a shah, a prince, or a President. Those are rights that were won for Englishmen, by Englishmen over a period of centuries.

That is one of the things I am concerned about in the so-called line-item veto. This is not a line-item veto. One of the things that concerned me about the line-item veto is the fact that a President might be able to cower a Member of the Congress, and cause that Member to be inhibited from voicing criticism of the President for fear that a project or program affecting the Member's State or the Member's district—talking about a Member of the other body—would be jeopardized if that Member were to speak critically of the President.

So to that extent, it is not a measurable extent, but to that extent, a Member may be to some extent inhibited from exercising his freedom of speech. So these are just a few of the things that I call attention to that have been derived from the English Bill of Rights, the English constitution.

The English constitution is an unwritten constitution except that it is composed of various documents, the Magna Carta, the Petition of Right, Declaration of Rights, other important documents, statutes, court cases, customs, traditions, and so on. All these things go up to make the English constitution, the British constitution.

I am sure such a law would not be constitutional, but I would like to see a law that would place a requirement on every Member of the Senate and the House of Representatives to study American history and to study the history of England. Why? Because not only was England the mother country of our early forebears for the most part—Benjamin Franklin's father was an immigrant from England; Robert Morris, the financier of the Revolution was from England; and James Wilson, one of the delegates of the Convention on the Constitution from Pennsylvania, was born in Scotland.

What I am saying is that every Member of this body ought to have a greater appreciation of the American Constitution. He should note the phrases and the clauses that are in the American Constitution that have their roots deeply embedded in the soil of the English constitution. Many of those rights were gained by Englishmen after centuries of struggle. Many of them were won at the top of the sword.

So I will save any filibuster on this matter until later, if I am forced to. If I should be forced to have to filibuster, I think most Members recognize by now that I would not have to carry a bundle of notes to the floor. As long as my poor old feet that have been carrying me around now for more than 77 years are able to stand on this soft landing, but I recognize and fully support the independence of the judiciary.

I hope that the author of the amendment has not grown tired already of what is just the beginning of what I want to say, and asks about this amendment.

Mr. President, I was going to ask the distinguished Senator what is meant by the words ''currently included.'' I will read the sentence again: ''For purposes of this paragraph, the term items of appropriations provided for the judicial branch, means only those functions and expenditures that are currently included in the appropriations accounts and the Judiciary. . .''

''Currently included,'' only those that are currently included in the appropriations accounts of the judiciary as those accounts are listed and described in the Department of Commerce, Justice, and State, the judiciary and related agencies of the appropriations act.

I promise the distinguished Senator I will repress my appetite for launching into the vast realms of history during the remainder of my discussion of this amendment. What is meant by those words ''For purposes of this paragraph, the term items of appropriations provide for the judicial branch means only those functions and expenditures that are currently included in the appropriations accounts of the judiciary.''

Mr. HATCH. Mr. President, my distinguished colleague is as knowledgeable as anybody on the history of this body with respect to appropriations.

Of course, he is currently the ranking member of that committee and he has chaired that committee. He knows what we are trying to do with that language. We are trying to define the exemption so that this will not become a loophole through which Congress could avoid a Presidential veto.

As I have explained, we believe that the judiciary, which is a truly separated power and a co-equal branch of Government, has no real power unless it starts to politicize itself. I think that is what would happen if this amendment is not adopted and the line-item veto passes. If we do not give some protection here, we will politicize the judiciary.

I think we need to have this protection. What this amendment does is take the vulnerable judicial branch, which is a small percentage of the budget, and exclude it from separate enrollment. We exclude it in accordance with the language in this amendment, with reference to appropriations for the judiciary as listed and described in the Department of Commerce, Justice, State, and Judiciary and related agencies Appropriations Act of 1995.

We define it in that way so that we limit it so that there are no loopholes. We think it is a crucial matter. It is critical to do this because it is such a small part of the budget yet so easily politically manipulable. I do not want the courts manipulated, not by the Presidents, not by the Congress, not by anybody.

Mr. BYRD. But the Senator has not answered my question. What do the words ''currently included in the appropriations accounts'' mean? What about new functions?

Mr. HATCH. They would not be covered.

Mr. BYRD. New functions would not be covered.

Mr. HATCH. Just the ones currently covered. We want to have a definition in time, so if we are going to add features, they would not be covered. They could be enrolled as a separate item.

Mr. BYRD. Let us take a look at what those current items are, what we are talking about.

Mr. HATCH. Maybe I could—will the Senator yield?

Mr. BYRD. Yes. I would like to point out an error that appears to me immediately.

Mr. HATCH. OK.

Mr. BYRD. Which again—which again is indicative of the hurry in which this substitute was put together.

The Senator's amendment refers to Public Law 104–317. It refers to the Department of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act.

Mr. HATCH. I agree with the Senator. It ought to be 103.

Mr. BYRD. It has the wrong citation here.

Mr. HATCH. It ought to be 103–317.

Mr. BYRD. Error. Instead of Public Law 104–317, it is 103–317.

That is a minor error. But just think of the thousands of errors that will be committed in the name of the enrolling clerk of the originating body once this monstrosity becomes law. That is just a small error. That can be cured easily by unanimous consent.

Mr. HATCH. Will the Senator yield?

Mr. BYRD. Yes.

Mr. HATCH. That is a technical error. I think that can be easily remedied.

But let me just say this——

Mr. BYRD. Would the Senator like right now by unanimous consent to cure that error?

Mr. HATCH. Yes. I ask unanimous consent it be cured at this time and it be modified.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 407), as modified, is as follows:

On page 3, line 21, after ''separately'' insert '', except for items of appropriation provided for the judicial branch, which shall be enrolled together in a single measure. For purposes of this paragraph, the term 'items of appropriation provided for the judicial branch' means only those functions and expenditures that are currently included in the appropriations accounts of the judiciary, as those accounts are listed and described in the Department of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 1995 (Public Law 103–317)''.

Mr. HATCH. Mr. President, if I could, with the forbearance of my colleague

from West Virginia—he asked the question what really is covered here. Let me just cover it briefly.

The judiciary's budget is broken up into a number of sections and subsections. In the Judiciary Appropriations Act for 1995, the current act that is being referenced in the amendment—those accounts are, 1995 amounts, as follows:

First, Supreme Court of the United States. The 1995 appropriation is $27 million, which is almost a minuscule amount when you look at the total Federal budget of the United States.

Second, Court of Appeals for the Federal Circuit. Their appropriation is $13 million.

Third, the U.S. Court of International Trade's appropriation is $12 million.

Fourth, the courts of appeals, the district courts, and the other judicial services. This account covers the salaries and expenses of all Federal district courts, courts of appeals, and bankruptcy judges. This account also includes subaccounts for defender services, fees of jurors and commissioners, and court security. Salaries and expenses equals $2.340 billion; fees of jurors and commissioners equals $59 million; court security equals $97 million; defender services equals $250 million.

Fifth, the Administrative Office of the U.S. Courts' appropriation is $48 million.

Sixth, the Federal Judicial Center's appropriation is $19 million.

Seventh, the judicial retirement funds are $28 million.

Eighth, the U.S. Sentencing Commission's appropriation is $9 million.

This amendment only involves the judiciary's total 1995 budget, which is $2.9 billion. That is two-tenths of 1 percent of the Federal budget.

I would like my colleagues to note the salaries and retirement expenses for article III Federal judges are constitutionally mandated expenses.

The question might be, why should the exception be linked to today's judicial expenditures? What if there are technological changes or substantial changes in the organization of the courts? Could that not mean in the future some central judicial functions would be left out?

If I interpret the question of the distinguished Senator from West Virginia, it is along those lines. I would respond this way: The judicial expenses included today are broad enough that they should cover most technological advances that might have an impact on the courts and court support services. As for any fundamental organizational changes in the courts, I agree that certain changes might in fact be so fundamental that they would be left out. If that is the case, however, the definition of the excepted judicial expenses for purposes of separate enrollment could be amended by statute to accommodate any fundamental changes.

I do not foresee that as being likely, however, since most changes in court organization and operation would involve the types of services that are currently embodied in the appropriations process.

Again, I commend the distinguished Senator from West Virginia and the distinguished Senator from Oregon and other members of the Appropriations Committee for handling these matters as well as they have.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

What about these items that are in the Department of Commerce, Justice and State, Judiciary and Related Agencies, 1995 Appropriations, and 1994 Supplemental Appropriations? What about such items as these:

> $2,340,127,000 (including the purchase of firearms and ammunition); of which not to exceed $14,454,000 shall remain available until expended for space alteration projects; of which not to exceed $11 million shall remain available until expended for furniture and furnishings related to new space alterations and construction projects; and of which $500,000 is to remain available until expended for acquisition of books, periodicals, and newspapers, and all other legal reference materials, including subscriptions.

Mr. President, we are talking about chicken feed here, I realize that. But we are also talking about taxpayers' money. We are going to send to the President thousands of little billettes every year, any one of which he may line-item out. He can veto it. Any one of the legislative branch's items he can strike.

Under the amendment of the distinguished Senator, as far as the judicial branch is concerned, everything is to be in one package. That package is not to be broken down. The enrolling clerk can go out and take a walk. He gets a rest. When he comes to that item he will not have to worry about breaking those out and enrolling those several little billettes.

But to the taxpayer, $11 million is $11 million. The President might feel he ought to save some money and the judicial branch should not be exempt. Money is tight. We have a $5 trillion debt. The interest on the debt is running over $200 billion a year. The President may feel—and perhaps with good reason—that some of those items ought to be questioned. He may feel they ought to be reduced. There is $11 million that

> . . . shall remain available until expended for furniture and furnishings related to new space alterations and construction projects; and of which $500,000 is to remain available until . . . all other legal reference materials, including subscriptions.

I realize that the judges have to continue to read books, periodicals, and newspapers, and there may need to be some space alterations, and so on. But the President may feel that this is too much money.

Why should he not have the same authority and rights to scrutinize the budget for the judicial branch and question those items, and even strike them out? He could strike them out. If Congress does not want to override the veto, or if it cannot, it could pass a new bill. Instead of providing $11 million, it might provide half of that.

So the Senator's amendment, it seems to me, would let the judiciary go scot-free with no questions asked. The judicial branch is to be a preferential branch. The fact is that it is to be an independent branch. There is no reason why it should be a preferential branch when it comes to the line-item veto. It is a preferential branch under the Constitution by virtue of the fact that the salaries, title III judges' salaries, cannot be cut.

How many Senators are aware of that? How many Senators are aware that when judges retire, they retire at full salary? How many Senators are aware that judges do not pay one thin dime into their retirement—not 10 cents, not one copper penny, not one Indian head penny do the judges pay into their retirement. When they retire, they get full pay.

President Nixon talked once upon a time about nominating me to the Supreme Court of the United States. I was flattered by his consideration. That may be one reason why President Nixon is my favorite Republican President during my lifetime. But I decided that was not the place for me. But, gee whiz. I would not have to pay anything into the retirement. I could retire at full pay. I would not have to run in any election. I would not have to worry about those 30-second ads, would not have to raise any money for elections, would not have to purchase the services of consultants, and would not have to undergo the negative ads. I sometimes wonder if I did not make a mistake. No, I did not make a mistake. I like the legislative arena. I do not like to be quite that independent. I do not want to be quite that independent.

That is not said in derogation of the judges. We have to have them. They have to be independent. But we are talking about a matter here that goes to the heart of the legislative power of the purse. We are going to some extent to shift the power over the purse from the legislative branch, where it has been reposed for 206 years, since the beginning of this Republic, we are going to expand the powers of the President and, of course, we do not operate in a vacuum when we expand the power of the President. In this sense, we are going to lessen the powers of the legislative branch.

Looking further, under ''defender services.''

> . . . provided that not to exceed $19.8 million shall be available for Death Penalty Resource Centers.

I do not know. Who am I to say that every President, Republican or Democrat, is going to be in favor of Death Penalty Resource Centers? Does that have anything to do with the independence of judges? Does that have anything to do with the independence of judges? Death Penalty Resource Centers? Suppose the President wants to whack that $19.8 million. That is not

going to interfere with the independence of the judges, is it?

Let the RECORD show that there is no answer, no response.

Let us go down to the Administrative Office of the United States Courts. There we find advertising and rent in the District of Columbia and elsewhere, $47.5 million, of which not to exceed $7,500 is authorized for ''official reception and representation expenses.''

What is that? What is meant by ''official reception and representation expenses''? Does that mean we can spend money on throwing a party, treating people to a few cocktails?

I cannot believe that if the President wanted to cut that item, that he would be impairing the independence of judges. What about those people up there in the hills of West Virginia, who help to pay the taxes? I believe they would say, ''Well, we are going to have this so-called line-item veto; why should we exempt moneys for official receptions and representation expenses in the judiciary, or in the legislative account, or in the executive branch? Why should that be exempted?''

Then there is the Federal Judicial Center. I see under ''General Provisions, the Judiciary,'' section 304:

> Notwithstanding any other provisions of law, the salaries and expenses and appropriations for district courts, courts of appeals, and other judicial services shall be available for official reception and representation expenses.

Here is another of the same item, ''Official reception and representation expenses'' of the Judicial Conference of the United States, provided that such available funds shall not exceed $10,000.

Well, $10,000 is $10,000, whether it is in the judicial branch or whether it is in the legislative branch; $10,000. You cannot brush that aside with a wink and a nod. That is $10,000. That is more than some people earn in a year in this country. Yet, under the amendment offered by the distinguished Senator from Utah, the President cannot touch that. The President cannot touch that item because it is in the judicial branch.

Why should we give this kind of preferential treatment to the judicial branch in a line-item veto bill? For one thing, it is not a line-item veto. But we will be truly approving exempting one of the three branches of Government. That has nothing to do with the independence of judges.

I have as much respect for the members of the judicial branch of the Government as anybody else does here. I have some very, very good friends. As a matter of fact, Mr. Nixon appointed one of my very best friends to be a Federal district judge. That is another reason I liked Mr. Nixon. He was a Republican President who nominated a Democratic judge, and he has been a good judge, an excellent judge. He is now on the circuit court of appeals. I have other friends.

I am not out to whack the judges. But I want to see justice done. Justice—that is what the judicial system is all about; rendering of justice. So why not do justice to the taxpayers in making subject to the wet veto pen, the wet and ready veto pen of the President of the United States, when we send all of this multitude of little orphan billettes down to President of the United States?

I suppose my questions are being viewed as rhetorical questions, because I hear no answers.

Let me ask the distinguished Senator from Utah a question that cannot be viewed as a rhetorical question.

In section 303 of Public Law 103–317 there is a provision that reads as follows:

> Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Judiciary in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers.

What will happen to that provision in section 303? Does this mean that the judiciary would be the only branch that would still have the benefit of reprogramming authority? As Senator NUNN stated this morning and on yesterday and as I stated a few days ago our concerns with respect to reprogramming and how there can no longer be reprogramming done, if the substitute amendment becomes law, there cannot be any more reprogramming. If agencies get stuck with the need to reprogram moneys, they will just have to come back to the Congress and there will have to be a new law passed.

But now what about this provision here that gives the judiciary the authority to transfer—not to exceed 5 percent of any appropriation made available for the current fiscal year for the judiciary in this act may be transferred between such appropriations?

Mr. MCCAIN. Will the distinguished Senator from West Virginia yield?

Mr. BYRD. I was just going to say, as I see it, as I understand the amendment by Mr. HATCH—then I will yield—as I understand the amendment by Mr. HATCH, the judiciary is going to be exempt from the claws and clutches and jaws and teeth of this substitute. And if it is thus exempt, are we to understand that the judiciary would be able to continue to reprogram, it would be able to continue to make transfers between appropriations? Am I correct?

Mr. HATCH. If the future appropriations bills have section similar to section 303 in them, it would work the same way as it will in fiscal year 1995.

Mr. MCCAIN. Will the distinguished Senator yield for just one question?

Mr. BYRD. Yes. I promised to yield.

Mr. MCCAIN. I have had several requests from my colleagues who are interested in what the legislative schedule is going to be. Does the Senator by chance have an estimate as to how much longer he is going to be with the Senator from Utah on this issue? I am not trying to in any way curtail the Senator's in-depth discussion, but I would just wondered if he had any estimate on it?

Mr. BYRD. I do not have any estimate on the time. I certainly do not intend to take all afternoon on this one item. I am just curious as to the amendment.

Mr. MCCAIN. I thank the Senator.

Mr. BYRD. I assure the Senator I will not be long.

Mr. MCCAIN. I thank the Senator.

Mr. BYRD. As a matter of fact, I have already asked enough questions to indicate that we cannot expect full justice, we cannot expect equal treatment under the law among the various branches of the Government if the amendment by Mr. HATCH is agreed to here.

Let's see now. Where was I? Back on section 303.

So what we are saying then, if I may ask the distinguished Senator from Utah, with respect to the Department of Defense, with respect to the Department of Justice, with respect to the FBI, with respect to any of these other departments, while they will not be allowed to transfer moneys from one account to another, while they will not be allowed to reprogram, they will no longer be allowed to come to the Congress, to the chairmen of the Appropriations and Armed Services Committees and the ranking members and ask permission to reprogram certain moneys, the Justice Department can go on its merry way and continue—the judiciary, not the Department of Justice. I am sorry about the Department of Justice. It will not be able to do that. The crime fighting departments, the FBI, and so on, will not be able to transfer between appropriations that are made available. Yet, the judiciary can go on its merry way—the judiciary, not the Justice Department, the judiciary will be able to continue to transfer between appropriations.

Mr. HATCH. As long as future bills have this provision in them, that is true. We have the right as a Congress to not give them that power. In other words, the full judiciary, a little over $2 billion—two-tenths of 1 percent of the total Federal budget —will be subject to congressional review every year. If Congress decides, as it did in this particular instance, in Public Law 103–317, to have a section 303, then it can. But if Congress decides not to have a section 303, Congress has the power to stop the judiciary from having that right that is defined in section 303.

Mr. BYRD. Do I hear the distinguished Senator saying that notwithstanding the passage of the Dole substitute, notwithstanding it is agreed to in conference, if it is, notwithstanding that the conference reports go down to the President untrammeled, unchanged, unblemished, and unstained, that Congress can come along next year without the Senator's amendment—could Congress then next year write into the appropriations act, the

act making appropriations for the judiciary, could Congress write into that act next year section 303 that not to exceed 5 percent of any appropriations made available may be transferred—notwithstanding that the Dole substitute becomes the law of the land, can Congress thwart that act next year by writing into the appropriations for the judiciary this language that allows the judiciary to transfer moneys?

Mr. HATCH. It is my understanding Congress can do whatever it wants to. All the rest of the provisions would be subject to the line-item veto except for the judiciary's budget as we have defined it.

Mr. BYRD. Then if Congress can do that in the case of the judiciary, next year under the influence of Senator NUNN and Senator STEVENS, Senator INOUYE, Senators who are most knowledgeable with respect to defense appropriations and needs of the country, Congress can come along next year and write into the appropriations for the Department of Defense language that will allow the Department of Defense to continue to reprogram as in the past?

Mr. HATCH. Not as in the past. If the President has the veto, the President has a right to veto or not to veto. Congress can do pretty well what it wants to.

Mr. BYRD. So the President could veto?

Mr. HATCH. The President could veto.

Mr. BYRD. Could the President veto a congressional approval of transfer of authority?

Mr. HATCH. As in section 303?

Mr. BYRD. Yes.

Mr. HATCH. The President could veto that by vetoing the complete judicial appropriations bill. He would have to veto the whole bill.

Mr. BYRD. He would have to veto the whole bill?

Mr. HATCH. He could not line item that one.

Mr. BYRD. He could not?

Mr. HATCH. Not under my amendment.

Mr. BYRD. He could not line item that one item out?

Mr. HATCH. That is right. If the Congress chooses to put it in there, then, under my amendment as I have crafted it, if Congress chooses to do that, then the President could not line item it out. The only way he could get it out would be to veto the whole bill.

Mr. BYRD. Could he do the same with respect to the defense appropriations bill?

Mr. HATCH. He could line item out any provision.

Mr. BYRD. He could line item any provision out of that one?

Mr. HATCH. Right.

Mr. BYRD. But he could not line item any provision out of appropriations for the judiciary?

Mr. HATCH. That is correct.

But if he line items the defense appropriations bill, Congress is here to protect defense appropriations.

Mr. BYRD. Yes.

(Mr. GREGG assumed the chair.)

Mr. HATCH. If he line items a provision, a small, obscure provision in the judiciary, a coequal branch of Government that has no real ability to defend itself, Congress may not feel the need to do so. And if that is so, the judiciary could suffer some crippling line-item vetoes if we get a President who acts officiously, or who is mad at the judiciary for one reason or another, or who wants to give them a rough time. There would not be the same lack of vulnerability that, say, the Defense Department would have.

Mr. BYRD. I am not sure the Senator and I are talking on the same wave length. I think he is talking with respect to his amendment, if his amendment is agreed to. But I am asking a question notwithstanding his amendment.

Mr. HATCH. If my amendment is not agreed to, then the President would have the right to line item any aspect of the judiciary as well.

Mr. BYRD. Yes.

Mr. HATCH. Which I think would be very detrimental to the judicial system of this country.

Mr. BYRD. Congress is responsible for the appropriations for the judiciary, as well.

Mr. HATCH. If the Senator would yield, as much as I respect the Department of Defense, it is not a co-equal branch of Government. The judiciary is. We are trying to keep the judiciary less political than the other two branches. That is the reason I would like to have this protection. It is a very small part of the appropriations process.

And if a President feels strongly about some aspect of the judiciary, the President can veto the whole judiciary bill. But at that point I think Congress will come back and defend the judicial system.

Mr. BYRD. Why does the Senator not include in his amendment the Justice Department? Why does he not include the law enforcement arm? Why does he not include the FBI? Why does he just single out the judicial branch?

Mr. HATCH. If the Senator will let me answer, I believe the reason we have not done that is because we believe that the executive branch of Government is very capable of defending itself.

Those branches are not the judicial branch, which is supposed to be the least political branch of Government. I believe we ought to keep the judiciary as separate, as distinct, and as apolitical as we possibly can.

Mr. BYRD. Well, I respect the Senator's viewpoint. I share with him the belief in the need for complete independence on the part of judges. But I cannot understand how, in protecting that independence, we need to protect items such as furniture, recreation, moneys for travel, limousine service. Such items are subject to the veto pen of the President when it comes to the legislative branch and when it comes to the executive branch, so he is going to look twice or three times before he vetoes something that pertains to the White House or certain other areas of the legislative branch.

The legislative branch appropriations is less than the appropriation for the judiciary, is it not?

Mr. HATCH. I think that is correct.

Mr. BYRD. I believe the Senator said the appropriation for the judiciary is $2.9 billion?

Mr. HATCH. Yes, $2.9 billion.

Mr. BYRD. And he spoke of that as a rather small amount, not exactly trivial, but a small amount. Yet, for the legislative branch, I am advised, the total is $2.3 billion.

Mr. HATCH. Will the Senator yield on that point?

Mr. BYRD. Yes.

Mr. HATCH. Well, I do not think anybody in his or her right mind believes that the legislative branch would not fight with all of its power to sustain its own branch of Government. But who fights for the judiciary if the judiciary branch has been treated unfairly by the President for some political reason? I am hopeful that no President would be that way, but we have all seen some pretty petty things in this town.

I just want to make sure that this very small, coequal branch of Government—which is small but is important as the least political branch of Government—is kept that way.

Mr. BYRD. Mr. President, I cannot think of any Senator who has merited the Purple Heart for standing up for the legislative branch in recent years. As a matter of fact, it has been pretty much open season on the legislative branch around here. We enjoy self-flagellation, nicking our skins, cutting our throats.

I thank the distinguished Senator for his patience and his responses. He is sincere, he is conscientious, and he believes in what he is saying and what he is doing.

I happen to be one who believes that we should not give the judicial branch this kind of preferential recognition in a bill of this kind. We are talking about a so-called line-item veto in which the items in the legislative appropriations bill would be subjected to the scrutiny of the Chief Executive.

There is no reason that is contained within the four corners of the legislation, no reason, there is nothing in there that will keep the President from lining out items in the legislative appropriation. He will have that right. He can line them out. True, Congress may, if it ever returns to its senses, develop the courage to override one of those vetoes by the President. But it has been pretty much bereft of reason in late years and I doubt that it would have the collective guts to muster two-thirds vote.

I think that the judicial branch should undergo the same scrutiny as any other branch.

Mr. BROWN. Will the distinguished Senator from West Virginia yield for a question?

Mr. BYRD. Yes; I am about ready to yield the floor, but I am glad to yield.

Mr. BROWN. I do not mean to interrupt the distinguished Senator. My hope was to take 2 or 3 minutes to explain the new NATO Participation Act. I was wondering if there would be a point that the Senator might yield for me to do that. I do not wish to interrupt his flow of thoughts on this subject matter.

Mr. BYRD. Mr. President, I will not detain the Senator.

I did want to make one other point, and that is that the amendment by Mr. HATCH not only puts the judiciary in a preferential position, it also provides the loophole against the requirement that every appropriation account be divided into separate bills, including items in the accompanying report.

Let us take courthouses, for example. Ordinarily, I believe, they are included in the Treasury-Postal bill. They are included in the Treasury-Postal appropriations bill, and under the so-called line-item veto legislation that the Senate will be voting on, that bill will be subjected to the scrutiny and possible vetoing by the President of certain line items which could include courthouses. There is nothing to protect them.

But it seems to me that if the amendment by the distinguished Senator from Utah is agreed to, which will protect the judicial branch against vetoes of items, it would not take long around here for ingenious minds to decide that if so-and-so wants a courthouse to put it into the judiciary appropriation, put it in there, because it will be scot-free, there could be no tampering with that, there could be no vetoing of items there.

So then that will open up a loophole whereby Senators may get courthouses in their States under the loophole. I would be surprised if that is beyond the reach of the ingenious brains of Members of this body.

But this legislation opens up a loophole there. I bet we will start seeing Federal courthouses with earmarks showing up under the judiciary if this exemption is allowed to create such a loophole.

So the judiciary then would be the only part of Government allowed to retain reprogramming authority.

The Senator has been very patient, if he wishes to respond; if not, I will yield the floor.

Mr. HATCH. May I suggest the absence of a quorum for a minute?

Mr. BYRD. I will yield for that purpose, yes.

Mr. HATCH. 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. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, I ask unanimous consent that I be allowed to proceed as in morning business for 5 minutes concerning the NATO Participation Act Amendments of 1995.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. I thank the Chair.

(The remarks of Mr. BROWN and Mr. SIMON pertaining to the introduction of S. 602 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. HATCH. Mr. President, I am very serious about this amendment. I think it is a correct amendment and a good amendment. I would like to go forward with a vote on it.

I have to say that a number of my colleagues have requested that I withdraw the amendment. I ask my dear friend from West Virginia if he would have any objection to my withdrawing the amendment at this time?

Mr. BYRD. Mr. President, I think this would be the first time in my going on 37 years in the U.S. Senate that I would object to withdrawing an amendment. I do not like to object to a Senator otherwise having the right to withdraw an amendment.

In this case, I will object to withdrawing the amendment, and I will insist on a yea and nay vote on the amendment. It is not that I think I have any chance of carrying the amendment. It is not that at all. I do not know whether I will get another vote besides my own. But I think the U.S. Senate ought to be ready and willing to have a showdown as to whether or not we believe there is a special branch of Government that is above and beyond the other two and as to whether or not the appropriations for that branch ought to be exempt from the scrutiny and the possible veto by a President of certain items in an appropriation bill which the President may, with every justification, feel ought to be vetoed.

And so I do object to withdrawing the amendment. I apologize to the Senator.

Mr. HATCH. I think the Senator has every right to do so.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. I believe the Senator has every right to do so. I am disappointed that he has.

Mr. HEFLIN. Mr. President, I have joined my colleague Senator HATCH of Utah in proposing an amendment to exempt items of appropriations provided for the judicial branch from enrollment in separate bills for presentment to the President.

The doctrine of separation of powers recognizes the importance of protecting the judicial branch of government against improper interference from the legislative or executive branch. This doctrine is recognized in article III of the Constitution which protects salaries of article III judges.

Similarly the Budget and Accounting Act provides that requests for appropriations for the judicial branch shall be submitted to the president and transmitted by him to Congress without change. Thus it would be inconsistent to prohibit the President from changing the budget of the judicial branch prior to submission to the Congress, but then by the line-item veto legislation to give the President the authority to change the judiciary's appropriation line-by-line.

A little history may help explain the basis for our bipartisan amendment. Congress created the Administrative Office of the U.S. Courts in 1939 which now has the responsibility for budget submissions through the President and on to the Congress. Prior to that time budget submissions were provided by the Department of Justice, which is an executive branch agency. During the 1930's, according to testimony given to the Senate Governmental Affairs Committee by Chief Judge Gilbert Merritt, chairman of the executive committee of the Judicial Conference of the United States, the Justice Department often rejected the judicial branch's requests for funds, denied requests for new judges, cut travel funds, and denied other requests for appropriate staff support.

Congress reacted to this situation by creating the Administrative Office of the U.S. Courts and by directing it to submit the budget of the judiciary without change by the executive branch. Congress acted to protect the independence of the judicial branch, and I believe this protection should continue.

The protection should continue because often the executive branch of government is a litigant, both as plaintiff and defendant, in lawsuits in the Federal courts. Subtle or otherwise, the judiciary should be insulated from undue presssure from the executive branch.

Further, and most importantly, we are not giving the judicial branch a blank check for any appropriation it wants. The judiciary's budget will continue to be subjected to full congressional review and scrutiny. The judicial branch will still have to appear before the Appropriations Committee and defend its budget request, and we in Congress can amend or change that request as we deem necessary.

I believe that failure to exempt the judicial branch from the provisions of the pending line-item veto legislation will do violence to the separation of powers that was established by our Founding Fathers who wrote the Constitution.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas, the majority leader, is recognized.

Mr. DOLE. Mr. President, I happen to believe that we are going to have a

line-item veto that will apply to everyone. I listened to the arguments of the Senator from West Virginia. I agreed with him before he made his statement. I have already had a call from a friend of mine who is a Federal judge who said, ''Leave us out.'' Why not leave somebody else out? This is serious business, in my view, and if we are serious, everything has to be on the table from A to Z, with the exception of Social Security. Therefore, I am constrained to move to table the amendment of my colleague from Utah, my good friend—or former good friend—and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Before we vote on the motion, would the majority leader allow me to say I had no idea the majority leader was going to support my position on this. If I had known that, I would not have said that in all likelihood mine would be the only vote against the amendment. I do appreciate it.

Mr. DOLE. I hope we have a majority——

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

Mr. BYRD. Mr. President, I do not want the Senator to be broken off in the middle of a sentence.

Mr. DOLE. If my colleague will yield, I think it is pretty hard to make an argument that we ought to exempt the judiciary. I know we have separation of powers, but we are all spending the taxpayers' money.

Mr. BYRD. Exactly.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 85, nays 15, as follows:

[Rollcall Vote No. 113 Leg.]

YEAS—85

Akaka	Dole	Kerrey
Ashcroft	Domenici	Kerry
Baucus	Dorgan	Kohl
Bingaman	Exon	Kyl
Bond	Faircloth	Lautenberg
Boxer	Feinstein	Leahy
Bradley	Ford	Levin
Breaux	Frist	Lieberman
Brown	Glenn	Lott
Bryan	Gorton	Lugar
Burns	Graham	Mack
Byrd	Gramm	McCain
Campbell	Grams	McConnell
Chafee	Grassley	Mikulski
Coats	Gregg	Moseley-Braun
Cochran	Harkin	Moynihan
Cohen	Hollings	Murkowski
Conrad	Hutchison	Murray
Coverdell	Inhofe	Nickles
Craig	Inouye	Nunn
D'Amato	Jeffords	Packwood
Daschle	Johnston	Pell
DeWine	Kassebaum	Pressler
Dodd	Kempthorne	Reid
Robb	Simon	Thomas
Rockefeller	Simpson	Thurmond
Santorum	Smith	Warner
Sarbanes	Snowe	
Shelby	Stevens	

NAYS—15

Abraham	Hatch	Pryor
Bennett	Hatfield	Roth
Biden	Heflin	Specter
Bumpers	Helms	Thompson
Feingold	Kennedy	Wellstone

So the motion to lay on the table the amendment (No. 407), as modified, was agreed to.

Mr. COATS. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, for the second time in less than 1 month, the Senate is confronted with a proposal to alter our constitutional system in the name of fiscal responsibility. On March 2, the Senate declined to adopt a balanced budget amendment to the Constitution. Today, we are considering a proposal which, although not drafted as an amendment to the Constitution, nonetheless has important and far-reaching constitutional implications.

The separate enrollment bill would have Congress surrender fundamental constitutional prerogatives to the Executive. I hope the Senate will recognize the constitutional and practical defects of this proposal, and I hope we will again have the wisdom to say no.

Just as importantly, I would hope the Senate would consider the practical consequences of this radical proposal. I would have the temerity to suggest that the White House pay heed as well.

In 1986, on the occasion of the bicentennial of the U.S. Constitution, I had the honor to deliver a lecture at the Smithsonian Institution entitled, '' 'The New Science of Politics' and the Old Art of Governing.'' I take the liberty of repeating the opening passages.

Anyone who has studied American government or taken some part in its affairs will often have asked: ''How goes the science of the thing?''

As we approach the bicentennial of the Constitution, which is not to say our Independence, but our form of government, leafing through ''The Federalist Papers,'' pondering the unexampled endurance of the Constitutional arrangements put in place in those years, we are reminded of the role the ''new science of politics,'' as the founders liked to call it, played in devising those arrangements.

It appears to me that the significance of this bicentennial is predicated on the extent to which the perception is widened that the government of the United States was not fashioned out of ''self-evident truths,'' but rather was the work of scholar-statesmen who had studied hard, learned much, and believed they had come upon some principles—uniformities—in human behavior which made possible the reintroduction of republican government nearly two millennia after Caesar had ended the experiment.

We may doubt that the bicentennial discussion will attain to anything like the level of discourse two centuries ago. We are short on Madisons and Hamiltons and Jays. But it is possible to hope that we may acquire a more general understanding of what it was those men were discoursing about. Else all will be lost to fireworks and faith healing.

The argument was whether government could be founded on scientific principles; those who said it could be, won.

At the risk of reproach from persons more learned than I, let me state in summary the intellectual dilemma of that time. The victors in the Revolution could agree that no one wanted another monarchy in line with the long melancholy succession since Caesar. Yet given what Madison termed ''the fugitive and turbulent existence of * * * ancient republics,'' who could dare to suggest that a modern republic could hope for anything better?

Madison could. And why? Because study had produced new knowledge, which could now be put to use. To cite Martin Diamond:

''This great new claim rested upon a new and aggressively more 'realistic' idea of human nature. Ancient and medieval thought and practice were said to have failed disastrously by clinging to illusions regarding how men ought to be. Instead, the new science would take man as he actually is, would accept as primary in his nature the self-interestedness and passion displayed by all men everywhere and, precisely on that basis, would work out decent political solutions.''

This was a declaration of intellectual independence equal in audacity to anything done in 1776. Until then, with but a few exceptions, the whole of political thought turned on ways to inculcate virtue in a small class that would govern. But, wrote Madison, ''if men were angels, no government would be necessary.'' Alas, we would have to work with the material at hand. Not pretty, but something far more important: predictable. Thus, men could be relied upon to be selfish; nay, rapacious. Very well: ''Ambition must be made to counteract ambition.'' Whereupon we derive the central principle of the Constitution, the various devices which in Madison's formulation, offset ''by opposite and rival interests, the defect of better motives.''

The lecture thereupon considered the development of what seemed to me to be the ''defining failure of the Reagan era * * * that of political economy.'' Specifically, the accumulation in a brief span of a huge national debt, much at variance with any peacetime period in our then two-century experience. That debt has continued to grow, largely the result of compound interest, and is the presumed motivating factor behind the legislation before us now. Even as it was the concern that led to the proposed balanced budget amendment to the Constitution, which we dealt with recently.

In point of fact, that era is behind us. In 1993, the Congress enacted the Omnibus Budget Reconciliation Act which provided for deficit reduction over a 5-year period of some $500 billion—the largest deficit reduction measure in the half-century since the deficit was reduced following the end of World War II. Such was the size of the program cuts and—yes—tax increases provided in the 1993 legislation that interest

rates fell sharply—the so-called deficit premium dropping off dramatically. The result was lower debt service and a cumulative deficit reduction of near to $600 billion.

Citizens who might wonder at this will recall how many individuals, their neighbors, themselves perhaps, refinanced their mortgages following the 1993 legislation and the sharp drop in interest rates. That affected our costs as well—our costs, their costs, the costs of Government.

In consequence of this, Mr. President, we have in fact returned to a primary surplus in this year's budget. A primary surplus or primary deficit is defined as the difference between revenues and outlays for purposes other than debt service.

I pointed this out on February 8 in the course of the debate on the balanced budget, to wit: Spending on Government programs is less than taxes for the first time since the 1960's.

May I repeat that. Spending on Government programs is less than taxes for the first time since the 1960's.

Not a bad performance. But how did it come about?

Given the critical issue that confronts us, I will be candid with the Senate. More, perhaps, than is usual; more, perhaps, than is prudent.

In 1993, I was chairman of the Senate Finance Committee. The task of raising taxes by a quarter of a trillion dollars, and the lion's share of an equal amount in spending cuts, thus fell to our committees and to its chairman.

How did we do it? We did it the way the Framers of the American Constitution envisioned. We made accommodations that made up for the defect of better motives.

Item. Gasoline and diesel fuel taxes were raised 4.3 cents per gallon. Offset. Airlines were given a 2-year exemption from the increased tax. We also took away the tax benefits previously accorded exporters of raw timber.

Item. The business meal tax deduction was reduced from 80 percent to 50 percent. Offset. Restaurant owners were given a tax credit for the FICA tax they are required to pay on their employees' tips.

I could go on at some length. But there must be a point where prudence intervenes. I simply make a point known to every experienced legislator in the Congress. Compromise and trade-offs are the key.

And now I make the further point. If these exchanges cannot be sealed in legislation—all or nothing—the accommodations will be vastly more difficult, if not indeed impossible to reach.

The chairman will say to a Senator: ''If you will go along with this provision not much to your liking, we will be able to get you another provision that will in some measure make up for what you legitimately consider a loss.''

But what if the other Senator knows that his or her provision will end up as a separate item of legislation which could very well be vetoed?

Answer. There would be no deal.

Which is to say, no deficit reduction. Even as we have shown that we are capable of deficit reduction, and only have to keep at it for another 5 years or so to erase the legacy of the 1980's.

Those are the practical considerations. But now to the constitutional ones, which are scarcely impractical.

The Framers were well aware of the importance of the power of the purse, and accordingly made the conscious decision to vest this power in the branch of government closest to the people: Congress. In Federalist No. 58, James Madison wrote:

> This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

According to Madison's notes of the Constitutional Convention of 1787, Roger Sherman of Connecticut said that:

> In making laws regard should be had to the sense of the people who are bound by them and it is more probable that a single man should mistake or betray this sense than the legislature.

Thus, article I, section 9 of our Constitution plainly states:

> No money shall be drawn from the Treasury but in consequence of appropriations made by law.

In a brilliant article on the power of the purse in the Georgia Law Review in 1986, Judge Abner J. Mikva, then of the U.S. Court of Appeals for the District of Columbia Circuit, now counsel to President Clinton, wrote

> . . . if we wish to live in a pluralistic and free society, we will strive to ensure that Congress retains exclusive control of the nation's purse. Only in that event will the delicate balance of our constitutional structure be preserved.

I do hope Judge Mikva has not forgotten his paper.

The line-item veto legislation before us would disturb—profoundly disturb—that delicate balance. It would have us deviate from the explicit procedures for passage and enactment, or veto, of legislation, set forth in detail in article I, section 7, which states:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.

The Supreme Court has referred to this part of article I, section 7 as ''a single, finely wrought and exhaustively considered procedure.'' There is nothing ambiguous about it, nor is there any uncertainty about why the Framers vested the power of the purse in Congress.

Why, then, are we now giving serious consideration to measures that would radically alter our constitutional procedures?

The line-item veto is not a new idea. President Ulysses S. Grant first proposed it in 1873. In 1876, Representative Charles James Faulkner of West Virginia introduced an amendment to the Constitution to provide for a line-item veto. Some 150 line-item veto bills have been introduced in the interim, but Congress has never seen fit to adopt any of them.

Today we are told that circumstances, including the failure of the balanced budget amendment, have given the line-item veto a new urgency. It is argued that we need this because congressional spending and the national debt are out of control—precisely the same rationale offered by proponents of the balanced budget amendment. And mistaken for the same reasons.

We ought to be asking ourselves how and when these deficits were created, and whether they are permanent features of our governmental operations, or merely temporary. After a month of debate on the balanced budget amendment, I would hope the Senate knows the answers to these questions.

The point has been made over and over again on this floor by the Senator from New York, and by the distinguished Senators from West Virginia and Maryland, our revered Senator ROBERT C. BYRD and Senator PAUL SARBANES. Insofar as the national debt is a problem in our fiscal affairs, it is a problem that was created—in some measure intentionally—during the 1980's, the single decade of the 1980's. I do not wish to belabor this point. The facts have been well documented by David Stockman, President Reagan's Budget Director, by the journalist and historian Haynes Johnson, and others. It ought to be considered well-settled by now. The debt accumulated during the Reagan era was an historical anomaly. Again, were it not for the interest on the deficits created during those years, the Federal budget would be in balance today. If we recognize this, we will realize there is no need for the legislation before us.

Even if there were a need for a line-item veto, the separate enrollment legislation is surely unconstitutional. It would require the enrolling clerks to dismantle bills passed by the House and Senate before the bills are presented to the President, as provided by the Constitution. You do not need to be a constitutional scholar, or even a lawyer, to recognize that this procedure would violate the Constitution.

The presentment clause in article I, section 7 requires ''every Bill which shall have passed the House of Representatives and the Senate'' to ''be presented to the President'' before it becomes a law. Under this provision of

the Constitution, the bill presented to the President must be the same bill passed by Congress—not a series of smaller bills created by the enrolling clerks, or ''billettes,'' as they have been called by our learned colleague from West Virginia. The separate enrollment proposal would delegate to the House and Senate enrolling clerks a legislative function explicitly assigned to Congress by article I: deciding what bills say.

The Association of the Bar of the City of New York recently produced an exhaustive analysis of the constitutionality of the line-item veto. The association's report was written by David P. Felsher and edited by Daniel J. Capra, who is chairman of the association's committee on Federal legislation. The report finds that under either ''enhanced rescission'' or ''separate enrollment,'' the President would in effect be authorized to restructure legislation after its passage by Congress. This is unconstitutional because it is the province of Congress and Congress alone, to determine the contents of bills; the sole power of the President under the article I, section 7 is to sign or veto legislation. According to the association's analysis, ''it is irrelevant whether the itemization needed to implement the line-item veto is effectuated by the President or the enrollment clerk in Congress.''

I might add that this opinion is shared by other prominent constitutional scholars, including Prof. Michael J. Gerhardt of Cornell Law School, who has written me to say that the ''separate enrollment'' legislation is unconstitutional because it

> . . . effectively enables the President to make affirmative budgetary choices that the Framers definitely did not want him to make.

These scholars have concluded that ''separate enrollment'' is unconstitutional because the Supreme Court has been scrupulous in requiring strict adherence to the legislative procedures set forth in Article I. In INS versus Chadha in 1983, the Court struck down a statutory provision that permitted one House of Congress to exercise a ''legislative veto.'' Chief Justice Burger wrote that the requirements of article I, and I quote:

> . . . were intended to erect enduring checks on each Branch and to protect the people from the improvident exercise of power by mandating certain prescribed steps. To preserve those checks, and maintain the separation of powers, the carefully defined limits on the power of each Branch must not be eroded.

And there I end the passage from Chief Justice Burger. Three years later, in Bowsher versus Synar, the Court invalidated the provision in the Gramm-Rudman-Hollings deficit control law giving the Comptroller General of the United States authority to execute spending reductions under the act. The Court held that this violated the separation of powers because it vested an executive branch function in a legislative branch official. ''Underlying both decisions,'' according to a Congressional Research Service analysis, ''was the premise * * * that 'the powers delegated to the three branches are functionally identifiable,' distinct, and definable.'' I should add that a second en bloc vote on the itemized mini-bills would not cure the constitutional defects of this proposal. I refer of course to an amendment offered to this legislation yesterday. A second en bloc vote on the itemized mini-bills would not cure the constitutional defect of this proposal. We vote on one bill at a time in the U.S. Senate. Professor Gerhardt of Cornell has said that a separate vote would have to be taken on each of those bills in order to satisfy Article I.

If we wish to enact legislation in which we passed a bill for each item of the kind now put together in an appropriations bill, that would be perfectly constitutional. It would require us to pass perhaps 10,000 bills a year, which we could do, but it would be constitutional. What you cannot do is pass 10,000 bills with one vote.

Clearly, the great weight of authority indicates that ''separate enrollment'' is unconstitutional. Yet even if it is not, it is still a bad idea. Its proponents argue that 43 Governors have used this power to great effect in the States. This argument demands closer scrutiny.

Recall that a similar claim was made during our debate on the balanced budget amendment: that balanced budget requirements have enforced fiscal discipline in the States. But word eventually got out that this was not quite true: States also have capital budgets which are not required to be balanced which are, by definition, financed by debt, even as they return benefits over time. Claims about the effectiveness of the line-item veto in the States may be equally misleading.

The late, beloved Prof. Aaron Wildavsky of the University of California at Berkeley wrote in 1985, with characteristic insight, that much of the ''savings'' attributed to use of the line-item veto in the States may be illusory. He cited the experience of Pennsylvania, where one study found that spending bills were deliberately inflated in order to compensate for expected item vetoes, or simply to serve political ends. Thus it does not necessarily follow that X million dollars are ''saved'' merely because a Governor line-item vetoes that amount. They were not meant to be enacted in the first place.

Dr. Louis Fisher of the Congressional Research Service and Prof. Neal Devins of the Marshall-Wythe School of Law at William and Mary concur in Wildavsky's assessment, writing that ''[g]ubernatorial reductions may merely cancel spending that the legislature added because the governor possessed item veto authority.'' Fisher and Devins conclude that '' * * * the availability of an item veto allows legislators to shift more of the responsibility for the fiscal process to the Executive,'' instead of keeping it in the Congress where it belongs and where, in 1993, we showed we could exercise such responsibility. If I may say, Mr. President, without meaning in any way to be partisan, every vote for the 1993 $600 billion deficit reduction measure came from this side of the aisle.

The distinguished chairman of the Appropriations Committee, Senator HATFIELD, testified along the same lines before the Judiciary Committee in 1984 of his experience with the line-item veto when he was Governor of Oregon:

> We also know that the legislators in States which have the line-item veto routinely ''pad'' their budgets, and that was my experience, with projects which they expect, or even want their Governors to veto. It is a wonderful way for a Democrat-controlled legislature, that I had, to put a Republican Governor on the spot: Let him be the one to line-item these issues that were either politically popular, or very emotional.

There is no reason to think these problems would be avoided at the Federal level if we adopt the line-item veto. If the state experience is any indication, the line-item veto might even create more difficulty in the Federal budget process. This has been our science of politics, this has been our experience of politics.

The substitute amendment before us will not impose discipline on Congress. Nor will it erase the national debt. It is very likely unconstitutional. It will undoubtedly be litigated, and the courts will have to decide.

I have great confidence that they will decide the measure before us is unconstitutional and the entire exercise will have been for nothing.

I hope the Senate will say no to separate enrollment. I hope the Senate will decline this invitation to relinquish important constitutional prerogatives to the executive branch. It was why the American Government came into being, Mr. President, in response to what we saw as the abuses in fiscal matters of the executive branch in Great Britain.

Mr. President, I ask unanimous consent that the letter from Prof. Michael J. Gerhardt of Cornell Law School and the report of the Association of the Bar of the City of New York, of which Daniel J. Capra is chair, be printed in the RECORD.

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

CORNELL LAW SCHOOL,
March 20, 1995.

Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate, Washington, DC

DEAR SENATOR MOYNIHAN: I greatly appreciate the chance to express my opinion on the constitutionality of a proposed scheme directing the clerk of the House in which an appropriation bill or joint resolution originates to disassemble the measure and enroll each item as a separate bill or joint resolution, which is then presented to the President for approval or disapproval. As I explain

below, I consider this proposal to be unconstitutional because it (1) violates Article I by allowing the President to sign or veto a measure in a form never actually by both houses of the Congress; (2) involves an illegitimate attempt by the Congress to redefine statutorily the constitutional term ''Bill''; (3) contravenes both Supreme Court authority severely restricting congressional discretion to delegate a core legislative or lawmaking function and longstanding congressional understanding of the prerequisites for a legitimate bill; and (4) radically alters the fundamental balance of power between the Congress and the President on budgetary matters.

At the outset, I find that merely describing the proposal's intended operation demonstrates its basic constitutional shortcomings. Suppose that an appropriation bill containing 200 separate appropriation items, which was considered and passed by both Houses as a single, whole bill, would be translated at the enrollment stage into 200 separate bills for presentment and veto purposes. Yet, none of those 200 bills would have ever been separately considered, voted on, or passed by the two Houses of Congress. The problem is that Congress cannot pass or enact 200 separate appropriation bills without subjecting each of those 200 bills to the full deliberative processes of the two Houses. The enrollment procedure is simply not a part of the carefully designed procedures for lawmaking set forth in Article I.

More specifically, the proposal violates the plain language of the presentment clauses of Article I. According to the latter, a bill or resolution that is to be presented to the President can become a law only if it has ''passed the House of Representatives and the Senate.''[1] The purposes of this requirement were to circumscribe Congress's lawmaking powers and to define the scope of the President's veto authority. It tortures the English language, however, to maintain that, in the hypothetical above, both the House of Representatives and the Senate actually passed 200 separate bills. A fragmented bill that is never subjected for consideration and approval by both Houses of Congress is not a bill or resolution within the plain and original meaning of the presentment clauses.

Moreover, the framers deliberately restricted the President's role in the lawmaking process to a qualified negative rather than to have him exercise an affirmative power to redraft or reconfigure a bill. Because the President is able under the proposal to pick and choose which budgetary items he would like to see enacted, the proposal allows him to sign various items into law in forms or configurations never actually approved as such by both houses of Congress. This kind of lawmaking by the President clearly violates Article I, section 1, which grants ''[a]ll legislative powers'' to Congress, and Article I, section 7, which gives Congress the discretion to package bills as it sees fit.

The proposal effectively enables the President to make affirmative budgetary choices that the framers definitely did not want him to make. The framers deliberately chose to place the power of the purse outside of the executive because they feared the consequences of centralizing the powers of the purse and the sword. As James Madison wrote in the Federalist No. 58, ''This power of the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people.''[2] Every Congress (until perhaps this most recent one)—as well as all of the early presidents, for that matter—have shared the understanding that only Congress has the authority to decide how to package legislation, that this authority is a crucial component of checks and balances, and that the President's veto authority is strictly a qualified negative power that enables him to strike down but not to reconfigure whatever the majorities of both Houses have sent to him as a bill.

Another major constitutional deficiency with the proposal is that the enrollment process—the phase in which the proposal allows for the fragmentation of a bill to occur—is not mentioned in the Constitution as a step in the bicameral development of a bill or resolution to be presented to the President. Nor it is considered an aspect of the ''step-by-step, deliberate and deliberative process'' by which the two Houses consider and pass a legitimate bill or resolution.[3] Enrollment is supposed to be merely the meticulous preparation of ''the final form of the bill, as it was agreed to by both Houses, for presentation to the President.''[4] Yet, when an enrolling clerk disassembles a unitary appropriations bill passed by both Houses and rewrites it into many separate bills, the clerk is not enrolling what was in fact ''agreed to by both Houses.'' Rather, the clerk is dividing the bill into 200 separate bills—a task that can only be performed by both Houses, acting in the customary bicameral manner.

In addition, Congress's delegation of its authority to enact each item of a bill into separate bills is illegitimate. The basic decision whether to adopt and then present one or many bills to the President is a legislative choice that is, according to the Supreme Court, the ''kind of decision that can be implemented only in accordance with the procedures set out in Article I.''[5] Congress cannot delegate to an enrolling clerk the core legislative function of deciding how many appropriation bills will be presented to the President or the form each of those bills should take.

The seminal case on this point is INS v. Chadha,[6] whose reasoning is directly applicable to the proposal under consideration. Chadha held that Congress cannot delegate to a single house any kind of legislative function that must be performed by both Houses, such as the enactment of a bill or resolution that changes the status quo or affects the interests of those outside the legislature. Because an appropriation obviously affects existing relationships, it is the kind of legislative judgment both as to form and substance that Congress cannot delegate to an enrollment clerk. The proposal deals with an integral part of the deliberative bicameral process. As the Court explained, ''[t]he President's participation in the legislative process was to protect the Executive branch from Congress and to protect the whole people from improvident laws. The division of the Congress into two distinctive bodies assures that the legislative power would be exercised only after opportunity for full study and debate in separate settings. The President's unilateral veto power, in turn, was limited by the power of two-thirds of both Houses of Congress to overrule a veto thereby precluding final arbitrary action of one person. It emerges clearly that the prescription for legislation in article I represents the framers' decision that the legislative power of the federal government be exercised in accord with a single, finely wrought and exhaustively considered, procedure.''[7]

Undoubtedly, the proposal would also significantly alter the balance of power between the President and Congress. The proposal would expand presidential involvement in the legislative process beyond what the framers intended. Such aggrandizement would be at the expense of Congress, which would lose its basic authority to present appropriation bills to the President in the precise configuration or compromises produced by the deliberative processes of the two Houses. The proposal would demote Congress, which the Constitution makes the master of the purse, to the role of giving fiscal advice that the President would be effectively free to disregard. The framers granted the President no such special veto power over appropriation bills, despite their awareness that the insistence of colonial assemblies that their spending bills could not be amended once they had passed the lower house had greatly enhanced the growth of legislative power.[8]

The proponents of separate enrollment argue, however, that the parsing and reformulating of bills by an enrolling clerk involves ministerial rather than legislative tasks. The problem with this contention is that Congress simply does not have the constitutional authority to redefine the necessary ingredients for legislative action for its own convenience. No case makes this point more clearly than Chadha, in which the Supreme Court declared that any action deemed legislative must be undertaken ''only in accordance with the procedures set forth in article I.''[9] Unless both houses of Congress have enacted each item in an appropriations bill as separate bills, it would be unconstitutional for a clerk of either House to do so and to submit his handiwork as a ''Bill'' to the President for approval or disapproval.

In summary, the explicit prescription for lawmaking set forth in detail in Article I, whereby Congress is allowed to present to the President only those bills that have been subjected to the full deliberative process of both Houses, cannot be amended by legislation, as this proposal tries to do. Nor can Congress, by statute, redefine the constitutional term ''Bill'' to include each and every item in a duly enacted unitary bill. This conclusion is supported by the plain and original meaning of Article I, longstanding congressional understanding, and clearly applicable Supreme Court authority.

It has been a privilege for me to share my opinions about this proposed law with you. If you have any other questions or if you need any further analysis, please do not hesitate to let me know.

Very truly yours,

MICHAEL J. GERHARDT,
Visiting Professor.

FOOTNOTES

[1] U.S. Const. art. I, section 7, clause 2.

[2] The Federalist No. 58 at 300 (J. Madison) (M. Beloff ed. 1987).

[3] INS v. Chadha, 462 U.S. 919, 959 (1983).

[4] C. Zinn, How Our Laws Are Made, H. Doc. No. 509, 94th Cong., 2d Sess. 44 (1976).

[5] Chadha, 462 U.S. at 954.

[6] 462 U.S. 919 (1983).

[7] *Id.* at 951.

[8] *See* Note, *Is a Presidential Item Veto Constitutional?* 96 Yale L.J. 838, 841–44 (1987).

[9] *Chadha,* 462 U.S. at 954.

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK,
New York, NY, February 24, 1995.

Re Line-item Veto Legislation.

Hon. DANIEL P. MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: I am the Chair of the Committee on Federal Legislation of the Association of the Bar of the City of New York. Our Committee, after exhaustive research, has reached the conclusion that legislation providing for a line-item veto is prohibited by at least three provisions of the

Footnotes at end of article.

Constitution. We hope that you will consider the unconstitutionality of line-item veto legislation in your upcoming deliberations in the Senate.

Very truly yours,

DANIEL J. CAPRA,
Professor of Law,
Fordham Law School.

REVISITING THE LINE-ITEM VETO

(By the Committee on Federal Legislation Association of the Bar of the City of New York)

INTRODUCTION

During the last two decades every President and Congress has attempted to reform the federal budgeting process. The 104th Congress and President Clinton are no exception. One perennial proposal has been to provide the President with a line item veto. This Committee last reported on a legislative line item veto eight years ago.[1] Without coming to any conclusion at that time, this committee did believe that there existed substantial practical, and possibly constitutional, impediments to the implementation of a line item veto. This Committee has revisited the issue because the proposed legislation, H.R. 2, differs in some respects from the line item veto previously analyzed by this Committee and because the changed political environment may allow the line item veto to finally pass; indeed, as of this writing, the line-item veto has been passed by the House of Representatives and is pending in the Senate.

We conclude that a line-item veto may not be implemented by statute. Rather, the Constitution must be amended, because a Presidential line item veto would fundamentally alter the legislative and veto process currently written into the Constitution and would unduly limit the power of Congress to enact legislation.

ITEM VETOES GENERALLY

The line item veto, or more precisely designated, the item veto, is a device that would, if enacted, enable the President to veto particular items in a bill without having to veto the entire bill. In theory, an item veto would enable the President to accept bills without having to accept expensive riders. Such riders are typically attached though the process of ''log-rolling.'' Proponents believe that an item veto would significantly reduce Congressional spending while simultaneously allowing the President to sign otherwise desirable bills.[2]

For over one hundred years, Congress has considered and consistently rejected attempts to provide the President with a line item veto. These repeated rejections have been based on the belief that the item veto would gravely undermine the fiscal authority of Congress and would greatly augment the ability of the President to impose his political agenda on the nation.[3]

There is legitimate concern that if an item veto were implemented, the results might be the opposite of what was intended. Professors Crain and Miller indicate that a line-item veto would lead to an increase in undisciplined federal spending:

''With the item veto at its disposal, the executive branch assumes more responsibility for eliminating wasteful spending programs. This invites legislative irresponsibility because legislators will tend to rely on the executive branch to cut out wasteful provisions with the item veto. By discouraging legislative discipline, critics argue that the item veto actually could discourage fiscal efficiency.[4]

Even if the line-item veto would improve fiscal efficiency, any improvement could come at the expense of disturbing a healthy tension between the Legislative and Executive branches. There is a real danger that the item veto might be used to promote Executive branch interests unrelated to the budgetary process. A President could use the item veto to punish those who oppose him (by singling out an opponent's project for a veto), or he might use the veto as a ''club'' to promote partisan causes generally.

Each member of Congress represents and is answerable to a local constituency, while the President has a national constituency. This difference in representative basis results in a different cost-benefit analysis for legislation and ultimately different policy choices. The President therefore considers the interests of a larger and more diverse group than an individual member of Congress when taking positions on budgetary matters. Congress, like any legislature, is an institution that is conducive to vote trading and log-rolling activities. To be enacted into law, any proposed legislation requires that a majority coalition be formed. Consequently, members of Congress often engage in cooperative legislative activities in order to further their individual agendas. As a result of this ''horse trading,'' aggregate spending levels tend to be greater than they would be otherwise.[5] The line-item veto would undoubtedly alter this process.

Advocates of the item veto often justify their positions by claiming: (1) the favorable experience of 43 states that provide their governors with an item veto; (2) the inability of Congress to curb its own spending excesses; and (3) modern congressional techniques (e.g. riders and eleventh hour omnibus appropriations bills) that create ''veto-proof'' legislation—i.e., a bill which, if vetoed in its entirety, could effectively shut down the federal government.[6]

In contrast, opponents of the item veto argue: that the state analogy is inapplicable (or at the very least, of limited applicability) to the federal situation; that the federal packaging of appropriations bills is not amenable to the effective use of an item veto; that the vast majority of federal expenditures are mandatory and would be immune from the item veto; and that an item veto would substantially alter the Separation of Powers Doctrine written into the Constitution.[7]

At least 43 states have enacted line item vetoes in an effort to give their governors some control over spending. This has enabled some states, at least on the face of it, to save significant sums of money.[8] To date, none of those 43 states has acted to repeal those provisions. Despite these positive indicators, the state experience is not dispositive of whether a line-item veto is workable on the federal level. First, state constitutions differ significantly from each other and from the Federal Constitution. As two commentators have stated, ''[t]here is a much greater state bias against legislatures than exists at the national level.''[9] Second, state budgetary institutions and procedures vary in key respects from each other and from those in the Federal government.[10] Third, appropriations bills in the states are structured to facilitate item vetoes by governors. In contrast, Congressional appropriations bills contain relatively few items, rendering the utility of the line item veto (for anything other than political coercion of individual legislators) more suspect.[11] Fourth, legislators in states which have an item veto have been known to ''routinely 'pad' their budgets,'' resulting in savings that are illusory.[12] Fifth, the item veto functions more as a partisan political tool, increasing tensions between governors and state legislatures, than as an effective means for reducing expenditures. In fact, the experience in at least one state suggests that ''the President may use the item veto to control a Congress dominated by [the] opposing political party.''[13] Sixth, because judicial interpretation, at the state level, has yet to delineate the scope of the item veto powers possessed by the various governors, caution is necessary before an item veto is adopted at the Federal level.[14] Seventh, the item veto could accelerate the use of budgetary legerdemain, i.e., accounting tricks such as moving items off budget or privatizing various programs.

The argument that an item veto would help Congress curb its spending excesses is, we believe, overstated.[15] Currently, only 39 percent of the Federal budget may be classified as ''discretionary spending'' and subject to the Congressional appropriations process. This figure is expected to decline even further. By the year 2003 interest and mandatory spending will account for more than 72 percent of the Federal budget, thus leaving only 28 percent for discretionary spending.[16] On the other hand, in order to be reelected, members of Congress will often log-roll legislation they desire into the budget in order to get their pet projects approved. Their decisions to increase spending will often be camouflaged by the creation of automatic spending increases in various entitlement programs.[17]

Despite the suggestion that the advent of omnibus legislation makes the President's use of his (or her) veto too costly, it appears that when a President has been willing to use the veto power, that President has gained tremendous negotiating leverage over Congress. For example, when President Reagan vetoed two omnibus measures in 1982, parts of the Federal government were shut down. Consequently, Congress was forced to revise those bills to comply with his wishes.[18]

As a result, in later years, President Reagan merely had to threaten to use his veto in order to win important concessions from Congress. Because President Reagan was willing to and did use his veto power, the ''all or nothing'' stakes of omnibus legislation actually increased rather than decreased his power relative to Congress with respect to the content of legislation.

CONSTITUTIONALITY OF THE LINE-ITEM VETO

We expressed concerns above that the line-item veto was an unnecessary measure that might in fact be counterproductive in obtaining fiscal efficiency, and that it might be unfairly used by the President to punish particular members of Congress. Yet even if the line-item veto made sense as a policy matter, it should not be adopted, because it violates several provisions of the Constitution. What follows is a discussion of the Constitutional provisions which are in conflict with the line-item veto.

VETO PROCEDURES

Article 1, Section 7, clause 2 of the Constitution sets forth, in considerable detail, the procedure for exercising and overriding the President's veto of legislation. The procedures set forth in H.R. 2 do not conform with these constitutional requirements.

Section 7 of Article I of the Constitution provides, in pertinent part, that:

''Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the

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Footnotes at end of article.

other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become law. . . .''

Under the proposed line-item veto, a different ''bill'' would be enacted than was presented to the President. Furthermore, subsection 5(a) of H.R. 2 provides that ''[w]henever the President rescinds any budget authority . . . or vetoes any provision as provided in this Act, the President shall transmit to both Houses of Congress a special message . . .'' Subsection 5(b) requires that each special message be transmitted to both Houses on the same day.

Thus H.R. 2 appears to directly contradict section 7 in several ways. First, and most importantly, Section 7 contemplates that the Bill be either approved or disapproved in its entirety by the President. Under the Constitution, when the President approves a bill, he signs ''it.'' When he disapproves of a bill he is not permitted to rewrite it—that may only be done by Congress through the legislative process. The Constitution does not permit the President to rewrite the bill except to the extent that Congress incorporates his Objections into a new or amended bill. Rather, in connection with a non-approved bill, the Constitution directs the President to return the bill in its entirety, together with his objections to the House that originated the bill. At that point that House, and not both Houses, shall enter the President's objections into its Journal. The Constitution then instructs that House, and not both Houses, to reconsider the bill. Under the Constitution, it is only after that House has reconsidered it, and only if two thirds of its members agree to pass the bill, that it shall be sent, along with the President's objections, to the other House, where it shall be reconsidered. It is only after reconsideration of the Bill by the second House, and only if approved by two thirds of the members of that second House, that a non-approved bill can become law.

In sum, Article I, Section 7 prohibits partial vetoes. The literal language of the second clause of this section strongly suggests that bills are to be approved, disapproved and reconsidered in toto and not in part. This is apparent from the repeated use of the terms ''it or its''—12 times, ''the bill''—2 times, and ''reconsider or reconsideration''—3 times, and from the context in which those terms are used. Both ''it'' and ''the Bill'' refer to ''Every Bill which shall have passed the House of Representatives and the Senate.'' They do not refer to any modified or amended version of the bill and do not refer to portions of any bills passed by both Houses. Consequently, pursuant to Section 7, a non-approved bill is returned to Congress for reconsideration. The President does not return a modified version. He is instructed to return the bill passed by the House and the Senate along with his Objections thereto. It is the bicamerally passed bill that is reconsidered. Various forms of the word ''reconsider'' are used not once but three times to refer to ''it'' or ''the bill'' in connection with the return to Congress of a non-approved bill. Furthermore, the framers and ratifiers did not choose various forms of the words amend, change, alter, modify, or some similar word. Instead they chose to provide that Congress could ''reconsider'' a non-approved bill, in order to give Congress a chance to approve the bill as it was originally passed, to modify it or to pass a completely new bill.

The veto provision is one of the most detailed and precisely worded provisions in the entire Constitution. This suggests that the procedures outlined therein should be carefully followed and not artfully evaded.[19]

Considering America's history, it is remarkable that the Constitutional Convention of 1787 included any kind of veto power for the President. Before the American Revolution, legislative acts of the colonies were subject to two vetoes. Both the Governor of the colony and the King of England could veto legislation. Both vetoes were absolute and not subject to override by the legislatures. It is not surprising that the colonists resented these veto powers.[20] In fact, the first two grievances listed in the Declaration of Independence deal with this issue. They are: that ''He [George III] has refused his assent to laws . . . He has forbidden his Governors to pass. . . .'' It is thus clear that, during and immediately after the American Revolution, there was a strong disposition against any Executive veto power.[21] We believe that a strict construction of the detailed veto provisions in the Constitution is consistent with the intent of the Framers to provide a relatively limited, rather than generous, veto power.

BICAMERAL AND PRESENTMENT REQUIREMENTS

One of the most troubling aspects of any item veto bill is that an item veto would augment the President's veto power by permitting him to veto appropriation bills that were never considered by the House or the Senate in such fragmented form. Executive veto power over part of a Bill is, in this respect, inconsistent with the bicameral and presentment requirements of the Constitution. As the Supreme Court pointed out in I.N.S. v. Chadha,[22] legislative actions require approval of both Houses, in a bicameral fashion, and presentment to the President. There is no language in the presentment clause, or anywhere else in the Constitution, that permits the President to approve or veto a bill other than in the form in which it passed both Houses and was presented to him. As Professor Gressman puts it: ''The Presentment Clauses state that the bill which is to be presented to the President, the bill he may veto or approve, is the bill 'which shall have passed the House of Representatives and the Senate.' ''[23]

Under Chadha, when a legislative power is exercised—such as in the case of a one House veto—the legislative act is subject to the explicit provisions of the presentment clauses, Article 1, section 7, clause 2 and 3, and the bicameral requirement of Article 1, section 1 and Article I, section 7, clause 2. With a line-item veto, the President clearly would be exercising legislative power insofar as he performs the legislative act of determining the final content of an appropriations bill and does not merely accept or reject the bill as a unit. It is irrelevant whether the itemization needed to implement the line item veto is effectuated by the President or the enrollment clerk in Congress. The effect is the same. A line item veto will permit the President to restructure legislation after its passage. If the President were to exercise an item veto, the bill that would be enacted into law would not have been voted upon and passed by the two Houses of Congress. One bill would be passed by the two Houses of Congress and presented to the President and a second bill would end up being enacted into law without passage by both Houses of Congress and presentment to the President. As the Supreme Court explained in Chadha, a law enacted pursuant to this process would be unconstitutional because it failed to pass both House of Congress and was not presented to the President after such passage.

It is true that H.R. 2 subsection 3(a) permits an item veto to be overridden by way of a rescission/receipts disapproval bill. However, while a rescission/receipts disapproval bill can restore the legislation to what it was before the exercise of the line item veto, a problem is created because it is the President who actually changed the law and not both Houses of Congress with the approval of the President.

Moreover, as a practical matter, the legislative option of promulgating a rescission/receipts disapproval bill is made difficult by the provisions of H.R. 2. Such a bill must reinstate all of the items vetoed. Thus, if the President vetoes several items from a single bill, the practical reality is that a rescission/receipts disapproval bill is unlikely to be forthcoming from Congress. And even if such a bill is passed, the President can veto that bill, and a two-thirds vote in each House of Congress is required to overcome that veto. Furthermore, under H.R. 2, unless Congress overrides the President's veto of a rescission/receipts disapproval bill within the time specified in the statute, the rescission of discretionary budget authority or the veto of a targeted tax benefit becomes effective. Thus, the veto of the rescission/receipts disapproval does not trigger a reconsideration of a law passed by Congress and vetoed by the President, but rather triggers the automatic implementation of a law presented by the President to Congress unless Congress enacts another law. This stands the Constitutionally-mandated legislative process on its head.

THE RULES CLAUSE

The Rules Clause of Article I of the Constitution provides that ''Each House may determine the Rules of its Proceedings. . . .''[24] We believe that a line-item veto is inconsistent with the Rules Clause. Under a line-item veto, the form, content and subject matter of bills will be determined by someone other than the members of the House and Senate.

Moreover, Subsection 5 of H.R. 2, which deals with ''Consideration in the Senate'' and ''Points of Order,'' appears to explicitly violate the Rules Clause by controlling Congress' internal rules and procedures. For example, Subsection 5(d) of this bill attempts to limit debate on rescission/receipts disapproval bills, debatable motions and appeals in connection therewith. it also provides that a motion to further limit debate is not debatable and a motion to recommit is not in order.[25] Such a provision imposes an obvious limitation on the rulemaking authority of each House of Congress.

It is true that, to the extent item-veto legislation imposes limitations on Congressional rule-making, it is a self-inflicted wound. Congress, if it passes the line-item veto, will have constricted its own rulemaking authority. Yet the Rules Clause does not permit such a self-inflicted limitation on Congressional authority. It has been settled law for more than a century that:

''The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.[26]''

Thus each House has the power and authority to set its own rules regarding a variety of internal matters. The problem with passing legislation that restricts the rulemaking power of either House is that the legislation is passed by both Houses and can only be abrogated through subsequent legislation by both Houses. This is inconsistent with the Rules Clause, which provides that each House has the authority to determine ''its'' own proceedings. Legislation affecting the internal rulemaking power of either House results in one House of Congress ceding control over its internal rules to the other House. The power granted in the Rules Clause was granted to each House of Congress in order to make the legislative powers of each House more effective. That power may not be channelled or regulated by a statute passed by both Houses and signed by

the President. As one commentator has stated, the Rulemaking power ''granted in the Constitution is above all law, and cannot be taken away or impaired by any law.''[27]

THE APPROPRIATIONS CLAUSE

In addition to all the constitutional concerns addressed above, an appropriations bill that is modified by an item veto is probably unconstitutional on another ground as well: the ''approved'' appropriations would not be approved ''by law'' as required section 9 of Article I of the Constitution. That section provides that: ''No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.'' The problem created by a line-item veto is that the resulting appropriations would not be made by law, but rather would be made by the President with the tacit approval of Congress.

THE POWER OF THE PURSE BELONGS TO CONGRESS

Providing an item veto to the President could fundamentally alter the balance of power between Congress and the President. Commentators have stated:

''the adoption of what might appear to be a relatively modest reform proposal could result in a radical redistribution of constitutional power * * * At stake are the power relationships between the executive and legislative branches, the exercise of Congress' historic power over the purse, and the relative abilities of each branch to establish budgetary priorities.''[28]

The Constitution places the ''power of the purse'' in the hands of Congress and outside the grasp of the President because of the fear of combining the power of the purse with the power of the sword.[29] Section 9 of Article I of the Constitution provides that ''No money shall be drawn from the Treasury but in consequence of appropriations made by law.'' James Madison wrote that '' [t]his power of the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people.''[30]

Roger Sherman said at the Constitutional convention that ''[i]n making laws regard should be had to the sense of the people who are bound by them and it is more probable that a single man should mistake or betray this sense than the legislature.'' These words apply in the area of fiscal decisions where the decisions regarding taxation and spending depend on the government having taken into account the diverse interests of its citizens. No institution is better suited, able or willing to accommodate these diverse interests than Congress. Based upon this view, the Framers chose to give supremacy in budgetary power to Congress. In fact, only the House—the chamber closest to the elctroate—was given the right to initiate revenue bills. Clearly, the Framers believed that decisions affecting the pocketbooks of the citizens should be made by the governmental institution that is closest to them.[31]

All this does not mean that the President is prohibited from taking an active role in Congress' appropriations decisions. For example Article II provides that the President may recommend to Congress measures that he deems ''necessary and expedient.'' And of course the President possesses a qualified veto over all legislation, including appropriations measures.

Nevertheless, with respect to the budget, under the Constitution, the President's role is subordinate to that of Congress. Despite the President's recommendation and veto powers, it is Congress that must make the final decisions regarding funding levels and the expenditure of appropriated funds. It is Congress that must decide the extent to which the President's views and proposals are accepted. Budgetary ''reform'' that increases the President's power at the expense of Congress would alter this scheme and therefore should be disfavored.

In considering whether Congress may cede any of the Power of the Purse to the Executive, Chief Justice Taft states that:

''it is a breach of the National fundamental law if Congress gives up its legislative power and transfers it to the President. . . This is not to say that the three branches are not coordinate parts of one government and that each in the field of its duties may not invoke the action of the two other branches in so far as the action invoked shall not be an assumption of the constitutional field of action of another branch.''[32]

It could be argued that a line-item veto does not in fact cede legislative power over the purse to the President, given the fact that the President already has the power to veto appropriations legislation in its entirety. The fact is, however, that the ability to veto specific items in a larger bill will definitely increase Executive control of the budget process, at the expense of legislative prerogative; indeed, that is the very reason that supporters are pushing for a line-item veto.

The legislative process is a complex, politically-driven process; one item often gets passed in ''trade'' for another as part of a general piece of legislation. This kind of ''horse-trading'' or ''log-rolling'' was clearly not unknown to the Founders of the Constitution. To the contrary, legislative bargaining is essential to the Constitutionally-mandated process and to Congressional control over the purse.[33]

The line-item veto would upset this carefully-calibrated legislative process by allowing the Executive to pluck out a piece of the Congressionally-passed puzzle and reject it. The line-item veto is therefore qualitatively different from the veto power enacted in the Constitution. It represents an aggressive extension of the veto power, and therefore contradicts the qualified use of the veto power that was envisioned by the Framers.

CONCLUSION

Because the line-item veto conflicts with the veto provisions of the Constitution, with the Rules Clause, with the bicameral and presentment clauses, and with the supremacy of Congress over fiscal matters, we conclude that the line-item veto may only be enacted through Constitutional amendment.

THE COMMITTEE ON FEDERAL LEGISLATION

Daniel J. Capra, Chair.*

Marianne Fogarty, Secretary.

Andrea J. Berger, Stacey E. Blaustein, Richard A. Briffault, Louis A. Craco, Jr., Lawrence P. Eagel, David P. Felsher,** Leon Friedman, Mark L. Goldstein, Helen Gredd, Peter C. Hein, Madelynn S. Heintz, Michael E. Herz, Beth Jacob, Maria Bainor Keane, Nicole A. LaBarbera, Sylvia A. Law, Stephen M. Lazare, Thomas J. Lilly, Jr.

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*Editor of this Report.

**Author of this Report.

[1] Committee on Federal Legislation of the Association of the Bar of the City of New York, The line-Item Veto, 41 The Record 367 (1986).

[2] See Maxwell L. Stearns, The Public Choice Case Against the Item Veto, 49 Washington & Lee L. Rev. 385, 386 (1992); Eugene Gressman, Is the Item Veto Constitutional?, 64 N.C.L. Rev. 819 (1986).

[3] See Louis Fisher & Neal Devins, How Successfully Can the States' Item Veto be Transferred to the President?, 75 Georgetown L.J. 159, 162 (1986).

[4] Mark Crain & Jim Miller, Budget Process and Spending Growth, 31 William & Mary L. Rev. 1021, 1031–32 (1990).

[5] See Paul R. Q. Wolfson, Is a Presidential Item Veto Constitutional, 96 Yale L.J. 838, 851–52 (1987).

[6] See Stearns, supra, at 387.

[7] Id. at 387–88.

[8] See Neal Devins, Budget Reform and the Balance of Powers, 31 William & Mary L. Rev. 993, 1005 (1990).

[9] Fisher & Devins, supra, at 162.

[10] Crain & Miller, supra, at 1033.

[11] Devins, supra, at 1005–06, quoting the 1984 testimony of Senator Mark Hatfield, Governor of Oregon from 1978–1986.

[12] Devins, supra, at 1005 n.67 and accompanying text.

[13] Devins, supra, at 1005.

[14] Fisher & Devins, supra, at 182.

[15] See, Anthony R. Petrilla, Note, The Role of the Line Item Veto in the Federal Balance of Power, 31 Harvard J. Legis. 469, 471 (1994).

[16] Letter dated August 4, 1994 from United States Senators J. Robert Kerrey (D.–Neb.) and John C. Danforth (R.–Mo.) to members of the Bipartisan Commission on Entitlement and Tax Reform containing ''Draft Findings.''

[17] Petrilla, supra, at 470.

[18] Devins, supra, at 1016.

[19] Two other possible constitutional problems for H.R. 2 may arise under Article 1, Section 7. First, H.R. 2 subsection 3(b) sets a specific time period in which Congress is permitted to override the President's non-approval. However, the Constitution sets no time limit for reconsideration of a non-approved bill. Second, according to Section 7 of Article 1, the President's special message (his objection) would appear to belong in the Congressional Record and not the Federal Register as provided in H.R. 2.

[20] See Alan J. Dixon, The Case for the Line-Item Veto, 1 Notre Dame J. L. Ethics & Pub. Pol'y 211, 218 (1985).

[21] For example, when the Constitution was ratified, no state, except for Massachusetts, gave its Governor any kind of veto.

[22] 462 U.S. 919 (1983).

[23] Eugene Gressman, Is the Item Veto Constitutional?, 64 N. C. L. Rev. 189 (1986).

[24] U.S. Const., art. 1, sec. 5, cl. 2.

[25] Similarly, Subsection 5(e) indicates that it shall not be in order for either the Senate or the House of Representatives to consider:

(1) any rescission/receipts disapproval bill that relates to any matter other than the rescission of budget authority or veto . . . transmitted by the President.

(2) any amendment to a rescission/receipts disapproval bill.

[26] Wolfson, supra, at 853 quoting United States v. Ballin, 144 U.S. 1,5 (1892).

[27] Wolfson, supra, at 856. See also. Gressman, supra, at 821.

[28] Fisher & Devins, supra, at 162.

[29] Mikva, Congress: The Purse, the Purpose and the Power, 21 Ga. L. Rev. 1,2–3 (1986) (the decision of the Framers to grant Congress the Power of the Purse reflected their belief that a proper governmental system would have the legislature at its core.) See also The Federalist, No. 30, at 188 (A. Hamilton) (J. Cooke ed. 1961) (''Money is, with propriety, considered as the vital principle of the body politic, as that which sustains its life and motion, and enables it to perform its most important functions.''

[30] The Federalist Papers, No. 58.

[31] See Mikva, supra, at 4.

[32] J.W. Hampton, Jr. & Co., v. United States, 276 U.S. 394, 405–06 (1928) quoted in Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation 64 (1972) (S. Rep. 92–82, 92d Cong., 2d Sess. (1972)).

[33] Stearns, supra, at 397, 399; Wolfson, supra, at 851–52.

Mr. COATS. Mr. President, it is always enlightening listening to the Senator from New York. He always presents a thoroughly researched and thoroughly examined and well-articulated argument for his positions. And I enjoy his presentations immensely.

As the Senator from New York knows, there is a difference of opinion on the constitutionality of separate enrollment. Distinguished constitutional scholars have come to opposite conclusions, one of which is Laurence Tribe, a constitutional scholar frequently quoted by members of both parties, but particularly by members of the party of the Senator from New York. The

American Law Institute and Congressional Research Service have given indication that they believe the separate enrollment procedure is constitutional, and Senator BIDEN, currently a Member of this body and ranking member of Judiciary, has argued articulately for the constitutionality of such procedure.

So, clearly, there are opinions on both sides of this issue. Ultimately, of course, the court will make that determination. We have adopted expedited procedures, traditional procedures of which that determination can be made. This Senator hopes and trusts that the opinions of Mr. Tribe and Senator BIDEN, the American Law Institute, and others, will prevail and be persuasive with the courts. But we will find out in due course what that is.

I thank the Senator from New York for his contributions, which are always valuable contributions and thought-provoking contributions.

Mr. MOYNIHAN. If the Senator will yield for a question, I am sure the Senator would agree that when the Court decides, we will abide by the decision. That is the great fact of the American Government.

Mr. COATS. There is no dispute on that point.

Mr. BYRD. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Indiana has the floor.

Mr. COATS. I would like to yield the floor if the Senator from West Virginia seeks the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished Senator from New York for his very scholarly statement today. I am only sorry that more Senators are not on the floor to have heard what the Senator had to say. We know what the Constitution says, and the Constitution says ''every bill which shall have passed.'' Constitutional scholars may differ, but I think that we have to retreat to the Constitution itself, first of all, to attempt to construe and interpret that document and read the plain language of the Constitution itself.

We have, as Senators, a responsibility to make some judgment ourselves as to the constitutionality of a measure before we pass on it. In the final analysis, it will be the courts that will decide. But we cannot pass that cup to others. We have to make that judgment here.

I read the letter by Professor Tribe. It was written 2 years ago, I believe, to Senator BILL BRADLEY, if I am not mistaken. I have great respect for Professor Tribe. But I must say, I was disappointed in reading that letter. I was disappointed that such an eminent scholar of the Constitution would take that view of this measure. I say that with apologies to Professor Tribe. He is a constitutional scholar and I am not. But I was astonished that he took that view and indicated that in his judgment that would pass the constitutional test.

I thank the Senator from New York for his statement here today, in which he pointed to the acknowledged Father of the Constitution, James Madison, who in Federalist Papers No. 58 said, ''This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any Constitution can arm the immediate representatives of the people * * *'' Is that not what he said?

Mr. MOYNIHAN. Yes.

Mr. BYRD. This power over the purse. What escapes my comprehension is how we, as Senators, can so lightly pass that cup; how we can so lightly vote to transfer some of that power over the purse to the Executive. Whether he be a Democrat or a Republican, I have never wavered in my opposition to the line-item veto.

Mr. MOYNIHAN. Will the distinguished and revered Senator yield for a question?

Mr. BYRD. I am delighted to.

Mr. MOYNIHAN. Would he happen to know that in the 1988 text of ''American Constitutional Law,'' which Professor Tribe wrote, he stated that separate enrollment was probably unconstitutional?

Mr. BYRD. Was probably?

Mr. MOYNIHAN. Probably unconstitutional. I think he was right then.

Mr. BYRD. Well, that statement is in stark contrast to the letter which I believe he wrote to Senator BIDEN.

The Senator from New York, who has

A heart as stout as the Irish oak
And as pure as the Lakes of Killarney

has taken the right stand in my judgment. He took the right stand on the ''unbalanced budget amendment,'' commonly referred to as the balanced budget amendment. And he has unwaveringly defended the position that that document which has come to bear the aura of immortality should not be demeaned and debased and, as a matter of fact, defaced by such an amendment.

He takes the right stand today. He is a man of obstinate veracity. I appreciate the fact that he has taken the time here today to make this statement. I wish all Senators heard it. I hope they will read it. I heard part of it. It will be my intention to read Senator MOYNIHAN's statement, and I will keep it. I thank the distinguished Senator for his service.

Mr. MOYNIHAN. I thank the Senator.

Mr. BYRD. Mr. President, I believe the distinguished Senator from Michigan wanted to modify his amendment. Has he modified it?

Mr. ABRAHAM. Mr. President, I have modified it.

Mr. BYRD. Mr. President, let me compliment the Senator on having improved the language of the amendment. I certainly have no objection to adopting the amendment on voice vote.

It is an improvement. He has contributed a very worthwhile service. I just wanted to compliment him and say that even though his action constitutes an improvement, this piece of legislation is beyond the stage of improving in such a way that it will not impair the power of the purse which, under the Constitution, has been lodged in the legislative branch.

If the Senator wishes to have a voice vote on his amendment, I yield for that purpose.

AMENDMENT NO. 401, AS FURTHER MODIFIED TO AMENDMENT NO. 347

Mr. ABRAHAM. Mr. President, I would call up amendment No. 401.

The PRESIDING OFFICER. That is the pending amendment.

Mr. ABRAHAM. Mr. President, I thank the Senator from West Virginia for the comments he made yesterday and the questions which he raised with respect to this amendment. I appreciate his help on that.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

So the amendment (No. 401) was agreed to.

AMENDMENT NO. 350 TO AMENDMENT NO. 347

(Purpose: To prohibit the use of savings achieved through lowering the discretionary spending caps to offset revenue decreases subject to pay-as-you-go requirements)

Mr. BYRD. Mr. President, I have an amendment at the desk which has been qualified for a call up. I shall call it up at this point.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

Amendment numbered 350:

At the appropriate place insert the following:

SEC. . USE OF THE REDUCTIONS IN DISCRETIONARY SPENDING CAPS.

(A) CONGRESSIONAL BUDGET ACT.—

(1) BUDGET RESOLUTIONS AND LEGISLATION.—Section 301 of the Congressional Budget Act of 1974 is amended by adding at the end the following:

''(j) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—It shall not be in order in the Senate or House of Representatives to consider any concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report that decreases the discretionary spending limits unless the concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report provides that such decrease may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1974.''.

(2) SIXTY VOTE POINT OF ORDER.—Subsections (c) and (d) of section 904 of the Congressional Budget Act of 1974 are amended by inserting ''301(j),'' after ''301(i).''.

(b) GRAMM-RUDMAN.—Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following:

''(f) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—A decrease in the discretionary spending limits may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under this section.''.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the Chair. I thank the able clerk for reading the amendment in its entirety.

Mr. President, I am one Senator who believes that it would be foolhardy to enact tax cut legislation this year. Instead, I believe that we should concentrate all of our efforts and our resources toward reducing the deficit. I am aware that President Clinton has called for a middle-class tax cut and I am sorry that he did so. I am aware that the so-called Contract With America pledges a much larger tax cut than that which has been called for by President Clinton.

The so-called Contract With America pledges a much larger tax cut, would be mostly for America's wealthiest taxpayers. I am opposed to both of those proposals because I believe that deficit reduction ought to be our first priority at this time.

I think the President was on the right track when he worked with the Democratic leadership in the 103d Congress to enact a budget deficit reduction package that amounted to somewhere between $400 and $500 billion over a period of 5 years. He was on the right track. He should have stayed on that track.

According to the Center on Budget and Policy Priorities, the tax bill passed by the House Ways and Means Committee would reduce revenues by nearly $180 billion over the next 5 years. That, I believe, is bad fiscal policy.

Here we are, we are debating today, and we have been debating since Monday, a piece of legislation that purports to do something about the budget deficit. It purports to do something about the budget deficits. ''Oh, we have to do something to get these deficits under control. We have to do something about our horrendous budget deficits. We have to put the tools in the hands of the President of the United States. We have to give him the line-item veto.''

President Reagan often said, ''Give me the line-item veto. When I was Governor of California I had the line-item veto. Give me the line-item veto. I will take on the challenge. I will make the cuts.''

And I hear—it is only hearsay, or ''read-say,'' I hear and I read that the so-called Contract With America—if I ever refer to that as a ''Contract With America'' I hope the Official Reporters will make a correction in my transcript, to put the words ''so-called'' as antecedents to the words ''Contract With America.''

The so-called Contract With America, I understand—I hear and I read—that one of the planks in that so-called contract is a line-item veto. So the so-called Contract With America purports that a line-item veto should be placed in the hands of the Chief Executive. We have all these fine new Senators who have come in here, 11 of them, 11 new Senators, all Republican Senators. I get the impression that these, not only new Senators but several of the Senators who have been around here long enough to know better, consider that as a conservative position. I know there are some real conservatives on that side of the aisle, but I am at a loss to understand how a true conservative can advocate giving to the President a line-item veto and can advocate a balanced budget amendment to the Constitution.

I have been around here now 36 years in this body, going on my 37th year. I have known a lot of conservatives, conservative Senators, conservative Republicans. I cannot imagine the conservative Republican Senators who were in this body when I came here 36 years ago advocating a line-item veto, advocating a balanced budget amendment to the Constitution. I cannot believe that Norris Cotton, George Aiken, or Everett Dirksen, or Bob Taft, I cannot believe that Senators of that day would not roll over in their tombs today if they heard what I have been hearing. Conservative Senators—this is the great conservative cause. ''Stand up for the conservative cause. Put in the President's hand a line-item veto. Power of the purse vested in the legislative branch? Why, article I, section 9 of the Constitution—I don't believe a word of it. I don't believe that the Framers of the Constitution knew what they were doing when they wrote into the Constitution section 9 of article I, which says, 'No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.' And, of course, the first article, the first sentence in the Constitution tells us who makes the laws. 'All legislative Powers herein granted shall be vested in the Congress of the United States, which shall consist of a Senate and House of Representatives.' ''

And here we are, we are being told that the conservatives—this is supposed to be this great new revolution here being carried on by the conservatives, being brought to the floor of both Houses, this new revolution—the conservatives are out to advocate that the constitutional framers were not as wise as we had been heretofore taught they were, and that the President of the United States should have part of the power over the purse; we should place in his hands the line-item veto.

I wish that Henry Clay were still in the Senate. I wish that Henry Clay were still in the Senate.

It is kind of old fashioned around here, I know, to go back and read the old dusty records of the Congresses of yesteryears. But I hold in my hand here some pages from the Congressional Globe containing sketches of the debates and proceedings of the Second Session of the 27th Congress, volume 11, Blair and Rives, editors, City of Washington, printed at the Globe office for the editors in 1842, exactly 153 years ago. And the date, to be very exact, was January 24, 1842.

Let us see what old Henry Clay said. I do not use that word as a word of disrespect. I am getting along in years myself and I expect I am older today than Henry Clay was—I know by a long shot—than he was when he spoke in the Senate. Let us see what Henry Clay had to say.

He was not talking about the line-item veto. He was talking about the veto, the veto, which we all know is in the Constitution. Here is what Mr. Clay said. I will not read his whole speech. I had thought, if I were forced to stand on my feet and take a good bit of the Senate's time I just might read the whole speech of Henry Clay, but I will not do that. Just a little of it will give you the flavor. Here is what he said in part.

After speaking of the veto power generally, and more particularly of its exercise by a late President of the United States, the speech proceeded to say. . . .

You see, this is the reporter of the Congressional Globe who is writing in the third person, so he is saying this is what Mr. Clay had to say. The Official Reporter today will not refer to the Senators as in the third person.

''After speaking of the veto power generally and more particularly of its exercise by a late President of the United States, the speech proceeded to say''—now this is Henry Clay. This is not ROBERT C. BYRD. This is Henry Clay.

The first and in my opinion the most important object which should engage the serious attention of a new administration is that of circumscribing the executive power and throwing around it such limitations and safeguards as will render it no longer dangerous to the public liberties.

Hear me: Henry Clay. We do not hear talk in the Senate about public liberties anymore. We do not talk about the liberties, the people's liberties anymore. We only talk about what is good for the next election. What party is going to prevail in the next election. Who is going to get the upper hand in the next election. There is no time and no place here to talk about the people's liberties.

With the view, therefore, to the fundamental character of the government itself, and especially of the executive branch, it seems to me . . .

This is Henry Clay of Kentucky.

. . . to me that either by amendments of the Constitution, when they are necessary, or by remedial legislation when the object falls within the scope of the powers of Congress, there should be, first, a provision to render a person ineligible to the office of the President of the United States after a service of one term.

Not ''three strikes and you are out.'' One term, then you are out.

Second, that the veto power . . .

Listen to this.

Second, that the veto power should be more precisely defined and be subjected to further limitations and qualifications.

He is not talking about broadening the veto power. He is not saying that we should give the Chief Executive a line-item veto. Clay thinks that the framers went too far in giving the President the veto and requiring that, if a veto is overridden, it be overridden by two-thirds vote.

It was his purpose . . .

This is the reporter again talking in the third person.

It was his purpose—

Meaning Clay's purpose.

to go but very briefly into the history and origin of the veto power. It was known to all to have originated in the institution of the tribunitian power in ancient Rome;

Well, sweet speak of rhetoric. Here is a man 153 years ago who is talking about the tribunitian power in ancient Rome. I have been talking about that also.

Senators could learn a little more about the tribunitian power in ancient Rome.

Henry Clay said.

. . . that it was seized upon and perverted to purposes of ambition when the empire was established under Augustus; and that it had not been finally abolished until the reign of Constantine. There could be no doubt that it had been introduced from the practice under the empire into the monarchies of Europe, in most of which, in some form or other some modification or other, it was now to be found. But, although it existed in the national codes, the power had not, in the case of Great Britain, been exercised for a century and a half past; and, if he was correctly informed on the subject, it had, in the French monarchy, never been exercised at all. During the memorable period of the French Revolution, when a new Constitution was under consideration, this subject of the veto power has been largely discussed, and had agitated the whole country. Everyone must recollect how it had been turned against the unfortunate Louis XIV.

Well, that is an error. The official reporters made an error in the Congressional Globe when they referred to Louis XIV. Clay was talking about Louis XVI. He was not talking about Louis XIV. He was talking about Louis XVI. It is easy to see how a mistake can be made. Instead of XVI the official reporter wrote XIV. But be that as it may.

. . . Louis XVI, who had been held up to the ridicule by the populace, under the title of ''Monsieur Veto'', as his wife, the Queen, had been called ''Madame Veto'' . . .

So it had to be Louis XVI.

. . . although, after much difficulty, the power had finally found a place in the constitution, not a solitary instance had occurred of its actual exercise. Under the colonial state of this country, the power was transplanted from the experience which had been had of it in Europe, to the laws relating to the colonies, and that in a double form, for there was a veto of the Colonial Governor and also a veto of the Crown.

Clay went on to say that:

No doubt the idea of engrafting this power upon our own Constitution was adopted by the Convention from having always found it as a power recognized in European Governments, just as it had been derived by them from the practice and history of Rome. At all events, the power was inserted as one feature, not only in the general Constitution of the Federal Government, but also in the Constitutions of a portion of the States.

I will not tire Senators with reading from the Congressional Globe and reading from the words of one of the all-time great Senators. His picture is out here in the anteroom where we meet with constituents; Henry Clay.

Anyone at all acquainted with the contemporaneous history of the Constitution must know that one great and radical error which possessed the minds of the wise men who drew up that instrument was an apprehension that the executive department of the then proposed government would be too feeble to contend successfully in a struggle with the power of the legislature. Hence, it was found that various expedients had been proposed in the convention with the avowed purpose of strengthening the executive arm.

And the Federalist Papers so state that one reason why the President, why the Executive was given the veto, was to protect himself and his office from the incursions by the legislative branch.

All these propositions had their origin in the one prevailing idea: that of the weakness of the Executive and its incompetence to defend itself against the encroachments of legislative domination and dictation.

It was an axiom in all three governments that the three great departments—legislative, executive and judicial—should ever be kept separate and distinct, and a government was the most perfect when most in conformity with this fundamental principle. But it was said that the framers of our Constitution had nevertheless been induced to place the veto upon the list of executive powers by two considerations. The first was a desire to protect the executive against the powers of the legislative branch, and the other was a prudent wish to guard the country against the injurious effects of crude and hasty legislation. But where was the necessity? Clay asked. Where was the necessity to protect the executive against the legislative department? Were not both bound by the solemn oath to support the Constitution? The judiciary had no veto. If the argument was a sound one, why was not the same protection extended to the judiciary also?

Ah, Clay speaks of the solemn oath to which we swear with our hands on God's gospel and our other hand raised to Almighty God. We do not pay much attention to our oaths anymore. But Clay evidently felt differently about it.

Some of the pages are gone from my faxed copy of the Congressional Globe. But I will continue reading excerpts from the same speech by Clay on the abolition of the veto power in the Senate January 24, 1842.

Clay had hitherto viewed the veto power simply in its numerical weight, in the aggregate votes of the two Houses; but there was another and far more important point of view in which it ought to be considered. He contended, that practically, and in effect, the veto, armed with such a qualification as now accompanied it in the Constitution, was neither more nor less than an absolute power. It was virtually an unqualified negative on the legislation of Congress.

That was Henry Clay.

In such circumstances, when all the personal influence, the official patronage, and the reasoning which accompanied the veto, were added to the substantial weight of the veto itself, every man acquainted with human nature would be ready to admit, that if nothing could set it aside but a vote of two-thirds in both Houses, it might as well have been made absolute at once.

And there have been only 104 vetoes in the history of this Republic that have been overridden—104 in 206 years. So it is virtually an absolute veto. Think of what it will mean. I daresay, once this legislation becomes law, if it ever does become law, which God avert—I wish it would not be done with my help—I daresay there will not be any vetoes of items, any vetoes of these little orphan ''billettes.'' I daresay that there will not be any vetoes overridden because not one of those little orphan ''billettes'' will have the pressure and the power that may be brought to bear on a matter of national significance.

Little West Virginia in the House of Representatives has three votes. There are many other States likewise that are represented by few in numbers in the other body. And as I have already said, let something be of interest—take the Northeast region here because there are a cluster of States up there, very important States. Most of them were States before the Constitution existed. They had a part to play in writing that Constitution and a part to play in the revolution, the Revolutionary War. But if there is something in an appropriation bill that is of major significance to those few little States but not of importance to the rest of the Union, it would be very, very difficult for those few States to muster the votes necessary to override a Presidential veto of some of the little orphan ''billettes'' that will parade across the President's desk once this piece of legislation is enacted.

Mr. Clay contended, that really and in practice this veto power drew after it the power of initiating laws, and in its effect must ultimately amount to conferring on the executive the entire legislative power of the Government.

You wait until he gets this. Clay in his dreams probably would never have conceived of such a massive transfer of power of the purse that we are about to enact here. He was talking about the veto that is in the Constitution, which has been in there for 206 years, which was thoroughly discussed at the Convention, thoroughly discussed in the ratifying conventions of the States. He could not have dreamed of this kind of veto that we are about to hand to the President.

With the power to initiate and the power to consummate legislation, to give vitality and vigor to every law, or to strike it dead—

Or to strike it dead.

at his pleasure, the President must ultimately become the ruler of the nation.

And he will also become the ruler of the Members of the House and Senate. Bow down to this new Caesar, bow down to this power. I wish there were a Henry Clay in this body today.

Mr. Clay warned the nation, that if this veto power was not arrested, if it were not

either abolished or at least limited and circumscribed, in process of time, and that before another such period had elapsed as had intervened since the Revolution, the whole legislation of this country could become to be prepared at the White House, or in one or other of the Executive departments, and would come down to Congress in the shape of bills for them to register, and pass through the forms of legislation, just as had once been done in the ancient courts of France.

There was the voice of prophecy.

There, there, was the security, [Clay said] and not in this miserable despotic veto power of the President of the United States.

That is what he thought of the veto power, ''the miserable despotic veto power of the President of the United States.''

You might take a mechanic from the avenue and make him President, and he would instantly be surrounded with the power and influence of his office. . .

The unpretending name, President of the United States, was no security against the extent or the abuse of power. . . Whether he were called emperor, dictator, king, liberator, protector, sultan, or President, of the United States was of no consequence at all. Look at his power; that was what we had to guard against. The most tremendous power known to antiquity was the shortest in duration.

That was the power of the dictator. Under the Republic, a dictator was chosen for a maximum of 6 months or until such time as the crisis for which the dictator was chosen had run its course, whichever was the lessor. Cincinnatus was chosen dictator because there was a Roman general whose army was surrounded by the tribes of the east. Cincinnatus heeded the call, took off his toga, took on the cloak of the dictator, defeated the enemy in 16 days, gave up the dictatorship, and went back to plowing with his oxen on his little 3-acre farm beside the Tiber.

But what power he had. He had all the power, omnipotent power, over every man, woman, boy, and girl in Rome while he was dictator. He could execute without trial; all power. So the dictatorship of Rome continued but for a brief period. Yet, while it lasted, the whole state was in his hands. He did whatever he pleased, whether it was life, liberty, or property.

I will close with this last extract of the speech of Clay on January 24, 1842.

''Before the power should be utterly abolished, he''—meaning Clay—''deemed it prudent, that an experiment should be made in a modified form; and instead of requiring a majority of two-thirds of both Houses to supersede the veto of the President, he thought it sufficient to require the concurrence of a majority of the whole number of members elected to each House of Congress.''

So that was Henry Clay, one of the great trio of all time, one of the Members of the Senate when it was in its golden age.

What would he say today? What would he say today of this hydra-headed dragon? We are about to sow the dragon's teeth and the country will reap the whirlwind.

Where are the true conservatives of today? You are looking at one. I am a conservative when it comes to preserving the constitutional system, the Constitution of the United States. I am not above many. I have voted for five amendments, as I have said. But never would I vote—I would be shot before a firing squad before I would vote—to destroy the structure of this Constitution.

Talk about our children and grandchildren. We shed crocodile tears about children and grandchildren when it comes to reducing the budget deficit. Well, then, let us start helping our children by taking a forthright stand against the tax cut.

If we want to really help our children and grandchildren, let us take a stand against a tax cut.

It would put us in the hole by another $180 billion in this year's 5-year budget resolution before we even start to work on a plan to reduce the deficit. To make matters worse, these revenue losses would skyrocket over the subsequent 5 years to $450 billion, making total revenue losses over the next 10 years equal $630 billion. Ultimately, when all of the provisions of the House Ways and Means Committee bill are phased in—now. this is the so-called contract with America—the revenue losses every year would be more than $110 billion.

Who would get the lion's share of the benefits of these tax cuts? Again, according to the latest analysis by the Center on Budget and Policy priorities, these large revenue losses, which would total $630 billion over the next 10 years, are largely attributable to provisions that heavily benefit upper-income households and large corporations.

In fact, according to a Treasury Department analysis, less than 16 percent of the benefits of the fully phased-in tax provisions as passed by the House Ways and Means Committee would go to the 60 percent of all families with incomes below $50,000. The top 1 percent of families with incomes of $350,000 or more a year would receive 20 percent of the tax benefits, while more than half of the tax goodies would go to the top 12 percent of families—those with incomes over $100,000 per year.

Of the major provisions in the House Ways and Means Committee bill, the changes in IRA's capital gains taxation, and the taxation of Social Security income are heavily tilted in favor of high-income people.

Past analyses indicate that about 95 percent of the benefits from the current IRA proposal would go to the top fifth of the population.

According to an analysis by the Treasury Department, over half the benefits from the House Ways and Means Committee's capital gains provisions would go to the wealthiest 3 percent of families who have incomes over $200,000, while three-fourths of the benefits would go to the top 12 percent of families who have incomes over $100,000 a year; and the House Ways and Means Committee's reduction in the proportion of Social Security benefits that are subject to taxation would give a tax break to the top 13 percent of Social Security beneficiaries.

Similarly, the changes proposed by the House Ways and Means Committee in rates of depreciation and the repeal of the corporate Alternative Minimum Tax would substantially reduce taxes paid by the Nation's largest corporations.

All of these new tax breaks, Mr. President, will have to be paid for. Over the next 5 years alone, we would have to find $180 billion in spending cuts; $630 billion over the next 10 years; and, every year thereafter, $110 billion per year in cuts in order to bankroll these subsidies for the well off people in this country. That level of cuts would have to be made if we were to enact the House Ways and Means Committee tax bill. Having made these cuts, we will just be breaking even. We will not have reduced the deficit at all. We have heard all this crying out here on the Senate Floor over the cruel effects of budget deficits on our children and grandchildren. Yet, when it comes right down to it, the grandchildren do not vote so we will just wait a little longer to get serious about the deficit. Meanwhile we can dole out a little more tax pork for the privileged few.

It is silly; utter folly. They talk, on the one hand, about reducing these deficits so that we can finally get down to paying something on the principal of the debt, stop having to pay interest on that debt, reduce the deficits, take defense off the table—do not touch defense—even increase defense, and, at the same time, balance the budget and, lo and behold, enact a tax cut. Enact a tax cut—what a joke.

I like to vote for tax cuts. That is easy. That does not take any courage.

Where are these cuts to come from? The Ways and Means Committee will not tell us the specifics; but, according to a Washington Post article of March 17, 1995, the House Budget Committee has approved the ''broad outlines of $190 billion in spending cuts over the next 5 years ''—for what?—'' to finance a massive GOP tax cut. Nearly half the reductions would come from Welfare and Medicare and the rest from hundreds of other government programs and foreign aid.'' So, we cut programs for the poor, we cut programs for the sick, we cut programs for the elderly. For what? So that another Rolls Royce can appear in the driveway of some fat cat. Well, that ought to get your blood pressure up. I have no problem with the idea of slicing foreign aid, but the savings ought to go toward reducing the deficit.

That same Washington Post article also lists what are called ''suggestions in the House Budget Committee's proposal to cut discretionary spending by $100 billion over 5 years.''

I ask unanimous consent to print this article in the RECORD.

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

[From the Washington Post, Mar. 17, 1995]

HOUSE PANEL PLANS BIG SPENDING CUTS—$190 BILLION WOULD OFFSET TAX BREAKS

(By Eric Pianin and Dan Morgan)

The House Budget Committee yesterday approved by the broad outlines of $190 billion in spending cuts over the next five years to finance a massive GOP tax cut. Nearly half the reductions would come from welfare and Medicare and the rest from hundreds of other government programs and foreign aid.

Budget Committee Chairman John R. Kasich (R-Ohio) boasted that his plan would assure that Republicans fully pay for a tax package providing three times as much relief as one proposed by President Clinton and begin to put the government on ''the glide path'' to a balanced budget.

Republicans issued the proposals hours before the House passed a separate bill that would pare $17.1 billion from the current budget. Republicans had pledged that all the long-term savings from that package would go for deficit reduction and not to help pay for their tax cut. But early yesterday, Kasich acknowledged that the promise had been nothing more than a ''game'' to attract conservative Democratic support for the bill, provoking a storm on the floor of the House.

The House approved the spending-cut package, 227 to 200, despite widspread defections by fiscally conservative Democrats who claimed they had been duped. The uproar further soured Republican-Democratic relations and distracted from the COP leadership's message that they were paying for tax relief with ''real'' spendng cuts.

''They lied in order to pass a bill they couldn't pass otherwise,'' Minority Leader Richard A. Gephardt (D-Mo.) said.

Yesterday's contentious, sometimes confusing budget drama underscored the House Republicans' challenge in juggling a number of converging fiscal initiatives—proposing a huge tax cut just as they are promising a balanced budget—with time running out on their 100-day ''Contract With America'' timetable.

The $17.1 billion spending-cut package initially was devised by Republicans to offset the cost of disaster relief for California and to make a down payment on the cost of the tax package, although later they promised to use most of it for deficit reduction. Separately, Kasich and his staff prepared the plan for $190 billion of spending cuts to finance the bulk of the tax cuts, along with a 10-page list of ''illustrative Republican spending cuts'' to show where most of those savings could be found. The five-year plan would take effect in 1996.

In the coming weeks, Kasich must also complete work on yet another initiative, a seven-year plan for balancing the budget. All told, GOP leaders must come up with as much as $1.2 trillion of cuts and savings to eliminate the deficit and pay for the tax cuts by 2002, as they have pledged to do.

Meanwhile, about 100 moderate and fiscally conservative Republicans have joined in a mini-revolt aimed at forcing the leadership to peel back the cost of the proposed $500-per-child tax credit—the most expensive piece of the GOP tax plan—and target the benefits more narrowly to middle-class families.

The Republicans have signed a letter circulated by freshman Rep. Greg Ganske (Iowa) and House Agriculture Committee Chairman Pat Roberts (Kan.) asking Speaker Newt Gingrich (R-Ga.) to assure a floor vote on cutting the maximum income of eligible families from $200,000 a year to $95,000 according to several signers.

''We took a little bit silly passing tax cuts when we don't have any money,'' said Rep. Ray LaHood (R-Ill.), who declined to sign the Contract With America because he opposes its tax cuts.

Yesterday, Sens. Dan Coats (R-Ind.) and Rod Grams (R-Minn.) introduced a $500-per-child tax credit proposal that is similar to the version approved by the House Ways and Means Committee earlier this week and provides benefits to families making up to $200,000 a year.

While the drive for a major tax cut continues to enjoy widespread support among House Republicans, Democrats and Senate Republicans are wary of devoting precious resources to a tax cut when polls indicate that voters are more concerned about deficit reduction and many economists say a tax cut is a bad idea.

But House GOP leaders refuse to back down on their campaign pledge to slash taxes for families and businesses, and yesterday Kasich unveiled his blueprint for financing the package.

About $100 billion of the proposed savings would be achieved by extending and lowering legally mandated limits on discretionary spending over the next five years and leaving it up to the appropriate House committees to determine where the specific cuts would be made.

Suggestions in the House Budget Committee's proposal to cut discretionary spending by $100 billion over five years:

Budget committee's five-year plan

[In billions of dollars]

Reduce funding for ineffective training and employment programs	9.3
Eliminate Low Income Home Energy Assistance Program	7.2
Reduce federal agency overhead	5.0
Reduce violent crime trust fund	5.0
Terminate support for the International Development Association	2.8
Cut funding to Agency for International Development	2.7
Repeal the Davis-Bacon Act (sets wages for federal contracts in construction industry)	2.6
Cut National Institutes of Health funding by 5 percent	2.5
Reduce energy supply research and development	2.3
Reduce mass transit operating subsidies, capital grants	2.3
Eliminate programs in National Telecommunications and Information Administration	2.2
Phase out Amtrak operating subsidies	1.6
Phase out funding of Legal Services Corp.	1.6
Reform management of NASA's human space flight programs	1.5
Terminate funding for the National Endowments for the Arts and Humanities	1.4
Place five-year moratorium on construction, acquisition of federal buildings	1.3
Restructure National Oceanic and Atmospheric Administration	1.2
Eliminate the Economic Development Administration	1.2
Eliminate the U.S. Travel and Tourism Administration and trade promotion	1.1
Privatize the Corporation for Public Broadcasting	1.0
Reduce programs in vocational and adult education	0.9
Reduce assistance to Eastern Europe, former Soviet Union	0.8
Eliminate wasteful rehabilitation of severely distressed public housing	0.8
Cut contributions to international peacekeeping	0.8
Reduce funding for Goals 2000 and School in Work programs	0.7
Reduce funding for construction of Agriculture, Interior facilities and trails	0.7
Reduce domestic volunteer programs	0.7
Reduce Energy Department's fossil energy research and development	0.7
Apply cost-benefit test to Superfund projects	0.5
Reduce General Accounting Office funding by 15 percent	0.3
Cut number of political appointees	0.2
Reduce Peace Corps funding	0.2
Replace dollar bills with dollar coins	0.1
Eliminate Small Business Administration's tree planting program (in millions of dollars)	75
Terminate State justice Institute (in millions of dollars)	54
Other programs (in billions of dollars)	37.0
Total	100.4

Mr. BYRD. Mr. President, in other words, the House Budget Committee has proposed a list of suggested discretionary spending cuts, totaling $100 billion over the next 5 years, which would be used, not for deficit reduction, but to pay for more than half of the 5-year cost of the tax breaks proposed by the House Ways and Means Committee.

Mr. President, the use of cuts in discretionary spending to pay for tax cuts is not permitted under the provisions of the Budget Enforcement Act. Rather, that act sets annual discretionary spending limits which, if they are exceeded, will cause across-the-board sequesters sufficient to ensure that total discretionary spending stays within the caps. Similarly, pay-as-you-go procedures in section 252 of the Budget Enforcement Act control mandatory spending and taxes. This is good policy because domestic discretionary spending, in large measure, goes to benefit the Nation in general. It should not be allowed to be ravaged in order to pay for tax favors—tax favors—for the well-to-do.

What the House Republicans are actually proposing will require a change in the Budget Enforcement Act to follow reductions in discretionary spending limitations to be used to pay for tax cuts for the wealthy. That is bad policy. That is not just some obscure Budget Act process change. That is bad policy, and it ought not be sanctioned.

I note among the suggestions here, one, reduce violent crime trust fund, $5 billion. It was my proposal that we have a crime trust fund, and I think I found $21 billion or $22 billion or $23 billion to put in that trust fund when we passed the crime bill—$30 billion. So here they are going to whittle out $5 billion from the trust fund.

Reduce funding for ineffective training and employment programs. Well, it

says ''ineffective.'' Whether or not they are ineffective we will know.

Eliminate Low Income Home Energy Assistance Program; cut National Institutes of Health funding by 5 percent; reduce energy supply research and development; reduce mass transit operating subsidies; phase out Amtrak operating subsidies; phase out funding of Legal Services Corporation, and so on and so on and so on.

Reduce programs in vocational and adult education; cut contributions to international peacekeeping; reduce funds for Goals 2000 and school-in-work programs; reduce funding for construction of agriculture/interior facilities and trails.

Mr. President, we saw what happened in 1981 under President Reagan's policies. He blew into town preaching deficit reduction and promising to balance the Federal budget while, at the same time, proposing to increase defense spending and to cut taxes. Congress gave him what he asked for, and I gave him what he asked for.

The people of West Virginia said, ''He is a new boy on the block, help him, give him a chance.'' So I did. I voted to give him what he asked for. We passed his massive tax cuts in 1981, and I have been kicking myself ever since.

We passed his massive tax cuts in 1981, which cut revenues by $2.1 trillion over the following 10 years. We provided huge increases in defense spending as well, and I went along with that. I voted for everything he asked for. I wanted to give him a chance. That is what my constituents told me to do. Supply-side economics, we were told, would kick in as a result of the tax cuts, and we would actually see more revenues coming into the Treasury than would have come in without the tax cuts. We were going to ''grow our way'' out of our deficit problem. But, it did not happen. Instead, we saw a string of budget deficits which were by far the largest in the history or the Nation. Those deficits of President Reagan's 8 years were only exceeded by President Bush's deficits, which stand as the largest in history. It should be clear that supply-side economics is a failed theory, and David Stockman knew it and said it in writing. It was bogus baloney. It was a flop and it was highly detrimental to this Nation.

It is why we are in this debate right today. It is why we are in the pickle that we are in right today, because out of that colossal mistake that we made came the largest budget deficits, a quadrupling of the national debt and the pressure for a line-item veto and for constitutional amendments to balance the budget. That is why we are in this pickle. They brought us to this. We would not be debating a line-item veto here today if we had not gotten caught up in that trap, that quadrupling the debt.

We are now being asked by the Republican leadership in the House to go down that same road again.

It is really quite unbelievable, but that is what the proponents of the huge tax cut believe. Talk about disregarding history. Talk about a flat learning curve. We have not learned anything from recent history. Some have not picked up a thing from the nightmare of the 1980's. This so-called Contract With America calls for massive tax cuts, increases in defense spending, and a balanced Federal budget by the year 2002. Even if defense spending is not increased, the House Ways and Means Committee's tax cuts will cost $630 billion over the 10 years. That cost will have to be paid for, along with over $1 trillion in additional spending cuts, in order to balance the Federal Budget by the year 2002.

Well, I made that mistake in 1981. But this is one Senator who is not prepared to make the same mistake again. I do not intend to vote for any tax cuts this year—not President Clinton's and not the House Ways and Means Committee's proposal.

We say we are for deficit reduction, and I am for deficit reduction. I am for cutting spending where we can do so in a fair and equitable manner and at the same time deal with our investment deficit in this country. We have not only a trade deficit, not only a fiscal deficit, but we also have an investment deficit, an infrastructure deficit.

I am opposed to enacting spending cuts to pay for tax giveaways. Any savings we can make should go toward reducing our deficit not lining somebody's pockets.

My amendment provides that it shall not be in order in the Senate or House of Representatives to consider

Any concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report that decreases the discretionary spending limits unless the concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report provides that such decrease may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in tax receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1974.

My amendment also creates a requirement that a waiver would require an affirmative vote of three-fifths of Senators duly chosen and sworn, as would an appeal of the ruling of the chair.

I urge Senators to support the amendment. If the rhetoric about balancing the budget which has been flowing fast and thick in this Congress since we convened is to be believed, we need to take this important step.

Any private citizen paying attention will know that these huge deficits will never be reduced if we are subsidizing wealthy tax payers with back-loaded tax cuts at the same time we are trying to reduce the deficit.

How ironic that we are voting before this day is over, voting to shift the control of the purse, vested in the hands of the people's representatives in Congress, voting to shift that power to an executive, in the name of reducing deficits, in the name of balancing the budget on the one hand and, on the other, let flow from our lips the utter folly of advocating a tax cut. For what reason? To get votes.

Let us not stretch our already fragile credibility to the breaking point by continuing to pretend that these obviously incompatible goals—massive tax breaks and reduced deficits—can ever by reconciled in the real world.

AMENDMENT NO. 350, AS MODIFIED TO AMENDMENT NO. 347

Mr. President, on page 2, line 10, I modify my amendment and I ask unanimous consent to modify it by striking ''1974'' and inserting ''1985.''

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 350), as modified, is as follows:

At the appropriate place insert the following:

SEC. . USE OF THE REDUCTIONS IN DISCRETIONARY SPENDING CAPS.

(a) CONGRESSIONAL BUDGET ACT.—

(1) BUDGET RESOLUTIONS AND LEGISLATION.—Section 301 of the Congressional Budget Act of 1974 is amended by adding at the end the following:

''(j) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—It shall not be in order in the Senate or House of Representatives to consider any concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report that decreases the discretionary spending limits unless the concurrent resolution on the budget, bill, joint resolution, amendment, motion, or conference report provides that such decrease may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.''.

(2) SIXTY VOTE POINT OF ORDER.—Subsections (c) and (d) of section 904 of the Congressional Budget Act of 1974 are amended by inserting ''301(j),'' after ''301(i)''.

(b) GRAMM-RUDMAN.—Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following:

''(f) USE OF REDUCTIONS IN DISCRETIONARY SPENDING CAPS.—A decrease in the discretionary spending limits may only be used for deficit reduction and may not be used to offset all or part of an increase in direct spending or decrease in receipts under this section.''.

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

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I have been listening with keen interest to the excellent remarks made by my great friend and colleague from West Virginia. I want to compliment him, once again, for being able to seize the key elements that tell the truth as it is. I am rising now principally to support the amendment that has been offered by the senior Senator from West Virginia and to address what he had to say about the history of the lack of fiscal management. I think it points out just how important the amendment he is offering tonight and why it belongs on

the important piece of legislation before us.

This amendment would strengthen and reinforce the pay-as-you-go requirements in the current budget law. And certainly, Mr. President, I think it deserves our support. If only we had something like this during those other times when we went down that rosy scenario road that the Senator from West Virginia outlined.

I would like to take a few moments to discuss the logic of supporting the current law, which fits right in with the amendment offered by the Senator from West Virginia.

Mr. President, the current law requires the Government to account for annual appropriations spending separately from permanent changes in taxes and entitlements. It is unwise for the Government to use savings promised by budget process changes to pay for tax cuts or entitlement expansions, which, by their very nature, are permanent and require no additional congressional action. They, theoretically, are there forever.

Under section 251 of the Balanced Budget and Emergency Deficit Control Act, annual caps on budget authority and outlays limit discretionary spending. Pay-as-you-go procedures in section 252 of the act control mandatory spending and taxes. The law setting forth these pay-as-you-go procedures does not, in any way, mention changes in the discretionary spending limits.

The appropriations caps constrain the total amount of money that the Congress may appropriate. They do not, by themselves, spend money, nor can anyone know that they will save money until Congress has enacted every appropriations bill for the year in question. The Congressional Budget Office scores only actual appropriations, because they provide the actual authority to spend. Changes in the caps, on the other hand, do not yield immediate budgetary savings. If Congress reduces the caps, subsequent appropriations bills, later appropriations, after-the-fact appropriations are the ones that determine whether or not we live up to the goals that we have outlined.

The amount saved would not be available. I emphasize that again, Mr. President. The amount saved would not be available to offset legislative changes in entitlements or taxes.

The Congressional Budget Office thus believes that it cannot include cap reductions on the pay-as-you-go scorecard without a change in the law. Sound reasons for support of the structure of the law—that is important. That is sound reasoning. Congress appropriates spending, year by year, one year at a time.

Entitlement spending and tax cuts, on the other hand, often go on and on and on forever unless Congress takes an affirmative action to trim them back. To rely on budget processes, changes that promise to constrain appropriations in future years to pay for tax cuts or entitlement expenses, is like buying an unaffordable new house based on the expectation that a person is going to get a substantial raise each and every year that follows. It might work. But then again, Mr. President, it might not. Most times, it has not worked. We should not base our Nation's fiscal policy on such promises and guesswork.

Under the current law, rewards follow responsibility. The law holds appropriated spending responsible for breaches of the appropriation caps, and holds legislation under the jurisdiction of authorizing committees responsible for entitlement and tax law changes that do not pay for themselves. Allowing committees of the Congress other than the Appropriations Committee to get credit for reducing appropriation caps will encourage those committees to look to the appropriated spending rather than to themselves for deficit reduction.

The law links deficit reduction burdens and benefits, and we should keep it that way.

A few days ago, the House Budget Committee reported out a piece of legislation that would have allowed future reductions in appropriation caps to be counted to offset the tax cuts, those tax cuts that Senator BYRD outlined just a few moments ago.

My concern is, what is to stop the House Budget Committee from including such a provision in the budget resolution that they may report next year? The amendment by the Senator from West Virginia would ensure—I repeat, Mr. President—the amendment offered by the Senator from West Virginia would ensure that they could not profit from such a provision that on its face is so phony.

The amendment of the Senator from West Virginia would help to ensure that any savings achieved from lowering the appropriation caps would go to deficit reductions. We all know now and we all understand that that was the reason for the caps in the first instance, to try to bring sanity to the fiscal irresponsibility we have experienced for far too long. The appropriation caps under this bill would go to deficit reduction. I suggest that that is the way it should be.

The amendment offered by the Senator from West Virginia simply would make it more difficult to alter the existing law. He would preserve the pay-as-you-go procedure that has served Congress so well over the past few years, and make sure they are effective in the future.

Mr. President, I urge Senators to support the amendment offered by the Senator from West Virginia.

I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have just read the amendment from the distinguished Senator from West Virginia. I regret, Senator EXON, that I did not get to hear your entire argument.

Mr. President, I do not think the Senate should adopt the Byrd amendment because I think it is redundant, and I do not think we need it. I would like to explain why.

On the 28th day of February of this year, in response to an inquiry that I as chairman of the Budget Committee made to the Congressional Budget Office, in the last correspondence signed by Robert Reischauer as Director, in response to two questions, the second of which was: Can legislation that reduces the discretionary limits—that is, the caps—be counted on the pay-as-you-go scoreboard?

Now, essentially, this question is answered in a rather lengthy paragraph which I will read shortly. Essentially, it says ''No.''

Now, what has happened is in the 1990 summit, followed by a reconciliation bill later on, the U.S. Congress distinguished appropriated accounts from taxes and entitlements and mandatory spending in two very fundamental ways.

First, as to appropriated accounts, they were to be governed and controlled by a mechanism called caps. That means that literally, until 1998, there is an actual dollar number already existing for all of the appropriated accounts including defense. So we add them all up, Senator EXON, and there is a literal dollar number. Later on, from time to time, we might change those caps. But they are, nonetheless, caps.

What happens is that if we break those caps the budget is held harmless and returned to that level by a sequester, an automatic across-the-board cut of appropriated accounts.

If we come in under those caps then that money does not go on any scorekeeping card nor is it counted as a reduction in the caps unless you do that, and until the year's end nothing happens to that money because it is still subject to appropriation under the caps.

Now, that is one way of treating the combination of defense spending and appropriated domestic money. That is how it is treated.

Now, the rest of Government—that is, entitlement and taxes—are treated differently. They are treated under language called pay-as-you-go. Let me read what the Director of the OMB has to say about pay-go accounts.

Here is where I think our good friend, Senator BYRD, got the idea that we needed to put a new law in place. Unless it is to tweak the House, because they went through an exercise of saying they were going to pay for taxes with appropriated accounts. CBO says they cannot do that.

This is the CBO Director's response to that question. One, the Office of Management and Budget contends that current law allows a reduction in spending limits to offset increases in

spending or losses of receipts on the pay-as-you-go scoreboard.

The Congressional Budget Office disagrees. The current budget enforcement process reflects a clear decision by the lawmakers that discretionary spending—a subject matter of Senator BYRD's amendment—that discretionary spending would be subject to different budgetary control mechanisms than would be applied to mandatory spending and receipts or taxes.

Under current law [law that is in effect tonight] discretionary spending is limited by annual caps on budget authority and outlays. If enacted, discretionary appropriations for any year exceed either cap, an across-the-board sequestration of nonexempt appropriations would lower discretionary spending to the level of the caps.

I stated that a little while ago. Now it is being stated in the language of the CBO director, Dr. Robert Reischauer:

Mandatory spending and revenues are controlled by pay-as-you-go procedures. Under PAYGO, OMB and CBO track all mandatory spending and revenue legislation enacted since the BEA. If at the end of a session of Congress such legislation has, in total, increased the deficit for the current and budget years, spending for nonexempt mandatory programs is cut by the amount of the increase. Section 252 of the Balanced Budget Act, which governs enforcement of the PAYGO procedures, does not refer in any way to changes in the discretionary spending limits.

Which is what is worrying the distinguished Senator from West Virginia:

The limits on discretionary spending included in the BEA and OBRA–93 constrain the overall amount of money that the Congress may appropriate in a given year. They do not by themselves create new budget authority or outlays, and CBO and OMB have not reflected the limits in their scorekeeping systems. CBO scores only actual appropriations, because they provide the authority to spend. Changes to the discretionary spending limits thus do not yield immediate budgetary savings. If the discretionary spending limits were reduced, the savings would be achieved through subsequent appropriations bills, but the amounts saved would not automatically be available to offset legislative changes in mandatory spending or receipts.

That is the answer to the question and why we do not need the amendment. Let me repeat:

If the discretionary spending limits were reduced, the savings would be achieved through subsequent appropriations bills, but the amounts saved would not automatically be available to offset legislative changes in mandatory spending or receipts. Therefore, CBO believes that reductions in the discretionary spending limits cannot be included on the PAYGO scorecard without a change in law.

I hope this information has been satisfactory, he says to me, writing this letter.

Mr. President, I have the greatest respect for the Senator from West Virginia. And I have great, great empathy and concurrence with the notion he is trying to achieve. The budget resolution produced by the Senator from New Mexico, coming out of our Senate committee, will follow this law. If we reduce the discretionary caps the money allegedly saved will not be available for the pay-as-you-go scoreboard, which is the only place it could have gone to make room for tax cuts. And it does not go there. It does not go there by law.

So there is not any need to now say you cannot use savings by reducing the caps to offset taxes because that is the law. That is what the director of CBO says. That is what our Parliamentarian is going to say. I do not think there is any doubt about it. A point of order will lie, and we do not need to create it in a new piece of legislation because it already would lie if you attempted to offset in some way the savings that will come from reducing appropriations to pay for tax cuts.

Incidentally, if there really was reason to do this it would be because the President of the United States—and that is stated in this letter, implicitly, at least—made a mistake. He found room in his budget to pay for his so-called middle-class tax cuts by cutting appropriated accounts—lowering the caps. As a matter of fact he made two mistakes.

First is, he cannot do that. You need to get a waiver here. It should not be in a budget without a clear statement that I need a 60-vote waiver in the Senate because the law prohibits me from doing that. That is one mistake.

The second mistake, he used phony numbers. First he increased the caps impropitiously, in a manner not prescribed by law. And then he reduced the caps to count some savings. And then he counted the savings to pay for the tax cuts. Every single step of that is either illegal or phony or a combination thereof.

That is not going to happen in a budget resolution in the Senate because it will get caught right here on the floor. If I try to do it when I put that budget resolution up there for debate, Senator BYRD will get it. He will stand right up and say, ''You cannot do that.'' So let me suggest, he is not going to get a chance to do that because I am not going to do that. I will not bring a budget resolution to the floor of the U.S. Senate as chairman of a committee that flies smack in the face of this letter from the Congressional Budget Office that says that is not the law.

So, if anybody needed any assurance that is not the way we are going to do it here, you got it right now, because we are not going to do it that way.

Well, I should not say it. If 61 Senators want to vote that we do it that way, we will do it that way, the 61 votes are prescribed in this amendment also as a way to waive it. You do not need that either.

So I regret coming down here. I think I made a case, however, and I do not think I harmed Senator BYRD's position at all because I think he makes the right point. But I do not think we need the amendment. Frankly, if there is anything else we have to do by way of amending the Budget Act we are going to have some more hearings. I have committed it to the Budget Committee. We will get onto some other changes in the Budget Impoundment Act. There are a lot people want to do. Besides, I am not at all sure—I say to my friends on the other side—how soon this line-item veto will get out of conference. There are some very big differences between this bill as it leaves the U.S. Senate and the bill that the U.S. House of Representatives passed. There are very, very big differences.

As a matter of fact, I think we will have a budget resolution on the floor, I say to my friend, Senator BYRD, before that conference report will ever get back. So this amendment, if it is on there, is not going to help that situation. But I am here to say I am going to try to help because I do not have to give a speech as to why, why we should not use appropriated accounts, the Paygo accounts. We went through that. We spent weeks on end figuring this out. There is no intention whatsoever to use discretionary programs of this country to pay for tax cuts or entitlement increases, and I do not think that is the way it is going to be.

And I do not think that is the way it is going to be.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. DOMENICI. Yes.

Mr. BYRD. I have no doubt that the distinguished Senator from New Mexico means exactly what he says. He has no intention of doing that. That is not what the House is saying. The House wants to change the law. I do not want to see the law changed. I think we ought to have this amendment. This would also apply to any reductions in the discretionary spending limits which might occur pursuant to any budget resolution in the future.

The Senator from New Mexico agrees that the summit agreement—we were both there—and resulting Budget Enforcement Act do not allow domestic spending cuts to be used for pay-go. This amendment will make it perfectly clear that any reductions in discretionary spending limits will be used for one purpose only, deficit reduction.

Does the Senator from New Mexico agree that that should be the case?

Mr. DOMENICI. Did I yield for a question? I thought I still had the floor.

Mr. BYRD. The Senator does.

Mr. DOMENICI. The reason I say that is that I am supposed to be somewhere in a minute. I want to get the floor back, and then I will yield very quickly.

Let me just make this point. There have been some discussions on the floor of the Senate about the amendment that is going to pass, the line-item veto that is going to pass. There has been some discussion about how different it was in the original Domenici-Exon line-item veto. Let me just say there is one aspect to this line-item veto that the American people ought to understand, and that Senators ought to understand.

First, I will premise it on the following. None of us really knows whether this will be a significant shift of power, whether Presidents now or in the future will use line-item veto to gain some significant leverage that they should not have or a myriad of other concerns that are on the side of those who are reluctant to vote for this.

But I might suggest there has been one exchange made in the Budget Committee and carried over here, and even made a little better. That is a sunset provision. This bill, as it leaves here in a compromise between the distinguished Senator from Arizona and the Senator from New Mexico, carries a 5-year sunset. That means that if we look at this maybe in 3 years and it is not working too well, or in 4 years, clearly when that 5th year comes, it is gone. If Presidents in the meantime choose to make it this big power shift, you see that this sunset means that we do not have to send them anything.

But if we send them a new bill, there will not be any law on the books. So they will not have the veto pen out to make us do it their way. That is if we are going to pass another law to change it or modify it. I think everybody should know that. That is a bit of protection for the uncertainties that come with legislation of this type.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. DOMENICI. Yes.

Mr. BYRD. I thank you for that. That is the only good provision in this package that we are about to vote on tonight; the only good provision. I fully support that provision.

But I call attention to the distinguished Senator's statement in the "Report on the Legislative Line-Item Veto Act of 1995." Senator DOMENICI, according to this statement, "The Additional Views of Senator Pete V. Domenici"—I do not know what the "V." stands for; I want Pete to tell me what that is:

> I do not support S. 4 because I believe it will delegate too much authority to the President over the control of the budget . . .

I do not believe he supported S. 4. I think that S. 14, which represented his views, is the bill that we ought to be passing. And that is the bill with some important additions that the distinguished minority leader introduced as a substitute. He included the additions on taxes as well, which was an improvement. I am sorry that the Senator objected to that. But I supported that measure when the distinguished Senator's committee reported it out.

I thank the Senator. I am glad that there is that sunset provision:

> Boast not thyself of tomorrow, for thou knowest not what a day may bring forth.

I do not know whether I will be here 5 years from now. None of us know. Not any man or woman in this Chamber can foresee whether he in truth will be here when that 5 years rolls around. But that is within my present term, and although I intend to be running that period, planning that year for the next election, the next year, I cannot boast myself of tomorrow because I do not know what a day may bring forth.

But I hope I am here when that sunset provision runs out because I want to do everything I can to see that this monstrosity does not have a future life, as much as I do believe in a future life.

While I am on any feet, I want to compliment the distinguished Senator from Arizona. He has fought for this legislation over the years. I do not think this is the legislation he really wants. It is not the legislation that he agrees that he has expressed support for over the years, but he is about to achieve a victory of sorts.

I compliment him on a job well done.

I thank the distinguished Senator from New Mexico.

Mr. DOMENICI. Mr. President, I say to the Senator, the "V." in my name is my mother's maiden name. Her father was named Pete—like me—Vichi, V-i-c-h-i. She wanted so much to have as much of her father as she could. She gave me his first name, and she gave me his initial, and then my father insisted that I, nonetheless, have his name. So that is where it came from.

Mr. President, I want to make one other comment. The legislation is different in another way. The sunset is brief. It is 1 year shorter than previously reported out of the committee. But there is another thing. I know this would never be enough to convince the distinguished Senator from West Virginia. But this does make it such that individual vetoes can be voted on separately in the U.S. Senate. They do not have to be packaged, as in the original McCain proposal or the original Domenici proposal.

And, in a sense, for those who do not like the line-item veto, or are worried about it or frightened of it, that is thought to be a little better protection than if you have to vote, like the military BRAC Commission, take it or leave it. At least you can take one at a time. That is one other aspect of this that I thought we ought to put on record as being different and changing things a bit.

I yield the floor.

Thank you, Mr. President.

Mr. EXON. Mr. President, before my good friend and colleague leaves the floor—I know he has another matter—I just wanted to make a few brief comments. First, that I have had a very close relationship with the chairman of the Budget Committee for a long, long time. Although we do not always agree, we have a good working relationship that is going to carry through in the future. I hope to try to solve the mammoth problems that are going to be pushed off on the Budget Committee, and to help where the decisions have to be made.

I have listened to the statements he made in opposition to the amendment offered by the Senator from West Virginia. I listened very carefully to the quotes he made by the former CBO Director, Dr. Reischauer, who is no longer there. We have a new CBO Director now. I agree, I think, almost word for word, paragraph by paragraph, point by point, with everything the chairman of the Budget Committee said. Then why are we arguing? We are arguing because the chairman seems to feel that just because we have a policy that has existed in the past, that that is going to continue to be the policy in the future.

Senator BYRD, I think, has no quarrel with what the Senator from New Mexico is saying. We have no quarrel with what Senator DOMENICI says he intends to do. Senator BYRD has a quarrel, and I have a quarrel, and I think you, Senator DOMENICI, have a quarrel with what is going on on the other side of the Hill.

What we are trying to do—since this measure that is going to pass is going to be the law of the land—is to put into place, in law, once again now, provisions to tell the House of Representatives that we are not going to allow them to continue what they are doing, which is in violation of what Dr. Reischauer previously said.

I think we all agree. I think what we are simply saying to my friend, the chairman of the Budget Committee, is if you agree with Dr. Reischauer, then you agree with Senator BYRD. The only disagreement you seem to have is that it is redundant and it is not necessary.

I would simply say that I really think this amendment is obviously necessary, given what is going on in the House of Representatives today in that Budget Committee. And we have a new director over there of the Congressional Budget Office. What is to stop the Budget Committee from telling the Congressional Budget Office to do differently in the budget resolution than what Dr. Reischauer had indicated earlier, as was extensively and accurately quoted by the chairman of the Budget Committee.

I would simply say that I believe we are talking by each other as we do often times here in this body. As near as I can tell, Senator DOMENICI, the chairman of the Budget Committee, Senator BYRD, myself, and many others all agree. And if the only reason not to adopt the Byrd amendment is because it is redundant, then this is the time when redundancy is vitally important because of what is going on in the House of Representatives. The House's recent actions are anything but redundant with regard to what we have done in the past.

All Senator BYRD is trying to do with this amendment—and I am surprised that there is opposition on the other side—is to say, let us keep doing business the same way we have done it in the past. Some people say you do not have to say that because it is redundant.

Well, just look at what is going on in the House of Representatives today. They are making cuts in vital programs for infants and children and mothers and senior citizens, and all the

underprivileged of the Nation, for the purpose of putting in a tax cut that benefits primarily the wealthiest citizens of this Nation. They are only going to be able to do that over there if they make some changes in the rules and regulations that we have followed in the past.

What Senator BYRD is simply saying, I say to my colleagues on both sides of this aisle, is let us not fool ourselves again. Let us not go down that path that we did in the 1980's by charting new courses and going through rosy scenarios and inventing systems such as what—I have always called the laughable curve. I think it was really the Laffer curve, but I called it the laughable curve. The laughable curve in the 1980's is back with us once again under a different name. It is rosy scenario. It is changing the rules.

All that Senator BYRD's amendment tries to do, and I think the chairman of the Budget Committee agrees with it, if I heard him correctly—and he is a very honest and honorable man—is let us leave things the way they are. In this very important new piece of legislation that in some form is going to become the law of the land let us say once again that we are not going to be carried off course, and that we are going to be using the cuts that we make to reduce the deficit and not to irresponsibly, irrationaly, and unreasonably make tax cuts that even the Senate committees run by Republicans on this side of the Capitol, indicate do not make sense.

The Byrd amendment makes sense. It is in keeping with what I think is the feeling of my chairman, Senator DOMENICI of the Budget Committee. I cannot see why we are arguing about something that we seem to all agree with. If the only argument not to accept the Byrd amendment is that it is redundant, then it is the type of redundancy, Mr. President, that we need.

I yield the floor.

Mr. President, I understand that the Democratic leader would like to speak on this amendment.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Thank you, Mr. President. Let me commend the distinguished Senator from Nebraska for his comments. I feel very strongly about this issue as well. And I commend the distinguished Senator from West Virginia for offering the amendment.

It is appropriate that this is the last amendment. It is appropriate in part because the distinguished Senator from West Virginia has made it clear all along that there are some very fundamental concerns here, and one of the biggest concerns we have is the vagary of the legislation to begin with. There is a vagary on what the scope of tax legislation is. There is a vagary on its constitutionality. There is a vagary, frankly, on the balance of power, as the Senator from New Mexico just indicated. We are not sure what this is going to do. We are not sure just how much of a shift down to the White House this may represent. There is certainly a vagary with regard to the degree of practicality or of the prudence in taking a simple bill and making it 1,500 or 2,000 pages. There is a lot of vagary here. But how ironic it would be if in the interest of deficit reduction, with all the other vagaries, we did not even know this was going to reduce the deficit, we had no idea whether or not ultimately we were going to accomplish what I thought brought us here in the first place, which is to reduce the deficit. That would be the ultimate irony.

All the distinguished Senator from West Virginia is saying is let us be true to our goal. If we are going to do this, let us be absolutely certain there is no mistake about why we are doing it. Before we vote on final passage, regardless of what assurances we may be given by CBO, regardless of what budgetary guidelines normally we must follow—as the Senator from Nebraska has so appropriately said, we do not know what is coming over from the other side. We do not know how many times things may come over from the other side that will dictate a situation that could otherwise undermine the intent of this legislation.

So let us be clear. This is our last opportunity to say with an exclamation point, ''Here is why we are doing it. This is why it is important.'' If we are going to line-item veto specific provisions in the bill, then it better be designated for one purpose and one purpose only. Regardless of the agenda in the Contract With America, regardless of what intentions the House may have, we now know that it is going to go to deficit reduction because of the Byrd amendment.

So I think it is very appropriate that this is the last amendment because it ought to clarify with no equivocation why we have spent the last week debating line-item veto.

We are not supporting a line-item veto because we want to offer an agenda for tax reform or tax cuts, for tax cuts that we may not want. That is not why we are doing this. We do not want to provide more opportunities to cut taxes and create even greater imbalance between the wealthy and the middle class in this country. That ought to be a fight for another day. What we are here for is to reduce the deficit. What we are here for is to be absolutely certain that if we have designated the President with new powers, we understand what those powers are for. It is to reduce the deficit and nothing else.

So I hope that colleagues on both side of the aisle, regardless of whether they think we have said it loudly enough or clearly enough, can appreciate the concern for vagary once more in this legislation.

The courts are going to determine whether or not this is constitutional. Ultimately, we will probably be able to determine what kind of a shift in the balance of power results. The courts will also determine, I suppose, what will happen with regard to the scope of tax legislation, but we ought to be the ones to determine for what the line-item veto is going to be used. And if we determine it, we have our opportunity with this amendment to say it is going to be used for deficit reduction and that is it.

So, Mr. President, there is nothing more to say than that. The purpose of this amendment is very clear. Again, as so many amendments that we have offered have attempted to do, we are trying to improve this legislation in a way that allows us the confidence that, indeed, we are doing what we say we want to do.

So I commend the distinguished Senator from West Virginia for the amendment. I am very hopeful that in an overwhelming bipartisan consensus we can adopt it before this bill is enacted into law. And with that I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I will be very brief in my remarks.

I first want to rise in support of the Byrd amendment. As everyone here knows, the House Budget Committee last week proposed a change in the Budget Act that would permit reductions in discretionary spending to be used to offset lost revenues resulting from tax cuts, rather than to reduce the deficit. This is one of the most irresponsible proposals I have seen since coming to the U.S. Senate. Everyone in Congress speaks loudly and clearly about the need for spending cuts in order to reduce the deficit. However, one of the first things the new Republican majority in Congress has proposed is to, rather than reducing the deficit, cut spending on programs that help some of the neediest people in the country so that we can pay for tax cuts for some of the wealthiest people in America.

I heard the distinguished Chairman of the Budget Committee, Senator DOMENICI, argue that the Byrd amendment would replicate current law. While that might be technically true, given the House Budget Committee's actions last week, the Senate needs to go on record in opposition to using spending cuts to pay for tax cuts. These cuts must, and should, be used to reduce the deficit. I urge my colleagues to support the Byrd amendment.

I also would like to spend a few minutes discussing the Dole line-item veto proposal that will be voted on tonight. I want to pay tribute to my esteemed colleague from West Virginia, Senator BYRD, who, in my opinion, is always on the side of the angels when it comes to assaults on the Constitution, always on the side of the angels in understanding what James Madison and John Jay and Alexander Hamilton meant when they talked about the separation of powers.

The first time I ever heard that expression I was in the ninth grade. The

concept of separation of powers was refined for me somewhat when I read the Federalist Papers for the first time when I was an undergraduate student at the University of Arkansas. Then I went off to law school and studied a full course in constitutional law and almost a full course on the Federalist Papers. It is a tragedy that every high school student in this country does not have at least one semester on that sacred document called the U.S. Constitution.

John Jay, Alexander Hamilton, and James Madison created the concept of the separation of powers as a method of protecting the public. They put it in the Constitution because it was an important idea that should not get swept away with a momentary trendy, popular idea. So here we are with a very momentary, popular, trendy idea that could very well be an unmitigated disaster for the country—the Dole line item veto proposal.

I remember when I was Governor of Arkansas 250 magnificent prints of a mockingbird showed up to be signed by the Governors of the five States that had the mockingbird as their State bird. When these prints arrived I spent all night long signing my name 250 times on those prints. And of the 250, I got 50, Preston Smith in Texas got 50, the other three Governors got 50. They all spent all night long signing their names, too.

We are going to see similar signing ceremonies if the Dole proposal ever becomes law. Poor President Clinton. He does not sleep very much as it is. I have known him for years. He gets by on less sleep than anybody I have ever known, but he cannot get by with the 2 hours a night that will be left if he is forced to sign all those billettes sent up by Congress.

Mr. President, I would not be surprised if within 2 years from this moment, the Dole proposal will have been found to be such a disaster, so unworkable, there would be a clamor to repeal it.

Mr. President, I went to Wake Forest 3 or 4 weeks ago to speak at a convocation of their law school. The subject of my speech was on the ''Trivialization of the United States Constitution.'' While we are not dealing with a constitutional amendment today, we are dealing with an assault on the Constitution.

I voted for Senator HATCH's amendment to try to retain some semblance of the constitutional balance or power. Can you imagine what FDR would have done when he called the Supreme Court those nine old men who kept striking down the laws that he was trying to get passed to get this country moving again—nine old men. He detested them. He wanted to pack the Court by putting six more members on the bench. At first, everybody thought that was pretty good idea. Just like at first everybody thinks the Dole proposal is a good idea. All of the sudden, the people of this country decided that was one thing they did not want FDR to have the authority to do.

But can you imagine the President of the United States having a line-item veto on the Supreme Court? The Constitution would prohibit him from cutting their salaries, but he could sure turn the lights out. He can cut the heat off. James Madison would just be whirling in his grave if he knew this debate was going on.

We, as Members of Congress are not perfect. There is plenty of pork to go around. Anybody who beats his chest on the floor of this body and says, ''I'm above that'' is not being entirely truthful. All you would have to do is ask that Senator how he or she voted on the space station. That is the biggest piece of pork in the history of the world. How did they vote on the super collider, the second biggest piece of pork in the history of world? How did they vote on that $400 million wind tunnel the other day, the third biggest piece of pork? No, it is that little $1 million lab down in some poor rural state that is pork.

So, Mr. President, as I say, we are not perfect.

But we have been doing some things right. Over the last several years we have taken a number of concrete steps in an effort to deal with the deficit. If we are serious about the deficit, we need to agree to work in a bipartisan manner and say to the American people, ''Yes, we are going to get the deficit under control and we are not going to squander the opportunity to get the deficit under control by putting out a politically inspired tax cut to people who do not want it.''

So we have a golden opportunity. And instead we are squandering it with another assault on the Constitution by shifting the power of the purse to the executive branch. We want the President to be king.

The one thing the Founding Fathers in 1787 said in Philadelphia, ''We have had enough kings. We don't want any more kings. We are going to have a President.''

And until this moment, they have succeeded magnificently. We have had 42 Presidents and no kings. I wonder how much longer that is going to last.

I yield the floor.

Mr. BYRD. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. MCCAIN. Mr. President, on behalf the chairman of the Budget Committee, I make a motion to table the Byrd amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arizona to table the amendment of the Senator from West Virginia. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from North Carolina [Mr. HELMS] are necessarily absent.

I also announce that the Senator from Alaska [Mr. STEVENS] is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 49, nays 48, as follows:

The result was announced—yeas 49, nays 48, as follows:

[Rollcall Vote No. 114 Leg.]

YEAS—49

Abraham	Faircloth	Murkowski
Ashcroft	Frist	Nickles
Bennett	Gorton	Packwood
Bond	Grams	Pressler
Brown	Grassley	Roth
Burns	Gregg	Santorum
Campbell	Hatch	Shelby
Chafee	Hutchison	Simpson
Coats	Inhofe	Smith
Cochran	Kassebaum	Snowe
Cohen	Kempthorne	Specter
Coverdell	Kyl	Thomas
Craig	Lott	Thompson
D'Amato	Lugar	Thurmond
DeWine	Mack	Warner
Dole	McCain	
Domenici	McConnell	

NAYS—48

Akaka	Feinstein	Leahy
Baucus	Ford	Levin
Biden	Glenn	Lieberman
Bingaman	Graham	Mikulski
Boxer	Harkin	Moseley-Braun
Bradley	Hatfield	Moynihan
Breaux	Heflin	Murray
Bryan	Hollings	Nunn
Bumpers	Inouye	Pell
Byrd	Jeffords	Pryor
Conrad	Johnston	Reid
Daschle	Kennedy	Robb
Dodd	Kerrey	Rockefeller
Dorgan	Kerry	Sarbanes
Exon	Kohl	Simon
Feingold	Lautenberg	Wellstone

NOT VOTING—3

Gramm	Helms	Stevens

So the motion to lay on the table the amendment (No. 350), as modified, was agreed to.

Mr. COVERDELL. Mr. President, I move to reconsider the vote.

Mr. COATS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 347

Mr. DODD. Mr. President, I rise in opposition to the separate enrollment bill offered by Majority Leader DOLE because I do not believe that it represents a true compromise. I cannot support legislation that requires a two-thirds vote of both Houses of Congress to disapprove a presidential item veto because I see it as an unwarranted tilting of the balance of power away from Congress—the branch of government that is closest to the people.

I believe that separate enrollment legislation would be both unconstitutional and unduly burdensome. This

bill requires the enrolling clerk to enroll each individual item in appropriations bills or legislation that includes new entitlement spending or a new targeted tax benefit. The definition of a targeted tax benefit is ambiguous, and the application of new entitlement spending is unclear.

What is clear is that this slice and dice approach could break up one bill into more than 2,000 separate pieces of legislation. As Senator BYRD noted, if separate enrollment requirements had been in place last year, it would have required the President to review 9,625 separate appropriations measures, instead of just 13 appropriations bills. Separate enrollment would surely be a boon to the Presidential pen manufacturers industry, but a logistical nightmare for everyone else.

I have always been very concerned about line-item veto legislation. But, I could support a reasonable version this year because of the environment in which we now find ourselves.

We recently completed a lengthy debate on the balanced budget amendment. That proposal failed—fortunately, in my view. But at least five other Constitutional amendments—on tax limitation, term limits, unfunded mandates, school prayer and flag burning—are waiting in the wings.

The new Congressional leadership has expressed an unprecedented desire to enact the Republican agenda not only in statute, but into the permanent Constitution of the Nation.

This is the context in which I am willing to support statutory changes that I might not otherwise have endorsed. In contrast to Constitutional amendments, we can easily change statutory language if we find that it has not met our expectations or has had unintended consequences.

I support the substitute offered by Senator DASCHLE. I believe it is a reasonable line-item veto alternative. It requires both Houses of Congress to vote on a President's rescission list and sets up a fast-track procedure to ensure that a vote occurs in a prompt and timely manner.

My change of heart is not based on a belief that strengthened line-item authority will be effective in curbing spending. It is based on a willingness to give a reasonable measure a try.

Line-item veto legislation has always been trumpeted as a critical tool to reduce the deficit. Its supporters argue that any Constitutional concerns are eclipsed by the need to rein in a free-spending Congress. They argue by anecdote that strengthened rescission authority is essential to impose fiscal discipline and eliminate egregious pork-barrel spending. There is, however, little evidence that line-item authority reduces spending in any significant way.

Here is what the experts have to say. According to the Congressional Budget Office: ''* * * the potential for the item veto to decrease the deficit is uncertain.'' The General Accounting Office states: ''* * * rescissions cannot be expected to serve as a significant deficit reduction or spending limitation tool.''

If one doubts the effect of rescissions on the Federal budget, we can look to the example of the States. Forty-three States grant their governors line-item veto authority. Studies have shown that less than 1 percent of budgetary savings is typically achieved by these States through the item veto. The State of Wisconsin—which has one of the most generous item vetoes in the Nation—is a good case study. An analysis of 542 line-item vetoes in Wisconsin found that budget savings attributable to the Governor's use of item veto authority ranged from only .006 percent to 2.5 percent.

Former President Ronald Reagan was one of the most vocal champions of a line-item veto. In fact, in honor of his persistent support, the House passed its line-item bill on his birthday. The fact is, however, that when the former President was Governor of California, he used his line-item authority to rescind an average of less than 2 percent of the State's budget.

While its impact on spending levels is likely to be small, the DOLE legislation raises important Constitutional separation of powers questions. Granting new rescission authority would shift the delicate balance of powers our founders established, and would inordinately increase Presidential power over spending priorities.

The framers did not flip a coin to divvy up powers among our three branches of government. They were familiar with tyranny and were concerned about vesting too much power in the hands of any one person. They believed that the Nation's priorities should be determined by a large and highly accountable body of representatives. They wanted Congress to make public policy by deciding whether and how much money should be allocated. So they specifically granted the power of the purse to Congress—not to the President.

In Federalist 58, James Madison wrote:

> This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

Strengthening the President's power over the purse could yield dangerous and unintended consequences. Expanded line-item authority could be used to arm-twist individual legislators into adhering to the president's political priorities. Legislators could be coerced into supporting policy positions out of fear for vital projects in their State or district.

It is clear that granting greater line-item authority increases an executive's say over not just how much money will be spent but also over what will be spent. In the hands of a creative and aggressive chief executive, this power could be wielded to subvert the most basic decisions and policies of the legislature.

The line-item veto can be taken to ridiculous extremes by strong chief executives. In Wisconsin, Governor Tommy Thompson has exercised his generous line-item authority on some 1500 occasions. Governor Thompson has been unafraid to wield his veto pen, and he has been imaginative in doing so. He has gone so far as to delete individual letters, words and lines from the budget to stand the legislature's intent on its head.

The Governor's prolific and inventive use of the line-item veto attracted a great deal of attention in his State—so much so that Wisconsin citizens voted to amend the State constitution to bar the Governor's use of the so-called ''Vanna White Veto.'' It was so named because Governor Thompson used his veto to imitate the ''Wheel of Fortune'' star who came to fame by flipping letters.

Here are just a few examples. In one instance, Governor Thompson was sent a bill establishing a 48-hour maximum detention for certain juvenile offenders. He creatively used his line-item veto authority to increase that limit to 10 days.

In another instance, the Governor gutted a $650,000 clean energy rebate program by eliminating all the words except ''$50,000'' and ''program'', thereby providing $50,000 for an unspecified program—mystery pork, you might say. On two occasions, he used his line-item authority to raise taxes.

On yet another occasion, Governor Thompson redirected $83 million of a $183 million property tax relief measure to the State's general fund for other purposes. As one member of the State assembly pointed out, such actions have resulted in the Governor literally vetoing budget items into existence.

While Governor Thompson has been somewhat more inventive than his predecessors in exercising item veto authority, his intent has been the same as his fellow governors. A 12-year study of the State's item veto revealed that Wisconsin's Governors were likely to use the authority to pursue their own policies or political goals—but not to reduce spending.

Wisconsin is not alone. The Congressional Budget Office recently concluded that ''although the item veto may affect State budgets, it is more likely to substitute the Governor's priorities for those of the legislature than it is to reduce spending.''

While much has been made about the need to increase the President's rescission authority, all evidence suggests that current authority works quite well.

In the 20-year history of the Congressional Budget and Impoundment Control Act of 1974, Congress has enacted more than $92 billion in rescissions, compared to $72 billion requested by

six Presidents. This point bears repeating: Congress has rescinded $20 billion more in spending than requested by Presidents over the last two decades.

Earlier this month, one likely Presidential candidate announced that he would not seek his party's nomination. Explaining his decision, he declared that he wanted to focus on real economic issues, but that his party was more interested in gimmicks and procedural issues. That candidate was none other than Jack Kemp.

I believe that the line-item veto is just one more procedural duck designed to serve as a substitute for the difficult and painful budget choices needed to balance the budget.

In less than 2 weeks, the Senate Budget Committee is required by law to report a budget resolution. All evidence suggests that our colleagues on the other side of the aisle have no intention of meeting this statutory deadline. Apparently, when the Congressional Compliance Act was signed into law earlier this year requiring Congress to abide by all laws it imposes on everyone else, the new majority put in a hidden rider exempting Congress from obeying its own internal laws.

The 104th Congress has now been in session for 12 weeks. At least two-thirds of the Senate's time has been occupied considering process changes that would make none of the difficult and painful decisions needed to put our fiscal house in order.

Members of Congress have had ample opportunity to bemoan the economic illnesses our country faces and offer seemingly painless magic potions to cure them. Most of these proposed cures have been worse than the disease. And all have been lacking in the basic political leadership and courage that is necessary to solve our problems.

At the end of the day—balanced budget amendment, or no balanced budget amendment, line-item veto or no line-item veto—we have to roll up our sleeves and get to work.

I am willing to support a reasonable line-item veto proposal. I can support one that guarantees the President a majority vote. But I cannot support any line-item proposal that hands the President plus a small minority in either House of Congress the power to govern.

I am not willing to undermine the delicate balance of powers created by our Founding Fathers in our zeal to respond to a contemporary economic problem.

Mr. DASCHLE. Mr. President, there has been uncertainty expressed regarding some of the language contained in the Dole line-item veto substitute. It is important to clarify the language in order to give guidance to those who will be responsible for implementing it.

The major area of uncertainty has surrounded the definition of targeted tax benefit under the Dole substitute and, in particular, the meaning of "similarly situated taxpayers." I would like to enter into the RECORD a few comments to further clarify this issue.

It has been suggested that "similarly situated taxpayers" may refer to taxpayers who are engaged in a particular activity. Democrats would not disagree with this as one interpretation of the language.

As I did last night, I would like to take an example because I believe this helps focus the discussion. Speaking in generalities can only get us so far, and, as I said, it is important that we provide some specific guidance for those who will be implementing this language.

Suppose that a proposal is raised to provide a tax credit for research expenses incurred by companies promoting conservative causes. I don't believe anyone would argue that this proposal should not be a subject to scrutiny under the line-item veto legislation. Everyone would agree that a tax benefit solely for companies that do research in an effort to promote a specific cause is a special interest tax break. And, as a special interest tax break, it ought to be subject to possible line-item veto.

But, what if someone were to say, "Compared to those taxpayers who promote conservative causes, there is no special treatment here." In other words, what if we define "engaged in a particular activity" as the identical activity for which the special tax break is given. Clearly, this leads to a ludicrous result, and clearly that is not what is intended.

Again, common sense dictates that the particular activity to which the measure should be compared is business research or some broader activity. When this is the comparison group, then we obtain the right result—that is, that the provision is subject to potential line-item veto.

Let me turn another point of clarification, relating to the application of the Dole substitute to direct spending measures. Again, it is important that we make these clarifications for those who will be charged with implementing this legislation.

Nowhere in the language of the Dole substitute does it say that application of the line-item veto will be restricted to increases in direct spending. Both decreases in spending and increases in spending, therefore, potentially will be subject to the veto pen.

The result is that the Dole language would treat direct spending differently from targeted tax benefits. A reduction in entitlement spending would be subject to potential line-item veto, whereas a tax increase clearly would not be subject to line-item veto.

There are the points of clarification I wished to make at this time for the RECORD. It is my hope and intention that these will provide adequate guidance to those in both Chambers who will face the important task of interpreting and implementing the line-item veto legislation we enact.

Mr. KEMPTHORNE. Mr. President, I rise today to offer my strong support for line-item veto legislation, and specifically the Dole substitute amendment before us today. I would like to thank the Majority Leader and my colleagues Senator MCCAIN, and Senator COATS for their leadership and hard work in drafting a compromise bill that has gained wide support in the Senate. I believe the Dole amendment is good legislation. I hope that my colleagues on the other side of the aisle will join me in supporting this important piece of legislation granting line-item veto authority for the President.

In light of our Nation's $4.8 trillion public debt, which is $18,500 for every American, I believe enacting line-item veto legislation would be an important step to reduce Federal deficit spending. Obviously, line-item veto legislation by itself would not eliminate our yearly budget deficits, but it would create a critical link in our efforts to control and effectively reduce the enormous public debt. I am committed to getting our Nation's fiscal problems under control and I believe line-item veto legislation would help accomplish this difficult, yet attainable, goal.

Whether the Senate approves enhanced rescission, expedited rescission, or separate enrollment, any of these approaches would strengthen the ability the President has to rescind Federal spending or targeted tax benefits.

The central message I hear every day from Idahoans is to reduce Federal spending, balance the budget and lower the national debt. But above all they want Congress to eliminate pork-barrel spending. American taxpayers are tired of watching the Federal Government waste their hard earned tax dollars on unnecessary projects which are not of a national concern.

Mr. President, I would like to share with you a sample of some of the comments I received from Idahoans during the 104th Congress in support of enacting line-item veto legislation:

> Recently the house passed a measure to allow the line-item veto for the President. This is something I feel we desperately need in order to eliminate much of the "pork" that is added to large bills as they proceed through the process. I realize that I may not understand all the implications this power might lend to the executive branch but I feel at least it is better than the uncontrolled behavior that is now practiced by members of the Congressional branch. If individual States need such pork, let that State pay for it. I respectfully request that you pass this measure—Joy C. Roberts, Eagle, Idaho

> I believe this measure would discourage the funding of unnecessary programs and reduce government waste—Marc Banner, Boise, Idaho

> Line item veto is mandatory to bring back responsible government—Richard Lewis, Pocatello, Idaho

> This would help eliminate many partisan and/or irresponsible clauses passing through on the shirt tails of otherwise responsible legislat[ion]—Bill Trammel, Boise, Idaho

Under the Dole amendment, once an appropriation bill, authorizing bill, or

any resolution providing direct spending or targeted tax benefits passes the Senate then each item in the bill or resolution will be enrolled as a separate bill or joint resolution. The respective committees will report the bills with great detail so that each item may be separately enrolled. With the President's existing Constitution authority to veto bills, he will be able to review each item in detail and veto any provision separately enrolled.

Opponents of line-item veto legislation believe Congress would unnecessarily grant the President too much power, therefore upsetting the legislative and executive branches' balance of power. Moreover, opponents fear the President will use this line-item veto power to coerce Members of Congress. There is concern the President would be inclined to target funding of particular interest to Members' States as pork-barrel spending and threaten to line-item veto it to gain support for an administration objective. I believe line-item veto legislation will hold the President more accountable to Federal spending programs. The President and Congress will be forced to work together on spending programs.

Enacting line-item veto authority for the President is a top priority of the Republican leadership in the 104th Congress. Forty three States provide their Governors with some type of line-item veto legislation because it works. Idaho is one of these States.

Last January, during President Clinton's State of the Union Address he urged Congress to send him line-item veto legislation for his approval. Various line-item veto bills have been introduced and voted on in previous Congresses, at times when we had a President who wanted line-item veto authority, but a Congress not willing to give him the power. Today, however, we have a President who wants a line-item veto authority, constituents who demand it, and a Congress willing to give him the power. It is time for the Senate to do the responsible thing and pass the line-item veto.

Mr. ABRAHAM. Mr. President, I rise in support of the Dole substitute to the McCain-Coats Legislative Line-Item Veto Act of 1995.

I do not feel it necessary to revisit, here, the stores of dubious spending programs, whether on cranberries, bees, helium, or whatever, that unfortunately find their way into legislation and our bloated Federal budget.

I will, however, repeat what we all know, or at least should know: that we desperately need to regain control over our spending so that we can stop adding to our country's huge and exploding deficit. We must use every means at our disposal to eliminate unnecessary spending, including Presidential vetoes of particular spending programs that have been inserted into larger bills.

Those who argue that this bill improperly hands excessive power to the President ignore the history of Congress' budgeting process or fail to come to grips with its effects on our spending habits.

During the early years of our Republic Congress' appropriations comprised all of four or five pages. Back in the 1940's and 1950's, however, Congress developed the habit of putting riders, in reality spending programs irrelevant to the underlying legislation, on our bills. It was the funding for these riders that Presidents impounded, and it was in 1974, after Congress took away the President's impoundment power, that the legislature began earmarking all funding.

At that point Congress began to pass appropriations bills, laws, and enabling legislation of hundreds of pages in length.

The word ''omnibus'' no longer finds its way into legislation, but many of the so-called laws Congress passes actually are bundles of laws and appropriations put together for reasons of political convenience.

During most of the 19th and part of the 20th century, Congress passed shorter, more precise, and concise laws that only aimed to accomplish particular goals—setting or better yet eliminating a particular tariff, paying an individual for a particular service, and so on. We also put fewer burdens on our people in the form of taxes and regulations.

It is simply unrealistic to pretend that the legislation that generally comes out of Congress today represents unitary legislation.

In some ways, perhaps, our society requires more complex legislation—to, for example, set forth a complete program that has a number of distinct but mutually dependent elements. But too many of us have come to use complex legislation as a form of cover under which we can hide pork for our constituents. This is wrong, and it should be stopped.

The line-item veto essentially returns to the President a power he already has—that of reviewing legislation and vetoing it if he finds it improper. Discrete programs and appropriations still would be sent to the President as before, only now the President would be able to approve or disapprove of each of them, even when bundled together into a large, more disparate bill.

The line-item veto would provide us with an important tool in combating hidden pork and yet maintain an appropriate balance of power—with a legislative process under which the President may review and even veto any piece of discrete congressional action, and under which we in Congress may, if two-thirds of us agree that we should, override that veto.

Far from taking away our proper legislative function, this line-item veto ensures that we will scrutinize every piece of legislation, every program and spending proposal, to see to it that it is in the interest of the American people. We must restore discipline to our budgeting process and this regulation requires that we examine every proposal that affects the budget to make sure that it is both worth the cost and necessary.

With a line-item veto in effect Congress no longer will reach compromises by giving everyone the spending programs they want because a third party, the President, will hold an effective veto power over each element of that compromise. Instead of being forced to choose between accepting a good program that has been stuffed with pork or vetoing the entire bill, the President now will be able to slice away the pork, leaving the program itself intact.

In this way the President, once again, can serve as a check on overspending by Congress, without taking away our constitutional right and duty to consider and enact legislation in the interest of the American people.

I yield the floor.

Mr. CHAFEE. Mr. President, in September, the Congress will vote to increase the U.S. Government's borrowing authority to over $5 trillion—a regrettable but necessary step to keep our Government afloat. The tragic truth is, uncontrolled Federal spending has effectively saddled every man, woman and child in this country with $18,000 worth of debt. And, deficits continue to pile up at a rate of more than $200 billion per year with no end in sight.

In short, Congress' appetite for spending more than the Treasury takes in, has created a deficit situation that is snowballing out of control. Today, the interest charge alone on our national debt consumes 15 percent of our annual Federal budget. In my view, the deficit crisis is our most significant, and distressing national problem. Absent swift action, our children will inherit a legacy of debt that will reduce their standard of living, and eclipse the American dream.

While the line item veto on its own will not substantially reduce these deficits, it is an important check on special interest spending that today finds its way into dozens of bills signed into law each year. The substitute amendment we are debating today, which has been sponsored by the distinguished Majority Leader, Senator DOLE, would give the President badly needed authority to veto special interest spending provisions and tax expenditures buried in important legislation, without having to veto the overall measure.

In effect, rather than receiving a single bill, the President would receive a series of mini-bills contained within an overall bill. He could then surgically remove or veto narrow special interest provisions, and sign the remainder into law. The Dole substitute would require that all new direct spending provisions, appropriations measures and targeted tax expenditures contained within each bill be enrolled as separate items to give the President this surgical, or line-item veto authority. The Congress

could override vetoes with which it disagreed by a two-thirds vote of both houses.

The Dole amendment would give the President the authority to excise pork barrel projects and tax breaks intended to benefit narrow constituencies. Importantly, it would also enable the President to veto new direct spending programs which programs operate without the need for annual appropriations.

During my tenure as Governor of Rhode Island from 1962 to 1968, there were many occasions when I wished I'd had a line-item veto. The situation I faced then was identical to the problem the President confronts today at the national level. Narrow special interest provisions, which could not survive on their own merits, are inserted into critical legislation, leaving the President with a Hobson's choice: Veto urgently needed legislation, or swallow the offending provisions to advance the greater good. The line-item veto is the right prescription for this problem.

Many have expressed concern that giving the President this new authority would undermine the ''power of the purse'' delegated to the legislative branch under the Constitution. While this concern maybe overstated, there is no question——this is a bitter pill for the Congress to swallow. But it's a recognition that the legislative branch cannot put its fiscal house in order, and that additional checks are needed. Wisely, the Dole amendment includes a 4-year sunset provision, so that we are not committing ourselves to an irreversible course of action.

In closing, I want to commend the majority leader, Senator DOLE, as well as Senators MCCAIN and DOMENICI for working together to develop the Dole substitute to S. 4. I strongly support this amendment and hope that the Senate will adopt this measure with a substantial bipartisan vote.

Mr. DORGAN. Mr. President, I have long believed that giving the President the capability to exercise a line-item veto will be helpful in preventing some of the unsupportable spending projects that are put in appropriations bills without notice, public debate, or hearings.

I voted for the Daschle proposal for a line-item veto today, and I am also voting for the Dole proposal to give the President the line-item veto authority.

The Daschle proposal contains two provisions that were, in my opinion, preferable to the Dole proposal. The Daschle proposal had a broader provision on the line-item veto for tax items. Also, the Daschle proposal called for a majority override on the vetoed provision. The Dole proposal requires a two-thirds vote to override the line-item veto. Both of the provisions in the Daschle bill are preferable to me.

However, the Daschle bill did not receive sufficient votes for passage.

Therefore, I am voting for the Dole proposal. I want the Senate to pass a line-item veto bill this session of Congress, and this is a way to get that done.

The Dole proposal does contain a provision for the veto of certain tax provisions. I believe that is an improvement over previous versions.

Although the separate enrollment requirements of the Dole bill may be cumbersome, I have supported that approach in my cosponsorship of the Bradley bill in the last session of Congress. It is, if not the preferred approach, still a reasonable one.

I want to be clear that I don't think the line-item veto will have much affect on the size of the Federal deficit. But, in real ways, it will bring more discipline to congressional spending. And for that reason I believe it is good public policy.

The line-item veto is one part of a series of reforms that I believe are necessary to change the spending habits in Congress. That is the reason I voted yes on both the Daschle and the Dole proposals for a line-item veto.

AMENDMENT NO. 347, AS AMENDED

The PRESIDING OFFICER. Under previous order, amendment No. 347, as amended, is agreed to.

The amendment (No. 347), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. MCCAIN. Mr. President, as I understand the parliamentary situation, under the previous unanimous-consent agreement, Mr. BYRD is going to speak for up to 2 hours.

The PRESIDING OFFICER. Under the previous order, there will now be up to 2 hours of debate under the control of the senior Senator from West Virginia.

Mr. MCCAIN. Mr. President, I have discussed the unanimous-consent agreement with Senator BYRD and he has agreed to allow a new unanimous-consent agreement that would allow for 5 minutes for the Senator from Arizona, myself; followed by 5 minutes by the Senator from Indiana, Senator COATS; and, of course, whatever leader time he wishes to consume.

So I ask unanimous consent that, in addition to the 2 hours controlled by Senator BYRD, following the 2 hours controlled by Senator BYRD, there be 5 minutes for the Senator from Nebraska, 5 minutes for the Senator from Arizona, and 5 minutes for the Senator from Indiana.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I thank the Chair. Pending the presence of Senator BYRD, 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. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Mr. President, under the unanimous-consent agreement, I understand the Senator from Nebraska has been allotted 5 minutes. I would like to take that 5 minutes at this time.

The PRESIDING OFFICER. The Senator is recognized.

Mr. EXON. Mr. President, I will vote for final passage of the Dole line-item veto substitute. As my colleagues well know, I would have preferred another version of the legislation, namely S. 14, which I cosponsored with the distinguished Republican and Democratic leaders and the chairman of the Budget Committee.

However, S. 14 was not meant to be. We had a vote earlier today to substitute S. 14 for the so-called Dole compromise. Unfortunately, S. 14's supporters, of which I am one, did not carry the day.

All vote tallies aside, I still believe with all of my heart that S. 14 is a better bill. As one of its architects, I can say that it is a cleaner bill. It is constructed on sound footing. It is a simple bill without the unwieldy contraptions that complicate and weigh down the Dole substitute. It is a bill that can weather a constitutional challenge.

Yet, I tell my colleagues today that I will vote for the Dole substitute. I will vote for it as our only chance to win a line-item veto. I will vote for it as a last resort to cut pork-barrel spending.

Mr. President, I can support this bill because it is much improved over its original version. In spite of the haste and pressure to ram this legislation through this body, the Senate worked its will in a number of areas. Through the amendment process, we made this a better bill. We made it a bill that Senators from both sides of the aisle can support—albeit reluctantly.

I am pleased to see that many of the concepts that I proposed in S.14 have found their way into the Dole substitute. The bill now contains a sunset provision. It now addresses the critical areas of targeted tax benefits and entitlements.

However, we are not yet in the winner's circle. We will have enormous hurdles to clear in conference. I hope they are not insurmountable. I hope that reason and bipartisanship can conspire to produce a conference report that the Senate can support, and as a Senate conferee one that I can support when we take the final action on this proposition when the conference report is returned to the Senate.

In conclusion, this is not an enthusiastic vote I cast today. I have listened with great interest to my colleagues who oppose this bill. I share many of their concerns. I share many of their suspicions.

I am still leery of the cumbersome separate enrollment process that was

tossed into the pot at the last minute. I wish we could have had a thorough hearing on it. Separate enrollment could turn into the dreaded hydra of which Senator BYRD warns. There are also serious constitutional considerations which I believe could haunt us for years to come. Fortunately, we now have a sunset provision that will allow Congress to revisit this legislation in 5 years.

But, Mr. President, I will vote for this bill because it's our only hope for a line-item veto. There is a certain irony not lost on this Senator. Just as the President often has to accept the bad with the good in a critical spending bill, so must I accept the bad with the good in this bill.

Mr. President, I wish we did not need a line-item veto at all. I wish Congress had the raw courage to make the sound fiscal decisions that would make this bill unnecessary. But a rising deficit and a nearly $5 trillion debt underscores the necessity of this legislation.

No, this bill will not balance the budget. No, this bill will not eradicate the national debt. No, this bill will not solve all of our problems with a wave of the hand. No, this legislation is not perfect, but it is one important step to blot out the red ink. It is one important step to put an end to out-of-control spending that is bleeding future generations dry. It is one important step to change the Nation's wasteful spending habits. And that is how we will solve our Nation's fiscal ills—one step at a time. I ask my colleagues to join with me today and take this first crucial step.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia now controls 2 hours.

Mr. BYRD. Mr. President, I will be happy to yield some time, if Senators wish. I ask the distinguished Senator from Michigan [Mr. LEVIN] how much he needs?

I yield 5 minutes to the distinguished Senator.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I thank the Chair. I thank the Senator from West Virginia.

Mr. President, I think it is appropriate for the President to be able to single out spending items that he believes to be wasteful, and to require a separate congressional vote on those items. For that reason, I was supportive of a bill similar to that originally introduced by Senators DOMENICI and EXON. That is why I also voted for the bill that was introduced by the Democratic leader. However, I cannot vote for the bill before us for three reasons.

First, I believe the bill is unconstitutional. The Constitution specifies the mechanism by which laws are made. This bill establishes a different mechanism. We cannot do that. We cannot amend the Constitution by legislation.

Second, the bill would cut up legislation into pieces which standing alone are bits and pieces.

In a statement earlier this week I went through a sample piece of legislation that the Senator from Indiana had put together as a test run of how the bill would work, and the results speak for themselves. The bits and pieces that result would be standing alone, as they are left to do, would be incomprehensible and would bear no relationship to the bill that was passed by the Congress.

Finally, Mr. President, the bill does not achieve its intended purpose of enabling the President to cut spending by vetoing earmarks. I do not think most of our colleagues even realize that. But under the Dole substitute, unlike the original S. 4 or S. 14, if the President vetoes an earmark, he will not save the taxpayers a dime. He still has the appropriations to spend. He will just spend it for something other than the purpose specified by Congress.

The Constitution establishes the method by which laws are enacted and repealed. It specifies how a bill becomes law. It says that when a bill is passed by both Houses of Congress, it must go to the President. It does not have an exception. The bill before us would attempt to carve out an exception. The House bill, which is passed by both Houses, would not under this substitute go to the President. Instead, it gets carved up into bits and pieces, and the bits and pieces go to the President. We cannot amend the bits and pieces. We cannot refer the bits and pieces back to committee. The bits and pieces go to the President as if they were bills passed by the Congress, although the Congress never legislated on those bits and pieces the way we legislate on any bill by having it introduced, having it go through a committee process, a hearing process, an amendment process, a motion process, a conference process. The bill which we passed does not go to the President. The bills which he is given to sign have never been passed by us. That violates the Constitution. We cannot do that.

What is ironic here also is if the President wants to sign a bill in its entirety, an appropriations bill, he cannot do so. He does not have a bill to sign. The bill disappeared. It was splintered into shards. Under this process, if the President wants to sign the bill, an appropriations bill which has been splintered into 500 parts, he cannot sign the bill. He has to sign 500 pieces of the bill even if he wants to sign the whole appropriations. If he wants to veto the entire appropriations bill, he cannot veto the entire appropriations bill. The President has vetoed appropriations bills in their entirety. Presidents under this approach cannot, but would have to veto each of the shards, each of the bits and pieces that were submitted to the President.

I wonder if my time is up? I wonder if the Senator from West Virginia would yield me 1 additional minute?

Mr. BYRD. I yield 2 additional minutes.

Mr. LEVIN. Mr. President, Laurence Tribe, who is a constitutional expert, has been quoted on this floor. I was somewhat surprised by his most recent statement about this.

The Assistant Attorney General for interpreting the Constitution under the Bush administration concluded—his name was Timothy Flannigan—concluded that you cannot have separate enrollment. This was the Bush Assistant Attorney General. In his view, the Constitution ''requires that the bill be presented to the President as passed by the Congress.''

Separate enrollment is unconstitutional.

I believe Mr. Dellinger, President Clinton's Assistant Attorney General, in his statement in his most recent letter says that the best reading of the Constitution is that separate enrollment does not work. But what is interesting was Laurence Tribe's earlier opinion which I want to just briefly read, because, while Laurence Tribe is, indeed, a constitutional expert, a few years before his current opinion, he wrote a book. In that book called ''American Constitutional Law,'' this is what Professor Tribe wrote.

> The core issue is whether Congress may statutorily expand the meaning of the term ''Bill''—which denotes a singular piece of legislation in the form in which it was approved by Congress—by defining as a separate ''Bill'' each and every item, paragraph, or section contained within a single bill that has passed both Houses as an entirety. The method would be to direct the enrolling clerk of the House where the bill originates to disassemble a bill and enrol each numbered section and unnumbered paragraph as a separate bill or joint resolution for presentation to the President in compliance with clauses 2 and 3 of section 7 of article I. But it is far from certain whether the myriad bills thus presented to the President could be said to have been considered, voted on, and passed by the two Houses in accord with the Constitution's ''single, finely wrought and exhaustively considered procedure.'' The choice of whether to adopt and submit one appropriations bill or a hundred, and the decision as to the form the bill or bills should take, might well be deemed the ''kind of decision[s] that can be implemented only in accordance with the procedures set out in article I.'' And delegation to an enrolling clerk in either house of the power to make decisions which would otherwise be part and parcel of the political, deliberative, and legislative process is constitutionally suspect.

Mr. President, I think it is appropriate for the President to be able to single out spending items that he believes to be wasteful, and to require a separate congressional vote on those items. For that reason, I was prepared to vote in favor of a bill similar to that originally introduced by Senators DOMENICI and EXON. That is also why I voted for the substitute proposed by the Democratic leader.

However, I cannot vote for the bill before us for three reasons.

First, the bill is unconstitutional. The Constitution specifies the mechanism by which laws are made; this bill

purports to establish a different mechanism. We can not do that. We can not amend the Constitution by legislation.

Second, the bill would cut up legislation and cut it in pieces which standing alone are gibberish. In a statement earlier this week, I went through a sample piece of legislation that the Senator from Indiana had put together as a test run of how this bill would work. I think the results speak for themselves. The hundreds of bits and pieces of a bill that result would be incomprehensible and would bear no relationship to the one bill Congress actually passed.

Finally, the bill does not achieve its intended purpose of enabling the President to cut spending by vetoing earmarks. I do not think most of my colleagues realize that. Under the Dole substitute—unlike the original S. 4 or S. 14—if the President vetoes an earmark, he will not save the taxpayers a dime. He will still spend the money; he will just spend it for something other than the purpose specified by Congress.

So while I support the version of a line item that comports with the requirements of the Constitution and the system of checks and balances established by our Founding Fathers, the bill before us fails that fundamental test.

The Constitution establishes the method by which laws are enacted and repealed. It specifies that a bill becomes law when it is passed by both Houses of Congress and signed by the President, or, if the bill is vetoed by the President, when that veto is overridden by a two-thirds vote in each House. This bill purports to create a third way by which laws can be made, by giving the Clerk of the House of Representatives and the Secretary of the Senate the power to take a bill passsed by both Houses of Congress and disaggregate it.

Despite the efforts of the sponsors, that is simply not consistent with what the Constitution requires. Article I, section 7 of the Constitution states that ''Every bill which shall have passed the House of Representatives and the Senate'' shall be presented to the President for signature. It does not say that some bills shall be presented to the President for signature.

So here we have an appropriations bill that has passed both Houses of Congress. Under the substitute before us, it does not go to the President. It goes to the Clerk of the House and the Secretary of the Senate instead, to tear it up into different bills. That is not the procedures established in the Constitution. The Constitution says that every bill passed by Congress shall be sent to the President for signature or veto. It does not give us leeway to pass a bill and then hide it and try to pass something else.

The President, if he wanted to sign that appropriations bill in its entirety, could not do so. To achieve the same result, he would have to sign hundreds of different bills. If we wanted to veto it in its entirety, he could not do so. To achieve the same result, he would have to veto hundreds of different bills.

But suppose the President went ahead and vetoed each of the hundreds of little bills. The Constitution says that he shall return each bill, with his objections, to the House in which it originated, which ''shall proceed to reconsideration.'' The Constitution then provides that we must have a recorded override vote on each such bill. The Constitution states:

> [I]n all such Cases, the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively.

So we cannot have a voice vote on veto overrides, and we cannot do it en bloc. The Constitution says that we shall act on each bill vetoed by the President, and we shall do it by recorded vote. So if the President vetoes 500 little bills, we have to have 500 recorded votes.

Simply put, Mr. President, the procedure that this bill would put us through is a charade. It is a fiction, designed to pretend that we have passed bills that we did not write, did not introduce, did not report out of committee, did not debate on the floor, could not amend, and did not have any legitimate opportunity to vote on.

Here is how the procedure would work. We would go through the entire legislative process of introducing legislation, reporting it out of committee, amending it, voting it through both Houses, going through a conference, approving a final product—a single appropriation bill.

Further, this bill passed both Houses in identical form. Under the Constitution, it is supposed to be sent to the President. But that is not what we are going to do.

Instead, we will give the bill to the Clerk of the House or the Secretary of the Senate, and tell them to disaggregate it into hundreds of different bills. The Clerk and the Secretary, who are not elected at all, but are appointed officials of the majority party in each House, would be directed to take the careful work of the Congress—a bill which, under the Constitution is supposed to be sent to the President—and tear it up into shreds.

This process of splintering a bill would involve a substantial exercise of discretion. The enrolling clerks would have to determine which provisions are tax expenditures. They would have to decide if these provisions affect a limited group of taxpayers differently from other, similarly situated people? What, exactly is a ''limited group'' of taxpayers? Who is ''similarly situated''? How do we expect the enrolling clerks to know?

The enrolling clerks would have to determine which pieces of a paragraph, or a single sentence, contain allocations or suballocations of appropriations. They would have to decide where in a sentence to stop one bill, and start another. They would have to decide whether a provision is an allocation of funds creating a positive obligation to expend funds, or simply a limitation on funds.

These are all legislative tasks, but they would be performed by an enrolling clerk, not by the Congress as the Constitution provides. We are supposed to make these legislative decisions, not the enrolling clerks.

When the clerks have done their work, these shreds of the bill we passed would then be brought back to the House or Senate for what is called a vote en bloc. This vote is a charade. A Member who objected to one or more of the new bills would not have an opportunity to vote against them. No Member would have any opportunity to offer a motion to recommit. No Member would have any opportunity to offer an amendment. No Member would have any opportunity to offer an objection. No Member would even have the opportunity to correct an error in the shredding process.

The only recourse that we would have, if we had a problem with any of the bills, for any reason, would be to vote against the entire package of disaggregated bills. And what would happen if we were to reject this product of the enrolling clerks? We would not have any opportunity to vote on a corrected product. We would have to start the entire legislative process over.

The absence of any opportunity at all for Members to correct errors made in the process of disaggregation gives the Secretary and the Clerk extraordinary powers and raises the potential for real mischief by appointed officials.

This is not the legislative process established in the Constitution. It is a charade, designed to create the appearance that we have complied with the constitutional requirements. That is not good enough. The Constitution says that a bill passed by both Houses of Congress shall be sent to the President for signature. There are no exceptions for momentarily convenient ends. This bill does not comply with that requirement.

The Supreme Court said in the Chadha that we cannot amend the Constitution by legislation. The Court explained:

> The explicit prescription for legislation action contained in Article I cannot be amended by legislation. . . . The legislative steps outlined in Article I are not empty formalities; they were designed to assure that both Houses of Congress and the President participate in the exercise of lawmaking authority.

The Court explained its decision as follows:

> The bicameral requirement, the Presentment Clauses, the President's veto, and Congress' power to override a veto were intended to erect enduring checks on each Branch and to protect the people from the improvident exercise of power by mandating certain prescribed steps. To preserve those checks, and maintain the separation of powers, the carefully defined limits on the power of each Branch must not be eroded. . . . With all the

obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution.

Mr. President, I intend to vote against the measure before us because it is unconstitutional.

Second, I oppose the bill, because it would turn carefully considered pieces of legislation into gibberish. Earlier this week, I showed my colleague a document prepared for the Senate enrolling clerk, at the request of the Senator from Indiana, as a test run of how this bill would work in practice.

What the enrolling clerk put together was one appropriations bill, cut up into separate pieces as required by the measure before us. He produced a stack of paper 3 inches thick, containing 582 separate bills, each of which would be separately enrolled, signed by the Speaker of the House and the President of the Senate, and sent to the President for signature.

As I pointed out at that time, many of these so-called bills are, standing by themselves, simply gibberish. For example, I read one, which states, in its entirety:

of which $200,000 shall be available pursuant to subtitle B of title I of said Act, and

That is it. That's the entire text of the bill, which we are going to send to the President for signature. Who is authorized to spend this money? What are they authorized to spend it for? What account does it come from? $200,000 out of what appropriation? ''Subititle B of title I'' of what act? It makes no sense. And there are hundreds more bills that are equally incomprehensible. This is not the enrolling clerk's fault—he just did what the bill directed him to do.

This is not supposed to be a jigsaw puzzle, Mr. President. It is legislation. Each of these sentences I read the other day is an independent, free-standing bill, to be sent to the President for signature. After they are pulled out of a bill and separately enrolled, not one of them means a thing. The measure before us would result in a product that simply makes no sense.

Finally, Mr. President, I oppose this bill, because it would give the President extraordinary powers, without achieving its stated purpose of allowing the President to cut spending by vetoing earmarks.

I do note that the proposal before us has been improved by the amendment that I offered with the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Nebraska [Mr. EXON]. Under the substitute originally introduced by the majority leader, the President could have used his line item veto power to increase spending or to veto restrictions on spending.

Under the substitute, as originally proposed, the President could have used his line-item veto power to reject rescissions and cancellations of spending. He could have used this power to veto limitations and conditions placed on an appropriation, without vetoing the appropriations itself. In other words, he could veto the limitations, and spend all of the money anyway. The President could have rejected provisions in appropriations bills that attempt to reduce Government waste. He could have vetoed limitations on spending for consultants, for entertainment of Government officials, for Government travel. That means he could have spent more money for these purposes.

Fortunately, we have corrected part of the problem. Under the Levin-Murkowski-Exon amendment, items of the type I have just described would not be separately enrolled. The President would no longer be able to veto rescissions or cancellations of funds. He would no longer be able to veto restrictions on appropriations and still spend the money. He could no longer spend money for purposes inconsistent with the specific intent of the Congress.

That was an important amendment, but my colleagues should be under no illusion that we have eliminated the problems with this bill. We have done the best that we could with a flawed approach, but the approach remains seriously flawed.

Despite the adoption of the Levin-Murkowski-Exon amendment, the substitute before us gives the President broad powers to substitute his personal priorities for the budgetary priorities voted by the Congress. If, for example, we were to require the President to spend a specified amount appropriated funds for the Strategic Defense Initiative, or a particular approach to SDI, the President could veto that requirement and spend the money based on his own personal priorities.

Moreover, the substitute before us would cede this power to the President without giving him the authority to save the taxpayers money by eliminating an earmark. Despite the extraordinary powers given to the President by this bill, when it comes to cutting spending, it is weaker than either of the two bills reported out of the Budget and Governmental Affairs Committees.

How can that be? How can a bill that gives so much power to the President give him so little power to reduce spending?

First, this substitute gives the President the power only to veto, not to reduce, an appropriation. So while the President is given great power to veto an earmark within an appropriation, he would not thereby reduce the appropriation itself, unless he were prepared to veto the entire appropriation.

Here is where we need to understand what an earmark is. An earmark is not an appropriation. It does not give the President any additional power to spend money; it simply says that of the money already appropriated, a certain amount must be spent for a specified purpose. This is what we call an allocation or suballocation of an appropriation. Here's how it works.

We start with an appropriation. For example, the following: ''The following funds are appropriated: For the purpose of program X, $600 million.''

We then want to specify more precisely how that money will be spent, so we have an allocation. For example: ''of which $20 million shall be available for purpose A; $12 million shall be available for purpose B; $15 million shall be available for purpose C; etc.''

That is an allocation of an appropriation. If one of these allocations is further divided into pieces, that would be a suballocation.

Now, let us look at the difference between the two bills reported out of Committee and the Dole substitute. The two reported bills both took the rescission approach. They authorized the President, subject to certain limitations, to rescind any amount of budget authority provided in an appropriation. That means that the President could veto all or part of an appropriation.

In the case of the example I just gave, if the President decides that the $20 million for project A was a wasteful earmark, he could rescind the budget authority for that project. Under either of the two rescission bills, the President would, in effect, put a blue pencil through that $20 million. At the same time, and this is the important part, the President would also reduce the overall $600 million appropriated for purpose X by the same $20 million.

The appropriation would be reduced to $580 million, and we would have a real cut in spending. In fact, both bills contain a so-called lock-box amendment, under which the money rescinded by the President could not be spent for any other purpose. That means we would really reduce Government spending.

But now let us look at what the Dole substitute does. Under this substitute, the $600 million appropriation and each of the allocations of that appropriation are enrolled as separate bills. If the President decides that the $20 million for project A is wasteful, he can veto the bill containing that allocation.

But what happens to the $600 million appropriation if he vetoes the allocation? That appropriation is in a separate bill. He can not reduce it by $20 million as he could under the bills reported from Committee; he must either sign it or veto the whole thing. If he vetoes it, he is rejecting not only the wasteful earmark, but the entire program to which it is attached. If he signs it, however, he will not have saved a dime by vetoing the earmark.

So under substitute amendment before us, the President can veto an earmark, but it will not do the taxpayers any good, because that will not reduce the appropriation. We will still have the same amount of spending that we would have had without the veto. There is no money to put into a lockbox, because spending has not been reduced by a dime. The only difference is that the President will spend the

money on his own pet project, instead of the project specified by Congress.

Let us look at a classic earmark. We could have an appropriation for post office construction, with allocations for specific post offices to be built in specific locations. That is what we are after in this bill, and I do not have a great problem with giving the President the power to veto those earmarks. But I will say, Mr. President, that I would prefer a rescission bill, which gives the money back to the taxpayers, over this bill, which leaves the appropriation intact for the President to spend on post offices of his own choosing.

Mr. President, some Senators appear to be under the misapprehension that the substitute before us would enable to President to cut spending by vetoing an earmark. In fact, it does not. The original version of S. 4 would have enabled the President to do that. The Domenici bill would enable the President to do that. The Daschle substitute would enable the President to do that. But the Dole substitute does not. Under the Dole substitute, if the President vetos an earmark—or an allocation, as it is called in the bill—he can still spend the money, unless he vetoes the entire appropriation, which may cover many worthwhile projects in addition to the earmark.

Some will say that, even so, we would be better off without the earmark.

But not all allocations and suballocations are ''earmarks''. Many are basic statements of congressional priorities, and many place important conditions, limitations, and restrictions on presidential spending.

Let us look at some real world appropriations, with their allocations and suballocations. I gave a few examples yesterday, all from last year's appropriations bill for Commerce, Justice and State. Let me go through them again, to explain what the President can do, and what happens to the money.

One example I gave was the so-called bill which would state: ''of which $200,000 shall be available pursuant to subtitle B Title I of such Act''. Let us set aside the fact that, standing by itself, this is gibberish, and assume that the appropriating committees will figure out a way to write this so that it makes sense. What does it do?

Here is the answer. Last year's bill appropriated $62 million for State and Local Narcotics Control and Justice Assistance under the Omnibus Crime Control and Safe Streets Act of 1968. The largest allocation out of that appropriation was $50 million for state and local law enforcement programs. The $200,000 was an allocation for enforcement of anti-car theft provisions for preventing motor vehicle theft.

The $50 million allocated for State and local law enforcement programs and the $200,000 for enforcement of anti-car theft provisions was a statement of congressional priorities. We determined that the anti-car theft program was a relatively minor priority, compared to the assistance provided to state and local law enforcement programs. That is what we do in appropriations bills. We establish priorities.

Under the bills reported out of committee, the President could rescind the $200,000 allocation and save that money for the taxpayers. But he can't do that under the Dole substitute.

Under the bills reported out of committee, the President could rescind the $200,000 allocation and save that money for the taxpayers. But he can't do that under the Dole substitute.

Under the substitute, the President could veto the $50 million allocation, the $200,000 allocation, or both, but that would have no effect on the overall appropriation of $62 million. The President would still be required to spend that money; he could simply substitute his own priorities for those established by Congress. Perhaps he thinks the car theft program is more important than local law enforcement; he could reverse the allocations. But he would not save any money without vetoing the full appropriation.

These priorities are no small matter. In the last Congress for example, we spent weeks fighting over the relative priority to be given in the crime bill to hiring additional cops, building additional prisons, and establishing crime prevention programs. We will undoubtedly refight some of those battles in this Congress. But unless we are very, very careful about the way we write our appropriations bills, the President could use the veto power provided in this legislation to reverse our priorities. Moreover, he could do it without saving the taxpayers a dime.

In short, Mr. President, the substitute before us is likely to do little good, and a lot of harm. In particular, the power given to the President to veto allocations and suballocations will enable him to substitute his own personal priorities for those established in bills passed by Congress, but will not save the taxpayers a dime, because unless the underlying appropriation is vetoed, the money will still be spent.

This provision is well-intended. The sponsors of the substitute undoubtedly think that they are striking out at earmarks. But they have missed the mark.

Mr. President, I will vote against this bill, because it is unconstitutional. I will vote against it, because it would turn bills carefully considered and passed by the Congress into gibberish. And I will vote it because for all this trouble, we would not even succeed in giving the President the power intended, to cut spending by eliminating earmarked funds. I urge my colleagues to join me in opposing this bill.

I thank the Senator from West Virginia, not just for yielding time but for his stalwart defense of the Constitution. The spirit of Henry Clay is on this floor. I thank the Senator from West Virginia for the kind of defense of the Constitution which Henry Clay put up when he was here.

Mr. BYRD. I thank the distinguished Senator from Michigan for his most generous and charitable words. I deeply appreciate them. I am flattered by them.

The Senator from Rhode Island [Mr. PELL], did he wish time?

Mr. PELL. Three minutes.

Mr. BYRD. I yield 3 minutes to Mr. PELL.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I find myself in opposition to the line item-veto legislation before us, both on philosophical as well as practical grounds.

Philosophically, I simply believe that Congress should be extremely chary in yielding its power of the purse to the executive branch. I hold this view on the basis of my Senate service under eight Presidents of both parties during my 34 years in the Senate, and notwithstanding the cordial relationships I have had with all of them.

The fact is that the executive branch, under our Constitution, quite properly is a separate power center with its own agenda and its own priorities. Inevitably, it will seek and use any additional power to achieve its objectives. And the pending grant of veto power over specific items, I fear, will surely give even the most benign and well motivated Chief Executive a new means for exercising undue influence and coercion over individual members of the legislative branch.

So my preference would be to simply retain the present system of Presidential recommendation of rescissions. I fully recognize that under that system our appropriations bills do sometimes cater to narrow special interests. It was for that reason that I favored the substitute offered by the minority leader to require congressional action, by majority vote, on proposed rescissions. It is unfortunate that the majority saw fit to withdraw its support for the earlier version of this approach, as originally proposed by Senator DOMENICI.

It is even more regrettable that the only viable compromise that could be devised involves the dismemberment of all appropriations bills into hundreds of separate bills. Quite apart from the constitutional questions which have been raised with respect to the form of presentation of bills, the compromise is mind boggling in its complexity.

Separate enrollment, it seems to me, is so cumbersome and unwieldy as to invite ridicule on this body for even considering it. More to the point, it invites bureaucratic confusion or at worst tampering with the legislative process. It is the kind of jerry-built solution which seems almost certain to spawn more problems than it was designed to fix. We should reject it, or failing that, hope that the conferees in their wisdom will set it aside.

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Maryland [Mr. SARBANES], 5 minutes.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I thank the very distinguished and able Senator from West Virginia for yielding me time.

I wish to join my colleague from Michigan in the comments he made a few moments ago in expressing my deepest appreciation to the Senator from West Virginia for the very strong fight he has been making in the Chamber on this issue and on other issues which touch the Constitution of the United States. He has been a true champion of our Constitution and the Nation is in his debt.

I am deeply troubled that this body appears to be into the symbolism but not the reality of addressing important national problems. There is a dedicated craftsmanship in dealing with problems of public policy which members of a legislative body are supposed to bring to the task. Anyone can stand up and thump their chest and holler there is a problem and we need to have a response.

The real question is will the response be a sensible one? Will it in fact, in real practical terms, improve the situation? Too few want to face those questions and deal with them in a tough-minded way. Witness the proposal before us. The Congress is going to send thousands of little ''billettes'' down to the President to sign or veto. As the able Senator from Michigan pointed out, there are manifestly serious constitutional questions about this approach.

There was a path the Senate could have followed, pursuant to the concept of expedited rescission, which I think would have commanded very broad support in this body. An approach which would have gotten at some of the spending problems people have criticized without bringing about a radical and fundamental shift in the allocation of powers between the executive and the legislative branches.

I said earlier on in the debate that it is no great trick to have a strong executive. If you go through history, many countries have had strong executives. In fact, when it is carried to extreme, we call them dictatorships. The hallmark of a free society is to be able to have a legislative branch and a judicial branch in addition to an executive branch and for those two branches to have independence of judgment and real decisionmaking power, with the ability to check and balance executive authority.

I can understand executives wanting to maximize their authority, but I have difficulty understanding legislators who in a blind way, are giving up a significant part of their role in the operation of the political system.

I do not say that from the point of view that they should guard their own personal power and authority but from the point of view of guarding their role under the Constitution as representatives of the people. The Founding Fathers devised a constitutional system which has been the marvel of the world. They established a National Government with independent branches that check and balance one another; to have not only the executive with power and authority but also to have a legislative branch with power and authority.

The thing we must be careful about as we consider these various line-item veto proposals is not to erode the balance, the basic balance and constitutional arrangement that has served the Republic well for over two centuries.

The Congress passed the Budget Impoundment and Control Act in the mid 1970's, to address this balance between the executive and the legislative branches which provided a rescission process. It is possible to do further refinements with respect to the rescission arrangements that currently exist in the law and it is down that path I believe we should be proceeding.

The current approach has been criticized. It is said the President makes rescissions, sends them to the Congress, the Congress simply ignores them.

A proposal was offered by the minority leader which would have addressed this problem by requiring the Congress to act upon rescissions sent to it by the President. The Congress would not simply be able to ignore it. The President would be able to focus the spotlight on the issue and require the Congress to act on it. The expedited rescission proposal provided that if a majority in both Houses did not agree that the item should be rescinded then it would not be rescinded. That seemed to me to be a sensible way of trying to address some of the problems that have been raised without fundamentally altering our constitutional arrangements.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SARBANES. Could the Senator yield me just 2 more minutes?

Mr. BYRD. Yes. I yield the Senator 2 additional minutes.

Mr. SARBANES. I thank the Senator.

I just want to touch finally on a point made immediately preceding me by the distinguished Senator from Rhode Island. Namely, that the proposal before us places enormous power in the hands of the Executive to bring pressure on the legislative branch. What the executive branch can do under this proposal is link items in an appropriations bill with totally unrelated issues on which a Member of the legislative branch may be challenging the Executive.

For example, the Executive may have a nomination it is trying to move through the Senate. A Senator opposes that nomination. The Executive can pick out of an appropriations bill an item of critical importance to the Senator's home State, an item which everyone would concede is meritorious, but yet the Executive would be able to use his veto to negate that item, not on the merits of the item itself, but because the executive branch would relate it to a totally separate item in which they are being opposed by the Member in the legislature.

Think very carefully about that. I believe it will happen. In the hands of a vindictive President, it could be absolutely brutal.

But I think the temptation for its use in this manner will be tempting to any Chief Executive who is concerned about moving some other matter through the legislative body and finds himself being thwarted or frustrated.

Finally, let me go back to the point with which I opened. My deepest concern is the manner in which we are trivializing very important issues. The Senator from West Virginia has rendered an extraordinary service to the people of the country by highlighting that. He has stood here on the floor and underscored that we are dealing with serious matters. This is serious business. Decisions are being made in the rush of the moment that may well alter in a fundamental way our basic constitutional arrangements. We ought to be very careful about doing that, Mr. President. I regard the measure before us as a giant step down that path and, therefore, I very strongly oppose it.

Mr. President, I yield the floor.

Mr. BYRD. Mr. President, I thank the very able and distinguished senior Senator from Maryland for his vision, his dedication to this Constitution of ours, his love for the Senate, and his patriotism which has stood the test many times on this floor in recent days and in months and years past. It has always been with great pride that I have listened to him and been thankful for someone of Paul SARBANES' stature and courage.

I know of others in this institution who treasure their membership in this body and who cherish the Constitution. I perhaps should not mention names because, inevitably, I would not think of all the names that should be mentioned at a time like this.

But I shall mention the name of the Senator from Michigan, Mr. LEVIN. He is a master craftsman when it comes to legislation. He is meticulous and careful and exact.

I have often thought that in that Convention which met from May 25 to September 17, 1787, he would have been an appropriate man to appoint to the Committee of Detail. He is so methodical, so very, very thoughtful in probing the depths of every word. He would have been well placed in that great gathering, because there are very few words in that Constitution that are without great purpose. Not many words were wasted.

I suppose that if I could flatter myself by thinking that I might find a few words in that Constitution that perhaps ought not to have been there—and I cannot say this with certitude, of

course—it would be those words in that veto clause, in the second part thereof, which refers to ''every order, resolution, or vote,'' in saying that they should be presented to the President for his consideration.

Of course, we do not send votes to the President. We do not enact orders of a nature to be approved or disapproved by a President. We do enact simple resolutions, concurrent resolutions, and joint resolutions, neither of the first two of which goes to the President.

But as to the words ''order'' and ''vote,'' I have never been able to understand why the Framers put those words in the Constitution. But they, too, were afraid that something would be sent to the President and called a bill which was, in reality, not a bill. Bills have to be presented to the President for his approval or rejection. And so the Framers took every precaution to make sure that anything that went to the President for his signature or for his veto would, indeed, be a bill or a joint resolution.

Mr. LEVIN. Will the Senator yield for a question?

Mr. BYRD. Yes.

Mr. LEVIN. First of all, for a thank you and to say how grateful I am for your comments, but also for a question.

First, on that clause that the Senator just made reference to, ''Order, Resolution, or Vote,'' I have not wondered as long or as hard as the Senator from West Virginia has about that, but I wondered a bit about it.

I am wondering whether or not that might have been intended precisely to avoid the Congress from failing to send to the President something to which the concurrence of both Houses was required but which they would put a different label on in order to avoid it going to the President; that they might call it an order or a vote instead of a resolution to avoid the clear intent of the Constitution that something to which the concurrence of both Houses may be necessary go to the President.

I wondered whether that might be the reason for those words so that the Congress could not put the label, some label other than resolution on something, and avoid a document which required concurrence of both Houses from going to the President.

But my question of the Senator from West Virginia is this: The Senator has focused a great deal of attention—needed attention—on section 7 of article I, which requires that ''Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President . . .'' It does not say ''some bills,'' it says ''Every Bill.''

The Senator has pointed out eloquently and persuasively that what is attempted here legislatively is that a bill which passes both Houses not go to the President and we cannot amend the Constitution by legislation.

There is another part of that section 7 which has had less attention, and I would like to ask the Senator from West Virginia a question about it.

That is, currently if the President decides to veto an appropriations bill, he can just simply veto the bill. But under this proposal, after the bill is divided into these bits and pieces, or ''billettes,'' as the Senator from West Virginia calls them, in order to veto an appropriations bill, the entire bill, the President would have to veto each of the bits and pieces of that bill.

Let us say that the appropriations bill is divided by an enrollment clerk, assuming this politically appointed enrollment clerk can figure out what represents a tax and a general tax and a tax which is limited to a group, and he can properly put the limitations to the right appropriation and do all these other things which are really legislative—these are not ministerial functions, these are critical policy decisions—but assuming you have an enrollment clerk who does all that and sends these 500 bits and pieces to the President and the President says, ''I want to veto this entire appropriations bill,'' it is my understanding that under the pending substitute, he would have to veto each of the 500 bits and pieces in order to get to the entire bill.

If that happened, if he wants to veto the entire bill, he would then return all the bits and pieces—all of them would come back to the Congress—and then, as I read article I, section 7, it says that in all cases of a veto, each bill vetoed—now we have 500 of them—''. . . the Votes of both Houses'' on the override ''shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House, respectively.''

So that as I read the Constitution, if the President decides to veto the entire bill, therefore he has to do all the bits and pieces. Each of the vetoed bills would have to come separately before the Congress for an override vote, and they could not be voice voted and they could not be voted en bloc.

Is that the Senator's reading of that language of the Constitution? It seems clear to me, but the Senator is the constitutional expert, I believe, around here, in my judgment, at least, and I am wondering whether he might indicate whether that is the way he also reads that provision.

Mr. BYRD. Mr. President, the Senator flatters me, but aside from that, he has posed a very significant question.

I think what it amounts to is, we are doing indirectly what we cannot do directly. And that is, that we are conveying a share of power over the purse to the Executive. We are purporting to send him a line-item veto, when, under the Constitution, the Senate and the House, in my judgment, cannot give away that power, cannot give to the President of the United States a line-item veto. Only the people can do that through an amendment to the Constitution.

The Framers gave to the President a qualified veto. They did not give to the President an absolute negative. He has to take it all or leave it all. But there are so many questions that are raised by this substitute. I wish we could have gone on with this debate for a few more days. Several flaws have already been brought to light during the limited debate that we have had on this measure, and only God knows what additional ones might have come to light upon further examination. The Senator raises a very important question.

Each of the little ''billettes'' would have to be signed or vetoed by the President or, if he did not sign them, and if Congress were in session, they would become law without his signature. But if the President vetoes one or several or all, there is no provision in this measure whereby a House, in which the bill first originated, has any authority to collect those vetoed bills and vote to override them en bloc. I raised that question in this Chamber yesterday.

In most cases, the House, being by custom the originator of appropriations bills, would be the first to decide and, in many cases, the only House to decide, because if the House chose not to attempt to override, the Senate would never have a voice and, to that extent, the Senate is being subordinated to the other body by this legislation.

Many of the ''billettes'' would, by virtue of their having been offered to the bill as amendments in the Senate, thereby have originated in the Senate and, under the Constitution, the measure which is vetoed is to be returned to the House in which it originated. Even though an amendment in the form of an enrolled bill may have been offered in the Senate by the Senator from Michigan, the Senator from Michigan may never see that measure again. The House will determine, because the overall bill originated in the House, whether or not there will be an attempt to override a veto.

In short, there is no provision for escaping the strictures of that constitutional provision that the Senator has mentioned. The bill goes back to the originating body and that House then votes to pass it over the President's veto, or it fails to do so. It cannot put two of those ''billettes'' together and vote en bloc to override the presidential vetoes. It cannot put a dozen or 50 or 100 of them in a package, and if the President chose to veto all of them, there is no provision to override en bloc.

Oh, I know, we have decided by way of the Abraham amendment that, after the House and Senate have voted on the conference report and the enrolling clerk of the originating body has enrolled all of these little billettes, packaged them into one big bill again and it is put on the calendar, all of the little billettes are to be voted on en bloc.

Mr. LEVIN. Without amendment.

Mr. BYRD. Without amendment, with very limited debate, no motion to recommit, no motion to reconsider. It mystifies me.

I have to say that I have heard Jefferson's name invoked so many times during the debate on the ''unbalanced'' budget amendment euphemistically called the balanced budget amendment. Jefferson's name was invoked so many times, so often in that debate, to the total disregard, almost, of what Madison thought about the Constitution, or what Hamilton had to say. Jefferson's name was invoked. He was not even at the Convention. He was in Paris at the time.

We will see what Jefferson says in his manual, The Parliamentary Practice for the use of the Senate of the United States, printed 1801. On page 73, thereof, one sentence: ''After the bill is passed there can be no further alteration of it in any point.'' Why it would have been anathema to Jefferson to have even mentioned letting the enrolling clerk break that bill up into several parts, and thus, through a fiction, created a multiplicity of bills.

Reading further what Jefferson says about that: ''When the bill is enrolled, it is not to be written in paragraphs, but solidly''—solidly, solidly—''and all of a piece, that the blanks between the paragraphs may not give room for forgery.'' That is Thomas Jefferson, in his parliamentary manual.

So, the Senator asked a question which, if this measure ever becomes law, which God avert, somebody will have to answer. And at some point, even though the courts may try to avoid a political thicket, they may, indeed, have to make a decision there. That is a problem with this measure. It is not just a thicket, it is a political thicket.

That is what is behind this whole exercise here, this whole effort—politics. We have to act on the line-item veto and, under the so-called Contract With America, send the President a line-item veto.

Mr. President, I thank the distinguished Senator for his question. It is a penetrating one, one which we will have time to ponder. I see great difficulty, great difficulty. Never again will a bill, which originally passed the House and the Senate, through a process of debate, amendment, recommittal, and reconsideration of votes, resume its original form. Instead it will be sent to the President in the form of 100, 500, 1,000, 2,000 little billettes. Never again will that bill be the same original bill that passed both Houses. Never.

Never again will there be a public law that refers to that bill in the manner in which appropriations bills are now cited as public laws. When it comes to overriding a veto, just think of the time that will be consumed in any effort to override the vetoes of 15 or 20 of those little billettes that have been enrolled by a clerk in the other body.

When we annually consider 13 bills, plus supplemental bills, plus possibly continuing resolutions, plus certain authorization bills, it boggles the mind to think of the waste of time in trying to override such vetoes. Even the thought itself is intimidating.

Mr. President, I want to thank all Senators. I think this has been a fairly good debate. It is highly regrettable, Mr. President —and I do not say this with any rancor—highly regrettable that this bill on which the Senate is about to vote was brought to the Senate on Monday of this week and offered as a complete substitute to S. 4. The minority had no opportunity, as far as I know, to participate in the writing of it. There has been no committee hearing on it. There has been no committee markup of the DOLE substitute. There was no committee report, no minority views, no supplemental views, no additional views by committee members. Yet, the Senate was immediately faced with the prospect of a cloture motion offered on that substitute.

Now, what was done was within the rules of the Senate. I do not question that at all. Some may say, well, the former majority leader often offered a cloture motion the very moment that a motion to proceed was made. That is true. I never thought of those instances as filibusters and have said so. I never considered it to be a filibuster simply because the former majority leader could not get unanimous consent to take up a measure. He made the motion to proceed and offered a cloture motion immediately. I have never thought of that as a filibuster.

But he was offering a motion to invoke cloture on a motion to proceed. I do not recall any instances—there may have been instances—I do not recall any instances, however, in which the previous majority leader—while he often offered a motion to invoke cloture on a motion to proceed—I do not remember any instances in which he immediately upon the Senate's proceeding to take up a measure or matter, I do not remember any instances in which he immediately thereupon offered a cloture motion on the matter itself. There may have been some such instances. I do not recall such.

But even if he did so, it was certainly not a matter of this gravity, a matter of this nature. We are talking now about a matter here which goes to the heart of the Constitution. It is not a constitutional amendment, but it seeks to amend the Constitution without appearing to amend the Constitution.

It seeks to do indirectly that which it cannot do directly. Congress cannot give to the President of the United States line-item veto authority. That would require a constitutional amendment. I know there are some who maintain that the line-item veto authority is in the Constitution already. I do not believe that for a moment.

If it were in there, surely some President, along the line somewhere, would have been advised by his chief counsel that there, in that Constitution, is something that you can use, and it is the line-item veto.

It has never been discovered up until this time. It has never been used up until this time. And the reason it has not been used is because it is not there.

Mr. SARBANES. Will the Senator yield on that point?

Mr. BYRD. Yes, I will yield.

Mr. SARBANES. It is my understanding there have been Presidents, Chief Executives, who have urged their lawyers within the executive branch to do exactly that: Look in the Constitution to find an existing line-item veto authority. And as much as the Presidents have wanted that authority, it is my understanding his lawyers have always come back to him and said, ''We cannot find that authority in the Constitution that enables us, in good conscience, exercising our professional judgment, to say that authority is there to be found.''

Mr. BYRD. I think that is true. In the instance of Mr. Bush, for example, I think he was so advised. I know George Washington maintained that he had to sign or veto the whole bill. The first President of the United States maintained that he had to sign the bill or veto it in its entirety. He could not take part and reject part.

So, Mr. President, here a cloture motion was offered immediately on a measure which the minority only saw for the first time, a far-reaching measure, a measure which we, even after these 4 days of debate, cannot really comprehend. We really do not know what this bill does. And I regret that the Senate was faced with that fait accompli: Here it is. Here is a new bill. We do not have a committee report on it. We have never had any committee hearings on it. But here it is, and here is a cloture motion along with it—which means that come the following day but one, the Senate will vote on cloture.

It would seem to me that a minority should find that pretty hard to swallow, the application of a gag rule immediately upon a bill which had not seen the light of day until the moment that it was introduced.

As I say, I do not speak with rancor. I speak only with sadness that we have come to this in the U.S. Senate. When I came to the Senate, the minority would not have stood for that, that approach. The minority at that time was on the Republican side of the aisle. Nor would the majority have sought to take advantage of the minority in that way. Senators in that day would have rebelled at the thought.

But that day is gone now. And I will say this. If a minority does not seek to protect its rights, then it cannot blame the majority for riding and running over it, trampling it under foot.

This substitute is an absurdity, an absolute absurdity. Here we are, grown men and women. We have taken the oath to support and defend the Constitution of the United States. We have

been favored and blessed with the high title of ''Senator.'' And we are judged to be craftsmen of the art in legislating. We are thought to be men and women who should take great pride in our work here, but alas, we fall far short.

The very idea that for the first time in all history, as far as I am concerned—I know of no precedent for this approach. I know of no precedent for the handling of a bill such as is outlined in this substitute. There is no precedent in British history, the history of Parliament; in the history of the Colonial legislatures; in the history of the State legislatures; in the history of our republic under this Constitution—absolutely no precedent for handling a bill in this manner. And not only does tradition and custom refute this approach, but the great parliamentarians of the past refute it.

I have just read from Jefferson's manual, and he, in turn, refers to the great authority on the British Parliament and its parliamentary procedures, William Hakewill, in whose treatise on parliamentary procedures, dated 1671, are noted the various authorities referred to in so many instances by Jefferson in his book on parliamentary procedure. There is nothing like it. I have never seen anything like it. I could never have thought that here in the Senate we would be voting on such a deformity as is this piece of legislation.

If we can do what we are doing with this bill, we can do almost anything. Do not be surprised at anything when a legislative body allows itself to be hoodwinked, blinded, cajoled, or whatever, into stamping its imprimatur on such a piece of legislation, if it can be called that. It will go to conference. I hope it never sees the light of day after it gets to conference. But for us to put our imprimatur on it?

I have to stand before God when I leave this life and give an accounting of my stewardship here. There is no way out of it. It is unavoidable. And I have to give an accounting to my children and my grandchildren. There is no way out of that. I have to give an accounting to myself when I look in the mirror. I have to say, ''Old boy, you did not do very well today. You have seared your conscience. You voted to do indirectly what you could not do directly.'' I would have to look at it in that way. How others may wish to look at it, is up to them. But I cannot in good conscience ever look back upon this hour and think that the Senate did the right thing.

This thing is going to pass. I wish that this bill had been before the Senate for at least another week. Several flaws have been detected and made visible by the distinguished Senior Senator from Georgia [Mr. NUNN] and others. There have been attempts to correct the flaws that came to light.

So for the time that this measure has been on the Senate floor, the time has been well spent. But we were deprived of further examination and study by the very fact that a cloture motion was entered on the very day that this substitute was introduced. We were deprived of the opportunity to thoroughly probe it, uncover it, and look at it minutely. I do not think that is the proper way to legislate.

I am sorry that the minority took it lying down. I will bet that when the Republican side was in the minority, it would not have taken that lying down. I praise our minority leader, Mr. DASCHLE. He has done everything that he could do. But the minority leader with 39 others cannot block cloture. It takes the minority leader plus 40 others to block cloture.

I chose to agree with the minority leader. There was no point in making the effort when we knew the votes were not there. It would only be an embarrassment. So let us do the best we can, fight the good fight, and be on to the next battle.

Mr. President, this is indeed a sad moment for the Senate. I remember what Brutus said in a letter to Cicero. Cicero, in order to gain favor with Anthony and Octavian, came to agree with them on certain things, and Brutus criticized Cicero for doing so, according to Plutarch, in a letter: ''Our forefathers would have scorned to bear even a gentle master.''

Mr. President, our forefathers, too, would have scorned to bear even a gentle master.

As I look around this Chamber tonight, I think of Everett Dirksen. I think of Norris Cotton, George Aiken, Bob Kerr, Richard Russell, Lister Hill, Allen Ellender, Spessard Holland, and others whose voices have long been stilled, how they would have been ashamed, ashamed, to see the Senate accept without a fight, and a long fight, a piece of junk like this. This is a piece of junk out of keeping with any precedent in any legislative body that I know of. In the words of Brutus, ''Our forefathers would have scorned to bear even a gentle master.''

Yet, there are some in the minority who cannot stand and vote against cloture once. Do not mention twice, or three times.

When the Republicans were in the minority, and I was the majority leader, I offered cloture eight times on the campaign financing bill, and eight times that cloture motion was rejected. No majority leader has ever offered cloture on the same measure eight times. I offered a cloture motion eight times. Never were we able to get more than three votes for cloture from the Republicans. They stood like a stone wall. You have to respect that kind of unity.

I am sad. I am sad that we have a more powerful minority than the Republicans had, as far as numbers go.

We have a good leader. He has demonstrated leadership, statesmanship, heroism, and patriotism and great courage on the balanced budget amendment, and on this measure. But a leader cannot lead, if there are those who will not follow. You have to let the followers lead.

Can you depict a leader who has to follow? That is what a leader is reduced to, if his troops will not stand behind him.

I have been a leader. I was elected by my party to be leader six times, three terms in the majority and three terms in the minority. I know. If you look behind you and your troops are not there, you may carry the title of leader but in name only. Of all times when Senators should have stood, immovable, it is in an instance when the very structure of our constitutional system is being endangered.

Mr. President, I want to read from a book that has just been published. This book is titled ''Constitutional Equilibrium: Mainstay of the Republic.'' And I begin by reading from page 183, under the subtitle ''Decline and Fall of the Roman Republic.''

The theory of a mixed constitution—

That is what ours is, a mixed constitution, with checks and balances, and separation of powers—

The theory of a mixed constitution had its great measure of success in the Roman republic. It is not surprising, therefore, that the Founding Fathers of the United States should have been familiar with the works of Polybius, or that Montesquieu should have been influenced by the checks and balances and separation of powers in the Roman constitutional system, a clear and central element of which was the control over the purse, vested solely in the Senate in the heyday of the republic.

And what happened to Rome? Rome had its legendary founding in 753 B.C. Under the old republic and the middle republic, the Senate was supreme. The Senate had control, complete control over the finances.

In short, Rome's fate was sealed by the one-by-one donations of power and prerogative that the Roman Senate plucked from its own quiver and voluntarily delivered into the hands, first, of Julius Caesar and then Octavian, and subsequently into the trust of the succession of Caligulas, Neros, Commoduses, and Elagabaluses who followed, until at last, the ancient and noble ideal of the Roman republic had been dissolved into the stinking brew of imperial debauchery, tyranny, megalomania, and rubble into which the Roman empire eventually sank.

At the height of the republic, the Roman Senate had been the one agency—

And the same can be true of this Republic. This Senate was the most brilliant spark of ingenuity that came out of that Constitutional Convention in 1787. The Senate was part of the Great Compromise. And every Member who has ever stood at that desk up there and taken the oath ought to take great pride in being a Member of this body, a continuing body. There has never been a new Senate since the original Senate sat, began its sittings on April 6, 1789.

The same as can be said about the Roman Senate could be said about this Senate.

At the height of the republic, the Roman Senate had been the one agency with the authority, the perspective, and the popular aura to debate, investigate, commission, and correct the problems that confronted the Roman state and its citizens. But the Senate's loss of will, and its eagerness to hand its responsibilities over to a one-man Government . . . a dictator, and later an emperor, doomed Rome and predestined Rome's decline and ultimate fall.

Mr. President, let us learn from the pages of Rome's history. The basic lesson that we should remember for our purposes here is, that when the Roman Senate gave away its control of the purse strings, it gave away its power to check the executive. From that point on, the Senate declined and, as we have seen, it was only a matter of time. Once the mainstay was weakened, the structure crumbled and the Roman republic fell.

This lesson is as true today as it was two thousand years ago.

And it pains me to see Members come into this body who seem to have absolutely no conception of what this body is all about, no conception of the constitutional system, no conception of the system of separation of powers and checks and balances, no conception of the wisdom of the Founders in placing into the legislative branch the power over the purse, little conception, apparently little respect for or regard for the lessons of history.

Does anyone really imagine that the splendors of our capital city stand or fall with mansions, monuments, buildings, and piles of masonry? These are but bricks and mortar, lifeless things, and their collapse or restoration means little or nothing when measured on the great clock-tower of time.

But the survival of the American constitutional system, the foundation upon which the superstructure of the Republic rests, finds its firmest support in the continued preservation of the delicate mechanism of checks and balances, separation of powers, and control of the purse, solemnly instituted by the Founding Fathers. For over two hundred years, from the beginning of the Republic to this very hour, it has survived in unbroken continuity. We received it from our fathers. Let us as surely hand it on to our sons and daughters.

Now, Mr. President, I have said about all that I wish to say. It would not matter if I spoke for days. The die is cast. This bill will go to conference. What comes therefrom nobody knows. It may be this bill; it may be H.R. 2; it may be a blend of the two; it may be nothing. Nobody knows. But the record will have been written here, and it is a record of which I cannot be proud. And the roll of Senators will soon be called.

Let me read the roll of the great men who wrote this Constitution. Here it is:

New Hampshire: John Langdon, Nicholas Gilman; Massachusetts: Nathaniel Gorham, Rufus King; Connecticut: William Samuel Johnson, Roger Sherman; New York: Alexander Hamilton; New Jersey: William Livingston, David Brearley, William Patterson, Jonathan Dayton; Pennsylvania: Benjamin Franklin, Robert Morris, Thomas Fitzsimons, James Wilson, Thomas Mifflin, George Clymer, Jared Ingersoll, Gouverneur Morris; Delaware: George Read, John Dickinson, Jacob Broom, Gunning Bedford, Jr., Richard Bassett; Maryland: James McHenry, Daniel Carrol, Daniel of St. Thomas Jenifer; Virginia: John Blair, James Madison, Jr; North Carolina: William Blount, Hugh Williamson, Richard Dobbs Spaight; South Carolina: J. Rutledge, Charles Pinckney, Charles Cotesworth Pinckney, Pierce Butler; Georgia: William Few, Abraham Baldwin; and President and deputy from Virginia, George Washington.

Mr. President, what would they think of us?

Nathan Hale was a young schoolteacher who answered the call of his commanding chief, General George Washington to go behind the British lines and bring back drawings and notes concerning the fortifications of the British. Hale was 21 years old. He was a schoolteacher.

He went behind the British lines, disguised as a Dutch schoolmaster. He completed his work. He made drawings of the batteries and the British fortifications.

On the night before he was to return to the American side, he was apprehended and arrested as a spy. The next morning, he was brought before the gallows with his hands tied behind him. His last request was for a Bible, and the request was denied.

The British commander, whose name was Cunningham, asked Nathan Hale if he had anything he wished to say. Nathan Hale, looking at the stark wooden coffin in which his lifeless body would soon be placed, said, ''I only regret that I have but one life to lose for my country.''

Nathan Hale was willing to give his one life. It is sad to say that there are Members of this body who are not willing to give one vote for the Constitution which was written by this illustrious list of Framers whose names I have just read. Not one vote to save their country, to save the constitutional system.

On a monument in Atlanta Georgia, these words are inscribed to the memory of the great Senator and orator Benjamin Hill:

Who saves his country, saves all things, saves himself, and all things saved do bless him. Who lets his country die, lets all things die, dies himself ignobly and all things die curse him.

Mr. President, I wish that it could be said that we Republicans and Democrats alike tonight had conspired to save our country and to preserve the liberties of the American people. Because in saving the Constitution, we preserve the liberties of our people.

Claudius Marcellus was a Roman consul. His colleague was Paulus. They both were enemies of Caesar. Curio was a tribune, also an enemy of Caesar. But Caesar with 1,500 talents had bought off Paulus and with an even greater sum had secured the services of Curio. The vote was put. Claudius Marcellus could not be bought. Marcellus was of the opinion that Caesar should lay down his arms. Curio, in the pay of Caesar, opposed the motion by Claudius Marcellus, and moved instead that both Pompey and Caesar lay down their arms. Most of the Senators who had theretofore been of the same opinion as Marcellus went over to the other side and voted with Curio. Whereupon, Claudius Marcellus closed the doors of the Senate and exclaimed to his fellow Senators, ''Enjoy your victory. Have Caesar for your master.''

The PRESIDING OFFICER (Mr. FRIST). The Senator from West Virginia has 28 minutes remaining. Does he wish to yield that time?

Mr. BYRD. Mr. President, I yield 5 minutes to the distinguished Senator from Arizona.

Mr. MCCAIN. I thank the Senator from West Virginia. As always, I am extremely impressed by the power of his thoughts and his speech.

Mr. President, I will be brief. The Senate has debated this legislation for a full week. The concept of a line-item veto has been debated on this floor for many years. For eight years, I have sought the Senate's consideration of a legislative line-item veto. I believe that in a few minutes the issue will be decided. And I am hopeful that the issue will be decided in favor of the proponents of this measure.

As I am not known for my great patience, it would be hard to overstate how gratified I am to have finally arrived at this moment. It has been a long, difficult but worthwhile contest. And one in which I feel honored to have participated—honored to have participated irrespective of the outcome.

Much of that honor derives from the quality of the opposition to this legislation. I know that some of the best minds and ablest legislators in the Senate have argued in opposition to the line-item veto. Their eloquence and their skill at debate surely exceed my own powers of persuasion. I had to rely heavily on the skills of the majority leader, the persuasiveness of my fellow proponents, and the merits of the cause to advance this legislation.

The senior Senator from West Virginia, the estimable Senator BYRD, distinguished this debate—as he has distinguished so many of our previous debates—with his passion, his eloquence, his wisdom, and his deep and abiding patriotism. Although my colleagues might believe that I have eagerly sought opportunities to contend with Senator BYRD, that was—to use a sports colloquialism—only my game face. I assure you, I have approached each encounter with trepidation. Senator BYRD is a very formidable man.

Senator BYRD has solemnly adjured the Senate to refrain from unwittingly violating the Constitution. His respect, his love for our Constitution is profound, and worthy of a devoted public servant. But my love for our Constitution is no less than his, even if I cannot equal the Senator's ability to express that love.

Like Senator BYRD, my regard for the Constitution encompasses more than my appreciation for the genius of that document, for the wisdom and skill of its authors. It is for the ideas it protects, for the nation born of those ideas that I would ransom my life to

the defense of the Constitution of the United States.

No ethnicity, no tribal identity, no accidents of geography or birth define this Nation. We are defined by ideas; ideas whose antecedents are found in antiquity, as Senator BYRD has so often and so eloquently recalled for us, but whose application has been so well refined in our Nation's history that we are now without peers in this world.

It is to help preserve the notion that government derived from the consent of the governed is as sound as it is moral that I have advocated this small shift in authority from one branch of our Government to another. I do not think the change to be as precipitous as its opponents fear. Even with line-item veto authority, the President can ill afford to disregard the will of Congress. Should he abuse his authority, Congress could and would compel a redress of that abuse.

I contend that granting the President this authority is necessary given the gravity of our fiscal problems and the inadequacy of Congress' past efforts to remedy those problems. I do not believe that the line item veto will empower the President to cure government's insolvency on his own. Indeed, it is and will always remain mostly Congress' burden to restore our government's fidelity to the principle of spending no more than it receives. The amounts of money that may be spared through the application of the line-item veto are significant, but—as the opponents contend—certainly not sufficient to remedy our deficit.

But granting the President this authority is, I believe, a necessary first step toward improving certain of our own practices—improvements that must be part of any serious redress of our fiscal problems. The Senator from West Virginia reveres—as do I—the customs of this honorable institution. But I am sure he would agree that all human institutions, just as all human beings, must fall short of perfection.

For some years now, Congress has failed to exercise its power of the purse with as much care as we should have. Blame should not be unfairly apportioned to one side of the aisle or the other. All have shared in our failures. Nor have Congress' imperfections proved us to be inferior to the other branches of Government. That is not what the proponents contend.

What we contend is that the President is less encumbered by the political pressures affecting the spending decisions of Members of Congress whose constituencies are more narrowly defined than his. Thus, the President will take a sterner view of public expenditures—be they in the form of appropriations or tax concessions—which serve the interests of only a few or which cannot be reasonably argued as worth the expense given our current financial difficulties.

In anticipation of a veto and the attendant public attention to the vetoed line-item appropriation, narrowly targeted tax break, or a new entitlement, Members should prove more able to resist the attractions of unnecessary spending—and, thus, begin the overdue reform of our spending practices. It is not an indictment of Congress nor of any of its Members to note that this very human institution can stand a little reform now and then.

Mr. President, I urge my colleagues to support the legislative line-item veto, and show the people of this country that for their sake we are prepared to relinquish a little of our own power. I thank the chair, and thank all my colleagues for their patience during this very long debate.

The PRESIDING OFFICER. Under the previous order, the Senator from Indiana has 5 minutes.

Mr. MCCAIN. Mr. President, I believe the Senator from West Virginia had not expended all of his time. If he seeks to be recognized, I think it is in order.

Mr. BYRD. Mr. President, I yield such time as he may desire to the Senator from Indiana [Mr. COATS]. Will he tell me how much time he would like?

Mr. COATS. Mr. President, I believe under the previous order, the Senator from Indiana was reserved 5 minutes of his own time. I inquire of the Senator from West Virginia, if he wishes to use or delegate any of the remainder of his time?

Mr. BYRD. I think the Senator from Vermont wants time. If the Senator wishes to use his own time, if he needs a few more minutes, I will be happy to yield.

The PRESIDING OFFICER. The Senator from West Virginia has 23 minutes.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I will take but a minute.

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Vermont such time as he may require.

Mr. LEAHY. Mr. President, earlier today I made a statement, I put an additional statement in the RECORD, of my opposition to the amendment, so I will not expand on that, other than to say I wish all Senators, no matter how they vote, will either listen to or read what was said by the distinguished senior Senator from West Virginia.

I have served with him here for 20 years. Throughout that time, we have had times of agreeing and times of disagreeing. One thing I always agreed on is his sense of history, his allegiance to the Constitution. I know of no Member of this body now serving or previous serving who stood stronger for the Constitution or stood stronger for history as Senator BYRD.

Mr. President, we should ask ourselves, in a Nation as powerful as ours, in a Nation, really the most powerful democracy known to mankind, the most powerful economy, the most powerful military worldwide reach, but a democracy and the most powerful democracy, one based on three separate branches of Government, the ability for them to be separate, the ability for them to have the respect of the people, we should ask ourselves as we continue to try to destroy any one of those branches of Government, what do we do to our democracy?

If we give up the power of the purse to the executive, that is chipping away. We find Members who want to denigrate the very bodies in which they serve—both this and the other body—and that chips away at our democracy. We find those who want to destroy the Presidency no matter who holds it. That chips away at our democracy.

Mr. President, each one of us should take a little bit of time out, read some history, consider what maintains this great and powerful democracy and ask ourselves: Are we supporting it or are we whittling away at it?

I yield the floor and thank the distinguished Senator from West Virginia.

Mr. FEINGOLD. Mr. President, though the legislation is seriously flawed, I am willing to support an experimental line-item veto authority and to see it tested over the next several years. The so-called sunset clause of the legislation, which terminates the expanded veto authority unless Congress takes action, was the key to my support for the bill.

If the Congress decides that we have gone too far in delegating authority to the President, the sunset clause will make it much easier to act. The burden will be on those who want to retain the authority.

Without a sunset clause, Congress would have to pass a bill to overturn the line-item veto authority, and it is likely that any President would veto such a bill, thus retaining this extraordinary new power.

The continuing Federal budget deficits justify granting this temporary authorty to the President, but I have a number of grave concerns with the proposal as it passed the Senate.

First, and foremost among those concerns is the threshold of a two-thirds vote in each House to overcome this new expended veto authority.

That kind of threshold is provided in the Constitution for entire bills, but extending that authority for individual sections of a bill may be going to far.

There are many uncertainties in this new authority that we are providing the President, and no one can anticipate all the potential abuses that might flow from this new authority.

In Wisconsin, we have seen the abuse of a line-item veto authority by a number of Governors, and it is safe to say that no one anticipated the extent of those abuses when the line-item veto authority was first contemplated. Governor Thompson has used the veto authority not only to rewrite entire laws, but to increase spending and increase taxes.

The two-thirds threshold will compound the uncertainty about possible abuses by making it that much

more difficult for Congress to respond to that possible abuse.

I am also concerned about the potential unconstitutionality of the measure. A number of serious questions on this very issue were raised during the debate, and I am glad that the proposal also includes expedited judicial review to help resolve this matter.

The provisions relating to tax expenditures may not be adequate. I am troubled that the language in this proposal may be too protective of tax loopholes for the wealthy. Tax expenditures contribute greatly to pressure on the deficit, and if any area should be subjected to the scrutiny of line-item veto authority, it is this one.

The basic structure of this particular line-item veto authority also raise problems. If it becomes law, the measure could mean sending the President hundreds, even thousands, of tiny bills. That could be a procedural nightmare, and I would much prefer to have seen a different approach.

On the positive side, unlike the recently debated balanced budget amendment, this line-item veto authority is established by statute, not as part of the Constitution. By providing this new authority by law instead of through the Constitution, the measure does not raise the serious concerns that making a permanent change to our basic law would raise.

Also unlike the balanced budget amendment, this proposal is no gimmick. Though it is not a substitute for making real spending cuts, it can help the cause of deficit reduction because it does convey real authority to the President.

Indeed, the danger is that it conveys authority that is too broad, and because of that, I will watch how the President uses this new authority, and will lead the charge to oppose any extension of this particular line-item veto authority if problems arise.

The proposal now goes to a conference committee to settle the differences between the two Houses, and I will revisit my support for this bill when it comes back to the Senate. I would certainly oppose the measure if the sunset clause it removed, and may well oppose the measure if other changes are made, but for now, I support this temporary new authority.

Mr. MACK. Mr. President, a few weeks ago, the Senate failed to take what would have been a courageous and historic step toward fiscal responsibility when it defeated the balanced budget amendment. It was one of the most disappointing and discouraging votes I have been a part of.

That's because we failed the American people, who sent us a very clear message last November. They said they wanted an end to business as usual. Their message was emphatic: they want less spending, less Government and more freedom. But we turned a deaf ear.

I hope the Senate has another chance to pass the balanced budget in the future and I will continue to fight for its passage. But in the meantime, there are other steps we can take to significantly reform the way the Federal Government spends the American people's money. today, we can take a giant step in the direction of fiscal sanity by passing the line-item veto.

The biggest threat to America's long-term prosperity is out-or-control deficit spending. The result of 26 straight years of deficit spending is a mountain of debt. In fact, our national debt now totals nearly $5 trillion. Every day that we fail to impose fiscal discipline on ourselves we are mortgaging our children's future.

Giving the president the line-item veto will not solve the larger problem—massive deficits as far as the eye can see. But it will begin to restore fiscal sanity to a broken budget process. It will allow presidents to strike out specific wasteful and unnecessary programs that get stuck into huge and complex appropriations bills. Now, if a President wants to cut out a specific item, no matter how big or small, he must veto the entire funding bill. The line-item veto, a power some 43 governors already have, would allow the President to eliminate those programs without having to send the entire bill back to Congress. It's a common-sense reform that is long overdue.

The line-item veto is only one of what I hope will be a number of reforms in the budget process. There are other reforms that would force Congress to finally get its spending under control. For example, I am proposing a Spending Reduction Commission which would serve as a fail-safe mechanism to help ensure we achieve the spending cuts necessary to get to a balanced budget. There are other proposals to change the current process that I believe we should seriously consider as well.

But the issue before us today is the line-item veto. The American people are demanding that we act, and act now, to control Government spending. Passing the line-item veto is an important step in that direction. I urge all my colleagues on both sides of the aisle to support this bill.

Mr. THOMPSON. Mr. President, I sat in your chair on Tuesday, when the distinguished senior Senator from West Virginia made an eloquent argument against this bill. I agree with him that Senators should take great care to consider the Constitution. And his arguments were very helpful to me, as I am sure they were to all our colleagues. I believe that the Abraham amendment addresses the constitutional arguments that Senator BYRD raised concerning orphan bills. The original Dole substitute prompted questions concerning the constitutional requirement of article I, section 7, that a bill that has passed the House and Senate must be presented to the President for his approval or disapproval. Under the original Dole substitute, neither House would have passed the orphan bills in that form. However, both Houses would have passed the same legislative language.

Even without the Abraham amendment, S. 4 is constitutional. Congress has the power under article I, section 5 to establish its rules. We can enact a rule that deems an item of a bill to be a bill. More importantly, the Supreme Court has held that it is a political question whether both Houses have actually passed the same language if the bill that is presented to the President is authenticated by both the Speaker of the House and the President of the Senate. In other words, courts afford conclusive effect to a congressional determination that both Houses have passed identical bills. But there can be no doubt that the Abraham amendment removes any question under the presentment clause. And I commend my fellow freshman for his significant contribution.

There is little doubt that when this bill becomes law, a constitutional challenge will be raised. And that challenge will go all the way to the Supreme Court. And the result will be an important Supreme Court decision on separation of powers. When courts consider a constitutional challenge to a statute, a level of deference is paid to congressional resolution of the constitutional issue. This Senator's remarks are not legislative history in the sense that they illuminate statutory language. But they do demonstrate that Congress had expressly considered and resolved constitutional issues raised by the bill. Courts will therefore provide the level of respect due to a coordinate branch's considered constitutional conclusion. So I will take this opportunity to address some of the constitutional arguments that have been raised apart from the presentation clause.

The charge is made that this bill would transfer power, in particular the power of the purse, unconstitutionally from the legislative branch to the President. But this is not the case. It cannot truly be said that Congress alone has the power of the purse. Like so many powers in the Federal Government, the power of the purse is not vested solely in one branch of government. Powers are shared as well as separated in our constitutional system. The branches do not operate as hermits in splendid isolation. They need each other. They were designed to function with each other, and occasionally even against each other. The authority that each branch legitimately exercises sometimes overlaps with the legitimate authority of another branch. It is this mutual dependence that makes checks and balances possible. And it is this system of checks and balances that reduces the likelihood that the Government will trample over the liberties of the people.

The power of the purse is a classic example of a shared power. It is true that if Congress will not appropriate money for an expenditure, money from the Federal Treasury cannot be spent for

that purpose. But it is also the case that an appropriation is not made merely because Congress votes to create it. The President shares the power of the purse. If he signs the appropriations bill, the money is appropriated—not because the Congress voted for it, but because the President also approved of the expenditure. One person's opinion in the executive branch counts as much as the vote of the Congress. And if the President vetoes the expenditures, then the President's power of the purse counts more than up to two-thirds of both Houses. If the appropriation fails, that does not mean that Congress has transferred any power to the President.

S. 4 is fully consistent with the constitutional arrangement that the Founders created. Indeed, the better argument is not that the bill would transfer power to the President that the President never had, but that it restores to the President the power that Congress wrested away from him. In the early years of the Republic, appropriations bills were essentially line items. Congress simply did not pass appropriations bills that contained hundreds or thousands of items and that directed the spending of billions of dollars. Rather, Congress acted on each item on its merits. And the President signed or vetoed the item on its merits.

Over the years, the level playing field the Framers anticipated has been tilted sharply in favor of the Congress. Late in the session, Congress passes enormous bills with a large number of provisions of varying merit. Not only is the bill presented to the President, but so is a Hobson's choice: Sign the bill and let it become law regardless of the merits of some of its line items, or veto the bill and shut down a department of Government upon which every American depends. Unlike Congress, Presidents have historically been responsible, and have prevented the Government from shutting down by accepting Congress' terms. By passing individual items, Congress will give the President only the power that the Framers always intended for him to exercise.

Even apart from the supposed loss of power that Congress will suffer, it is also contended that under this measure the Senate will lose power at the expense of the other body. Because the other body is normally the one where appropriation bills originate, the decision whether to override the veto of an item that originated in the Senate is solely up to the other body. If they do not override vetoes of such items, the Senate cannot work its will.

Of course, that can happen now as well. If an appropriations bill is vetoed, and the President successfully persuades the American people that the bill should have been vetoed because of items that the Senate insisted upon, the other body may choose not to override the bill. The Senate cannot then succeed in overriding the veto. Under the new system, that may occur as well, but the Senate will not be defenseless. The other body may choose to override vetoes of items of its choice. But if the Senate does not concur, the House's override vote will be meaningless. In practice, both bodies will cooperate to override vetoes of each other's truly important items because each House has the power of mutually assured destruction of the other's vetoed items.

The language of the Constitution rarely answers the difficult questions. It is necessary to examine the court decisions. And no Supreme Court decision has ever struck down a statute based upon a generalized contention that it violates the separation of powers. Many specific constitutional provisions together create the doctrine of the separation of powers. Only if the statute violates one or more of those specific provisions is the Constitution violated. No one has made an effective argument that S. 4 violates any specific constitutional provision.

Therefore, S. 4 complies in every respect with the Constitution. In fact, it restores the constitutional balance between the President and Congress that was originally contemplated. And it does not change the balance of power between the two Houses. Its enactment today will be a historic step in making Congress more accountable for its spending decisions, one which will preserve, not harm, the liberties of the American people.

EXPEDITED JUDICIAL REVIEW OF THE LINE-ITEM VETO

Mr. SIMON. Mr. President, at this time I ask the distinguished Senator from Arizona to enter into a colloquy with me.

Two days ago, the distinguished Senator joined me in passing an amendment to ensure expedited review of any remaining constitutional questions raised by the line-item veto proposal. The intent of that amendment was to provide a speedy way of removing any cloud regarding the separate enrollment provision I would like to thank the distinguished Senator for his support in this matter.

Upon review of the amendment, I believe the amendment warrants additional clarification. As written, the amendment permits ''any Member of Congress'' to bring an action under the expedited review procedures. However, it has come to my attention that the Federal courts have raised some question about whether a Member of Congress has standing to pursue such a suit under article III of the Constitution. If the Federal courts ruled that a Member of Congress lacked standing in such a case, the expedited review procedures would become null and void.

To take account of this contingency, I believe that it is important also to allow any person adversely affected by the act to bring an appropriate test challenge under the act's expedited review procedure. Does the distinguished Senator from Arizona agree?

Mr. McCAIN. Yes, I do.

Mr. SIMON. Does the Senator from Arizona further agree that, when the bill proceeds to conference, it will be the intent of the manager of the bill to specify that both Members of Congress and persons adversely affected by the act may utilize the review procedures.

Mr. McCAIN. Yes, I do.

Mr. SIMON. To eliminate any misapprehension, let me specify that subsection (a)(1) of the expedited review procedure should read as follows:

(a) EXPEDITED REVIEW.—

(1) Any Member of Congress or any person adversely affected by the Act may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that a provision of this Act violates the Constitution.

Does the Senator from Arizona concur with my modification?

Mr. McCAIN. Yes, I do, and I very much appreciate the Senator's efforts to clarify this issue.

Mr. HEFLIN. Mr. President, I rise to express my support for the separate enrollment version of a line-item veto. In the 103d Congress, I cosponsored S. 92, the Legislative Line-Item Veto Separate Enrollment Authority Act, which was sponsored by my good friend and colleague Senator HOLLINGS. I am pleased that the separate enrollment approach is now emerging as the compromise version of the line-item veto that will hopefully pass Congress and be signed into law by the President.

In my judgment, the line-item veto, if enacted into law, would provide the President with an effective weapon with which to fight wasteful Government spending. Over the past few years, a consensus has developed, even among most Members of Congress, that, as the 1989 report of the National Economic Commission stated: ''The balance of power on budget issues has swung too far from the Executive toward the Legislative Branch.'' This imbalance has most likely contributed to the deficit spending of recent years.

It is believed by many that the President, exclusively representing the general, national interest of the country as a whole, is more inclined to oppose Government spending which only serves parochial interests, yet increases the national debt. Increasing the budgetary power of the President relative to the Congress would therefore lessen the current bias toward more pork barrel spending and strengthen the bias which favors national priorities.

The largest obstacle that we face as a nation to sustainable, long-term economic growth is our huge national debt. Although we have made substantial progress in reducing our annual budget deficits over the past 2 years, cutting them in half in real terms, the national debt is still standing at an unacceptably high level.

The national debt as a percentage of the economy, as measured by gross domestic product, or GDP, now stands at 52 percent. In other words, the size of

our national debt is just over half the size of the output of our economy for 1 year.

To put today's figure in historical perspective, the national debt as a percentage of the economy reached a peak of 114 percent in 1946 because of the debt incurred to finance our efforts in World War II. After 1946, the size of the national debt relative to the economy declined steadily over the years even during the Vietnam war and Great Society years, to a low of 26 percent by fiscal year 1981. This is because our economy grew much faster than the national debt during this period.

This downward trend in the size of the national debt, which is common in times of peace, reversed itself in 1981 and rose over the next 12 years. The national debt doubled in real terms, from a low of 26 percent in fiscal year 1981 to a high of 52 percent in 1993 due to the huge deficits we ran in the 1980's. In other words, our national debt grew twice as fast as the economy, the first time in American history this has happened in peacetime.

The debt runup of the 1980's is unique in American history, and it is worth repeating that it is the only time in our history that the national debt has grown substantially in peacetime. We have had only three similar runups in the national debt during the 219 years of the existence of the United States: during the Civil War, during World War I, and during World War II.

During the peacetime periods after each of the three major wars just mentioned, during which it was necessary to increase the national debt, we returned to prewar levels of national debt. Now it is time to return to pre-1980's levels of debt. We have made a good start by cutting the deficit in half, and thereby halting the growth of the national debt. It ha been stabilized at 52 percent of GDP for the last 2 years, as the economy and the debt have grown at about the same pace.

Our next task is to start reducing our level of debt by balancing the budget, thereby allowing the economy to grow much faster than the debt, because the debt will not be growing at all. In my judgment, it will be necessary to reform the current budget process in order to achieve the desired end of budget balance. That is why I have fought so hard for a balanced budget amendment to the Constitution and for a Presidential line-item veto.

Constitutions in 43 States provide for a line-item veto whereby the Governors have the ability to eliminate individual provisions or reduce amounts of spending in legislation presented for their signature. The line-item veto has a proven track record on the State level at discouraging and preventing unnecessary and wasteful spending. Because it has been a proven, effective tool against excessive spending on the State level, it would make an effective tool on the national level as well.

In 1992, 188 Governors and former Governors, including Presidents Carter, Reagan, and Clinton, were surveyed with regard to the line-item veto. Nearly 70 percent of those who responded said that, as Governors, they had found the line-item veto useful. Ninety-two percent of the past and present Governors surveyed support a line-item veto on the Federal level in order to restrain Federal spending.

Also in 1992, the General Accounting Office evaluated the potential effectiveness of the line-item veto on the Federal level. The GAO report stated, and I quote at length:

> If the President had line-item veto authority from fiscal years 1984 through 1989 and used that authority to reduce or eliminate each item to which an objection was raised in the Statements of Administration Policy, we estimate that the savings would have ranged from $7 billion to $17 billion per year, for a cumulative 6-year total of about $70 billion. . . . This would have reduced Federal deficits and borrowing by 6.7 percent, from the $1,059 billion that actually occurred during that period to $989 billion. . . . In addition, the reduced federal borrowing associated with the program savings explicitly shown would have resulted in interest cost savings.

The line-item veto has bipartisan support in both Houses of Congress. In addition, Presidents Reagan, Bush, and Clinton are advocates of the line-item veto at the Federal level. In addition, according to Gallup surveys, large majorities of Americans spanning more than four decades have consistently favored the line-item veto.

There has been some talk of the separate enrollment line-item veto creating a bureaucratic ''cut and paste'' nightmare in the enrolling clerk's office. But these nightmare scenarios are unfounded. Due to the modern computer technology we enjoy in Congress, separate enrollment would not pose a prohibitive burden on the clerk's staff. In fact, such technology makes the process quite simple.

I urge my colleagues to support the line-item veto. This is a clear opportunity to seriously address our biggest national problem—excessive deficit spending—with a realistic, proven solution. The voters have spoken; it is time to end wasteful Government spending. Let us give the President the line-item veto through the separate enrollment mechanism.

Mr. LIEBERMAN. Mr. President, I rise in support of a broad-based line-item veto which would allow the President to strike spending as well as tax provisions.

I am a relative newcomer to this institution. But in my time here I have observed that the system of rules we live under makes it far easier to spend money than to save money. Maybe that is just a fact of life. Most Americans would probably agree that spending is easier than saving. We have the same problem here in Congress.

The line-item veto may not fix all of our budgetary problems; in fact, I am reasonably sure it will not do so. But I do believe it is worth a try to make a dent in those problems, and for that reason, I support giving the President greater authority to strike spending as well as tax expenditures, subject to a congressional override. And if the line-item veto does not work, I support getting rid of it—for that reason I am pleased that there is general agreement among both sides that any line-item veto provision ought to have a sunset provision.

Certainly the current system has its flaws. Let me give you just one example, a $16 million urban tree-planting program at the Small Business Administration. I do not believe in governing by anecdote, but the repeated and unsuccessful attempts to kill this program are illustrative. The administration has tried to get rid of this program at least twice. The SBA does not want the money—tree planting is not their specialty. The House has tried on numerous occasions to get rid of this program because it simply makes no sense for the SBA to be in the business of planting trees. The Kerrey-Brown group, of which I was a participant, tried to get rid of this program. But it has proved to be the Freddy Krueger of Federal programs—no matter what you do to kill it, this program survives.

I am hoping the line-item veto proposals before us will make it possible to finally get at programs like this tree-planting program. I happen to be a big fan of trees and I spend a lot of my time working to keep our air and water clean enough to keep those trees alive. I just do not think we can afford to have the SBA running a program like this, and I suspect most of my colleagues agree with me. I am also convinced that the reason we have had a tough time getting at this program is because it has been wrapped into larger bills. When I was in the State Senate in Connecticut, it was common wisdom that the way to pass the tough items was to bury them in the big bills and keep your fingers crossed that they would slip through unnoticed. Given our deficit, I just do not think we can afford this approach anymore.

In addition, I am firmly convinced that tax expenditures should also be subject to any line-item veto passed by this Chamber. Put simply, new taxes should be put to the test in the same way as new spending. As a proponent of a capital gains cut as a way to increase needed investment and saving in this country, I am well aware that adding new tax expenditures to the line-item veto bill could put some tax investment incentives at risk. However, that is a risk I am willing to take if the end result will be more discipline, and fewer loopholes, in our Tax Code.

We have heard a lot about possible abuses of the line-item veto by the executive branch. I come from one of the 43 States with a line-item veto in our State Constitution. It is a pretty tough provision—allowing the Governor to ''disapprove any item or items of any bill making appropriations of money.'' And the provision has worked just fine—the legislative branch has not

been overthrown, and no revolutions have occurred. By most accounts, the provision has been a success.

Despite all of this, I do harbor some concerns that an Executive might use this provision for political ends. Surely we are not above politics. I have watched with some dismay as the other body has targeted, or appeared to target, programs which are priorities of this administration—programs like national service and the various technology programs like TRP and ATP. For this reason, I am pleased that there is general agreement that passage of a line-item veto should be something of an experiment—that it should sunset after a few years so that we can debate its effectiveness and, if it has been successful, pass it again. A sunset provision should help keep the executive branch away from abuses.

Mr. President, I support a line-item veto which covers a broad range of spending and tax cuts, and I hope my colleagues will do so as well.

Mr. BIDEN. Mr. President, I have long held that separate enrollment is the solution to the tough question of how to provide the President with line-item veto power.

Since 1984, when I joined Senator Mattingly and others in introducing a separate enrollment line-item veto bill, until this year, as cosponsor of Senator BRADLEY's bill, I have supported both the principle of a line-item veto and the specific approach of separate enrollment.

Today, I want to explain my position on this important issue, a position that has, until just last week, had little support on either side of the aisle. I am gratified by the recent embrace of this approach as the compromise position that could finally permit a controlled experiment with a line-item veto to go forward.

Mr. President, a controlled experiment is just what this proposal calls for.

Mr. President, I share the concerns of many of my colleagues that a line-item veto could threaten the balance of power established in the Constitution between the Congress and the President.

That is why I argued unequivocally against any constitutional version of line-item veto just 2 months ago in the Judiciary Subcommittee on the Constitution.

Because this is a statutory line-item veto, Mr. President, and one, I must emphasize, with a built-in sunset it remains the prerogative of Congress to decide if this is, in the end, what we want to do and how we want to do it.

And that is, indeed, the intended effect of the legislation before us today. It grants new power to the President—to veto separate items in appropriations bills, not the whole bill as would be required today. This change permits the President to target specific spending programs, not whole categories of Government activity.

But this change would not only provide the executive with additional responsibility for controlling Federal spending at the margins. It would put additional responsibility on Congress to remove those items that would be easy targets for a presidential veto.

No one can look upon the deplorable state of our Federal finances and tell me that a little more fiscal responsibility, at both ends of Pennsylvania Avenue, is not in order.

Of course, if the question were that simple, we would not be at the impasse we have reached today.

There is honest, deeply held disagreement on whether we should go forward with any experiment in a line-item veto.

Everyone of us in the Senate, and every citizen of this country, should be grateful for Senator BYRD'S tireless efforts to remind us of the historical significance and constitutional implications of the step we are contemplating here.

But I would like to make two points in defense of separate enrollment line-item veto legislation.

First, our Constitution was intended to be flexible enough to adjust to a variety of new circumstances. Within the limits I believe are rightly imposed in this case—a statutory change, with a built-in sunset provision, in the year 2000—we should be willing to make incremental adjustments in our procedures that have some prospect of promoting our shared goal of deficit reduction and more responsible budgeting.

Second, Mr. President, it could be argued that by enrolling each element in our spending bills separately, we are restoring a historical relation between the President and Congress, a relationship that took a new course when we began to write appropriations bills that lumped hundreds, even thousands, of items of spending together.

I am pleased that some of my colleagues have cited arguments I made several years ago in the Judiciary Committee in defense of the constitutionality of the separate enrollment approach.

It is my considered opinion that this approach can survive any court challenge on constitutional grounds. I am persuaded that the Congress may choose—as it will, if we accept this legislation—its own procedure for enrolling and presenting legislation to the President. There is nothing inappropriate about choosing to present our bills to the President in a way that will expose them to the same veto power that he has always possessed.

I must stress, Mr. President, that I do have some concern about the difference between S. 4, the proposal before us today, and S. 137, the version I cosponsored this year and—with one exception—identical to the bill I introduced a decade ago with Senator Mattingly.

That difference is in the level of detail that is required of the bills that we will send separately to the President. The version that I have consistently supported required the separate enrollment of numbered items or unnumbered paragraphs.

To use one example, one of those items or paragraphs might include the budget for veterans' construction projects. Under the versions I have consistently supported, the President could veto that element of the Veterans' Affairs, Housing and Urban Development, independent agencies appropriations bill, rather than the whole bill.

Now, some of my colleagues have expressed concern that the new requirement, added in S. 4, that Congress has to include additional detail, detail that could, to continue my example, include specific construction projects at specific veterans' hospitals in specific States.

The temptation for a President to use the line-item veto to extort concessions, or to punish transgressions, may be greater under this new formulation than under the legislation I have supported in the past.

Mr. President, we still retain the authority to determine the level of detail that we include in our committee reports, and thus the level of detail that will be required under S. 4.

And again, Mr. President, the new process we will adopt here today is not a constitutional change, but a statutory one, and a statutory change with a date certain—5 years from now—when its authority automatically ends.

Now, I supported a quicker sunset of line-item veto power in the versions that I cosponsored, this year and in the past. But I am satisfied that we have built in sufficient safeguard to give this experiment a chance to succeed—or to fail.

Because of the sunset provision, we have reserved the right to reverse this decision if the anticipated benefits of this bill do not outweigh its potential costs.

Its benefits, I believe, will come not only in the form of reduced spending; in these times, any money saved is important, but we should not expect this to affect deficits in any fundamental way.

Its benefits are likely to be more subtle, in the reduction of spending programs that can't pass the ''laugh test''—that would be laughed at if they were exposed to public ridicule.

That is the real promise of this line-item veto bill, that it will improve, at the margin, the quality, as well as the quantity, of our spending decisions.

Mr. President, a major improvement of this proposal over earlier line-item veto proposals is that it includes those programs that spend money through the Tax Code—what we call tax expenditures, and what everyone else knows as loopholes.

This is an approach I supported when I cosponsored Senator BRADLEY's separate enrollment bill this year.

This is a substantial and far-reaching line-item veto proposal that we will vote on this afternoon. And we must recognize that it will grant power to the President that he does not have today.

Again, I prefer the language of S. 137, Senator BRADLEY's separate enrollment bill, defining just what a tax expenditure is. And I supported Senator BRADLEY's attempt to clarify the tax expenditure definition in S. 4, that could be open to ''back-loaded'' tax cuts that lose revenue more than 5 years in the future.

But the debate here on the Senate floor has convinced me that the language of S. 4 covers real tax loopholes, both the narrowest gimmicks and the broadest, that are such a drain on the Federal Treasury.

Mr. President, at the heart of S. 4 is the traditional veto power that the President has always possessed. The change that this bill will bring about is a change in the way we choose to send our bills to the President.

I have no doubt that this will shift some influence over spending priorities to the Executive; this is, of course, one purpose of the line-item veto—to exchance executive budget authority, and to put the Congress on notice that our spending proposals will be exposed to an additional level of scrutiny.

This may well add to the President's influence on the legislative agenda, and, at the extreme, could provide a President with the temptation to use the line-item veto to threaten or to retaliate against Members of Congress.

If some future President chooses to make such use of this new budget tool we offer him, then we will take it away.

In the end, should we not examine each of our spending decisions individually? Should we not subject our spending plans to the closest possible scrutiny, down to presenting them separately to the President?

In the face of the deficit problem we now confront, and in the face of corrosive public cynicism about our ability to get our houses in order, Mr. President, do we want to send the message that business as usual is good enough for us?

In passing S. 4, we will take more care with our spending decisions, and in a small but important way, end business as usual.

Mr. CRAIG. Mr. President, I rise in support of S. 4, the Legislative Line Item Veto Act, as modified by the Dole compromise amendment.

This landmark legislation promises to bring some long overdue progress in fiscal responsibility and in our war on government waste.

When it finally becomes law in the coming weeks:

It will help reduce the deficit;

It will subject a lot of questionable pork provisions to the withering bright sunlight of Presidential and public scrutiny; and

It will also subject the President to increased scrutiny—we'll see if his veto pen matches his promises.

I recognize that the Daschle amendment—which we tabled earlier today—is essentially the same as S. 14, which was cosponsored by several Senators on this side, including myself.

I was an original cosponsor of both S. 4 and S. 14 as introduced, because I wanted to increase the chances of the Senate passing a legislative line item veto, passing the strongest one we can, passing one that was carefully crafted, and passing one that is bipartisan.

I voted to table the Daschle amendment—as did some of the other cosponsors of S. 14;

This is because we now have a chance to pass a bill that is stronger than S. 14, and like S. 14, is carefully crafted to do the variety of things that the large majority Senators want to do.

That is what we now have in the Dole amendment. As in the original McCain-Coats S. 4, we have a ⅔ vote required to override an item veto.

As in both S. 4 and the original S. 14, we now have a process that prevents circumventing the veto by passing a one-line appropriation bill and putting hundreds of detailed directions in a committee report; and we will avoid extending the item veto to policy items that are non-dollar items.

As in S. 14, and somewhat similarly to the Bradley proposal, we apply the line item veto to targeted tax breaks.

As in S. 14, we apply the item veto to new direct spending, and will include a deficit-reduction lockbox.

As in bills introduced by Senators HOLLINGS and BRADLEY, in a bipartisan spirit, we use the process of separate enrollment.

I said before that I preferred a strengthened rescission process to separate enrollment; I still do; but taking each proposal as a whole, taking all the provisions in each, the Dole amendment is the best package to come before this body.

Of all the versions discussed, the Dole amendment is the least likely to be subject to constitutional problems and court review.

It is clear that, under Article I of the Constitution, the Congress determines the form of bills it sends to the President.

This approach does not involve any of the issues raised in the past that might question the constitutionality of legislative vetoes or impoundment powers that might cross the barriers separating the legislative and executive powers.

Some Senators supported the Daschle substitute as being the ''middle ground'' version. But now, by extending the veto to targeted tax breaks and new direct spending, the Dole amendment also is in the middle ground and covers a range of Senators' concerns.

The only material difference remaining between the Dole and Daschle versions is whether you want a line item veto to be overridden by a majority vote or a ⅔ vote.

I agree with President Clinton on this one: I want the stronger line item veto.

In this case, it is possible to pass the better of 2 proposals, and a ⅔ override is better than a majority override. It is that simple.

In all other important respects, the Dole amendment and other amendments that we are accepting incorporate the other positive aspects of S. 14 and the Daschle substitute into the bill we are going to pass.

The bottom line is this: The principal difference between separate enrollment and enhanced rescission in how the papers are bundled. That is all.

As improved here on the floor, that difference in bundling will not be a problem.

Separate enrollment under the Dole amendment would wind up accomplishing essentially the same ends a the McCain-Coats type of enhanced rescission process in S. 4, with improvements from S. 14 added.

I also wanted to address some of the concerns about separate enrollment raised by Senator NUNN and others.

Some Senators are concerned that moving the details of committee reports into separately enrolled bills would present the President with 10,000 appropriations bills to sign or veto instead 13 or so.

If writer's cramp truly becomes a concern, the Constitution allow the President simply to let the least controversial or least notable of the these bills become law without signature or veto.

Article I, section 7 says, in part:

> If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, . . .

This simple answer is more than this concern deserves.

Some Senators are concerned that, conversely, to thwart the President and the line item veto, bills may be reduced to one-line appropriations, with the details, earmarks, requirements, directions, and requests that now appear in committee reports being moved instead into floor colloquies and letters.

Senators who raise this kind of concern are assuming that business as usual will not change, but will just get more difficult under the new rules.

They are missing the point: This bill will change how we conduct business around here.

The new rules mean it is a whole new ball game.

Senator NUNN correctly points out that, as a matter of accommodation, currently, report language is treated as ''sort of binding'' on agencies as they spend appropriations.

The point is, this part of the process should change.

Now, so-called ''earmarks'' will have to appear right out there in the open—

not hidden from view by an obscure comment in a conference report that the lack of mention of contradiction in the Senate committee report means that the Congress expects an agency to honor a direction given in the House report as implicitly modified by a floor colloquy.

How many of my colleagues even understand that this is the way we do business now?

I can guarantee that most Americans do not know that—and would be incredulous if they did.

The current process leads to ambiguity at best, evasion of responsibility at worst.

Here is an actual example of how the current system breaks down—it happened to this Senator:

In 1994, the House report on one appropriation bill took position on a matter of agency discretion; several Senators entered into a Senate floor colloquy directly contradicting the House position; the conference committee should have resolved that disagreement but did not. As a result, the agency had no idea what, if any, guidance it had from Congress or how binding it was.

Well, under this bill, if we put it in law, we know it is binding. If it is in a floor colloquy, we know it is advisory, interpretative, clarifying.

That is well-known and well settled.

There is no doubt—no doubt—that no court ever would find a floor colloquy to have the binding effect of law.

So, what this line item veto means is that a lot of unimportant earmarks and so-called ''directions'' simply will disappear from the formal parts of the process. The important ones will become law or be vetoed.

That is the way it should be.

What a novel idea—that we should put into law the instructions that we expect agencies to carry out.

Some Senators are concerned that reprogrammings would have to be accomplished through an act of Congress instead of over the telephone among committee chairman and ranking members.

The possible problems pointed out with reprogramming, once again, are only problems if you keep trying to do business as usual under the new procedure.

Now, under this bill, we will have to decide when micromanagement of an item is so important that it should be in law, and when we are just going to let the agency have some discretion in how it does its job.

We will need fewer reprogrammings, because this new process creates a disincentive for Congress to micromanage agencies through the appropriations process.

When we do handle that reduced number of reprogrammings, they ought to become routine legislation, basically technical corrections.

And, after all, if an item of reprogramming is so controversial that it would be subject to contention on the floor of the Senate, then it is too important to go through the status quo's ''informal'' process.

LINE-ITEM VETO

Mr. KERRY. Mr. President, several weeks ago I voted ''no'' when this body voted on the proposal to send to the States for ratification an amendment to the Constitution to require a balanced budget. I enumerated the reasons for my opposition. Principal among them was that the constitutional amendment proposal was a fraud; its proponents claimed that it was essential to achieving a balanced Federal budget—a goal to which I fervently subscribe—when, in reality, the amendment would not cut so much as a thin dime from the deficit. In addition, the amendment, had it been approved by Congress and ratified by the requisite number of States, would have created a dangerous situation and a disturbing precedent of sinking not only into standard procedure but into the U.S. Constitution requirements that several key types of Congressional fiscal policy decisions would have to be made by supermajorities. I was persuaded than and remain persuaded now that the Founding Fathers—rightly—would be spinning in their graves in anxiety for our Union if they knew what was then being proposed and debated.

But I promised at that time, Mr. President, that I would vote for proposals that would make—or make likely—real savings in the Federal budget, and that did not sink fraudulent or untested methods into the Constitution or trample on the basic tenets of that Constitution.

And tonight, Mr. President, the Senate is considering the kind of proposal I promised to support, a proposal that is very different than the Balanced Budget Amendment. The proposal on which we are about to vote—to which some refer loosely as a ''line-item veto'' although it has features quite different than proposals that carried that moniker for many years—is not a fraud. It is real. It provides the ability to the President of the United States to achieve real economies in the federal budget much more easily than such economies can be achieved today.

Is this a cure-all? No, of course not, Mr. President. The passage of the line-item veto will not instantaneously and surely erase our nearing-$200-billion deficits. But it is one tool—a new tool with teeth—that any President can use to remove less essential spending from the budget. And it gives strength to such a Presidential decision by requiring a two-thirds vote of both houses to overturn the President's decision and reinstate the spending he vetoed.

I believe this tool can and will make a beneficial difference. It applies to tax expenditures as well as to direct spending.

But if it proves not to work as advertised—as those of us who vote for it believe it work—we can return to this floor and, by engaging in the Constitutional process of enacting a law, we can repeal it or modify it. And, in any event, the provision on which we vote tonight will disappear automatically—it will sunset—in the year 2000 unless we act to extend it.

Mr. President, this is worth a try. It could have—and I hope and trust it will have—a sobering effect on those who seek to lard appropriations bills with special-purpose pork. It can provide—and I hope and trust it will provide—a tool to the President to achieve significant economies in the federal budget by eliminating programs that are not in the national interest, or have outlined their usefulness but not their political patronage.

We must take real steps to achieve a balanced budget. This will not be sufficient by itself to achieve that balance—we have much and very difficult work ahead of us to cut the deficit the old fashioned way by cutting programs and expenditures and bringing revenues in line with spending. But this truly is a real step, and I support it.

Mr. LAUTENBERG. Mr. President, the Senate is debating a truly fundamental change to our system of government. We have before us legislation which proposes to reconsider some of the most basic principles of our democracy. For over 200 years, the Federal government has maintained a careful balance between the powers of the legislative, executive, and judicial branches. That balance has stood the test of time, and has helped sustain our nation's cherished liberties for generations.

Mr. President, given that remarkable record, we need to be very cautious before altering this historic balance of powers. It's not something we should do lightly. It's not something we should rush through.

We do, however, have to be prepared to respond to changing conditions, and to make needed changes in the way we do business. Despite all that's good about our democratic system, we also face some real problems. And one of the most important is government waste, and the deep public anger that it provokes.

Mr. President, as much as any time in our history, it is critical to reduce waste in government. We are continuing to load debt on our children and grandchildren. The tax burden is heavy. Americans are losing faith in government as they are repeatedly bombarded with examples of unnecessary spending—from fraud in government programs to the Lawrence Welk Center—and taxpayers are infuriated. They have a right to be.

They also have a right to demand that we do something about it. And there is broad public support for trying some form of line item veto.

Yet, Mr. President, we should not exaggerate what a line item veto can accomplish. It won't eliminate all government waste. Nor will it balance the budget. It may result in eliminating unnecessary pork barrel projects and special-interest tax loopholes.

This is not to say, Mr. President, that all narrowly—targeted spending or tax provisions are wasteful. But many are. And the most egregious examples get the most publicity, and erode public confidence in the Congress and our government. Surely that's one reason why the public is so angry with Washington.

We need to look for ways to address this problem. And the line item veto might help, by giving the President additional power to eliminate items that are truly indefensible.

Under current law, when the Congress sends the President a broad spending or tax bill, the President's options are pretty limited. He can sign the whole bill into law. Or he can veto the entire package.

Once an appropriations bill is enacted, the President can proposed to rescind specific items of spending, and send Congress a rescission. But this rescission power is extremely limited. First, it does not apply to tax breaks. And, in the case of proposed rescissions to appropriations, Congress can simply ignore them.

It seems to me, Mr. President, that it's worth trying to give the President additional powers to eliminate waste. But, as we move into these uncharted waters—fundamentally changing our form of government—we should build in certain protections against abuse of executive power. Restraint of executive power has been a hallmark of our Constitution and guided our Founding Fathers in its creation.

We can strengthen the President's rescission power by making sure the Congress considers all Presidential rescission proposals, and does so on an expedited basis. That would be a significant step forward in the fight against waste. Currently, if the President sends rescissions to us to eliminate wasteful spending, we can just ignore them. And we usually do. Forcing review of wasteful expenditures, in the glare of public debate, would be a healthy antidote to our current way of doing business.

We can also build in protections against abuse of this expanded executive power by retaining the democratic practice of majority rule. The pending legislation would permit the President to kill any increases in spending or changes to entitlement programs if he can convince just one-third of one house of Congress to support him. That's an enormous expansion of executive power. It would permit the President to nullify what a majority of the people's representatives have already approved.

Finally, we can guard against abuse of power by the Executive by requiring the Congress to review the line item veto after a prescribed trial period. Initially, I think the shorter this trial the better. If the line item veto works as its authors intend, it will have a salutary effect on our government and there will be no problem extending it.

Unfortunately, Mr. President, the proposal before us fails to protect against executive branch abuses. It also puts power in the hands of a small minority, undermining majority rule. It lets one-third of Congress rule with the President, controlling Federal policy on virtually all new spending and entitlement programs.

The legislation also could unintentionally hurt smaller States, with smaller congressional delegations, like my State of New Jersey. The proposal would load the deck in favor of bigger States which have a leg up on building the necessary two-thirds vote to override a Presidential line-item veto. In my view, that's unwise.

Mr. President, the case for a line item veto rests largely on the need to eliminate narrowly targeted pork-barrel spending. But the majority leader's amendment goes much further than that. It would allow a President to unilaterally eliminate funding for entire programs. This would give a single individual the power to kill major initiatives in education, law enforcement, health care, veterans, mass transit, immigration enforcement, housing, you name it. All would be at risk.

It would also put Medicare, veterans benefits, and other entitlement programs under the control of a small minority of Congress aligned with a President.

Mr. President, I'm not suggesting that President Clinton or any future President would abuse this new power. But we really don't know.

That's not a Democratic concern or a Republican concern. It's a nonpartisan concern.

That's not a liberal concern or a conservative concern. It's a democratic—with a small 'd'—concern.

It has nothing to do with party or ideology. It has everything to do with the potential for abuse of power and rule by a congressional minority.

Let's take one example, Mr. President, of a President of my own party, Lyndon Baines Johnson. President Johnson was a strong leader who excelled at cajoling and pressing Members of Congress into voting with him. I never experienced it myself, but the ''Johnson treatment'' was something that is legendary.

Lyndon Johnson used every tool in his arsenal to win.

Looking to the future, a President with strong leadership skills and strong convictions would gain enormously in power. With just one-third of one House of Congress, he could wipe out essential benefits for ordinary Americans and a majority in Congress could do nothing to stop him.

Mr. President, I'd urge against giving the President that virtually unbridled power.

I'm not willing to risk that a future President would be able to overrule a majority in Congress and eliminate all school lunches.

Or deny middle-class students the opportunity to go to college.

Or deny working families assistance with child care.

Or take police officers off the streets.

Or force young children to go hungry.

Or increase the number of the homeless on our streets.

Or deny veterans the benefits they've earned by serving our country.

Or deny senior citizens needed benefits under Medicare.

Mr. President, these expenditures and these benefits are not pork. But they all would be vulnerable to the line-item veto under this amendment. And a President bent on eliminating them could wield this new tool as a meat ax against ordinary Americans. There need to be some real protections against that if we are to have a line-item veto.

Mr. President, I also am concerned that a line-item veto could open the door to what some have called ''political extortion''. I use that term to convey how a President would be able, in effect, to hold a gun to the head of Members of Congress.

This is what could happen. A President could go to a Member of Congress and say this:

''I need your support for my favorite new initiative. If you don't agree to support it, I'm going to rescind that bridge, or highway, that's so important to your district.''

Mr. President, that kind of political pressure occurs in some States that have a line-item veto. And it can lead to more wasteful spending, not less.

Mr. President, to limit the possibility that a line-item veto will be abused, it's important to keep the Executive on a short leash. One way is to require Congress to reauthorize the line-item veto on a routine basis. Another is to allow a majority in Congress to overrule the President. These protections would preserve the constitutional principle of balance of power and avoid shifting power extraordinary power to the executive branch, or to larger States at the expense of medium sized or smaller States.

They would make it less likely that a future occupant of the White House would ride roughshod over the people and Congress.

Unfortunately, Mr. President, the pending proposal doesn't include adequate protections. It's a serious flaw in the legislation.

I'm also concerned about the provisions in the pending amendment related to tax expenditures. Those provisions, though drafted ambiguously, apparently are intended to provide a ''loophole for loopholes'' that will protect many special interest tax breaks from rescission.

Mr. President, we all know the many special tax breaks that have been included in tax bills over the years. There are special rules for the timber industry. For the oil and gas industry. For cruise liners. In fact, a few years ago we even tried to enact a special loophole for the tuxedo industry.

Once enacted, Mr. President, most tax breaks enjoy a special status that

even the most popular spending programs would envy. They never have to be appropriated. They never have to be reauthorized. They never have to compete for scarce budgetary resources. Instead, they simply nestle quietly and unobtrusively into the nooks and crannies of the Tax Code, never to be seen or heard from again. But, they lose substantial revenue, and their costs are made up by ordinary taxpayers.

Mr. President, unwarranted tax loopholes go to the heart of what bothers so many Americans today. Loopholes generally are provided only to special interests and wealthy individuals who either have special connections, or enough money to hire a lobbyist with access to Members of Congress.

Meanwhile, ordinary Americans don't have these connections. They don't have personal relationships with powerful Senators. And they don't have lobbyists working for them.

So when ordinary Americans see the clients of lobbyists getting special treatment in the Tax Code, they resent it. And they resent it very, very deeply.

Mr. President, the pending amendment includes some ambiguous language on targeted tax benefits. But, according to statements made on this floor, that language is intended to be very narrow. Apparently, if a tax break benefits a particular company, it may be subject to a rescission. But if the loophole benefits two companies, or an entire industry, it will get special protection.

Mr. President, that's a loophole for loopholes, and I cannot support it.

In conclusion, Mr. President, let me again emphasize that we're talking about the basic structure of Government that was established over 200 years ago, and we should proceed with caution. To help eliminate waste in Government, it's worth trying a line-item veto. But, we should not support proposals that are vulnerable to abuse, that fail to adequately protect the public interest and our constituents, or that provide a loophole for special interest tax loopholes.

I yield the floor.

Mr. FORD. Mr. President, would the distinguished Senator from West Virginia give me about 3 minutes?

Mr. BYRD. Mr. President, I yield as much time as is under my control, as the Senator from Kentucky requires.

Mr. FORD. I thank the Senator, and I thank the Chair.

Not many people in this Chamber—several, probably—have operated under the line-item veto. As Governor of Kentucky, I was given the opportunity for use of the line-item veto. I had three things I could do. I checked with the legislative research commission to be sure that there have been no changes, or whether they have broadened some.

I had three things I could do when an appropriations bill comes to you. You can veto the whole bill. But you can run a line through the item, initial it, then you have to give your reason for that veto, and send it back to the legislature within 10 days. They either sustained or overrode your veto.

Second, I had the opportunity to reduce a number from $1 million to $500,000 and give the reason for the reduction. I had 10 days to send it to the legislature. I also had the authority to veto a phrase in the language of the appropriations bill.

That is all it was. Simple is better, in my opinion here. Either give the President the authority to line item, initial it, send it back up here, and say ''These are the reasons I had to line-item veto this particular position in an appropriation bill.''

I am beginning to worry that we have gotten to a point where our distinguished friend from West Virginia is calling them billettes. I have heard of ''sermonettes.'' They are probably better than billettes. But we hear all Governors have had this authority. Governors use it. So do many States.

Well, we are not modeling after what the Governors have at all. Maybe this is a little bit different, but still we deal with the legislative body, we deal with appropriations bills, and third, we have a responsibility to give the reason, and the legislative body then has the opportunity.

I am hoping that when this bill goes to conference and comes back—and it is going to conference—that it will be a somewhat better bill. There has been a lot of Members that have had enthusiasm for the Domenici-Exon bill legislation and it was voted out. Some could not get together on it, and as we have heard about Henry Clay, Henry Clay was the great compromiser. Come to Lexington, KY, sometime, and see his library. You would be quite impressed with that. Henry Clay said, ''Compromise was negotiated here.''

Well, we have seen no negotiation here except on one side, 49–48 a while ago. When we said all this money that is going to be saved ought to reduce the deficit, there was a lot of blustering going on around here, and they said, ''No, we don't want it to go to the deficit, we want to use it for something else.'' We will see how that comes out.

Mr. President, I hope when this bill leaves the Chamber tonight and it goes to conference that the conference will have the wisdom to send back something we can all join in, and have an opportunity to give the President line-item veto. And if this line-item veto we are passing tonight is the one that comes back from conference, and it is finally passed and the President does sign it, I am not sure how long it will last because I was amazed at the statement by my friend from Arkansas, Senator BUMPERS. He thought he would have a sense of the Senate that they would save so many acres of timber in order to be sure we had enough paper to be used to all of these 2,000, 3,000, 4,000, billettes that are going to come back.

I remember when I was Governor, we had to go get bond issues. We may have to do this for the President. You would have 49 pens you were looking at, and one in your hand, and you would sign on the bottom. So you would write Wendell H. FORD and all those pens go up and down with you, and you would sign 50 sheets, as they would slide across. Then you got 50 more you have to sign, they slide across. That is what you are doing.

Maybe we could have a patent on the pens that are going to be used by the President, so when he signs hundreds and hundreds of billettes that he will just be able to use one pen, and one pen will work on all those billettes.

It will be an interesting day and an interesting night. The future is not yet here. We will have to wait and see how it comes. I hope this bill leaves here and comes back with something we can all join together on.

I yield the floor, and I thank the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia has 14 minutes.

Mr. BYRD. I thank the Chair.

Mr. President, how much time does the distinguished Senator from California need?

Mrs. BOXER. Two minutes.

Mr. BYRD. I yield 4 minutes.

Mrs. BOXER. I thank my friend from West Virginia.

Mr. President, I will be brief. The hour is late and there has been an excellent debate on this. I really had not planned to speak. I have written something that is going to go in the RECORD to explain why I am voting ''no'' on this bill.

But I was really moved to come over to the floor and to shake the hand of my friend from West Virginia. I am so proud to serve in this body with so many extraordinary people, but I have to say that I really do not think there is anyone in this Chamber—this is my opinion—who understands the Constitution so well—but more than that, feels it inside.

It is a combination that is just extraordinary. His ability to put it into the history of the world, it is such a gift. I wanted to thank the Senator for sharing his wisdom, his thoughts, here.

I have to say when I was over in the other body for 10 years and someone said, ''Well, what do you think of Senator BYRD,'' I would not have said all these glowing things because I did not understand what I understand now.

Having been exposed to him in this debate and other debates, we are so privileged here. I hope that everyone understands when we cast our vote on this, how it will be viewed in the long term.

Things may lack real power on the surface, but I guess I have to ask this question on this bill: Why do we want to be here if we are going to give away our ability to fight for the people we represent? Why do we want to be here? We do not have to be here.

Why not just give up the power to the executive branch—and I do not care

who is there. I happen to like this President. I think this President is compassionate and smart. He is a good deficit cutter. I trust him. But that is not what we are legislating about.

I see my colleagues on the other side are smiling and are happy tonight because they are going to win something in the contract. Well, I will put that contract up against the Constitution any day of the week, and I am picking the Constitution. I am proud that I am here and I thank the people of California, 31 million people, the people who sent me here to stand up for the Constitution tonight.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia has 11 minutes.

Mr. BYRD. Mr. President, I will be glad to yield time to any Senator on either side if any Senator wishes it. If not, I am ready to yield back my time if the other side is ready to do the same.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, earlier the Senator from West Virginia read the names of the distinguished Americans who signed the Constitution, which is a document that we all revere. He asked the question: What would they think if they observed what we were doing this evening?

And I ask the question: What would they think if they were able to observe the spending habits of this Congress, the abuse of the power of the purse that has resulted in a $4.8 trillion debt, the practice of taking every penny of appropriations and putting it into one continuing resolution, placing it on the desk of the President at 11:59 of the last day of the fiscal year and saying, ''Mr. President, take it all or close down the entire Government of the United States.''

What would the Founding Fathers think of that practice? What would the Founding Fathers think of the practice of taking appropriations bills and titling them ''Emergency Supplemental Appropriations'' or ''Dire Emergency Supplemental Appropriations,'' to provide relief for hurricane victims in South Carolina or Florida, or earthquake victims in California, or flood victims in the Midwest—and attaching to that spending that is totally irrelevant to the question, totally unnecessary, at a time when we are running deficits of several hundred billion dollars and increasing a debt which our children and grandchildren and our posterity will find extraordinarily difficult to pay? Mr. President, $20,000 now for every new child born in America, of debt that child assumes. What would they think of that?

We are not new to this issue. Line-item veto was first introduced nearly 120 years ago by a gentleman from West Virginia, Congressman Charles Faulkner. He was the first to introduce line-item veto in 1876. It was referred to committee, the Committee of Judiciary, where it died. Since then, nearly 200 attempts at line-item veto have been introduced, each time buried in committee, filibustered to death, or procedurally blocked from direct consideration.

Last November the long-building anger against this Congress for such abuses of the power of the purse erupted, and with their votes the American people decisively demonstrated their deep frustration with business as usual, with the status quo, with the practice of the Congress in exercising the power of the purse.

Recently the U.S. Senate fueled that anger by failing to pass a balanced budget amendment and in doing so clearly demonstrated that we as an institution are more concerned with preserving our power than protecting our Nation's posterity. Let us, by our vote tonight, show the American people that we heard their message in November; show them that we are serious about fundamental changes in the way the Congress works and does its business. Let us show them that we intend to present tax and appropriations bills without subsequent embarrassment. Let us send the message to taxpayers that under our guidance, their dollars will no longer be wasted on pork-barrel spending or tax benefits that favor the few at the expense of the many. Let us act boldly to eliminate the dual deficits of public funds and the public trust. Let us tonight show the American people that business, as the Senate has practiced, it is over.

Mr. President, it has been 120 years since that Congressman from West Virginia offered line-item veto. The time has come for this Congress to finally pass that measure.

The PRESIDING OFFICER. The Senator from West Virginia still has 10 minutes.

Mr. BYRD. Mr. President, I do not choose to use the 10 minutes. I will be glad to yield it to others.

Mr. DOLE. I will only take 1 minute of my leader's time.

Mr. BYRD. I yield back my time.

Mr. DOLE. Mr. President, the long awaited moment has finally arrived. It has been a long time in coming, but it is welcome nonetheless.

As with the balanced budget amendment, the line-item veto has the overwhelming support of the American people, and I hope it will receive the overwhelming support of the Senate.

Those of us on the Republican side have supported giving the President the line-item veto for years. During the 1980's, opponents of the line-item veto used to say that Republicans supported it only because the President happened to be a Republican at that time. With passage of the measure we hope to dispel that myth once and for all. We believe that any President of the United States, as Chief Executive, should be given more power to reduce Federal spending.

If we cannot control ourselves—maybe the Chief Executive can help.

As Governor and as a candidate for President, President Clinton joined with 10 former Presidents and a great many Governors in calling for a line-item veto. We intend to give him that authority.

Many in this body deserve our thanks for bringing us this far along. Former Senator Mack Mattingly of Georgia first suggested the idea of separate enrollment in 1985. The distinguished Senator from new Jersey, Mr. BRADLEY, had a similar interest.

The distinguished Senator from Indiana, Senator COATS, The distinguished Senator from Arizona, Senator MCCAIN, and my distinguished friend from New Mexico, Senator DOMENICI, have worked tirelessly in support of legislation to give the President this additional authority. Each time the Senate has voted on the line-item veto, we have been able to garner a few more votes. Tonight we will hopefully have more than we need to ensure final passage.

We are familiar with the issue. We have debated it and discussed it before and again at length this week.

Our substitute was not perfect. The amendments offered by Senators SIMON, LEVIN, MURKOWSKI, and ABRAHAM, have all served to improve the bill. I am sure there will be other issues to address in the conference but we are almost there.

The status quo just wasn't working. We have all at some point in time had some special project or concern that we felt had to be included in a bill. All these small things added up and here we are today—out of control.

Can we still add our special projects—yes, but it will truly be government in the sunshine. Those items will be front and center. We have the opportunity to propose—and the President has the opportunity to oppose.

It may not be perfect—but it is the best chance we have got. Let us give it a try. If it does not work, we can change it.

But first—let us try.

I would just say, as the Senator from Indiana just indicated, it has been a long time coming. We are now going to have the vote. This measure may not be perfect, but I think it is an indication that we are serious about it and, again, I thank many of my colleagues, especially my colleague from Arizona, Senator MCCAIN, and my colleague from Indiana, Senator COATS, for their untiring, ceaseless efforts over the past several years.

I agree with the distinguished Senator from Indiana we have stubbed our toe on the balanced budget amendment. We sent the wrong message to the American people. They do not want business as usual. We had business as usual on the balanced budget amendment but that took 67 votes. I hope we will have many more than a majority on this important measure.

So I suggest, as I have said—I know my colleagues would like to leave. This will be the last vote tonight.

I remember back when Senator Mattingly from Georgia was here and we debated this and offered the amendment and we talked about separate enrollments at that time. The distinguished Senator from New Jersey, Mr. BRADLEY, had a similar interest.

In any event, I think we have had some amendments adopted that have improved the bill. We will go to conference with the House. They have a somewhat different version in some respects, as far as separate enrollment is concerned. I think perhaps we can work this out. We are prepared, as we said, to give a Democratic President—I remember the days when we had Republican Presidents, we were always accused, on the other side: Oh, well, the Republicans want this for a Republican President.

Now we are in the majority and we are prepared, nearly all of us on this side, to give this authority to a Democratic President, President Clinton, who sent me a letter today saying he supported this measure and asked that we move it as quickly as we can.

I would also like to thank my colleagues on the other side of the aisle—I think we have handled this matter expeditiously. It has not dragged on. We have not had a lot of extraneous amendments. I thank also the Democratic leader.

Finally, I also thank my friend from New Mexico, Senator DOMENICI, who worked with Senator STEVENS and Senator COATS and Senator MCCAIN in sort of molding this compromise package, and also members of my staff and the various Senators' staffs who have worked so hard over the past 3 or 4 weeks.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order, the question now occurs on S. 4, as amended.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] is necessarily absent.

I also announce that the Senator from Alaska [Mr. STEVENS], is absent on official business.

The PRESIDING OFFICER (Mr. FRIST) Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 69, nays 29, as follows:

[Rollcall Vote No. 115 Leg.]

YEAS—69

Abraham	Brown	Coverdell
Ashcroft	Burns	Craig
Bennett	Campbell	D'Amato
Biden	Chafee	Daschle
Bond	Coats	DeWine
Bradley	Cochran	Dole
Breaux	Cohen	Domenici
Dorgan	Hollings	Nickles
Exon	Hutchison	Packwood
Faircloth	Inhofe	Pressler
Feingold	Kassebaum	Robb
Feinstein	Kempthorne	Roth
Ford	Kennedy	Santorum
Frist	Kerry	Shelby
Gorton	Kohl	Simpson
Graham	Kyl	Smith
Grams	Lieberman	Snowe
Grassley	Lott	Specter
Gregg	Lugar	Thomas
Harkin	Mack	Thompson
Hatch	McCain	Thurmond
Heflin	McConnell	Warner
Helms	Murkowski	Wellstone

NAYS—29

Akaka	Hatfield	Moynihan
Baucus	Inouye	Murray
Bingaman	Jeffords	Nunn
Boxer	Johnston	Pell
Bryan	Kerrey	Pryor
Bumpers	Lautenberg	Reid
Byrd	Leahy	Rockefeller
Conrad	Levin	Sarbanes
Dodd	Mikulski	Simon
Glenn	Moseley-Braun	

NOT VOTING—2

Gramm	Stevens

So, the bill (S. 4), as amended, was passed.

S. 4

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 ''The Separate Enrollment and Line Item Veto Act of 1995''.

SEC. 2. STRUCTURE OF LEGISLATION.

(a) APPROPRIATIONS LEGISLATION.—

(1) The Committee on Appropriations of either the House or the Senate shall not report an appropriation measure that fails to contain such level of detail on the allocation of an item of appropriation proposed by that House as is set forth in the committee report accompanying such bill.

(2) If an appropriation measure is reported to the House or Senate that fails to contain the level of detail on the allocation of an item of appropriation as required in paragraph (1), it shall not be in order in that House to consider such measure. If a point of order under this paragraph is sustained, the measure shall be recommitted to the Committee on Appropriations of that House.

(b) AUTHORIZATION LEGISLATION.—

(1) A committee of either the House or the Senate shall not report an authorization measure that contains new direct spending or new targeted tax benefits unless such measure presents each new direct spending or new targeted tax benefit as a separate item and the accompanying committee report for that measure shall contain such level of detail as is necessary to clearly identify the allocation of new direct spending or new targeted tax benefits.

(2) If an authorization measure is reported to the House or Senate that fails to comply with paragraph (1), it shall not be in order in that House to consider such measure. If a point of order under this paragraph is sustained, the measure shall be recommitted to the committee of jurisdiction of that House.

(c) CONFERENCE REPORTS.—

(1) A committee of conference to which is committed an appropriations measure shall not file a conference report in either House that fails to contain the level of detail on the allocation of an item of appropriation as is set forth in the statement of managers accompanying that report.

(2) A committee of conference to which is committed an authorization measure shall not file a conference report in either House unless such measure presents each direct spending or targeted tax benefit as a separate item and the statement of managers accompanying that report clearly identifies each such item.

(3) If a conference report is presented to the House or Senate that fails to comply with either paragraph (1) or (2), it shall not be in order in that House to consider such conference report. If a point of order under this paragraph is sustained in the House to first consider the conference report, the measure shall be deemed recommitted to the committee of conference.

SEC. 3. WAIVERS AND APPEALS.

Any provision of section 2 may be waived or suspended in the House or Senate only by an affirmative vote of three-fifths of the Members of that House duly chosen and sworn. An affirmative vote of three-fifths of the Members duly chosen and sworn shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under that section.

SEC. 4. SEPARATE ENROLLMENT.

(a)(1) Notwithstanding any other provision of law, when any appropriation or authorization measure first passes both Houses of Congress in the same form, the Secretary of the Senate (in the case of a measure originating in the Senate) or the Clerk of the House of Representatives (in the case of a measure originating in the House of Representatives) shall disaggregate the items as referenced in section 5(4) and assign each item a new bill number. Henceforth each item shall be treated as a separate bill to be considered under the following subsections. The remainder of the bill not so disaggregated shall constitute a separate bill and shall be considered with the other disaggregated bills pursuant to subsection (b).

(2) A bill that is required to be disaggregated into separate bills pursuant to subsection (a)—

(A) shall be disaggregated without substantive revision, and

(B) shall bear the designation of the measure of which it was an item prior to such disaggregation, together with such other designation as may be necessary to distinguish such measure from other measures disaggregated pursuant to paragraph (1) with respect to the same measure.

(b) The new bills resulting from the disaggregation described in paragraph (1) of subsection (a) shall be immediately placed on the appropriate calendar in the House of origination, and upon passage, placed on the appropriate calendar in the other House. They shall be the next order of business in each House and they shall be considered and voted on en bloc and shall not be subject to amendment. A motion to proceed to the bills shall be nondebatable. Debate in the House of Representatives or the Senate on the bills shall be limited to not more than 1 hour, which shall be divided equally between the majority leader and the minority leader. A motion further to limit debate is not debatable. A motion to recommit the bills is not in order, and it is not in order to move to reconsider the vote by which the bills are agreed to or disagreed to.

SEC. 5. DEFINITIONS.

For purposes of this Act:

(1) The term ''appropriation measure'' means any general or special appropriation bill or any bill or joint resolution making supplemental, deficiency, or continuing appropriations.

(2) The term ''authorization measure'' means any measure other than an appropriations measure that contains a provision providing direct spending or targeted tax benefits.

(3) The term ''direct spending'' shall have the same meaning given to such term in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(4) The term ''item'' means—

(A) with respect to an appropriations measure—

(i) any numbered section,

(ii) any unnumbered paragraph, or

(iii) any allocation or suballocation of an appropriation, made in compliance with section 2(a), contained in a numbered section or an unnumbered paragraph but shall not include a provision which does not appropriate funds, direct the President to expend funds for any specific project, or create an express or implied obligation to expend funds and—

(i) rescinds or cancels existing budget authority;

(ii) only limits, conditions, or otherwise restricts the President's authority to spend otherwise appropriated funds; or

(iii) conditions on an item of appropriation not involving a positive allocation of funds by explicitly prohibiting the use of any funds; and

(B) with respect to an authorization measure—

(i) any numbered section, or

(ii) any unnumbered paragraph,

that contains new direct spending or a new targeted tax benefit presented and identified in conformance with section 2(b).

(5) The term ''targeted tax benefit'' means any provision:

(A) estimated by the Joint Committee on Taxation as losing revenue for any one of the three following periods—

(1) the first fiscal year covered by the most recently adopted concurrent resolution on the budget;

(2) the period of the 5 fiscal years covered by the most recently adopted concurrent resolution on the budget; or

(3) the period of the 5 fiscal years following the first 5 years covered by the most recently adopted concurrent resolution on the budget; and

(B) having the practical effect of providing more favorable tax treatment to a particular taxpayer or limited group of taxpayers when compared with other similarly situated taxpayers.

SEC. 6. JUDICIAL REVIEW.

(a) EXPEDITED REVIEW.—

(1) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that a provision of this Act violates the Constitution.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(3) Any action brought under paragraph (1) shall be heard and determined by a three-judge court in accordance with section 2284 of title 28, United States Code.

Nothing in this section or in any other law shall infringe upon the right of the House of Representatives or the Senate to intervene in an action brought under paragraph (1) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT.—Notwithstanding any other provisions of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION.—It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

(d) SEVERABILITY.—If any provision of this Act, or the application of such provision to any person or circumstance is held unconstitutional, the remainder of this Act and the application of the provisions of such Act to any person or circumstance shall not be affected thereby.

SEC. 7. TREATMENT OF EMERGENCY SPENDING.

(a) EMERGENCY APPROPRIATIONS.—Section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new sentence: ''However, OMB shall not adjust any discretionary spending limit under this clause for any statute that designates appropriations as emergency requirements if that statute contains an appropriation for any other matter, event, or occurrence, but that statute may contain rescissions of budget authority.''.

(b) EMERGENCY LEGISLATION.—Section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new sentence: ''However, OMB shall not designate any such amounts of new budget authority, outlays, or receipts as emergency requirements in the report required under subsection (d) if that statute contains any other provisions that are not so designated, but that statute may contain provisions that reduce direct spending.''.

(c) NEW POINT OF ORDER.—Title IV of the Congressional Budget Act of 1974 is amended by adding at the end the following new section:

''POINT OF ORDER REGARDING EMERGENCIES

''SEC. 408. It shall not be in order in the House of Representatives or the Senate to consider any bill or joint resolution, or amendment thereto or conference report thereon, containing an emergency designation for purposes of section 251(b)(2)(D) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 if it also provides an appropriation or direct spending for any other item or contains any other matter, but that bill or joint resolution, amendment, or conference report may contain rescissions of budget authority or reductions of direct spending, or that amendment may reduce amounts for that emergency.''.

(d) CONFORMING AMENDMENT.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 407 the following new item:

''Sec. 408. Point of order regarding emergencies.''.

SEC. 8. SAVINGS FROM RESCISSION BILLS USED FOR DEFICIT REDUCTION.

(a) Not later than 45 days of continuous session after the President vetoes an appropriations measure or an authorization measure, the President shall—

(1) with respect to appropriations measures, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and each outyear by the amount by which the measure would have increased the deficit in each respective year;

(2) with respect to a repeal of direct spending, or a targeted tax benefit, reduce the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 by the amount by which the measure would have increased the deficit in each respective year.

(b) EXCEPTIONS.—

(1) This section shall not apply if the vetoed appropriations measure or authorization measure becomes law, over the objections of the President, before the President orders the reduction required by subsections (a)(1) or (a)(2).

(2) If the vetoed appropriations measure or authorization measure becomes law, over the objections of the President, after the President has ordered the reductions required by subsections (a)(1) or (a)(2), then the President shall restore the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 or the balances under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect the positions existing before the reduction ordered by the President in compliance with subsection (a).

SEC. 9. EVALUATION AND SUNSET OF TAX EXPENDITURES

(a) LEGISLATION FOR SUNSETTING TAX EXPENDITURES.—The President shall submit legislation for the periodic review, reauthorization, and sunset of tax expenditures with his fiscal year 1997 budget.

(b) BUDGET CONTENTS AND SUBMISSION TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following paragraph:

''(30) beginning with fiscal year 1999, a Federal Government performance plan for measuring the overall effectiveness of tax expenditures, including a schedule for periodically assessing the effects of specific tax expenditures in achieving performance goals.''.

(c) PILOT PROJECTS.—Section 1118(c) of title 31, United States Code, is amended by—

(1) striking ''and'' after the semicolon in paragraph (2);

(2) redesignating paragraph (3) as paragraph (4); and

(3) adding after paragraph (2) the following:

''(3) describe the framework to be utilized by the Director of the Office of Management and Budget, after consultation with the Secretary of the Treasury, the Comptroller General of the United States, and the Joint Committee on Taxation, for undertaking periodic analyses of the effects of tax expenditures in achieving performance goals and the relationship between tax expenditures and spending programs; and''.

(d) CONGRESSIONAL BUDGET ACT.—Title IV of the Congressional Budget Act of 1974 is amended by adding at the end thereof the following:

''TAX EXPENDITURES

''SEC. 409. It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that contains a tax expenditure unless the bill, joint resolution, amendment, motion, or conference report provides that the tax expenditure will terminate not later than 10 years after the date of enactment of the tax expenditure.''.

SEC. 10. EFFECTIVE DATE.

The provisions of this Act shall apply to measures passed by the Congress beginning with the date of the enactment of this Act and ending on September 30, 2000.

Mr. EXON. Mr. President, I move to reconsider the vote.

Mr. COATS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mrs. BOXER. Mr. President, I voted against this bill because I believe the Dole proposal creates a dangerous shift of power from the Legislative to the Executive branch.

The power of the purse, Madison said in Federalist No. 58, represents the ''most complete and effectual weapon with which any constitution can arm the immediate representatives of the people for obtaining a redress of every grievance and for carrying into effect every just and salutary measure.'' Through this power, Congress—as the directly elected representatives of the people—can serve as a check on the Executive branch.

An alternative proposal by Minority Leader TOM DASCHLE was far more balanced and far less cumbersome and I was pleased to vote for it. I did not come to the Senate to fight for a shift of power to the President—any President. I came here to fight for the people of California in an equal partnership with the Executive.

This measure tips the scale unfairly away from the carefully crafted balance of powers so wisely designed by the founders of our Nation.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I ask unanimous consent to speak for 10 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISCONNECT BETWEEN THE FUTURE YEARS DEFENSE PROGRAM AND THE PRESIDENT'S BUDGET

Mr. GRASSLEY. Mr. President, I would like to continue my discussion on the integrity of the Department of Defense budget.

Yesterday, I examined accounting disconnects in four key areas of the defense budget.

Now, I would like to turn to the budget/future years defense program disconnect or the plans reality mismatch, as it is sometimes called.

This is about the disconnect between the Future Years Defense Program or FYDP and the President's budget.

I first became aware of this problem in the early 1980's, after hearing about the work of Mr. Chuck Spinney—an analyst in the Pentagon's Office of Program Analysis and Evaluation.

Mr. Spinney treated the Senate Armed Services and Budget Committees to a stack of his famous spaghetti diagrams at a special hearing held in the Caucus Room in late February 1983.

This was an unprecedented event.

It was the only joint Armed Services/Budget Committee hearing ever held.

Moreover, it took place despite a concerted effort by certain DOD officials to suppress Mr. Spinney's work and block the hearing.

In a room filled with TV cameras and bright lights, Chuck Spinney engaged the Reagan defense heavyweights in battle.

Cap Weinberger was the Secretary of Defense at the time.

When the day was over, Mr. Chuck Spinney had skewered them with their own spear.

Mr. Spinney had used Secretary Weinberger's own FYDP data to expose the flaws in his massive plan to ramp up the defense budget.

This was the crux of Mr. Spinney's Plans/Reality Mismatch briefing:

The final bill for Weinberger's fiscal year 1983–87 FYDP would be $500 billion more than promised.

Mr. Spinney's outstanding performance won him a place on the cover of Time magazine on March 7, 1983.

That was 12 years ago.

Again, all of this stuff happened before 54 of my colleagues ever set foot in this chamber.

Well, the brawl over the build-up led to a slew of reform initiatives: The Carlucci Initiatives; the Grace Commission; Nunn-McCurdy legislation; two Packard Commissions; Goldwater-Nichols legislation; and the Defense Management Review.

We were told that these initiatives would cure the disease, but they didn't.

The same old problem persists. Nothing has changed. Nothing has been fixed.

And things may be getting worse—as the budget vise is tightened down.

The money gap between the Pentagon programs and the budget persists.

Today, the GAO figures that the FYDP is overprogrammed by at least $150 billion.

That's a conservative estimate, too.

The CBO has come up with a somewhat lower estimate but a gap nonetheless.

There is a consensus on the problem but not on the solution.

Should we pump up the defense budget to close the gap—as some of my Republican colleagues suggest?

My Republican friends seem bound and determined to start up that slippery slope toward higher defense budgets.

They want to repeat the mistakes of the 1980's.

They want to rip open the national money sack at both ends and get out the big scoop shovel.

But why and for what?

The Soviet military threat is gone.

The cold war is over.

We need to begin balancing the budget.

And DOD's finance and accounting operation is flat busted.

And if it is really busted like I think it is, then DOD does not know how much money it needs right now.

Nor does anybody else.

Leadership and better management are the only solution—not more money.

Well, in the 1980's—at the height of the cold war, Congress did approve major increases in the defense budget.

That is true.

But Congress refused to close the massive gap between the Pentagon FYDP's and the Reagan budgets.

The gap was just too big.

Yet that is exactly what some of my Republican colleagues want to do today.

Cap Weinberger was Secretary of Defense when we argued this out 10 years ago.

He kept asking for more and more money.

But Mr. Spinney's analysis of DOD's own data showed that the military was getting less and less capability.

The topline kept rising.

But so did the gap.

The money sacks were piled high on the Pentagon steps, but there was never enough.

By the mid-1980's, Secretary Weinberger's 5-year funding roadmap topped out at $2 trillion. That was the fiscal year 1986 FYDP.

Congress just did not buy it.

Congress put the brakes on and slapped a lid on defense spending.

With the help of my Democratic and Republican allies, I was able to put a freeze on defense spending in 1985.

We were convinced that all the extra money was just making matters worse.

It was generating waste and abuse rather than more military strength.

The spare parts horror stories kept pouring out and finally and completely discredited the defense budget buildup.

Congress literally carved up Secretary Weinberger's ambitious 5-year plans.

Take, for example, the fiscal year 1983–87 FYDP.

It's price tag was a staggering $1.6 trillion plus.

Congress balked and cut the plan back to $1.1 trillion.

The final amounts appropriated were $600 billion below Weinberger's request.

We never got close to the $400 to $500 billion a year defense budgets that Secretary Weinberger wanted.

Mr. Weinberer's plans were unrealistic. They were not affordable, and they were totally out of line with what was really needed.

That is exactly where we are today.

Mr. President, that concludes my statement for today.

Tomorrow, I hope to complete my discussion of the Program/Budget mismatch.

I yield the floor.

APPOINTMENT BY THE MINORITY LEADER

The PRESIDING OFFICER. The Chair, on behalf of the minority leader, pursuant to Senate Resolution 105, adopted April 13, 1989, as amended by Senate Resolution 280, adopted October 8, 1994, announces the appointment of the Senator from Nebraska [Mr.

KERREY] as a member of the Senate Arms Control Observer Group.

MORNING BUSINESS

Mr. GRASSLEY. Mr. President, on behalf of the majority leader, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

DR. SAMUEL BRODER, DIRECTOR OF THE NATIONAL CANCER INSTITUTE

Mr. PELL. Mr. President, at the end of this month, Dr. Samuel Broder, Director of the National Cancer Institute, will formally leave his post to return to private life. This is an enormous loss to the National Cancer Institute, the American people, and the fight against cancer.

Dr. Broder has served with distinction at the National Cancer Institute since 1972, first with the Metabolism Branch in the Division of Cancer Biology and Diagnosis, and since 1981 with the Division of Cancer Treatment. In 1989, he was appointed by the President to serve as Director of the institute, capping his career there as laboratory researcher, attending clinical oncologist, and administrator.

As a strong supporter of the National Cancer Institute, and in particular, of its information dissemination programs, including the International Cancer Research Data Bank, I am personally grieved to see Dr. Broder move on to the well-deserved quiet and independence of private life. He has been a strong leader and administrator, fighting hard for the NCI's autonomy and priorities. And he has worked hard to create a balance between the critically important research that NCI conducts and supports, and the information dissemination and cancer prevention and control activities that make the NCI a national treasure for all citizens.

Dr. Broder's own scientific accomplishments in the areas of cancer and AIDs are well-known to all in the scientific community. He came to the job of Director with the respect of his colleagues, a solid understanding of the science he was to direct and the Institute he was to lead, and a deep dedication to the fight against cancer.

It is my hope that Dr. Broder will find professional and personal satisfaction in his new position and in his new life in Florida. I have no doubt that this is not the last that we will hear of him, because I believe that a person of his talent and dedication will continue to make enormous contributions to the cause of eradicating cancer wherever his path may take him. My family and I wish him and his family the very best and hope that his legacy at NCI will result in the choice of a successor who is as knowledgeable, responsive, and dedicated to the mission of the NCI as he has been.

Thank you, Mr. President.

RUSSIA CREDITWORTHINESS

Mr. LEAHY. Mr. President, today, I am releasing a GAO report that I requested when I was chairman of the Agriculture Committee.

The report concludes that the Bush administration inappropriately used USDA's export credit guarantee programs to expedite billions of dollars in loans to the Former Soviet Union [FSU] and its successor states.

This misuse of taxpayers funds leaves me deeply concerned.

I have said time after time that the GSM–102 export credit guarantee program is not a foreign aid program. It is a U.S. commercial program that allows creditworthy countries to use short-term debt to finance the purchase of quality U.S. agricultural products.

But, eligible countries must be determined capable of repayment.

This was not the first time that the Bush administration chose foreign policy objectives over creditworthiness considerations in the use of this program. Throughout the late 1980's, foreign policy considerations were the prevailing criteria.

I am all too familiar with the Government of Iraq's receipt of billions of dollars through the GSM–102 Program.

When we responded to Iraq's invasion of Kuwait, Iraq defaulted on these loans forcing the USDA to pay claims of over $2 billion with taxpayer money.

That is why, in the 1990 farm bill, I inserted a provision that requires the Secretary of Agriculture to determine that a prospective borrowing country is capable of adequately servicing the debt it incurs under these export credit guarantee programs.

It is also why in 1992, at my request, the Senate struck a Bush administration proposal that would have allowed USDA to balance creditworthiness against market development objectives in using the GSN programs.

I made it very clear on the floor, in committee, and in statements that the law did not permit loans to countries that were not creditworthy. Other foreign aid programs serve that purpose.

This GAO report confirms my suspicions about the Bush administration's use of the GSM–102 Program. When these loans were financed, the FSU was not creditworthy and should not have qualified for GSM–102 Program.

Instead, funds from one Government agency were allocated to support other administrative objectives. In a similar way, the Bush administration loaned money to help Saddam Hussein just before Iraq's invasion of Kuwait.

The Clinton administration understands the distinction between foreign aid and commercial trade.

Under this administration, no additional credit guarantees have been allocated for the Russian public sector.

In the spring of 1993, when Russian President Boris Yeltsin requested additional foreign aid, President Clinton simply supplied the import needs of Russia by using the Food for Progress Program—a foreign assistance program that I have long supported.

The Bush administration should have told taxpayers what was going on. If the executive branch wishes to provide foreign aid to another country they should at least say that to taxpayers. The aid could have been provided through established aid programs.

The Bush administration did a disservice to the taxpayers by hiding foreign aid under the guise of a commercial export program.

The GAO report comes too late to stop the Bush administration's inappropriate use of a commercial export program to help the states of the Former Soviet Union. But, it serves as a reminder that our agriculture programs are most effective when used for the purpose for which they are designed.

As we proceed through the 1995 farm bill debate, it will be important to create and enhance agricultural policies that best enable U.S. farmers, ranchers, and agribusiness to compete in the new world trade regime.

As part of that debate, we will examine the trade title closely to determine what programs are most effective in developing U.S. agricultural export markets.

And, we will ensure that sufficient safeguards are in place so that the experiences with Iraq and the FSU are not repeated.

I am confident that the Clinton administration will continue to do its utmost to ensure that all moneys borrowed under this and other USDA loan programs are repaid in full.

KENNETH HALL: A GREAT ILLINOISAN AND A GOOD FRIEND

Ms. MOSELEY-BRAUN. Mr. President, the Illinois General Assembly and the people of Illinois suffered a great loss this week. The death of State Senator Kenneth Hall on Tuesday has left his family, friends and colleagues mourning this loss of an extraordinary person and a great public servant. I have known Kenny for a long time. I had the privilege of serving in the Illinois legislature with Senator Hall for 10 years. I am proud to have been able to call him a friend.

Kenneth Hall was born in 1915 in East St. Louis, Illinois and attended high school and college in the area. After military service during World War II, Senator Hall began his public service career as a St. Clair County Sheriff's Investigator. He later served as Commissioner of the St. Clair County Housing Authority. He also served on the St. Clair County Welfare Service Committee and as a commissioner on the East St. Louis Park District. In 1949, he was appointed by former Governor

Adlai Stevenson III to serve on the State Rent Control Board.

Senator Hall's primary concern was always to his community, and he served for 28 years as a Democratic Precinct Committeeman. He was elected to the Illinois House of Representatives where he served two terms, and in 1970 was elected to the Illinois State Senate. Five years after election to the State Senate, he became the first black Assistant Majority Leader. During his 25 years in the Illinois Senate, he served on several committees including the Education, Veteran's Affairs, Executive committees, and served as Chairman of the Appropriation II Committee until 1992. His legislative agenda reflected his primary interests in helping the poor and disenfranchised. He firmly believed that government should play a role in helping those who cannot help themselves. He strongly supported education as a way out of poverty.

Those who knew Senator Hall remember him for his unfailing graciousness, and the way he cared about the people in his district. He was in many legislative battles during his career, but he was never disagreeable. He will be remembered most for his integrity and his honesty, and for the way he always had time for people.

He was an inspiration to many in his community, pushing them to find the best in themselves. East St. Louis Mayor Gordon Bush called Senator Hall a ''pioneer for racial harmony, and people living together as God's children''.

State Senator Kenneth Hall's career epitomizes what is best about public service. President Kennedy once said about politics as a profession, ''* * * if you are interested, if you want to participate, if you feel strongly about any public question, * * * governmental service is the way to translate this interest into action, the natural place for the concerned citizen is to contribute part of his life to the national interest''. Kenneth Hall was such a concerned citizen and he contributed a very large part of his life to the interest of his community, his state, and his country. In his own way he worked hard to make this world a better place. We could all learn something from his life.

I had the pleasure of working with Kenny in Springfield, when I was in the legislature. He was always helpful, and I always benefited from his counsel and advice.

Mr. President, Kenny was one of my mentors, and a shining light. His smile brightened every room and discussion he was in. He was tireless fighter and advocate who was never too busy to be kind. I will greatly miss him.

NOMINATION OF DR. HENRY FOSTER

Mr. PELL. Mr. President, I recently had the opportunity to meet with Dr. Henry Foster, President Clinton's nominee for the position of Surgeon General. I did so because, as a member of the Senate Labor and Human Resources Committee, I will be called upon to cast one of the first votes on this nomination before it is brought to the floor of the Senate. And I wanted to know what kind of man this is, who has been demonized by some and canonized by others.

Mr. President, what I found before me was a man of substance, who has worked very hard all his life to achieve the kind of success that is neither materialistic nor public. Dr. Henry Foster was raised in the rural South at a time of segregation so intense that he was forced, even while in medical school, to drink from a separate water fountain. He suffered the indignities of segregation with the kind of dignity, intelligence, and vision that enabled him both to see that he could achieve something very important in his life—and to do it. He spoke of his father's teachings of the value of education and hard work, and he incorporated those values into everything he has done in his life.

Dr. Foster's credentials alone certainly render him a qualified candidate for Surgeon General. A practicing obstetrician-gynecologist for 38 years, Dr. Foster is also a medical educator who has devoted much of his professional life to reducing infant mortality and preventing teen pregnancy. He has served as both Dean of the School of Medicine and acting President of Meharry Medical College in Nashville—one of the Nation's most prominent historically black colleges. Dr. Foster is currently on sabbatical from Meharry and is scholar-in-residence at the Association of Academic Health Centers in Washington, DC. He has been the recipient of many awards and honors—too numerous to mention here—but ranging from induction into the Institute of Medicine to receiving a ''Thousand Points of Light'' award from President George Bush for his ''I Have A Future'' program that promotes self-esteem and positive life choices among at-risk teens.

But as has been pointed out by his detractors, qualifications alone may not be sufficient for a person to hold a position of leadership and trust in our government. Especially with a position attracting as much attention as Surgeon General, it is important that the person appointed be an example of the best that our country has to offer.

Mr. President, from what I know of Dr. Foster, and from what I expect the Labor Committee hearings to bring out, Dr. Foster is such a person. In addition to excellent academic and leadership qualifications, Dr. Foster has traveled an admirable path, in the early years forfeiting a life of great wealth in a more comfortable, ivory tower setting and returning to his roots—this time to poor, rural Alabama—to help an under-served population that needed his care. Since then, Dr. Foster has helped train the minds and influence the careers of hundreds of Meharry Medical College students, many of whom have followed in Dr. Foster's footsteps.

While Dr. Foster's life and career have not been without their controversial moments, there are few, if any, individuals of prominence and principle in this country who have not experienced such moments in life. I have reviewed carefully the information available to me about those times in Dr. Foster's life and the actions that he took, and I have asked him about others. I am satisfied that Dr. Foster is telling the truth about discrepancies that arose shortly after his nomination was announced, and I am comfortable that Dr. Foster's actions can be explained in the context of both the times and the nature of his work.

While I realize that it is still possible to learn information that might raise questions or cause concern about Dr. Foster's suitability for this position, I must say that I doubt that this will occur. I have been most impressed by the strong support he has received from the medical community, from public health and social service advocates, and from many individuals—including several Rhode Islanders who have contacted me to say that they personally know and admire Dr. Foster.

Mr. President, it is my hope that prompt hearings can be held on Dr. Foster's nomination. I believe that the Senate Labor and Human Resources Committee, and its able Chairwoman, Senator NANCY KASSEBAUM, will hold fair, even-handed and comprehensive hearings on Dr. Foster's nomination. In my view, it is very much our duty to hold such hearings on any nominee forwarded to us by the President of the United States. As my colleagues know, I have voted to confirm many nominees of Presidents not of my own party, and I have voted to confirm numerous nominees who did not share my view of the world and who would not have been my choice. But I believe that every President deserves great deference in the choice of nominees and—at the least—deserves to have the Senate consider every nominee in a prompt fashion.

I urge my colleagues to meet and talk with Dr. Foster, and to discover a person of compassion, and humor, and dedication, whom I believe deserves the chance to serve his Nation.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, anyone even remotely familiar with the U.S. Constitution knows that no President can spend a dime of Federal tax money that has not first been authorized and appropriated by both the House of Representatives and the U.S. Senate.

So when you hear politicians or editors or commentators declare that ''Reagan ran up the Federal debt'' or that ''Bush ran it up,'' bear in mind that the Founding Fathers made it very clear that it is the constitutional

duty of Congress to control Federal spending.

The fiscal irresponsibility of Congress has created a Federal debt which stood at $4,844,512,611,537.49 as of the close of business Wednesday, March 22. Averaged out, every man, woman, and child in America owes a share of this massive debt, and that per capita share is $18,389.85.

DR. CLAIRE LOUISE CAUDILL NAMED ''COUNTRY DOCTOR OF THE YEAR''

Mr. McCONNELL. Mr. President, I rise today to pay tribute to a remarkable Kentuckian who has been named 1994/95 ''Country Doctor of the Year.'' Dr. Claire Louise Caudill of Rowan County, KY, has unselfishly dedicated herself to the medical profession and the citizens of Rowan County for 46 years.

Dr. Caudill was one of two women to graduate from the University of Louisville Medical School in 1946. Since that time, she has devoted herself to ensuring that proper medical attention was given in her county. She and her faithful nurse assistant, Susie Halbieb, often went above and beyond the call of duty. The two trudged through streams and down impassible country roads to provide care to people. In 1957, Dr. Caudill and nurse Susie opened a maternity clinic in Morehead and delivered about 600 babies a year.

Dr. Caudill's clinic was essential to Rowan County, as the next closest facility was over 70 miles away. Her practice was largely comprised of Medicare/Medicaid patients in one of the nation's poorest areas. She only required payment if the patient could afford it.

She made the dream of a proper medical facility a reality when she initiated fundraising to build a hospital. She spearheaded the effort to raise over $250,000 and then sought the assistance of the Sisters of Notre Dame to assist with funding, management, and staffing. The hospital was built in the 1960's and was duly named the St. Claire Medical Center. The hospital has since emerged as a noted regional facility. It is equipped with a cancer treatment center, a maternity center, a hospice, and a home health care department.

Dr. Caudill has been responsible for delivering over 8,000 babies in her lifetime. Although she no longer delivers babies, she still sees around 20 patients a day. Dr. Caudill is a credit to her community and the medical profession. Mr. President, I ask the Chamber to join me in paying tribute to Claire Louise Caudill, MD, Country Doctor of the Year. Her commitment to the welfare of her community continues to be an example for us all.

TRIBUTE TO HENRY WARD JANDL

Mr. JOHNSTON. Mr. President, I rise today to report to the Senate the sad news of the loss of one of our Nation's preeminent historic preservation professionals, Henry Ward Jandl, who died unexpectedly on Saturday, March 18, at George Washington University Hospital.

I came to know and respect Ward Jandl's fine work through many years of involvement in historic preservation legislation through the Senate Committee on Energy and Natural Resources as well as through my own personal interest, and that of my wife Mary, in historic preservation in Louisiana.

Ward Jandl graduated from the Hotchkill School in 1964 and Yale University in 1968. He spent 2 years in the Peace Corps teaching English in Ankara, Turkey. In 1971, he received a Graduate Certificate in Historic Preservation from Columbia University while working at the New York Public Library.

A resident of the District of Columbia since 1974, Ward's entire professional career was spent in the U.S. Department of the Interior, National Park Service. He began as an architectural historian at the National Register of Historic Places. At the time of his death, he was Chief Appeals Officer, Cultural Resources, and Deputy Chief, Preservation Division.

For his dedicated service to historic preservation, Ward received several honors from the Department of the Interior. In addition to being a valued policymaker, Ward coauthored two books: Houses by Mail: A Guide to Houses from Sears, Roebuck and Co., in 1986, and Yesterday's Houses of Tomorrow: Innovative Homes: 1850–1950, in 1991.

Mr. President, Ward Henry Jandl accomplished many things in his relatively brief, but filled career and has left a legacy for our Nation to follow as we attempt to preserve our past in preparation for brighter days ahead. I hope this legacy will help ease the loss of his passing for his father, Henry Anthony Jandl of Richmond, VA, and his sister, Margaret Marie Jandl of Cambridge, MA, to whom I extend my most sincere condolences.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 2:08 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that pursuant to the provisions of Public Law 96–388, as amended by Public Law 97–84 (36 United States Code 1402(a)), the Speaker appoints the following Members on the part of the House to serve as members of the United States Holocaust Memorial Council: Mr. GILMAN, Mr. REGULA, Mr. LATOURETTE, Mr. LANTOS, and Mr. YATES.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time and placed on the calendar:

H.R. 1158. An act making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–35. A concurrent resolution adopted by the Legislature of the State of West Virginia; ordered to lie on the table.

''SENATE CONCURRENT RESOLUTION NO. 16

''Whereas, the constitution of the United States of America is the most perfect example of a contract between a people and their government; and

''Whereas, the congress of the United States is currently considering an amendment to the constitution, known as the ''Balanced Budget Amendment''; and

''Whereas, the House of Representatives has already approved its version of such a balanced budget amendment; and

''Whereas, the House of Representatives approved its version without obtaining a projection of how it would be implemented; and

''Whereas, the House of Representatives rejected a version of the balanced budget amendment, offered by Representative Bob Wise of West Virginia, that would have protected against cuts in social security and would have allowed for both a capital and operating budget; and

''Whereas, the proposal for a balanced budget amendment is now under active consideration in the United States Senate; and

''Whereas, United States Senators Robert C. Byrd and John D. Rockefeller IV of West Virginia have called for a 'right to know' provision so that the senators would know before they vote how a balanced budget would be achieved; and

''Whereas, the treasury department of the United States has projected that a balanced budget amendment implemented by across-the-board cuts would reduce federal grants to West Virginia state government by $765 million, requiring the Legislature to increase state taxes to compensate for such losses or eliminate the programs and services currently provided to our citizens by federal funds; and

''Whereas, many citizens of West Virginia would likely suffer from cuts imposed to meet the requirements of the proposed balanced budget amendment, including thousands of our citizens who receive social security, veterans benefits, medicare, medicaid and other essential benefits; and

''Whereas, through the efforts of Senator Robert C. Byrd and other members of our congressional delegation appropriations have been made for numerous projects in West Virginia, including completion of the Appalachian corridor highway system, relocation of the federal bureau of investigation center to West Virginia and a myriad of other projects; and

''Whereas, these benefits and projects are vital to the economic development and well being of the people of our state and deserve to be protected if the constitution is amended to require a balanced budget; and

''Whereas, West Virginia receives $1.45 in federal benefits for each dollar in federal taxes; and

''Whereas, on a per capita basis, each man, woman and child receives approximately $2,000 more in benefits from the federal government that he or she pays in federal taxes; and

''Whereas, a proposal to balance the federal budget by returning the programs to the states would mean that West Virginia would be required to either raise its taxes by $2,000 dollars for each man, woman and child or eliminate the programs and services currently provided to our citizens by federal funds; and

''Whereas, the balanced budget amendment would be submitted to the Legislature for ratification if approved by the congress; and

''Whereas, this Legislature will be unable to establish its own budget without knowing what reductions will be made by the congress to effect the balanced budget amendment; and

''Whereas, this Legislature therefore has a right to know what effect the proposed balanced budget amendment would have on state government, but more importantly, on the people of our state; Now, therefore, be it

''*Resolved by the Legislature of West Virginia,* That the Legislature recognize that a balanced federal budget is a desirable objective; and, be it

''*Further resolved,* That the Legislature commends the president and the congress for their efforts toward this objective by supporting and enacting legislation that will result in the reduction of the federal deficit for three years in a row; and, be it

''*Further resolved,* That the Legislature will be asked to vote for ratification of a balanced budget amendment to the constitution if such a measure is submitted to the states by the congress; and, be it

''*Further resolved,* That the Legislature, acting on behalf of the citizens of West Virginia in deciding whether to ratify such an amendment, is entitled to be fully informed of its consequences on our people; and, be it

''*Further resolved,* That the congress is hereby urged to submit such an 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, veterans benefits, medicare, medicaid, education, highway moneys, including completion of the Appalachian corridor system, and other programs necessary for the health and well-being of the people of our state; and, be it

''*Further resolved,* That the Clerk of the Senate is hereby requested to forward a copy of this resolution to the president of the United States Senate, the Speaker of the House of Representatives and each member of the West Virginia congressional delegation.''

POM—36. A resolution adopted by the Cooperative Agricultural Bargaining and Marketing Associations relative to the USDA; to the Committee on Agriculture, Nutrition, and Forestry.

POM—37. A resolution adopted by the Agricultural Bargaining Council relative to the USDA; to the Committee on Agriculture, Nutrition, and Forestry.

POM—38. a resolution adopted by the Senate of the Legislature of the State of California; to the Committee on Agriculture, Nutrition, and Forestry.

SENATE RESOLUTION NO. 9

''Whereas, the United States Department of Agriculture (USDA) announced in the Federal Register on November 15, 1994, that the government of Mexico has requested that the Animal and Plant Health Inspection Service (APHIS) allows the importation into certain areas of the United States of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico; and

''Whereas, in response, APHIS has held two public meetings, one in Florida and one in California, for the purpose of receiving public comment prior to deciding whether to publish a proposed rule in the Federal Register that would allow the importation of avocados as requested by the Mexican government; and

''Whereas, the request of the Mexican government would require that the USDA substantially modify its current policy relating to pest quarantine, which has served to protect United States agriculture from the threat of pest infestation by the full array of injurious pest species known to exist in Mexico; and

''Whereas, the negative economic impact resulting from the presence of these exotic pests in California would be devastating to a wide spectrum of California agriculture, including apples, apricots, avocados, citrus, and pears; and

''Whereas, a programmatic environmental impact report prepared by the California Department of Food and Agriculture in June 1993, states that a Mexican fruitfly infestation in California would cause increased cost to the private sector totaling $124.4 million and lead to the use of as much as 5,560,000 pounds of pesticide; and

''Whereas, an eradication of a fruitfly infestation often requires intensive ground and aerial spraying of urban areas; and

''Whereas, in 1989, Mediterranean fruitfly, melon fruitfly, and oriental fruitfly cost the agricultural industry $300 million in lost markets and $5.4 million in damaged produce and postharvest treatments; and

''Whereas, California and the federal government have spent more than $500 million since 1975 in their continuing effort to eradicate exotic pests in California; and

''Whereas, California has recently announced that pest discoveries increased 195 percent over 1993, and there is a significant increase in prohibited fruit discoveries in violation of domestic quarantines; and

''Whereas, the USDA announced in July 1994, that it had imposed a hiring freeze; and

''Whereas, the scientific data submitted by Mexico—a research study and pest survey data—to support its request—lacks scientific integrity and ignores the fact that virtually every quarantine pest known to infest Hass avocados has been detected during border interceptions at El Paso, Texas; and

''Whereas, these quarantine pests are the same species that Mexico claims to have eradicated in Michoacan and are the very ones upon which the current USDA pest quarantine is based; and

''Whereas, the proposed modification of the USDA pest quarantine makes no provision for costs incurred by federal and state governments and by the California agricultural industry if a pest infestation occurs as a result of a modified quarantine; now, therefore, be it

''*Resolved by the Senate of the State of California,* That the request by the Mexican government that the United States permit the importation of fresh Hass avocado fruit grown in Michoacan, Mexico into this country be denied due to a lack of valid scientific data; and be it further

''*Resolved,* That the USDA consider no further proposals of this nature unless the request contains all of the following: (1) baseline information on the seasonal abundance, geographical distribution, and biology of all of the quarantine pests known to infest Mexican avocados, and a declaration that that information has been collected and analyzed by scientists representing the USDA and Mexican and Californian agricultural interests; (2) laboratory and field studies that conclusively establish the host susceptibility of Hass avocados to fruitfly infestation through scientifically credible and reproducible data; (3) an identification of definite areas and districts free from injurious, quarantined pests known to attack Hass avocados; (4) a showing that scientifically valid pest surveys have been conducted in these definite areas over a minimum period of 12 months with oversight by the USDA, the Mexican government, and private sector entomologists and that those survey results are negative; and (5) proof that the Mexican government has adopted and enforced regulations that will prevent the introduction of quarantined pests into any of the designated areas that form the pest-free zones; and be it further

''*Resolved,* That the burden of alleviating risks associated with the shipment of pest infested Mexican avocados into the United States should remain with Mexico and the United States should not assume this burden; and be it further

''*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California, Arizona, Florida, and Texas in the Congress of the United States, and to the Secretary of the United States Department of Agriculture.''

EXECUTIVE REPORTS OF COMMITTEES

The following executive report of a committee was reported on March 22, 1995:

By Mr. HELMS, from the Committee on Foreign Relations:

Treaty Doc. 103–25 Treaty Convention on Conventional Weapons (Exec. Rept. 104–1).

TEXT OF THE COMMITTEE-RECOMMENDED RESOLUTION OF ADVICE AND CONSENT

Resolved (two-thirds of the Senators present concurring therein), That (a) the Senate advise and consent to the ratification of the following Convention and two accompanying Protocols, concluded at Geneva on October 10, 1980 (contained in Treaty Document 103–25), subject to the conditions of subsections (b) and (c):

(1) The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects (in this resolution referred to as the ''Convention'').

(2) The Protocol on Non-Detectable Fragments (in this resolution referred to as ''Protocol I'').

(3) The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps

and Other Devices, together with its technical annex (in this resolution referred to as ''Protocol II'').

(b) The advice and consent of the Senate under subsection (a) is given subject to the following conditions, which shall be included in the instrument of ratification of the Convention:

(1) RESERVATION.—Article 7(4)(b) of the Convention shall not apply with respect to the United States.

(2) DECLARATION.—The United States declares, with reference to the scope of application defined in Article 1 of the Convention, that the United States will apply the provisions of the Convention, Protocol I, and Protocol II to all armed conflicts referred to in Articles 2 and 3 common to the Geneva Conventions for the Protection of War Victims of August 12, 1949.

(3) UNDERSTANDING.—The United States understands that Article 6(1) of Protocol II does not prohibit the adaptation for use as booby-traps of portable objects created for a purpose other than as a booby-trap if the adaptation does not violate paragraph (1)(b) of the Article.

(4) UNDERSTANDING.—The United States considers that the fourth paragraph of the preamble to the Convention, which refers to the substance of provisions of Article 35(3) and Article 55(1) of Additional Protocol I to the Geneva Conventions for the Protection of War Victims of August 12, 1949, applies only to States which have accepted those provisions.

(c) The advice and consent of the Senate under subsection (a) is given subject to the following conditions, which are not required to be included in the instrument of ratification of the Convention:

(1) DECLARATION.—Any amendment to the Convention, Protocol I, or Protocol II (including any amendment establishing a commission to implement or verify compliance with the Convention, Protocol I, or Protocol II), any adherence by the United States to Protocol III to the Convention, or the adoption of any additional protocol to the Convention, will enter into force with respect to the United States only pursuant to the treaty-making power of the President, by and with the advice and consent of the Senate, as set forth in Article II, Section 2, Clause 2 of the Constitution of the United States.

(2) DECLARATION.—The Senate notes the statements by the President and the Secretary of State in the letters accompanying transmittal of the Convention to the Senate that there are concerns about the acceptability of Protocol III to the Convention from a military point of view that require further examination and that Protocol III should be given further study by the United States Government on an interagency basis. Accordingly, the Senate urges the President to complete the process of review with respect to Protocol III and to report the results to the Senate on the date of submission to the Senate of any amendments which may be concluded at the 1995 international conference for review of the Convention.

(3) STATEMENT.—The Senate recognizes the expressed intention of the President to negotiate amendments or protocols to the Convention to carry out the following objectives:

(A) An expansion of the scope of Protocol II to include internal armed conflicts.

(B) A requirement that all remotely delivered mines shall be equipped with self-destruct devices.

(C) A requirement that manually emplaced antipersonnel mines without self-destruct devices or backup self-deactivation features shall be used only within controlled, marked, and monitored minefields.

(D) A requirement that all mines shall be detectable using commonly available technology.

(E) A requirement that the party laying mines assumes responsibility for them.

(F) The establishment of an effective mechanism to verify compliance with Protocol II.

The following executive reports of committees were submitted on March 23, 1995:

By Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation:

Robert Pitofsky, of Maryland, to be a Federal Trade Commissioner for the term of seven years from September 26, 1994.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. PRESSLER. Mr. President, for the Committee on Commerce, Science, and Transportation, I also report favorably five nomination lists in the Coast Guard, which were printed in full in the CONGRESSIONAL RECORDS of January 6, February 3 and 16, 1995, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the RECORDS of January 6, February 3 and 16, 1995, at the end of the Senate proceedings.)

By Mr. LUGAR, from the Committee on Agriculture, Nutrition, and Forestry:

Daniel Robert Glickman, of Kansas, to be Secretary of Agriculture.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. BOXER:

S. 600. A bill to require the Secretary of Agriculture to issue regulations concerning use of the term ''fresh'' in the labeling of poultry, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CHAFEE (for himself, Mr. KENNEDY, Mr. PELL, and Mr. KERRY):

S. 601. A bill to revise the boundaries of the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BROWN (for himself, Mr. SIMON, Mr. DOLE, Ms. MIKULSKI, Mr. ROTH, Mr. MCCONNELL, and Mr. MCCAIN):

S. 602. A bill to amend the NATO Participation Act of 1994 to expedite the transition to full membership in the North Atlantic Treaty Organization of European countries emerging from communist domination; to the Committee on Foreign Relations.

By Mr. FAIRCLOTH:

S. 603. A bill to nullify an executive order that prohibits Federal contracts with companies that hire permanent replacements for striking employees, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. PRESSLER:

S. 604. A bill to amend title 49, United States Code, to relieve farmers and retail farm suppliers from limitations on maximum driving and on-duty time in the transportation of agricultural commodities or farm supplies if such transportation occurs within 100-air mile radius of the source of the commodities or the distribution point for the farm supplies; to the Committee on Commerce, Science, and Transportation.

By Mr. DOLE (for himself, Mr. HATCH, Mr. HEFLIN, Mr. LOTT, Mr. GRAMM, Mr. BROWN, Mr. CRAIG, Mr. SHELBY, Mr. NICKLES, Mr. KYL, Mr. ABRAHAM, Mr. THURMOND, Mr. INHOFE, Mr. PACKWOOD, Mr. WARNER, Mr. COATS, Mr. BURNS, Mr. THOMAS, Mr. PRESSLER, Mrs. HUTCHISON, Mr. HATFIELD, Mr. GRAMS, Mr. FRIST, Mr. MCCONNELL, Mr. ASHCROFT, Mr. MACK, Mr. MURKOWSKI, Mr. BENNETT, Mr. KEMPTHORNE, Mr. GRASSLEY, Mr. BOND, and Mr. STEVENS):

S. 605. A bill to establish a uniform and more efficient Federal process for protecting property owners' rights guaranteed by the fifth amendment; to the Committee on the Judiciary.

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 606. A bill to make improvements in pipeline safety, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. WARNER (for himself and Mr. REID):

S. 607. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes; to the Committee on Environment and Public Works.

By Mr. KENNEDY (for himself and Mr. KERRY):

S. 608. A bill to establish the New Bedford Whaling National Historical Park in New Bedford, Massachusetts, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. WELLSTONE:

S. 609. A bill to assure fairness and choice to patients and health care providers, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. LOTT:

S. 610. A bill to provide for an interpretive center at the Civil War Battlefield of Corinth, Mississippi, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. PELL (for himself, Mr. KERRY, Mr. FEINGOLD, and Ms. SNOWE):

S. Res. 91. A resolution to condemn Turkey's illegal invasion of Northern Iraq; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. BOXER:

S. 600. A bill to require the Secretary of Agriculture to issue regulations concerning use of the term ''fresh'' in the labeling of poultry, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE TRUTH IN POULTRY LABELING ACT

• Mrs. BOXER. Mr. President, today I am introducing the Truth in Poultry Labeling Act of 1995. This legislation directs the Secretary of Agriculture to restrict the use of the term ''fresh'' to poultry that has never been kept frozen.

The bill closes a loophole in Federal law that allows frozen chickens and turkeys to be labeled and sold as fresh.

I am frankly disappointed that I have to introduce this legislation. I have been repeatedly assured that the Agriculture Department was prepared to act to end the fraud allowed by current law. In January, a draft rule to restrict the use of the term ''fresh'' to poultry that has never been kept frozen was actually issued, but there are no assurances that the rule will be finalized any time soon.

In fact, evidence suggests that we are likely to see more delay than action on this issue. Two weeks ago, the Food Safety and Inspection Service decided that it will grant an extension of the comment period on its proposed rule. The extension had been sought by the very industry groups which have dedicated themselves to protecting the status quo. The new rule was proposed in January, and the original 60-day comment period was set to expire last week.

I strongly object to the decision to delay—once again—the rule protecting consumers against mislabeled poultry.

The Agriculture Department did the right thing in January when it proposed the new rule.

Unfortunately, the announced delay is just another in a series of delays stretching back to 1988, when this same rule was first proposed: 7 years is far too long for consumers to wait for basic truth in labeling.

USDA has had a chance to act responsibly on behalf of consumers and has failed. I am therefore introducing this bill to require USDA to issue the new rule within 30 days of enactment, and will seek early consideration of the bill.

This legislation is supported by Consumers Union, the National Consumers League, Public Voice, the California Poultry Industry Federation, the Consumer Federation of America, and the United Food and Commercial Workers International Union.

Current law promotes consumer fraud, allowing chickens and turkeys that have been frozen hard as bowling balls to be thawed out and labeled fresh. Consumers are paying a substantial premium for fresh poultry that has no right to the label. It is time to end the delays and end the fraud, and I ask my colleagues to support this important piece of legislation.

Mr. President, I ask unanimous consent that the full text of the bill appear in the RECORD.

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

S. 600

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 ''Truth in Poultry Labeling Act of 1995.''

SEC. 2. REGULATIONS ON LABELING OF POULTRY.

Not later than 30 days after the date of enactment of this Act, the Secretary of Agriculture shall issue final regulations under the Poultry Product Inspection Act (21 U.S.C. 451 et seq.) that prohibit the use of the term ''fresh'' on labeling of any poultry or poultry part, or of any edible portion of the poultry or part, that has been frozen or previously frozen to below 26 degrees Fahrenheit.•

By Mr. BROWN (for himself, Mr. SIMON, Mr. DOLE, Ms. MIKULSKI, Mr. ROTH, Mr. MCCONNELL, and Mr. MCCAIN):

S. 602. A bill to amend the NATO Participation Act of 1994 to expedite the transition to full membership in the North Atlantic Treaty Organization of European countries emerging from Communist domination; to the Committee on Foreign Relations.

THE NATO PARTICIPATION ACT AMENDMENT OF 1995

Mr. BROWN. Mr. President, I sent to the desk just a few minutes ago the NATO Participation Act Amendments of 1995. Included as sponsors, along with myself, are Senator SIMON, Senator DOLE, Senator MIKULSKI, Senator ROTH, and Senator MCCONNELL. And I ask unanimous consent that Senator MCCAIN be added as a cosponsor of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, this NATO Participation Act deals with the hopes and fears and the concerns, I believe, of every American, because it deals with our very freedom.

Every American has a special place in their heart for the people of Central Europe and perhaps even a special place in their conscience. It was in Central Europe where we saw the treachery of Hitler plunge the world into the Second World War. No one can forget that his treachery saw the demise of what was then Czechoslovakia. Few Americans will ever forget the treachery of both Nazi Germany and the Soviet Union in carving up Poland. And I cannot think of a more apt description than the quote of Edmund Burke, when he said:

> The only thing necessary for the triumph of evil in this world is for good men to do nothing.

Mr. President, that is what happened in Central Europe. Good men and women concerned about democracy and freedom stood by and did nothing while Fascist and Communist forces carved up Central Europe. We paid for it in a cold war that lasted more than half a century.

Mr. President, we must never allow that tragedy to happen again. We must be very clear that the men and women of Central Europe are entitled to freedom. That is what the NATO Participation Act Amendments are all about—clarity, making it clear that we believe the Czech Republic, Poland, Hungary, and the Republic of Slovakia should be free and should be masters of their own destiny.

The NATO Participation Act of 1994 was a step forward because it authorized the establishment of a program within this Government to transition those eligible countries to NATO membership, and this follow-on act does four basic things to improve on that situation.

First of all, it helps to set aside the uncertainty of powers in this world about the countries' future by making it clear our policy is to move them into NATO. It develops a program and a focus for this Nation's foreign policy to proceed on a regularized path to include them in NATO, to move them toward full membership. But let me emphasize their membership is not free. It will involve major new responsibilities as well as cost for them.

Second, Mr. President, this act moves to reallocate funds for military training that will include those four countries. By training together and by working together, we will lay the groundwork for a partnership in NATO in the years ahead.

And third, it sets forth a clear policy of encouraging United States support for observer status in NATO for these four countries, a prerequisite and an important part of their training for full participation.

Last, in the event these four countries are not fully members of NATO by the end of this decade, it calls on the President in January 1999 to report fully to Congress on the progress of these countries in entering NATO. It will give us the tools and the ability to evaluate the progress, evaluate the program, and take the additional steps that may be necessary to accomplish our goal.

Mr. President, the bottom line is this: Those countries in Central Europe lost their freedom and lost their right to independence when the dark cloud of Nazism spread across Europe. It could have been prevented if good men and women had not stood aside.

They, again, saw their hoped-for independence snuffed out when the Iron Curtain fell across Europe and Soviet domination extinguished their freedom.

More than anything, this act says to the world that Americans will not stand idly by, unconcerned about Central Europe's security. The loss of the freedom of Poland, Hungary, the

Czech Republic, the Slovak Republic, and other eligible countries may ultimately mean the loss of our freedom.

Mr. SIMON. Mr. President, I am pleased to be a cosponsor. Let me address one concern that people have, that this will be viewed as somehow anti-Russian. There is no question the Russians do not like this move toward expanding NATO, and there is no question that there are genuine fears, whether justified or not, on the part of some of the countries of Central Europe with Russia. There is no reason, at some point in the future when democracy is insolubly established in Russia—and it is moving in the right direction—that Russia cannot become a part of NATO. As a matter of fact, if I were a Russian leader looking at a potential foe, I would not be looking to the West, I would be looking to the East—China, with all the population and potential there. I think this is not only in the best interest of the countries of Central Europe. I think this is in the best interest of Russia, and I am pleased to be a cosponsor.

• Ms. MIKULSKI. Mr. President, I am proud to rise as a cosponsor of the NATO Participation Act Amendments of 1995. This bipartisan legislation will increase security and stability in eastern Europe, and will contribute to the security of the United States.

This year we are marking the 50th anniversary of our victory in World War II. But the end of the World War was also the start of the cold war. Soviet expansionism forced us to prepare to defend western Europe. And the captive nations of eastern Europe were forced behind the Iron Curtain.

After more than 40 years of living under Soviet tyranny, Poland, Hungary, the Czech Republic, and Slovakia are free and independent. They are not asking for protection. They are merely asking to be full partners in the new Europe. By transforming their countries into free-market democracies, they have earned this right.

If our international organizations are to survive—as I believe they must—they must adapt to the post-cold-war world. This sounds so obvious. Yet NATO is still mired in its cold war structure. We still have not established the criteria for NATO membership—let alone a timetable for admitting new states.

In recent months the United States has more explicitly stated that NATO will be expanded. I applaud this. But our NATO partners have been dragging their feet. This legislation will help to clarify the United States position on NATO expansion—and will enable us to lead the alliance to meet the challenges of the post-Soviet world.

We have all heard the arguments against expanding NATO. Some believe that we will offend Russia by expanding NATO membership. I disagree. NATO is a defensive organization. A country that doesn't have expansionist aims has nothing to fear from an expanded NATO.

Mr. President, for many years I have worked with Senator BROWN and Senator SIMON to make the United States a more effective advocate for democracy and economic development in eastern Europe. I commend them for their leadership and look forward to working with them to enact the NATO Participation Act Amendments into law.•

By Mr. CHAFEE (for himself, Mr. KENNEDY, Mr. PELL, and Mr. KERRY):

S. 601. A bill to revise the boundaries of the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island, and for other purposes; to the Committee on Energy and Natural Resources.

THE BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR REAUTHORIZATION ACT OF 1995

• Mr. CHAFEE. Mr. President, it gives me great pleasure today to introduce legislation to reauthorize and expand the boundaries of the Blackstone River Valley National Heritage corridor. I am delighted to be joined in this effort by my colleagues from Rhode Island and Massachusetts, Senators PELL, KENNEDY, and KERRY, all of whom have worked hard on this issue through the years.

Before I describe our legislation in detail, allow me to provide a little historical background for the benefit of my colleagues.

Known as the cradle of the Industrial Revolution, the Blackstone Valley is the place where modern America begins—200 years ago on the banks of the Blackstone River, in Pawtucket, RI, Samuel Slater built our Nation's first water-powered textile mill, an event which changed this country forever. Backed by capital from Providence, other entrepreneurs followed Slater's lead. Factories and villages sprang up along the river's banks. Families migrated from farms into the towns. Canals—and later railroads—were built to improve the transportation of goods. Immigrants from all over Europe came to the region in search of work and opportunity.

In the 1920's, the region's prosperity began to fade. Mills closed and moved south. The Great Depression made matters worse. In subsequent years, the Blackstone, which had been renowned as ''the hardest working river in America'' became just another neglected, polluted body of water.

But people in the valley recognized that the river still had a story to tell. Evidence of the region's glorious past remained in abundance. Beautiful dams, bridges, mills, villages, farms, and pastures—all these things contribute to a special sense of place, identity, and history. Many began to realize that preserving and celebrating the area's past was the key to a brighter future.

In the early 1980's, we prevailed upon the National Park Service to conduct a study of the Blackstone Valley. They too concluded that its resources were of national significance and were well worth preserving. The question was: How? With half a million people living there, the valley does not lend itself to the traditional national park strategy where the Federal Government owns and manages the land.

What was needed was an approach that would encourage cooperation among communities, across State lines, and between the private and public sectors. And so, in 1986, through legislation which Senators PELL, KENNEDY, KERRY, and I advanced together, the Blackstone River Valley National Heritage corridor was born.

Stretching 46 miles along the Blackstone River, from Worcester, MA to Providence, RI, the corridor encompasses 20 cities and towns over a 250,000-acre area. Efforts to interpret and preserve the valley's historical and scenic resources are coordinated by the Blackstone Corridor Commission, which receives modest Federal funding to support its operations. The National Park Service works closely with the Commission, providing invaluable technical assistance and guidance.

Not surprisingly, there were some who doubted that the corridor concept could work. It was, of course, unlike anything that had been tried before. But I can say with great confidence that the Blackstone corridor is working. And it is working precisely because it is not managed like the traditional national park. Under the umbrella of the Corridor Commission, individuals from different communities, businesses, levels of government, and walks of life are working together toward a common vision, and with impressive results.

Historic treasures are being uncovered, interpreted, and restored. Old mills are being converted for modern use. Visitors now can enjoy the Blackstone by riverboat or canoe. Parks are being established along its banks. A greenway, for bicyclists and hikers is well underway. A Friends of the Blackstone group is cleaning up the river. National Park Service rangers and volunteers are educating visitors about the valley's rich history. A strategy for reintroducing salmon to the Blackstone river is being developed. Imagine that, salmon coming back to a river that was once an environmental disgrace.

And all this is being done with relatively little money from the Federal Government, because every Federal dollar that goes into the corridor is leveraged many times over by the Commission, sometimes by as much as twenty to one. In fact, often the Commission provides no money at all, just the expertise and cando attitude needed to shepherd a project from concept to reality.

This bill, which is identical to legislation introduced in the last Congress by Senator KENNEDY and approved by the Senate Energy and Natural Resources Committee last year, builds

upon that success. It extends the life of the Blackstone Corridor Commission—which, under current law, will expire in November 1996—for another 10 years, and gives the Secretary of Interior the authority to extend the Commission for an additional 10 years thereafter, providing the Commission meets certain criteria.

In addition, the bill will add to the corridor five new communities—three in Rhode Island and two in Massachusetts—which are culturally and historically tied to the existing corridor and contain the headwaters of the Blackstone River. This logical expansion will allow the Commission to interpret and protect the region's resources in a comprehensive and unified fashion. Finally, our legislation increases the Commission's annual authorization from $350,000 to $650,000, in recognition of its tremendous success and new responsibilities, and authorizes up to $5 million over 3 years in matching funds for development projects within the corridor.

Mr. President, it seems to me that protecting and preserving our Nation's special places, like the Blackstone Valley, is one of the Federal Government's most important functions. But as we all know, preservation does take money, and money is tight. I would submit that in these tough budgetary times, the Blackstone Corridor, which has accomplished so much with so little, offers us a model that should be encouraged and expanded upon. I thank my colleagues from Rhode Island and Massachusetts for their hard work and support, and urge the Senate to give this measure its swift approval.

Mr. President, I ask unanimous consent that a copy 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. 601

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 ''Blackstone River Valley National Heritage Corridor Amendments Act of 1995''.

SEC. 2. BOUNDARY CHANGES.

Section 2 of the Act entitled ''An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island'', approved November 10, 1986 (Public Law 99–647; 16 U.S.C. 461 note), is amended by striking the first sentence and inserting the following new sentence: ''The boundaries shall include the lands and water generally depicted on the map entitled Blackstone River Valley National Heritage Corridor Boundary Map, numbered BRV–80–80,011, and dated May 2, 1993.''.

SEC. 3. TERMS.

Section 3(c) of the Act entitled ''An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island'', approved November 10, 1986 (Public Law 99–647; 16 U.S.C. 461 note), is amended by inserting immediately before the period at the end the following: '', but may continue to serve after the expiration of this term until a successor has been appointed.''.

SEC. 4. REVISION OF PLAN.

Section 6 of the Act entitled ''An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island'', approved November 10, 1986 (Public Law 99–647; 16 U.S.C. 461 note), is amended by adding at the end the following new subsection:

''(d) REVISION OF PLAN.—(1) Not later than 1 year after the date of enactment of this subsection, the Commission, with the approval of the Secretary, shall revise the Cultural Heritage and Land Management Plan. The revision shall address the boundary change and shall include a natural resource inventory of areas or features that should be protected, restored, managed, or acquired because of their contribution to the understanding of national cultural landscape values.

''(2) No changes other than minor revisions may be made in the approved plan as amended without the approval of the Secretary. The Secretary shall approve or disapprove any proposed change in the plan, except minor revisions, in accordance with subsection (b).''.

SEC. 5. EXTENSION OF COMMISSION.

Section 7 of the Act entitled ''An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island'', approved November 10, 1986 (Public Law 99–647; 16 U.S.C. 461 note), is amended to read as follows:

''TERMINATION OF COMMISSION

''SEC. 7. (a) TERMINATION.—Except as provided in subsection (b), the Commission shall terminate on the date that is 10 years after the date of enactment of the Blackstone River Valley National Heritage Corridor Amendments Act of 1995.

''(b) EXTENSION.—The Commission may be extended for an additional term of 10 years if—

''(1) not later than 180 days before the termination of the Commission, the Commission determines that an extension is necessary to carry out this Act;

''(2) the Commission submits a proposed extension to the appropriate committees of the Senate and the House of Representatives; and

''(3) the Secretary, the Governor of Massachusetts, and the Governor of Rhode Island each approve the extension.

''(c) DETERMINATION OF APPROVAL.—The Secretary shall approve the extension if the Secretary finds that—

''(1) the Governor of Massachusetts and the Governor of Rhode Island provide adequate assurances of continued tangible contribution and effective policy support toward achieving the purposes of this Act; and

''(2) the Commission is effectively assisting Federal, State, and local authorities to retain, enhance, and interpret the distinctive character and nationally significant resources of the Corridor.''.

SEC. 6. IMPLEMENTATION OF THE PLAN.

Subsection (c) of section 8 of the Act entitled ''An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island'', approved November 10, 1986 (Public Law 99–647; 16 U.S.C. 461 note), is amended to read as follows: U.S.C. 461 note), as amended, is amended by inserting the following:

''(c) IMPLEMENTATION.—(1) To assist in the implementation of the Cultural Heritage and Land Management Plan in a manner consistent with purposes of this Act, the Secretary is authorized to undertake a limited program of financial assistance for the purpose of providing funds for the preservation and restoration of structures on or eligible for inclusion on the National Register of Historic Places within the Corridor which exhibit national significance or provide a wide spectrum of historic, recreational, or environmental education opportunities to the general public.

''(2) To be eligible for funds under this section, the Commission shall submit an application to the Secretary that includes—

''(A) a 10-year development plan including those resource protection needs and projects critical to maintaining or interpreting the distinctive character of the Corridor; and

''(B) specific descriptions of annual work programs that have been assembled, the participating parties, roles, cost estimates, cost-sharing, or cooperative agreements necessary to carry out the development plan.

''(3) Funds made available pursuant to this subsection shall not exceed 50 percent of the total cost of the work programs.

''(4) In making the funds available, the Secretary shall give priority to projects that attract greater non-Federal funding sources.

''(5) Any payment made for the purposes of conservation or restoration of real property or structures shall be subject to an agreement either—

''(A) to convey a conservation or preservation easement to the Department of Environmental Management or to the Historic Preservation Commission, as appropriate, of the State in which the real property or structure is located; or

''(B) that conversion, use, or disposal of the resources so assisted for purposes contrary to the purposes of this Act, as determined by the Secretary, shall result in a right of the United States for reimbursement of all funds expended upon such resources or the proportion of the increased value of the resources attributable to such funds as determined at the time of such conversion, use, or disposal, whichever is greater.

''(6) The authority to determine that a conversion, use, or disposal of resources has been carried out contrary to the purposes of this Act in violation of an agreement entered into under paragraph (5)(A) shall be solely at the discretion of the Secretary.''.

SEC. 7. LOCAL AUTHORITY.

Section 5 of the Act entitled ''An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island'', approved November 10, 1986 (Public Law 99–647; 16 U.S.C. 461 note), is amended by adding at the end the following new subsection:

''(j) LOCAL AUTHORITY AND PRIVATE PROPERTY NOT AFFECTED.—Nothing in this Act shall be construed to affect or to authorize the Commission to interfere with—

''(1) the rights of any person with respect to private property; or

''(2) any local zoning ordinance or land use plan of the Commonwealth of Massachusetts or a political subdivision of such Commonwealth.''.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

Section 10 of the Act entitled ''An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island'', approved November 10, 1986 (Public Law 99–647; 16 U.S.C. 461 note), as amended, is further amended—

(1) in subsection (a), by striking ''$350,000'' and inserting ''$650,000''; and

(2) by amending subsection (b) to read as follows:

''(b) DEVELOPMENT FUNDS.—For fiscal years 1996, 1997, and 1998, there is authorized to be appropriated to carry out section 8(c), $5,000,000 in the aggregate.''.●

Mr. PELL. Mr. President, it is with great pride in the Blackstone River Valley National Heritage Corridor and great hope for its continued success

that I join Senator CHAFEE of Rhode Island, Senator KENNEDY of Massachusetts, and Senator KERRY of Massachusetts in introducing legislation to reauthorize the corridor.

As I have said before about this exceptional partnership project, nothing succeeds like success. The Blackstone NHC is a wonderful example of success. Our bill both reauthorizes and expands the Blackstone NHC—the largest national park or affiliated area in New York or New England: 250,000 acres, including 20 towns or cities in 2 states.

The expansion is a logical one. We should increase the boundaries to include the communities of Burrillville, Glocester, and Smithfield in Rhode Island, and Worcester and Leceister in Massachusetts. All are within the watershed of the 46-mile long Blackstone River.

More than a decade ago, I convened the first planning meeting for the corridor involving Federal, State and local officials. Ever since then, the corridor has been a bipartisan project enthusiastically supported by both the Rhode Isand and Massachusetts congressional delegations.

Senator CHAFEE introduced the initial authorization. I introduced the existing authorization, and I am delighted that Senator CHAFEE is working hard to continue our bipartisan, bistate effort. All of us want the corridor to showcase the cradle of the American Industrial Revolution.

I would like to underscore what I consider a very important point. The Heritage Corridor Commission has used its relatively meager Federal resources to leverage dramatic expenditures and results.

The Blackstone NHC is an extraordinary bargain for the taxpayers. With only a modest Federal contribution, the corridor has leveraged funds by sometimes as much as a 20 to 1 match.

My own State of Rhode Island has invested more than $7.7 million and has acquired more than 250 acres of land in the Blackstone River Valley. A linear park and bikeway are in the planning stage, as is completion of an Anadramous fisheries restoration program that has met with initial success.

We continue to look for examples of imaginative, efficient, and cost-effective concepts. We need to look no further than the Blackstone Valley—not only for where those concepts were born but where they continue to be practiced and developed to this day.

The legislation that we are submitting today is intended to safeguard the integrity and coherence of the Corridor Commission by including areas that are functionally, ecologically, and historically integral components of the Blackstone Region.

In Rhode Island, the three communities that would be added are highly motivated to join in the success of corridor and worked hard to develop comprehensive town plans. Glocester also developed strategies, including local historic district zoning, to turn the village of Chepachet into a visitor destination.

Calling the area a corridor is somewhat of a misnomer, since it must be understood that we are not talking about some narrow strip of land and water. Its boundaries comprise an area more than 25 miles wide and 46 miles long; a management unit that now would include an entire watershed.

When future generations of Americans want to understand how communities and industries are made and grow, if we do our job right, they will understand the entire system by a visit to the Blackstone Valley.

We already have noticed a real transformation in confidence that is occurring in the Blackstone Valley. It is a transformation that is coming about because our citizens are realizing the value of our heritage. The lessons of history are increasingly part of the fabric of the valley.

I want to add the National Park Service has played a strong role and completely positive role in the corridor. These are people we trust, who understand the meaning of the words ''public service.'' There have been no complaints about Federal intrusion, only praise for Federal creativity and skill.

I am pleased to note that this new authorization by Senator CHAFEE builds on the foundation that we established—with Senators KENNEDY and KERRY—and improves the final product. It is worth noting that our own bipartisan commitment and collaboration mirrors the spirit of the corridor.

Mr. KENNEDY. Mr. President, it is a privilege to be a sponsor of this legislation introduced by Senator CHAFEE to improve the Blackstone River Valley National Heritage Corridor, and I commend Senator CHAFEE for his leadership on this important matter. This legislation is designed to build upon the successful historic preservation effort already underway in the Blackstone Valley in Massachusetts and Rhode Island. It was approved by the Senate Energy and Natural Resources Committee last year, and I hope it will receive the committee's support again, so that it can be enacted by the 104th Congress.

This legislation is the result of bipartisan and bistate cooperation among several Senators and Representatives. Senator CHAFEE and I and Senators JOHN KERRY and CLAIBORNE PELL, and Congressmen PETER BLUTE, RICHARD NEAL, JACK REED, and PATRICK KENNEDY all have a strong commitment to this historic preservation effort.

This bill will extend the current boundaries of the Blackstone Corridor to include neighboring communities that are essential parts of the region's history, as recommended by a comprehensive National Park Service study. It will also continue the Corridor Commission, which has been very effective in leveraging private support and bringing local groups together to preserve these important historical, cultural, and natural resources. The bill will modestly increase the Commission's funding, in order to strengthen current preservation efforts and address the broader responsibilities that will result from the larger boundaries of the corridor.

The Blackstone Corridor is unique in many respects, and it meets stringent criteria of national significance. Historically, it is distinctive as the site of the birth of the Industrial Revolution in America. It was here that the widespread use of water power for industry was first developed in the United States.

Much of this early development is still intact, with approximately 10,000 historic structures, including a canal system and dams that harness the force of the river, which drops dramatically at many points along its 46-mile course. Dozens of 19th century mill villages and communities spring up along the river to take advantage of its power. Many other aspects of the area—the farms and pastures that provide food for the mill workers, and the beautiful woods and scenic areas along the river—remain intact for the enjoyment of visitors.

The Blackstone Corridor is also distinctive because it represents an innovative and highly cost-effective way for the Federal Government to assist in preserving historic and natural resources. Rather than acquiring and managing vast acres of land and historic structures, the National Park Service and the Blackstone Commission serve as guiding hands to foster restoration projects that are predominantly funded with local resources. The Federal role is to provide technical expertise, set high standards, and provide national recognition. These efforts encourage local citizens, businesses, nonprofit historic and environmental organizations, schools and universities, 20 local Governments and two State Governments to work together to protect the valley's heritage, and to do so in a way that is consistent with National Park Service standards.

When the corridor was first established by Congress in 1986, this type of public-private partnership was an experimental concept. Neither Congress nor the Park Service was certain that the concept—very different from traditional Federal ownership and control—would work. Now it is clear that the corridor is a success, and it serves as a model for similar efforts across the country. A 1992 report by the Advisory Board of the Secretary of the Interior on National Parks gave Blackstone a glowing endorsement, calling it an outstanding initiative and partnership model. At a conference on heritage areas hosted by the National Trust for Historic Preservation, the Blackstone project was featured as the prime example of the effective use of Federal seed money to encourage local preservation.

Because the corridor has been such an unqualified success, other communities in the valley want to participate, and they have petitioned for official inclusion in the corridor boundaries. The Blackstone Commission has conducted a comprehensive evaluation of these communities—Worcester and Leicester in Massachusetts and Burrillville, Glocester, and Smithfield in Rhode Island. The Commission found that each of these communities has significant historic and natural resources that merit inclusion in the project.

One of the most valuable features of the corridor, as described in its cultural heritage and land management plan approved by the Secretary of the Interior in 1990, is its wholeness—the survival of representative elements of entire 18th and 19th century production systems, power and transportation methods, communities, workplaces, and machinery. The expansion will help ensure the protection of the entire corridor, including the headwaters of the Blackstone River, to tell a fuller story of America's industrial revolution.

Continuation of the Blackstone Corridor Commission is also essential. Existing law terminates the Commission's authority in 1996, undermining opportunities for the new areas to participate in the corridor and undercutting the Commission's effective ongoing efforts within the existing boundaries. The Commission has provided a vital framework for encouraging the local involvement and private sector financial participation that are the hallmark of the Blackstone project.

This legislation will extend the Commission for 10 years, and permit an additional 10-year extension if the Commission can satisfy criteria showing it continues to be effective in protecting and interpreting the corridor through the partnership approach. The Secretary's Advisory Board recommended reconsideration of the 1996 sunset clause in its report on Blackstone, stating that after the planning stage, there should be ''a program into which the corridor can feed, one with parameters as carefully drawn as those governing traditional park units.''

Our legislation also makes clear that the Commission will not interfere with private property rights. In fact, one of the priorities of the Commission is to work cooperatively with all interested parties and, in many cases, to enhance the value of private property in the region, by providing technical assistance to local communities. The Commission has no authority to issue regulations or impose its own restrictions on land or property.

The legislation proposes a modest increase in the Commission's operating budget to $650,000 a year. It authorizes up to $5 million over the next 3 years in matching funds for development projects that will be largely financed through local contributions. These funds will enable the Commission to continue its excellent work in the 20 towns now comprising the corridor and to expand its outreach efforts to the additional communities.

These investments are highly cost-effective. The corridor is the largest National Park Service-affiliated area in New England. The Commission deserves this vote of confidence by Congress for the impressive groundwork it has laid and for the important tasks it has set for itself in the years ahead.

Again, I commend Senator CHAFEE for leading the way on this legislation. I believe it offers an excellent opportunity to build on the success of the Blackstone River Valley National Heritage Corridor, and to keep an important part of our American heritage alive and accessible for future generations. I urge the Senate to move expeditiously to approve this bill.

• Mr. KERRY. Mr. President, I am pleased once again to join my colleagues, the distinguished Senators from Rhode Island, Senator CHAFEE and Senator PELL, and the senior Senator from Massachusetts, Senator KENNEDY, in sponsoring legislation to revise the boundaries of the Blackstone River Valley National Heritage Corridor. The bill we are introducing today is identical to legislation that was passed overwhelmingly out of the Senate Energy Committee during the last Congress. I am hopeful that the committee will expeditiously act to support this important component of the National Park System.

When the Blackstone River Valley National Heritage Corridor was established in 1986, it represented a unique experiment which sought to reconcile resource preservation with economic growth through the cooperation of the community, its businesses, the State government, and the National Park Service. Now, 8 years later, the success of this partnership can be seen in all of the 20 townships and 5 cities that comprise the corridor. From the historic preservation of buildings to the construction of parks, bikeways, and river access, the corridor has effectively blended the beauty of a New England landscape with the preservation of the region's history shaped so indelibly by the Industrial Revolution. This project has been so successful for all involved that five additional cities and towns—two in Massachusetts and three in Rhode Island—have petitioned to be included in the Commission.

For those of us who represent States east of the Mississippi and who are concerned with the aesthetic value of the landscapes of our States, this project is particularly exciting. Unlike Western States where large tracts of land are protected by the National Park Service, most Eastern States simply do not have open expanses of land available to develop as national parks in the traditional sense. The Blackstone River Valley National Heritage Corridor is a model for other regions interested in preserving their unique characteristics and their historic resources without disturbing their economic base. Just as the great national parks of the West symbolize the expansiveness and independence that are part of our history, the Blackstone Corridor captures another aspect of our collective heritage—a heritage that is rooted in the communities and industries of the east coast and which helped define the 19th century American experience. This architectural and industrial landscape stands today as a reminder of our past and its contributions to both our spiritual identity and our industrial development.

The Blackstone Valley Corridor should serve as a model for the preservation of our unique heritage and for the process by which it has been developed and promoted. This project exemplifies a solid partnership of Federal, State, and local resources working in unison leveraged to produce the highest level of results. it also exemplifies an extraordinary effort in pulling together committed private local volunteers and financial support to enhance the public investment. This is a prototype which could be duplicated in other National Park Service projects throughout the country.

While the success of this project is attested to by all involved, we must ensure that the hard work and resources that have contributed to that success are not compromised. By extending the Corridor Commission another 10 years and increasing the operating budget, this bill would allow the Commission the leeway it needs to continue in its unique mission. In addition, the boundaries would be expanded so that the five communities of Massachusetts and Rhode Island which have requested inclusion would be able to participate in the Commission-sponsored activities.

I sincerely hope that the corridor's success as both a national park and as an example of a positive public-private partnership in pursuit of conservation objectives will be replicated in other areas of the country. If we are to hold Blackstone Valley up as such a model, however, we first must ensure that it is provided with the resources it needs. Mr. President, for these reasons I look forward to continued positive action on this legislation.•

By Mr. PRESSLER:

S. 604. A bill to amend title 49, United States Code, to relieve farmers and retail farm suppliers from limitations on maximum driving and on-duty time in the transportation of agricultural commodities or farm supplies if such transportation occurs within 100-air mile radius of the source of the commodities or the distribution point for the farm supplies; to the Committee on Commerce, Science, and Transportation.

THE REGULATORY RELIEF FOR FARMERS ACT OF 1995

Mr. PRESSLER. Mr. President, now is the time of the year American's are preparing their fields for planting of this year's crops. Planting season can be unpredictable for farmers. Once the

season begins there is the inevitable uncooperative weather conditions of rain, snow, hail or early spring frosts. Farmers must move quickly and put in long hours.

The demand for farm supplies escalates during planting season. The last thing farmers need are burdensome and unnecessary regulations that interfere with planting operations.

The Department of Transportation has issued hours-of-service regulations that could interrupt or stop planting. These regulations are highly impractical, burdensome and costly for farmers and farm suppliers. Simply put, the regulations would require farmers to take three days off—at the peak work time of the year—after working up to 15 hours a day for 4 days straight. I might add these regulations would cause severe problems for farmers at harvest time, as well.

The solution to this dilemma is simple. The Department of Transportation should waive the hours of service requirements for agricultural purposes during harvest and planting seasons.

This issue is not new. Last year, 34 Senators, including myself, wrote to Transportation Secretary Peña urging a waiver from hours-of-service requirements for agricultural purposes during planting and harvest seasons.

Mr. President, I ask unanimous consent that a copy of that letter appear in the RECORD.

Mr. President, I want to extend my deepest appreciation to the efforts of our colleague, Senator EXON, on this effort. He has been a leader in the effort to waive agriculture from the hours-of-service regulations. Senator EXON led Senate efforts last year to pass legislation to provide this agricultural exemption. However, an agricultural exemption has never cleared the Congress.

I have worked with Senator EXON closely on this matter. I have let him know that I would introduce this bill today.

I have worked with my House and Senate farm State colleagues for regulatory relief for farmers and farm suppliers. Department of Transportation regulations are unfair to farmers and farm suppliers. An agricultural exemption did not clear Congress last year. What did clear the House last year was watered down and reduced to yet another mandated regulatory hurdle for farmers. That is the situation facing farmers today.

Farmers and farm suppliers want to obey the law and rules on hours-of-service. However, the rules do not make sense. Because of what I view as a bureaucratic entanglement brought about the Department of Transportation, I am introducing this bill today. Legislative action is needed so that American agriculture can have a sensible rule in place for the 1995 planting and harvest seasons.

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

U.S. SENATE,
Washington, DC, September 26, 1994.

Hon. FEDERICO PEÑA,
Secretary of Transportation, Department of Transportation, Washington, DC.

DEAR SECRETARY PEÑA: We support the provision in the Hazardous Materials Transportation Act (Public Law 103–311) which requires you to initiate a rulemaking proceeding relating to hours of service rules as they apply to retail farm suppliers.

As you know, current section 395.3 hours of service regulations require an on-duty worker to take three days off and wait in order to accumulate enough off-duty time to resume driving. Application of hours of service requirements upon farmers and their farm suppliers is burdensome, imposes costs and encourages violating the hours of service rules. Therefore, we strongly support a waiver from the hours of service requirements for agricultural purposes during the harvest and planting season.

DOT has recognized that the on-duty time of certain occupations are subject to special demands and has granted seasonal exemptions from section 395.3 hours of service requirements. We request your support for agriculture regulatory relief at least as accommodating as that granted under section 395.3(c) for small package delivery drivers meeting holiday seasonal demands. Farmers and farm suppliers engaged in the transport of fertilizer and fertilizer materials, agricultural chemicals, pesticides, seed, animal feeds, crops, and other essential farm supplies want to obey the law and should be subject to an hours of service rule which makes sense.

During certain weeks of each year in our agricultural states, there is a small window of opportunity in the crop-planting season when the demand for farm supplies escalates. The same is true for amount of rainfall or freezing temperatures. Because of farmer procedures and driver safety, it is impractical and costly for these workers to take three days off at the peak of agricultural production. Driving is incidental to their principal work function of servicing farmers' fields.

Increasingly, farmers utilize farm suppliers who are agronomic experts to help them cope with environmental regulations, develop, implement, and manage precision agriculture, and harvest profitable crops that produce safe, abundant and affordable food for Americans and the world. Over 80 percent of our nation's farmers utilize farm suppliers who are trained agronomic experts who service farmers' fields, which is their principal job function and driving is incidental to this principal job function.

As you draft this important regulatory relief proposed rule, we respectfully request that you take our comments and concerns into consideration. We look forward to working closely with you on this important rulemaking for American agriculture and having it finalized before the 1995 spring planting season.

Sincerely,

Jim Exon, Wendell H. Ford, Paul Simon, Arlen Specter, Carol Moseley-Braun, Richard C. Shelby, Byron L. Dorgan, Thomas A. Daschle, David H. Pryor, Tom Harkin, Chuck Grassley, Robert Kerrey, Kent Conrad, Trent Lott, Chuck Robb, John Breaux, Bob Graham, John Warner.

Larry Pressler, Howell Heflin, Max Baucus, Conrad Burns, Larry E. Craig, Kay Bailey Hutchison, Thad Cochran, Dan Coats, Don Nickles, Connie Mack, Malcolm Wallop, Hank Brown, Robert Dole, Mitch McConnell, Richard G. Lugar, Herb Kohl.

By Mr. DOLE (for himself, Mr. HATCH, Mr. HEFLIN, Mr. LOTT, Mr. GRAMM, Mr. BROWN, Mr. CRAIG, Mr. SHELBY, Mr. NICKLES, Mr. KYL, Mr. ABRAHAM, Mr. THURMOND, Mr. INHOFE, Mr. PACKWOOD, Mr. WARNER, Mr. COATS, Mr. BURNS, Mr. THOMAS, Mr. PRESSLER, Mrs. HUTCHISON, Mr. HATFIELD, Mr. GRAMS, Mr. FRIST, Mr. MCCONNELL, Mr. ASHCROFT, Mr. MACK, Mr. MURKOWSKI, Mr. BENNETT, Mr. KEMPTHORNE, Mr. GRASSLEY, Mr. BOND, and Mr. STEVENS):

S. 605. A bill to establish a uniform and more efficient Federal process for protecting property owners' rights guaranteed by the fifth amendment; to the Committee on the Judiciary.

THE OMNIBUS PROPERTY RIGHTS ACT OF 1995

Mr. DOLE. Mr. President, since last November's elections we have pursued an ambitious program of reform to fundamentally change and improve the relationship between the Government and its citizens. No doubt about it, to the defenders of business as usual these are wrenching changes we propose: A balanced budget amendment; the line item veto; regulatory reform; and even the elimination of cabinet level departments. Each of these reforms has been opposed by those who do not understand that the American people have instructed us to rein in the Federal Government. But we will continue to fight for these reforms, and for the American people.

Today, we add to these reforms, by confronting one of the most basic clashes between Government and individual liberty: The taking of private property for public uses. There is perhaps no greater foundation for a successful free society than private property. The American Revolution was fought in part because of the threat that tyranny posed to private property, whether it was taxation without representation, restraints on trade, or violation of home and hearth by British soldiers. Private property rights are the rights to enjoy the fruits of our labor and our ideas and thus enjoy a special place in the U.S. Constitution.

Mr. President, one of the most basic of these protections is found in the fifth amendment to the Constitution; ''nor shall private property be taken for public use, with just compensation.'' As the Supreme Court has stated, this protection is about basic fairness: Preventing the Government ''from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole.'' The fifth amendment thus provides a balance between public need and individual liberty.

Today, however, this balance is missing. A regulatory state that seems only to grow and grow—that is increasingly intrusive—has provided the means for a sustained assault on private property rights in America. It is our duty to ensure that we limit the arbitrary exercise of Government power and pursue

worthwhile goals in ways that protect the rights of our citizens.

Mr. President, I and my colleagues today are proud to introduce the Omnibus Property Rights Act of 1995. I want to especially commend my colleagues who worked hard to bring a lot of good ideas together in one comprehensive package. Senator HATCH should be particularly commended for his leadership of the working group that consisted of Senators SHELBY, NICKLES, HEFLIN, CRAIG, GRAMM, LOTT, THOMAS, BROWN, KYL, and ABRAHAM.

Mr. President, the Omnibus Property Rights Act of 1995 would accomplish four major objectives:

First, it would require the Federal Government to compensate property owners if Government action reduces the value of property by one-third;

Second, it would provide for alternative dispute resolution procedures and clarify court jurisdiction for takings claims;

Third, it would require Federal agencies responsible for Endangered Species Act and section 404 of the Clean Water Act to provide for administrative procedures to address takings claims; and

Fourth, it would require agencies to perform a takings impact analysis of regulations, and ensure that agencies select the regulatory alternative that minimizes the taking of private property.

Mr. President, these are sweeping reforms. But it is important to point out that our reforms do more than provide that just compensation is paid in proper circumstances. The real test is to minimize the number of takings that occur in the first instance. We need to ensure that when we pursue otherwise laudable goals, that we do so in ways that allow the Government to take private property only as a last resort, and when it is necessary to do so, to insist that just compensation is paid to the property owner. The Omnibus Property Rights Act of 1995 accomplishes these goals, and I intend to bring this bill to the floor as soon as possible. I urge my colleagues to support this much-needed legislation.

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

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

S. 605

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 ''Omnibus Property Rights Act of 1995''.

TITLE I—FINDINGS AND PURPOSES

SEC. 101. FINDINGS.

The Congress finds that—

(1) the private ownership of property is essential to a free society and is an integral part of the American tradition of liberty and limited government;

(2) the framers of the United States Constitution, in order to protect private property and liberty, devised a framework of Government designed to diffuse power and limit Government;

(3) to further ensure the protection of private property, the fifth amendment to the United States Constitution was ratified to prevent the taking of private property by the Federal Government, except for public use and with just compensation;

(4) the purpose of the takings clause of the fifth amendment of the United States Constitution, as the Supreme Court stated in Armstrong v. United States, 364 U.S. 40, 49 (1960), is ''to bar Government from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole'';

(5) the Federal Government has singled out property holders to shoulder the cost that should be borne by the public, in violation of the just compensation requirement of the takings clause of the fifth amendment of the United States Constitution;

(6) there is a need both to restrain the Federal Government in its overzealous regulation of the private sector and to protect private property, which is a fundamental right of the American people; and

(7) the incremental, fact-specific approach that courts now are required to employ in the absence of adequate statutory language to vindicate property rights under the fifth amendment of the United States Constitution has been ineffective and costly and there is a need for Congress to clarify the law and provide an effective remedy.

SEC. 102. PURPOSE.

The purpose of this Act is to encourage, support, and promote the private ownership of property by ensuring the constitutional and legal protection of private property by the United States Government by—

(1) the establishment of a new Federal judicial claim in which to vindicate and protect property rights;

(2) the simplification and clarification of court jurisdiction over property right claims;

(3) the establishment of an administrative procedure that requires the Federal Government to assess the impact of government action on holders of private property;

(4) the minimization, to the greatest extent possible, of the taking of private property by the Federal Government and to ensure that just compensation is paid by the Government for any taking; and

(5) the establishment of administrative compensation procedures involving the enforcement of the Endangered Species Act of 1973 and section 404 of the Federal Water Pollution Control Act.

TITLE II—PROPERTY RIGHTS LITIGATION RELIEF

SEC. 201. FINDINGS.

The Congress finds that—

(1) property rights have been abrogated by the application of laws, regulations, and other actions by the Federal Government that adversely affect the value of private property;

(2) certain provisions of sections 1346 and 1402 and chapter 91 of title 28, United States Code (commonly known as the Tucker Act), that delineate the jurisdiction of courts hearing property rights claims, complicates the ability of a property owner to vindicate a property owner's right to just compensation for a governmental action that has caused a physical or regulatory taking;

(3) current law—

(A) forces a property owner to elect between equitable relief in the district court and monetary relief (the value of the property taken) in the United States Court of Federal Claims;

(B) is used to urge dismissal in the district court on the ground that the plaintiff should seek just compensation in the Court of Federal Claims; and

(C) is used to urge dismissal in the Court of Federal Claims on the ground that plaintiff should seek equitable relief in district court;

(4) property owners cannot fully vindicate property rights in one court;

(5) property owners should be able to fully recover for a taking of their private property in one court;

(6) certain provisions of section 1346 and 1402 and chapter 91 of title 28, United States Code (commonly known as the Tucker Act) should be amended, giving both the district courts of the United States and the Court of Federal Claims jurisdiction to hear all claims relating to property rights; and

(7) section 1500 of title 28, United States Code, which denies the Court of Federal Claims jurisdiction to entertain a suit which is pending in another court and made by the same plaintiff, should be repealed.

SEC. 202. PURPOSES.

The purposes of this title are to—

(1) establish a clear, uniform, and efficient judicial process whereby aggrieved property owners can obtain vindication of property rights guaranteed by the fifth amendment to the United States Constitution and this Act;

(2) amend the Tucker Act, including the repeal of section 1500 of title 28, United States Code;

(3) rectify the constitutional imbalance between the Federal Government and the States; and

(4) require the Federal Government to compensate property owners for the deprivation of property rights that result from State agencies' enforcement of federally mandated programs.

SEC. 203. DEFINITIONS.

For purposes of this title the term—

(1) ''agency'' means a department, agency, independent agency, or instrumentality of the United States, including any military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the United States Government;

(2) ''agency action'' means any action or decision taken by an agency that—

(A) takes a property right; or

(B) unreasonably impedes the use of property or the exercise of property interests;

(3) ''just compensation''—

(A) means compensation equal to the full extent of a property owner's loss, including the fair market value of the private property taken and business losses arising from a taking, whether the taking is by physical occupation or through regulation, exaction, or other means; and

(B) shall include compounded interest calculated from the date of the taking until the date the United States tenders payment;

(4) ''owner'' means the owner or possessor of property or rights in property at the time the taking occurs, including when—

(A) the statute, regulation, rule, order, guideline, policy, or action is passed or promulgated; or

(B) the permit, license, authorization, or governmental permission is denied or suspended;

(5) ''private property'' or ''property'' means all property protected under the fifth amendment to the Constitution of the United States, any applicable Federal or State law, or this Act, and includes—

(A) real property, whether vested or unvested, including—

(i) estates in fee, life estates, estates for years, or otherwise;

(ii) inchoate interests in real property such as remainders and future interests;

(iii) personalty that is affixed to or appurtenant to real property;

(iv) easements;

(v) leaseholds;

(vi) recorded liens; and

(vii) contracts or other security interests in, or related to, real property;

(B) the right to use water or the right to receive water, including any recorded lines on such water right;

(C) rents, issues, and profits of land, including minerals, timber, fodder, crops, oil and gas, coal, or geothermal energy;

(D) property rights provided by, or memorialized in, a contract, except that such rights shall not be construed under this title to prevent the United States from prohibiting the formation of contracts deemed to harm the public welfare or to prevent the execution of contracts for—

(i) national security reasons; or

(ii) exigencies that present immediate or reasonably foreseeable threats or injuries to life or property;

(E) any interest defined as property under State law; or

(F) any interest understood to be property based on custom, usage, common law, or mutually reinforcing understandings sufficiently well-grounded in law to back a claim of interest;

(6) ''State agency'' means any State department, agency, political subdivision, or instrumentality that—

(A) carries out or enforces a regulatory program required under Federal law;

(B) is delegated administrative or substantive responsibility under a Federal regulatory program; or

(C) receives Federal funds in connection with a regulatory program established by a State,

if the State enforcement of the regulatory program, or the receipt of Federal funds in connection with a regulatory program established by a State, is directly related to the taking of private property seeking to be vindicated under this Act; and

(7) ''taking of private property'', ''taking'', or ''take''—

(A) means any action whereby private property is directly taken as to require compensation under the fifth amendment to the United States Constitution or under this Act, including by physical invasion, regulation, exaction, condition, or other means; and

(B) shall not include—

(i) a condemnation action filed by the United States in an applicable court; or

(ii) an action filed by the United States relating to criminal forfeiture.

SEC. 204. COMPENSATION FOR TAKEN PROPERTY.

(a) IN GENERAL.—No agency or State agency, shall take private property except for public use and with just compensation to the property owner. A property owner shall receive just compensation if—

(1) as a consequence of an action of any agency, or State agency, private property (whether all or in part) has been physically invaded or taken for public use without the consent of the owner; and

(2)(A) such action does not substantially advance the stated governmental interest to be achieved by the legislation or regulation on which the action is based;

(B) such action exacts the owner's constitutional or otherwise lawful right to use the property or a portion of such property as a condition for the granting of a permit, license, variance, or any other agency action without a rough proportionality between the stated need for the required dedication and the impact of the proposed use of the property;

(C) such action results in the property owner being deprived, either temporarily or permanently, of all or substantially all economically beneficial or productive use of the property or that part of the property affected by the action without a showing that such deprivation inheres in the title itself;

(D) such action diminishes the fair market value of the affected portion of the property which is the subject of the action by 33 percent or more with respect to the value immediately prior to the governmental action; or

(E) under any other circumstance where a taking has occurred within the meaning of the fifth amendment of the United States Constitution.

(b) NO CLAIM AGAINST STATE OR STATE INSTRUMENTALITY.—No action may be filed under this section against a State agency for carrying out the functions described under section 203(6).

(c) BURDEN OF PROOF.—(1) The Government shall bear the burden of proof in any action described under—

(A) subsection (a)(2)(A), with regard to showing the nexus between the stated governmental purpose of the governmental interest and the impact on the proposed use of private property;

(B) subsection (a)(2)(B), with regard to showing the proportionality between the exaction and the impact of the proposed use of the property; and

(C) subsection (a)(2)(C), with regard to showing that such deprivation of value inheres in the title to the property.

(2) The property owner shall have the burden of proof in any action described under subsection (a)(2)(D), with regard to establishing the diminution of value of property.

(d) COMPENSATION AND NUISANCE EXCEPTION TO PAYMENT OF JUST COMPENSATION.—(1) No compensation shall be required by this Act if the owner's use or proposed use of the property is a nuisance as commonly understood and defined by background principles of nuisance and property law, as understood within the State in which the property is situated, and to bar an award of damages under this Act, the United States shall have the burden of proof to establish that the use or proposed use of the property is a nuisance.

(2) Subject to paragraph (1), if an agency action directly takes property or a portion of property under subsection (a), compensation to the owner of the property that is affected by the action shall be either the greater of an amount equal to—

(A) the difference between—

(i) the fair market value of the property or portion of the property affected by agency action before such property became the subject of the specific government regulation; and

(ii) the fair market value of the property or portion of the property when such property becomes subject to the agency action; or

(B) business losses.

(e) TRANSFER OF PROPERTY INTEREST.—The United States shall take title to the property interest for which the United States pays a claim under this Act.

(f) SOURCE OF COMPENSATION.—Awards of compensation referred to in this section, whether by judgment, settlement, or administrative action, shall be promptly paid by the agency out of currently available appropriations supporting the activities giving rise to the claims for compensation. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

SEC. 205. JURISDICTION AND JUDICIAL REVIEW.

(a) IN GENERAL.—A property owner may file a civil action under this Act to challenge the validity of any agency action that adversely affects the owner's interest in private property in either the United States District Court or the United States Court of Federal Claims. This section constitutes express waiver of the sovereign immunity of the United States. Notwithstanding any other provision of law and notwithstanding the issues involved, the relief sought, or the amount in controversy, each court shall have concurrent jurisdiction over both claims for monetary relief and claims seeking invalidation of any Act of Congress or any regulation of an agency as defined under this Act affecting private property rights. The plaintiff shall have the election of the court in which to file a claim for relief.

(b) STANDING.—Persons adversely affected by an agency action taken under this Act shall have standing to challenge and seek judicial review of that action.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—(1) Section 1491(a) of title 28, United States Code, is amended—

(A) in paragraph (1) by amending the first sentence to read as follows: ''The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States for monetary relief founded either upon the Constitution or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, in cases not sounding in tort, or for invalidation of any Act of Congress or any regulation of an executive department that adversely affects private property rights in violation of the fifth amendment of the United States Constitution'';

(B) in paragraph (2) by inserting before the first sentence the following: ''In any case within its jurisdiction, the Court of Federal Claims shall have the power to grant injunctive and declaratory relief when appropriate.''; and

(C) by adding at the end thereof the following new paragraphs:

''(4) In cases otherwise within its jurisdiction, the Court of Federal Claims shall also have ancillary jurisdiction, concurrent with the courts designated in section 1346(b) of this title, to render judgment upon any related tort claim authorized under section 2674 of this title.

''(5) In proceedings within the jurisdiction of the Court of Federal Claims which constitute judicial review of agency action (rather than de novo proceedings), the provisions of section 706 of title 5 shall apply.''.

(2)(A) Section 1500 of title 28, United States Code, is repealed.

(B) The table of sections for chapter 91 of title 28, United States Code, is amended by striking out the item relating to section 1500.

SEC. 206. STATUTE OF LIMITATIONS.

The statute of limitations for actions brought under this title shall be 6 years from the date of the taking of private property.

SEC. 207. ATTORNEYS' FEES AND COSTS.

The court, in issuing any final order in any action brought under this title, shall award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing plaintiff.

SEC. 208. RULES OF CONSTRUCTION.

Nothing in this title shall be construed to interfere with the authority of any State to create additional property rights.

SEC. 209. EFFECTIVE DATE.

The provisions of this title and amendments made by this title shall take effect on the date of the enactment of this Act and shall apply to any agency action that occurs after such date.

TITLE III—ALTERNATIVE DISPUTE RESOLUTION

SEC. 301. ALTERNATIVE DISPUTE RESOLUTION.

(a) IN GENERAL.—Either party to a dispute over a taking of private property as defined under this Act or litigation commenced under title II of this Act may elect to resolve the dispute through settlement or arbitration. In the administration of this section—

(1) such alternative dispute resolution may only be effectuated by the consent of all parties;

(2) arbitration procedures shall be in accordance with the alternative dispute resolution procedures established by the American Arbitration Association; and

(3) in no event shall arbitration be a condition precedent or an administrative procedure to be exhausted before the filing of a civil action under this Act.

(b) COMPENSATION AS A RESULT OF ARBITRATION.—The amount of arbitration awards shall be paid from the responsible agency's currently available appropriations supporting the agency's activities giving rise to the claim for compensation. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

(c) REVIEW OF ARBITRATION.—Appeal from arbitration decisions shall be to the United States District Court or the United States Court of Federal Claims in the manner prescribed by law for the claim under this Act.

(d) PAYMENT OF CERTAIN COMPENSATION.—In any appeal under subsection (c), the amount of the award of compensation shall be promptly paid by the agency from appropriations supporting the activities giving rise to the claim for compensation currently available at the time of final action on the appeal. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

TITLE IV—PRIVATE PROPERTY TAKING IMPACT ANALYSIS

SEC. 401. FINDINGS AND PURPOSE.

The Congress finds that—

(1) the Federal Government should protect the health, safety, welfare, and rights of the public; and

(2) to the extent practicable, avoid takings of private property by assessing the effect of government action on private property rights.

SEC. 402. DEFINITIONS.

For purposes of this title the term—

(1) ''agency'' means an agency as defined under section 203 of this Act, but shall not include the General Accounting Office;

(2) ''rule'' has the same meaning as such term is defined under section 551(4) of title 5, United States Code; and

(3) ''taking of private property'' has the same meaning as such term is defined under section 203 of this Act.

SEC. 403. PRIVATE PROPERTY TAKING IMPACT ANALYSIS.

(a) IN GENERAL.—(1) The Congress authorizes and directs that, to the fullest extent possible—

(A) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies under this title; and

(B) subject to paragraph (2), all agencies of the Federal Government shall complete a private property taking impact analysis before issuing or promulgating any policy, regulation, proposed legislation, or related agency action which is likely to result in a taking of private property.

(2) The provisions of paragraph (1)(B) shall not apply to—

(A) an action in which the power of eminent domain is formally exercised;

(B) an action taken—

(i) with respect to property held in trust by the United States; or

(ii) in preparation for, or in connection with, treaty negotiations with foreign nations;

(C) a law enforcement action, including seizure, for a violation of law, of property for forfeiture or as evidence in a criminal proceeding;

(D) a study or similar effort or planning activity;

(E) a communication between an agency and a State or local land-use planning agency concerning a planned or proposed State or local activity that regulates private property, regardless of whether the communication is initiated by an agency or is undertaken in response to an invitation by the State or local authority;

(F) the placement of a military facility or a military activity involving the use of solely Federal property;

(G) any military or foreign affairs function (including a procurement function under a military or foreign affairs function), but not including the civil works program of the Army Corps of Engineers; and

(H) any case in which there is an immediate threat to health or safety that constitutes an emergency requiring immediate response or the issuance of a regulation under section 553(b)(B) of title 5, United States Code, if the taking impact analysis is completed after the emergency action is carried out or the regulation is published.

(3) A private property taking impact analysis shall be a written statement that includes—

(A) the specific purpose of the policy, regulation, proposal, recommendation, or related agency action;

(B) an assessment of the likelihood that a taking of private property will occur under such policy, regulation, proposal, recommendation, or related agency action;

(C) an evaluation of whether such policy, regulation, proposal, recommendation, or related agency action is likely to require compensation to private property owners;

(D) alternatives to the policy, regulation, proposal, recommendation, or related agency action that would achieve the intended purposes of the agency action and lessen the likelihood that a taking of private property will occur; and

(E) an estimate of the potential liability of the Federal Government if the Government is required to compensate a private property owner.

(4) Each agency shall provide an analysis required under this section as part of any submission otherwise required to be made to the Office of Management and Budget in conjunction with a proposed regulation.

(b) GUIDANCE AND REPORTING REQUIREMENTS.—

(1) The Attorney General of the United States shall provide legal guidance in a timely manner, in response to a request by an agency, to assist the agency in complying with this section.

(2) No later than 1 year after the date of enactment of this Act and at the end of each 1-year period thereafter, each agency shall submit a report to the Director of the Office of Management and Budget and the Attorney General of the United States identifying each agency action that has resulted in the preparation of a taking impact analysis, the filing of a taking claim, or an award of compensation under the just compensation clause of the fifth amendment of the United States Constitution. The Director of the Office of Management and Budget and the Attorney General of the United States shall publish in the Federal Register, on an annual basis, a compilation of the reports of all agencies submitted under this paragraph.

(c) PUBLIC AVAILABILITY OF ANALYSIS.—An agency shall—

(1) make each private property taking impact analysis available to the public; and

(2) to the greatest extent practicable, transmit a copy of such analysis to the owner or any other person with a property right or interest in the affected property.

(d) PRESUMPTIONS IN PROCEEDINGS.—For the purpose of any agency action or administrative or judicial proceeding, there shall be a rebuttable presumption that the costs, values, and estimates in any private property takings impact analysis shall be outdated and inaccurate, if—

(1) such analysis was completed 5 years or more before the date of such action or proceeding; and

(2) such costs, values, or estimates have not been modified within the 5-year period preceding the date of such action or proceeding.

SEC. 404. DECISIONAL CRITERIA AND AGENCY COMPLIANCE.

(a) IN GENERAL.—No final rule shall be promulgated if enforcement of the rule could reasonably be construed to require an uncompensated taking of private property as defined by this Act.

(b) COMPLIANCE.—In order to meet the purposes of this Act as expressed in section 401 of this title, all agencies shall—

(1) review, and where appropriate, re-promulgate all regulations that result in takings of private property under this Act, and reduce such takings of private property to the maximum extent possible within existing statutory requirements;

(2) prepare and submit their budget requests consistent with the purposes of this Act as expressed in section 401 of this title for fiscal year 1997 and all fiscal years thereafter; and

(3) within 120 days of the effective date of this section, submit to the appropriate authorizing and appropriating committees of the Congress a detailed list of statutory changes that are necessary to meet fully the purposes of section 401 of this title, along with a statement prioritizing such amendments and an explanation of the agency's reasons for such prioritization.

SEC. 405. RULES OF CONSTRUCTION.

Nothing in this title shall be construed to—

(1) limit any right or remedy, constitute a condition precedent or a requirement to exhaust administrative remedies, or bar any claim of any person relating to such person's property under any other law, including claims made under this Act, section 1346 or 1402 of title 28, United States Code, or chapter 91 of title 28, United States Code; or

(2) constitute a conclusive determination of—

(A) the value of any property for purposes of an appraisal for the acquisition of property, or for the determination of damages; or

(B) any other material issue.

SEC. 406. STATUTE OF LIMITATIONS.

No action may be filed in a court of the United States to enforce the provisions of this title on or after the date occurring 6 years after the date of the submission of the applicable private property taking impact analysis to the Office of Management and Budget.

TITLE V—PRIVATE PROPERTY OWNERS ADMINISTRATIVE BILL OF RIGHTS

SEC. 501. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) a number of Federal environmental programs, specifically programs administered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), have been implemented by employees, agents, and representatives of the Federal Government in a manner that deprives private property owners of the use and control of property;

(2) as Federal programs are proposed that would limit and restrict the use of private property to provide habitat for plant and animal species, the rights of private property owners must be recognized and respected;

(3) private property owners are being forced by Federal policy to resort to extensive, lengthy, and expensive litigation to protect certain basic civil rights guaranteed by the United States Constitution;

(4) many private property owners do not have the financial resources or the extensive commitment of time to proceed in litigation against the Federal Government;

(5) a clear Federal policy is needed to guide and direct Federal agencies with respect to the implementation of environmental laws that directly impact private property;

(6) all private property owners should and are required to comply with current nuisance laws and should not use property in a manner that harms their neighbors;

(7) nuisance laws have traditionally been enacted, implemented, and enforced at the State and local level where such laws are best able to protect the rights of all private property owners and local citizens; and

(8) traditional pollution control laws are intended to protect the general public's health and physical welfare, and current habitat protection programs are intended to protect the welfare of plant and animal species.

(b) PURPOSES.—The purposes of this title are to—

(1) provide a consistent Federal policy to encourage, support, and promote the private ownership of property; and

(2) to establish an administrative process and remedy to ensure that the constitutional and legal rights of private property owners are protected by the Federal Government and Federal employees, agents, and representatives.

SEC. 502. DEFINITIONS.

For purposes of this title the term—

(1) ''the Acts'' means the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(2) ''agency head'' means the Secretary or Administrator with jurisdiction or authority to take a final agency action under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(3) ''non-Federal person'' means a person other than an officer, employee, agent, department, or instrumentality of—

(A) the Federal Government; or

(B) a foreign government;

(4) ''private property owner'' means a non-Federal person (other than an officer, employee, agent, department, or instrumentality of a State, municipality, or political subdivision of a State, acting in an official capacity or a State, municipality, or subdivision of a State) that—

(A) owns property referred to under paragraph (5) (A) or (B); or

(B) holds property referred to under paragraph (5)(C);

(5) ''property'' means—

(A) land;

(B) any interest in land; and

(C) the right to use or the right to receive water; and

(6) ''qualified agency action'' means an agency action (as that term is defined in section 551(13) of title 5, United States Code) that is taken—

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

(B) under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 503. PROTECTION OF PRIVATE PROPERTY RIGHTS.

(a) IN GENERAL.—In implementing and enforcing the Acts, each agency head shall—

(1) comply with applicable State and tribal government laws, including laws relating to private property rights and privacy; and

(2) administer and implement the Acts in a manner that has the least impact on private property owners' constitutional and other legal rights.

(b) FINAL DECISIONS.—Each agency head shall develop and implement rules and regulations for ensuring that the constitutional and other legal rights of private property owners are protected when the agency head makes, or participates with other agencies in the making of, any final decision that restricts the use of private property in administering and implementing this Act.

SEC. 504. PROPERTY OWNER CONSENT FOR ENTRY.

(a) IN GENERAL.—An agency head may not enter privately owned property to collect information regarding the property, unless the private property owner has—

(1) consented in writing to that entry;

(2) after providing that consent, been provided notice of that entry; and

(3) been notified that any raw data collected from the property shall be made available at no cost, if requested by the private property owner.

(b) NONAPPLICATION.—Subsection (a) does not prohibit entry onto property for the purpose of obtaining consent or providing notice required under subsection (a).

SEC. 505. RIGHT TO REVIEW AND DISPUTE DATA COLLECTED FROM PRIVATE PROPERTY.

An agency head may not use data that is collected on privately owned property to implement or enforce the Acts, unless—

(1) the agency head has provided to the private property owner—

(A) access to the information;

(B) a detailed description of the manner in which the information was collected; and

(C) an opportunity to dispute the accuracy of the information; and

(2) the agency head has determined that the information is accurate, if the private property owner disputes the accuracy of the information under paragraph (1)(C).

SEC. 506. RIGHT TO AN ADMINISTRATIVE APPEAL OF WETLANDS DECISIONS.

Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) is amended by adding at the end the following new subsection:

''(u) ADMINISTRATIVE APPEALS.—

''(1) The Secretary or Administrator shall, after notice and opportunity for public comment, issue rules to establish procedures to allow private property owners or their authorized representatives an opportunity for an administrative appeal of the following actions under this section:

''(A) A determination of regulatory jurisdiction over a particular parcel of property.

''(B) The denial of a permit.

''(C) The terms and conditions of a permit.

''(D) The imposition of an administrative penalty.

''(E) The imposition of an order requiring the private property owner to restore or otherwise alter the property.

''(2) Rules issued under paragraph (1) shall provide that any administrative appeal of an action described in paragraph (1) shall be heard and decided by an official other than the official who took the action, and shall be conducted at a location which is in the vicinity of the property involved in the action.

''(3) An owner of private property may receive compensation, if appropriate, subject to the provisions of section 508 of the Emergency Property Owners Relief Act of 1995.''.

SEC. 507. RIGHT TO ADMINISTRATIVE APPEAL UNDER THE ENDANGERED SPECIES ACT OF 1973.

Section 11 of the Endangered Species Act of 1973(16 U.S.C. 1540) is amended by adding at the end the following new subsection:

''(i) ADMINISTRATIVE APPEALS.—

''(1) The Secretary shall, after notice and opportunity for public comment, issue rules to establish procedures to allow private property owners or their authorized representatives an opportunity for an administrative appeal of the following actions:

''(A) A determination that a particular parcel of property is critical habitat of a listed species.

''(B) The denial of a permit for an incidental take.

''(C) The terms and conditions of an incidental take permit.

''(D) The finding of jeopardy in any consultation on an agency action affecting a particular parcel of property under section 7(a)(2) or any reasonable and prudent alternative resulting from such finding.

''(E) Any incidental 'take' statement, and any reasonable and prudent measures included therein, issued in any consultation affecting a particular parcel of property under section 7(a)(2).

''(F) The imposition of an administrative penalty.

''(G) The imposition of an order prohibiting or substantially limiting the use of the property.

''(2) Rules issued under paragraph (1) shall provide that any administrative appeal of an action described in paragraph (1) shall be heard and decided by an official other than the official who took the action, and shall be conducted at a location which is in the vicinity of the parcel of property involved in the action.

''(3) An owner of private property may receive compensation, if appropriate, subject to the provisions of section 508 of the Emergency Property Owners Relief Act of 1995.''.

SEC. 508. COMPENSATION FOR TAKING OF PRIVATE PROPERTY.

(a) ELIGIBILITY.—A private property owner that, as a consequence of a final qualified agency action of an agency head, is deprived of 33 percent or more of the fair market value, or the economically viable use, of the affected portion of the property as determined by a qualified appraisal expert, is entitled to receive compensation in accordance with the standards set forth in section 204 of this Act.

(b) TIME LIMITATION FOR COMPENSATION REQUEST.—No later than 90 days after receipt of a final decision of an agency head that deprives a private property owner of fair market value or viable use of property for which compensation is required under subsection (a), the private property owner may submit in writing a request to the agency head for compensation in accordance with subsection (c).

(c) OFFER OF AGENCY HEAD.—No later than 180 days after the receipt of a request for compensation, the agency head shall stay the decision and shall provide to the private property owner—

(1) an offer to purchase the affected property of the private property owner at a fair market value assuming no use restrictions under the Acts; and

(2) an offer to compensate the private property owner for the difference between the fair market value of the property without those restrictions and the fair market value of the property with those restrictions.

(d) PRIVATE PROPERTY OWNER'S RESPONSE.—(1) No later than 60 days after the date of receipt of the agency head's offers under subsection (c) (1) and (2) the private property owner shall accept one of the offers or reject both offers.

(2) If the private property owner rejects both offers, the private property owner may submit the matter for arbitration to an arbitrator appointed by the agency head from a list of arbitrators submitted to the agency head by the American Arbitration Association. The arbitration shall be conducted in accordance with the real estate valuation arbitration rules of that association. For purposes of this section, an arbitration is binding on—

(A) the agency head and a private property owner as to the amount, if any, of compensation owed to the private property owner; and

(B) whether the private property owner has been deprived of fair market value or viable use of property for which compensation is required under subsection (a).

(e) JUDGMENT.—A qualified agency action of an agency head that deprives a private property owner of property as described under subsection (a), is deemed, at the option of the private property owner, to be a taking under the United States Constitution and a judgment against the United States if the private property owner—

(1) accepts the agency head's offer under subsection (c); or

(2) submits to arbitration under subsection (d).

(f) PAYMENT.—An agency head shall pay a private property owner any compensation required under the terms of an offer of the agency head that is accepted by the private property owner in accordance with subsection (d), or under a decision of an arbitrator under that subsection, out of currently available appropriations supporting the activities giving rise to the claim for compensation. The agency head shall pay to the extent of available funds any compensation under this section not later than 60 days after the date of the acceptance or the date of the issuance of the decision, respectively. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

(g) FORM OF PAYMENT.—Payment under this section, as that form is agreed to by the agency head and the private property owner, may be in the form of—

(1) payment of an amount equal to the fair market value of the property on the day before the date of the final qualified agency action with respect to which the property or interest is acquired; or

(2) a payment of an amount equal to the reduction in value.

SEC. 509. PRIVATE PROPERTY OWNER PARTICIPATION IN COOPERATIVE AGREEMENTS.

Section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is amended by adding at the end the following new subsection:

''(j) Notwithstanding any other provision of this section, when the Secretary enters into a management agreement under subsection (b) with any non-Federal person that establishes restrictions on the use of property, the Secretary shall notify all private property owners or lessees of the property that is subject to the management agreement and shall provide an opportunity for each private property owner or lessee to participate in the management agreement.''.

SEC. 510. ELECTION OF REMEDIES.

Nothing in this title shall be construed to—

(1) deny any person the right, as a condition precedent or as a requirement to exhaust administrative remedies, to proceed under title II or III of this Act;

(2) bar any claim of any person relating to such person's property under any other law, including claims made under section 1346 or 1402 of title 28, United States Code, or chapter 91 of title 28, United States Code; or

(3) constitute a conclusive determination of—

(A) the value of property for purposes of an appraisal for the acquisition of property, or for the determination of damages; or

(B) any other material issue.

TITLE VI—MISCELLANEOUS

SEC. 601. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 602. EFFECTIVE DATE.

Except as otherwise provided in this Act, the provisions of this Act shall take effect on the date of enactment and shall apply to any agency action of the United States Government after such date.

Mr. HATCH. Mr. President, I am pleased today to support the introduction of the Omnibus Property Rights Act of 1995. This bill is an omnibus property rights measure that combines four different approaches, contained in separate titles in the act, designed to protect private property from Federal Government intrusion. The citizens of Utah understand that the right to own property is a precious fundamental right, one which is vulnerable to an overbearing Federal Government.

At my urging, four different approaches contained in various bills, bills designed to protect private property from Federal Government intrusion and introduced by several Senators, were merged in a single bill. I believed that the combination of these approaches would be far more efficacious in protecting private property than in just relying on a single strategy. This omnibus bill is the product of almost a year of work and countless drafts and represents the most sophisticated legislative mechanism to foster and protect the private ownership of property. I want to commend Senators DOLE, GRAMM of Texas, SHELBY, NICKLES, BROWN, CRAIG, LOTT, HEFLIN, KYL, ABRAHAM, and THOMAS, and their staffs, for participating in this project. I intend to hold formal hearings on this bill in the very near future.

The first approach under the bill encompasses property rights litigation reform. This approach, advocated by myself and in part by Senator GRAMM of Texas, establishes a distinct Federal fifth amendment takings claim against Federal agencies by aggrieved property owners, thus clarifying the sometimes incoherent and contradictory constitutional property rights case law. It also resolves the jurisdictional dispute between the Federal district courts and the Court of Federal Claims over fifth amendment takings cases. It is a refinement of a proposal I placed in the CONGRESSIONAL RECORD on October 7, 1994.

The second approach, promoted by Senator DOLE, in essence codifies President Reagan's Executive Order 12630. Under this approach, a Federal agency must conduct a private property taking impact analysis before issuing or promulgating any policy, regulation, or related agency action which is likely to result in a taking of private property. Significantly, we have added to this section a reg. reform provision that prohibits any rule from becoming final if the rule could reasonably be construed when enforced to result in an uncompensated taking of private property.

The third approach, initiated by Senators SHELBY and NICKLES, establishes an agency administrative appellate and compensation procedure for takings of real property during enforcement and administration of both the Endangered Species Act and the Wetlands Preservation Program under section 404 of the Clean Water Act.

These acts present special enforcement problems and an agency appellate and compensation procedure allows the agency and the aggrieved party the option to avoid litigation. The fourth approach provides for alternative dispute resolution in arbitration proceedings. I must add that the bill provides for a complete election of remedies. If a decision of an agency appeal is unreasonably delayed, an aggrieved party may drop the appeal and litigate according to the terms of the act. These four approaches, established by the Omnibus Property Rights Act, together function to empower the property owner with mechanisms to vindicate the fundamental constitutional right of private ownership of property, while instituting powerful incentives for Federal agencies both to protect private property and include such protection in agency planning and regulating.

IMPORTANCE OF PRIVATE PROPERTY

The private ownership of property is essential to a free society and is an integral part of our Judeo-Christian culture and the Western tradition of liberty and limited government. Private ownership of property and the sanctity of property rights reflects the distinction in our culture between a preexisting civil society and the state that is consequently established to promote order. Private property creates the social and economic organizations that counterbalance the power of the state by providing an alternative source of power and prestige to the state itself. It is therefore a necessary condition of liberty and prosperity.

While government is properly understood to be instituted to protect liberty within an orderly society and such liberty is commonly understood to include the right of free speech, assembly, religious exercise, and other rights such as those enumerated in the Bill of Rights, it is all too often forgotten that the right of private ownership of property is also a critical component of liberty. To the 17th-century English political philosopher, John Locke, who greatly influenced the Founders of our Republic, the very role of government is to protect property: ''The great and chief end therefore, on Men uniting into Commonwealths, and putting themselves under Government, is the preservation of their property.'' [J. Locke, Second Treatise ch. 9, §124, in J. Locke, ''Two Treatises of Government'' (1698)]. The Framers of our Constitution likewise viewed the function of government as one of fostering individual liberties through the protection of property interests. James Madison, termed the ''Father of the Constitution,'' unhesitantly endorsed this Lockean viewpoint when he wrote in the Federalist No. 54 that ''[government] is instituted no less for the protection of property, than of the persons of individuals.'' Indeed, to Madison, the private possession of property was viewed as a natural and individual right both to be protected against government encroachment and to be protected by government against others.

To be sure, the private ownership of property was not considered absolute. Property owners could not exercise their rights as a nuisance that harmed their neighbors, and Government could use, what was termed in the 18th century, its despotic power of eminent domain to seize property for public use. Justice, it became to be believed, required compensation for the property taken by Government. The earliest example of a compensation requirement is found in chapter 28 of the Magna Carta of 1215, which reads:

> No constable or other bailiff of ours shall take corn or other provisions from anyone without immediately tendering money therefor, unless he can have postponement thereof by permission of the seller.

But the record of English and colonial compensation for taken property was spotty at best, although it has been argued by some historians and legal scholars that compensation for takings of property became recognized as customary practice during the American colonial period. [See W. Stoebuck, ''A General Theory of Eminent Domain,'' 47 Wash. L. Rev. 53 (1972)].

Nevertheless, by American independence the compensation requirement was considered a necessary restraint on arbitrary governmental seizures of property. The Vermont Constitution of 1777, the Massachusetts Constitution of 1780, and the Northwest Ordinance of 1787, recognized that compensation must be paid whenever property was taken for general public use or for public exigencies. And although accounts of the 1791 congressional debate over the Bill of Rights provide no evidence of why a public use and just compensation requirement for takings of private property was eventually included in the fifth amendment, James Madison, the author of the fifth amendment, reflected the views of other supporters of the new Constitution who feared the example to the new Congress of uncompensated seizures of property for building of roads and forgiveness of debts by radical State legislatures. Consequently, the phrase ''[n]or shall private property be taken for public use, without just compensation'' was included within the fifth amendment to the Constitution.

THE MODERN THREAT TO PROPERTY RIGHTS

Despite this historical pedigree and the constitutional requirement for the protection of property rights, the America of the mid- and late-20th century has witnessed an explosion of Federal regulation of society that has jeopardized the private ownership of property with the consequent loss of individual liberty. Indeed, the most recent estimate of the direct—that is, not counting indirect costs such as higher consumer prices—cost of Federal regulation was $857 billion for 1992. Today, the cost to the society probably is approaching $1 trillion. According to economist Paul Craig Roberts, the number of laws Americans are forced to endure has risen a staggering 3,000 percent since the turn of the century. Every day the Federal Register grows by an incredible 200 pages, containing new rules and obligations imposed on the American people by supposedly their Government.

Furthermore, even the very concept of private property is under attack. Indeed, certain environmental activists have termed private property an ''outmoded concept'' which presents an impediment to the Federal Government's resolution of society's problems. It is this type of thinking that has led regulators, in the rush of governmental social engineering, to ignore individual rights. Here are just a few of the hundreds—if not thousands—of examples that occur nationwide:

Mrs. Nellie Edwards was the owner of 36 acres of prime land that was seized by the city of Provo, UT, last year for an airport expansion project. Mrs. Edwards received only $21,500 for her land, which was well below the expected market value of the land because, unbeknownst to her, the Army Corps of Engineers had arbitrarily classified part of her land as a wetland. Mrs. Edwards, in essence, was victimized by the low-land value attached to wetlands. But the infuriating part of this sad story is that an investigator examined her land and saw absolutely no water or wildlife present on the land.

Ocie Mills, a Florida builder, and his son were sent to prison for 2 years for violating the Clean Water Act for placing sand on a quarter-acre lot he owned;

Under this same act, a small Oregon school district faced a Federal lawsuit for dumping clean fill to build a baseball-soccer field for its students and had to spend thousands of dollars to remove the fill;

Ronald Angelocci was jailed for violating the Clean Water Act for dumping several truckloads of dirt in the backyard of his Michigan home to help a family member who had acute asthma and allergies aggravated by plants in the backyard; and

A retired couple in the Poconos, after obtaining the necessary permits to build their home, was informed by the Army Corps of Engineers—4 years later—that they built their home on wetlands and faced penalties of $50,000 a day if they did not restore most of the land to its natural state.

See B. Bovard, ''Lost Rights,'' 35 (1944); N. Marzulla, ''The Government's War on Property Rights,'' Defenders of Property Rights (1994).

CURRENT PROTECTION OF PROPERTY RIGHTS FALL SHORT

Judicial protection of property rights against the regulatory state has been both inconsistent and ineffective. Physical invasions and Government seizures of property have been fairly easy for courts to analyze as a species of eminent domain, not so the effect of regulations which either diminish the value of the property or appropriate a property interest. This key problem to the regulatory takings dilemma was recognized by Justice Oliver Wendell Holmes in *Pennsylvania Coal Co.* v. *Mahon,* 260 U.S. 393 (1922). Just how do courts determine when regulation amounts to a taking? Holmes' answer, ''if regulation goes too far it will be recognized as a taking,'' 260 U.S. at 415, is nothing more than an ipse dixit. In the 73 years since Mahon, the Court has eschewed any set formula for determining how far is too far, preferring to engage in ad hoc factual inquiries, such as the three-part test made famous by *Penn Central Transportation Co.* v. *City of New York,* 438 U.S. 104 (1978), which balances the economic impact of the regulation on property and the character of the regulation against specific restrictions on investment-backed expectations of the property owner.

Despite the valiant attempt by the Rehnquist Court to clarify regulatory takings analysis in *Nollan* v. *California Coastal Comm'n,* 483 U.S. 825 (1987), *Lucas* v. *South Carolina Coastal Council,* 112 S.Ct. 2886 (1992), and in its recent decision of *Dolan* v. *City of Tigard,* No. 93–518 (June 24, 1994), takings analysis is basically incoherent and confusing and applied by lower courts haphazardly. The incremental, fact-specific approach that courts now must employ in the absence of adequate statutory language to vindicate property rights under the fifth amendment thus has been ineffective and costly. There is, accordingly, a need for Congress to clarify the law by providing bright line standards and an effective remedy. As Chief Judge Loren A. Smith of the

Court of Federal Claims, the court responsible for administering takings claims against the United States, opined in *Bowles* v. *United States*, 31 Fed. Cl. 37 (1994):

[j]udicial decisions are far less sensitive to societal problems than the law and policy made by the 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.

This incoherence and confusion over the substance of takings claims is matched by the muddle over jurisdiction of property rights claims. The Tucker Act, which waives the sovereign immunity of the United States by granting the Court of Federal Claims jurisdiction to entertain monetary claims against the United States, actually complicates the ability of a property owner to vindicate the right to just compensation for a Government action that has caused a taking. The law currently forces a property owner to elect between equitable relief in the Federal district court and monetary relief in the Court of Federal Claims. Further difficulty arises when the law is used by the Government to urge dismissal in the district court on the ground that the plaintiff should seek just compensation in the Court of Federal Claims, and is used to urge dismissal in the Court of Federal Claims on the ground that plaintiff should first seek equitable relief in the district court. This Tucker Act shuffle is aggravated by section 1500 of the Tucker Act, which denies the Court of Federal Claims jurisdiction to entertain a suit which is pending in another court and brought by the same plaintiff. Section 1500 is so poorly drafted and has brought so many hardships, that Justice Stevens, in *Keene Corporation* v. *United States*, 113 S.Ct. 2035, 2048 (1933), has called for its repeal or amendment.

Title II of the Omnibus Property Rights Act, which I introduced as S. 135 in January, addresses these problems. In terms of clarifying the substance of takings claims, it first clearly defines property interests that are subject to the act's takings analysis. In this way a floor definition of property is established by which the Federal Government may not eviscerate. This title also establishes the elements of a takings claim by codifying and clarifying the holdings of the Nollan, Lucas, and Dolan cases. For instance, Dolan's rough proportionality test is interpreted to apply to all exaction situations whereby an owner's otherwise lawful right to use property is exacted as a condition for granting a Federal permit. And a distinction is drawn between a noncompensable mere diminution of value of property as a result of Federal regulation and a compensable partial taking, which is defined as any agency action that diminishes the fair market value of the affected property by 33 percent or more. The result of drawing these bright lines will not end fact-specific litigation, which is endemic to all law suits, but it will ameliorate the ever-increasing ad hoc and arbitrary nature of takings claims.

This title also resolves the jurisdictional confusion over takings claims. Because property owners should be able fully to recover for a taking in one court, the Tucker Act is amended giving both the district courts and the Court of Federal Claims concurrent jurisdiction to hear all claims relating to property rights. Furthermore, to resolve any further jurisdictional ambiguity, section 1500 of the Tucker Act is repealed.

Finally, I want to respond to any suggestion that may arise that this act will impede Government's ability to protect the environment or promote health and safety through regulation. This legislation does not emasculate the Government's ability to prevent individuals or businesses from polluting. It is well established that the Constitution only protects a right to reasonable use of property. All property owners are subject to prior restraints on the use of their property, such as nuisance laws which prevents owners from using their property in a manner that interferes with others. The Government has always been able to prevent harmful or noxious uses of property without being obligated to compensate the property owner, as long as the limitations on the use of property ''inhere in the title itself.'' In other words, the restrictions must be based on ''background principles of State property and nuisance law'' already extant. The Omnibus Property Rights Act codifies this principle in a nuisance exception to the requirement of the Government to pay compensation.

Nor does the Omnibus Property Rights Act hinder the Government's ability to protect public health and safety. The act simply does not obstruct the Government from acting to prevent imminent harm to the public safety or health or diminish what would be considered a public nuisance. Again, this is made clear in the provision of the act that exempts nuisance from compensation. What the act does is force the Federal Government to pay compensation to those who are singled out to pay for regulation that benefits the entire public. In other words, it does not prevent regulation, but fulfills the promise of the fifth amendment, which the Supreme Court in *Armstrong* v. *United States*, 364 U.S. 40, 49 (1960), opined is:

to bar Government from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole.

Mr. BURNS. Mr. President, I rise today as an original cosponsor to the Omnibus Private Property Act. Since the beginning of this Congress, many bills to protect private property rights have been introduced. This bill encompasses those bills in a comprehensive proposal.

For too long, Washington has disregarded the fifth amendment to our Constitution. Laws, regulations, and other actions have allowed the rights of private property owners to be abused. Now we have the opportunity to provide a consistent Federal policy to encourage, support, and promote the private ownership of property and to ensure the constitutional and legal rights of private property owners.

The legislation we are introducing reaffirms our private property rights. It requires compensation for a loss of property value when the Federal Government takes certain actions. The bill also allows for taking disputes to be resolved through settlement or arbitration as an alternative to litigation. In addition, the Omnibus Private Property Rights Act requires that the Federal agencies responsible for enforcing the Endangered Species Act and the Clean Water Act establish procedures so private property owners may appeal actions and seek compensation.

Another important aspect of the bill deals with regulations. This bill requires that taking impact analysis be conducted prior to promulgating regulations. If these actions result in a loss of 33 percent of value of the property, compensation is required.

Montanans believe that protecting private property is of utmost importance. And Congress should pass the Omnibus Property Rights Act which reinforces the Government's responsibility to protect property rights and will help get the Federal Government off the backs of Montana's working men and women.

Mr. MACK. Mr. President, I am proud to be an original cosponsor of the Omnibus Property Rights Act of 1995. I thank Senator HATCH and my other colleagues who drafted this bill which seeks to stop Government from infringing upon its citizens' private property rights.

Private property rights are fundamental to a free and fair society. Last June, Chief Justice Rehnquist wrote on behalf of the majority, ''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 fourth amendment, should be relegated to the status of a poor relation.''

Over the past several years, we have seen Federal bureaucrats trample our fifth amendment right that private property shall not, ''* * * be taken for public use without just compensation.'' There are countless examples of people forced to spend their time and money fighting their own Government for the simple right to use their land. Unfortunately, there are even more citizens who never make it to court because they cannot afford lawyers to help them fight for their rights. In these cases, Government has robbed its citizens of the use of their property, without even compensating them. It makes you wonder if the American people still

control their Government or if our U.S. Government now controls us.

The Omnibus Property Rights Act will restore the basic rights accorded to private property owners by our Founding Fathers in the Bill of Rights. It will slash through the bureaucracy that has rendered those rights meaningless, and it will preserve for future generations the essential freedoms and rights upon which America was founded.

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 606. A bill to make improvements in pipeline safety, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE PIPELINE SAFETY ENHANCEMENT ACT OF 1995

• Mr. BRADLEY. Mr. President, I introduce legislation that will save lives and property: the Pipeline Safety Enhancement Act. I am very pleased to announce that my colleague, Senator LAUTENBERG, is joining we as a cosponsor of this bill.

Exactly 1 year ago today, at 11:55 p.m., a fireball lit up the sky in Edison, NJ. This eery light was visible for miles around. At ground zero, a plume of fire and smoke rose hundreds of feet in the air. Within minutes, nearby apartment buildings caught fire. Within hours, these buildings were utterly gone. Hundreds of people were rendered homeless, their possessions completely destroyed.

The physical casualties were miraculously low. Yet, damage was done. The nightmares persist. The memory and the fear remain.

The community is rebuilding. The victims are healing and moving on. But, issues raised by the blast remain unresolved.

Edison spurred a national debate on how we manage pipeline safety. My comprehensive one-call legislation—introduced in the House by Congressman PALLONE—came within a hairsbreadth of becoming law last Congress. The signals are positive for this year: it's a truly bipartisan issue—Senators SPECTER and LOTT have joined Senators LAUTENBERG and EXON and myself as cosponsors—pushed by a powerful private sector coalition.

Since the Edison accident and the introduction of legislation, the value of these one-call notification programs have been recognized by the State of New Jersey, which now has a first-class program, the National Transportation Safety Board and the U.S. Department of Transportation. In fact, the need for a better program is a central feature of the pipeline safety reauthorization bill being proposed by the Secretary of Transportation and the Administration.

There's more to the story, however. On February 7, 1995, the NTSB issued safety recommendations stemming from the Edison disaster. These recommendations should be taken very seriously. Edison was a wake-up call, where only by a miracle literally hundreds of people escaped serious injury. They certainly weren't saved by our public policies.

My legislation will codify the NTSB recommendations into law. My bill will call for stronger materials in our pipelines, better pipeline identification procedures, improved leak detection, more effective safety inspection requirements and new analysis of siting risks. Every one of these is included specifically in the NTSB report.

Mr. President, this is needed. This is also the least we can do. I urge my colleagues to consider this legislation carefully and pass it without delay.

Mr. President, I ask unanimous consent to have a brief description of the bill and the bill text be printed in the RECORD.

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

S. 606

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 ''Pipeline Safety Enhancement Act of 1995''.

SEC. 2. IMPROVEMENTS IN PIPELINE SAFETY.

(a) TOUGHNESS STANDARDS.—Section 60102 of title 49, United States Code, is amended by adding at the end the following new subsections:

''(l) TOUGHNESS STANDARDS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Pipeline Safety Enhancement Act of 1995, The Secretary of Transportation, in consultation with appropriate officials of the Research and Special Programs Administration of the Department of Transportation (referred to in this section as the 'Research and Special Programs Administration'), shall prescribe minimum standards for toughness (as defined and determined by the Secretary of Transportation, in consultation with the appropriate officials of the Research and Special Programs Administration) for new pipes installed in gas pipeline facilities and hazardous liquid pipeline facilities.

''(2) HIGH-DENSITY POPULATION AREAS.—In establishing the minimum standards for toughness under paragraph (1), the Secretary of Transportation shall give particular attention to the installation of new pipes in high-density population areas (as such term is used in section 60109).

''(3) PIPE DEFINED.—For purposes of this subsection, the term 'pipe' means any pipe or tubing used in the transportation of gas, including pipe-type holders.

''(m) MARKINGS.—

''(1) IN GENERAL.—Not later 180 days after the date of enactment of the Pipeline Safety Enhancement Act of 1995, the Secretary of Transportation, in consultation with appropriate officials of the Research and Special Programs Administration, shall prescribe minimum standards that require for the marking of pipelines in class 3 and class 4 locations (as such terms are used in subpart L of part 192 of title 49, Code of Federal Regulations, as in effect on the day before the date of enactment of the Pipeline Safety Enhancement Act of 1995) to identify hazardous liquid pipeline facilities and high-pressure pipelines.

''(2) HIGH-PRESSURE PIPELINE DEFINED.—For purposes of this subsection, the term 'high-pressure pipeline' means any gas pipeline in which the gas pressure is higher than that provided to the customer.

''(n) TESTING.—

''(1) IN GENERAL.—Not later than one year after the date of enactment of the Pipeline Safety Enhancement Act of 1995, the Secretary of Transportation, in consultation with appropriate officials of the Research and Special Programs Administration, shall include in the minimum safety standards prescribed under subsection (a) a requirement that each operator of a gas pipeline facility or hazardous liquid pipeline facilities conduct, on a periodic basis, inspections or tests capable of identifying damage caused by corrosion and other time-dependent damage that may be detrimental to the continued safe operation of the pipeline and that may necessitate remedial action, in order to determine the adequacy of the pipeline facility to operate at established maximum allowable operating pressure.

''(2) MAXIMUM ALLOWABLE OPERATING PRESSURE DEFINED.—For purposes of this subsection, the term 'maximum allowable operating pressure' means the maximum pressure at which a pipeline or a segment of a pipeline may be operated under regulations issued under this chapter.''.

(b) ASSESSMENT OF PUBLIC EDUCATION PROGRAM CONCERNING LEAK DETECTION.—Section 60116 of title 49, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''Under regulations''; and

(2) by adding at the end the following new subsection:

''(b) ASSESSMENT.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment the Pipeline Safety Enhancement Act of 1995, and every two years thereafter, the Secretary of Transportation, in consultation with appropriate officials of the Research and Special Programs Administration of the Department of Transportation, shall conduct an assessment of the programs conducted under this section to determine—

''(A) with respect to the programs conducted under this section—

''(i) the appropriateness of the information provided; and

''(ii) the effectiveness of the educational techniques used; and

''(B) in comparison to other similar educational programs, the relative effectiveness of educational techniques used in the programs conducted under this section.

''(2) REGULATIONS.—Upon completion of an assessment conducted under paragraph (1), the Secretary, in consultation with the appropriate officials of the Research and Special Programs Administration, shall promulgate such regulations as the Secretary determines to be appropriate to improve the programs conducted under this section.''.

(c) STUDY.—The Secretary of Transportation shall take such action as may be necessary to expedite the completion of the study conducted by the Research and Special Programs Administration of the Department of Transportation relating to methods to reduce public safety risks in the siting pipeline facilities. In addition, the scope of the study referred to in the previous sentence shall be modified to include the consideration of building standards. The Secretary of Transportation shall ensure that the results of the study are widely available to the governments of States and political subdivisions thereof.

PIPELINE SAFETY ENHANCEMENT ACT

This legislation would codify recommendations made by the National Transportation Safety Board. This independent safety board made specific safety recommendations to the

federal government on February 7, 1995. At that time, the NTSB released a report on the natural gas pipeline disaster that occurred at Edison, NJ, on March 23, 1994.

The Pipeline Safety Enhancement Act will include the following five requirements which are identified specifically in the Edison safety report:

(1) that the Secretary of Transportation develop minimum standards for the strength of new pipe installed for natural gas and hazardous liquid pipelines; the Secretary is to give special consideration to the use of pipe in high-density population areas (such as Edison, NJ);

(2) that there be established minimum standards for the permanent marking of pipelines in high-density areas;

(3) that minimum safety standards for pipeline operators include a protocol for periodic inspection and appropriate tests for pipeline damage;

(4) that there be an assessment and improvement of public education programs concerning pipeline leak detection;

(5) that ongoing studies on the safety risks associated with pipeline siting be expedited and that the analysis also include the effect of building standards on risk.

This legislation would be complementary to legislation already introduced by Senator Bradley on comprehensive ''one-call'' notification and other pipeline safety issues.●

● Mr. LAUTENBERG. Mr. President, I express my strong support for the Pipeline Safety Enhancement Act of 1995. This legislation, which Senator BRADLEY and I are introducing today, is based upon recommendations made by the National Transportation Safety Board as a result of its investigation into the Edison pipeline exposition.

It was 1 year ago today that residents of the Durham Woods Apartments in Edison, NJ, ran for their lives to escape a ball of fire that lit up the night sky. The heat of the fire was so intense that it burned the clothes off people's backs and singed their bare feet as they escaped over the hot pavement.

On this painful anniversary, people in New Jersey are reflecting on the horror of a year ago. All too often, disasters get just 15 minutes in the news and are forgotten. But for New Jersey, the Edison explosion lives on. We are not prepared to rest until we can guarantee that this tragedy will not be repeated.

Mr. President, today Senator BRADLEY and I are introducing legislation to significantly increase pipeline safety. This is the third bill that we have introduced in the last year to protect the thousands of Americans who live, work, or go to school in the vicinity of a pipeline.

The Pipeline Safety Enhancement Act would:

Direct the Department of Transportation to develop toughness standards for new pipes installed in gas and hazardous liquid pipelines, particularly in urban areas;

Establish standards for permanent markings that identify the location of high-pressure natural gas and hazardous liquid pipelines in urban, industrial and commercial areas;

Establish minimum safety standards for pipeline operators, including a protocol for periodic inspection and appropriate tests for pipeline damage;

Assess and improve public education programs concerning pipeline leak detection; and

Require that ongoing studies on the safety risks associated with pipeline siting be expedited and that the analysis also include the effect of building standards on risk.

Over the last year, we have taken positive steps to increase pipeline safety. However, I will not rest in my efforts to improve pipeline safety until I can personally vouch for the safety of every American who lives or works near a pipeline, and until we can promise the children of Edison that there will never again be an explosion like the one they endured at Durham Woods.

Since last March, I have seen and heard the devastation that followed this explosion. I have met with families who lost everything but the clothes on their back. I have heard from children who continue to wake up sweating in the middle of the night—still on the run a year later from that fiery ball of smoke.

I have learned about residents who lost their lives' work, like the scientist who was struggling to support his wife, his mother and two small children—and then saw his dissertation, his dream of a better life for his family, disappear in the tangled plastic of a melted computer.

For New Jersey, the Edison pipeline explosion was an unparalleled tragedy. But the truth is that this was no isolated event. There were pipeline problems in other places before March 23. And there have been pipeline problems since. I want to put these events deep into the recesses of history.

Senator BRADLEY and I believe that the Pipeline Safety Enhancement Act would do just that. If this bill and other bills Senator BRADLEY and I have introduced on this subject had been the law before March 23, 1994, life at Durham Woods would not have taken such a tragic turn.

Mr. President, today, we all should reflect on the 1-year anniversary of the Edison explosion. I pray for the victims who still suffer from the fallout of this disaster. I hope that Congress has learned an important lesson. And I pledge to continue to fight for improvements in pipeline safety so no other community will ever be doomed to undergo the trauma of a pipeline explosion.●

By Mr. WARNER (for himself and Mr. REID):

S. 607. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes; to the Committee on Environment and Public Works.

THE SUPERFUND RECYCLING EQUITY ACT OF 1995

Mr. WARNER. Mr. President, I am introducing today, along with my distinguished colleague from Nevada, Senator REID, the Superfund Recycling Equity Act of 1995.

This bill will allow the private sector to respond more freely to increased demands for recycling by removing many of the unintended impediments that Superfund has placed on recycling activities.

As a member of the Committee on Environment and Public Works, I have come to learn from the many expert witnesses who have testified before the committee that Superfund has the unintentional consequence of penalizing those who prepare materials for recycling. Federal courts have ruled that Superfund imposes ''generator'' liability on persons who sell secondary materials that are diverted from the waste stream for recycling. These rulings come from an overly broad interpretation of the law's provision which imposes liability on those who arrange for disposal of waste. Unfortunately, these courts have presumed that any transaction of material which is no longer useful in its current form is a waste treatment or disposal transaction. This legislation clarifies that legitimate recycling transactions are not, and were not intended to be, subject to Superfund's liability scheme.

The legislation I am introducing today will place traditional recyclable, or secondary, materials which are used as feedstocks in the manufacturing process on closer to equal footing with virgin, or primary materials counterparts. Traditional recyclables are paper, glass, plastic, metals, textiles, and rubber.

The sale of virgin material feedstocks—sold for the same or similar purpose as the recyclable feedstocks—is not considered to be an arrangement for treatment or disposal of hazardous substance. The sale of recyclables should be treated the same. If recyclables are not similarly treated, and those who prepare recyclables for the market face greater liability exposure than their competitors who sell virgin materials, a market disadvantage is created to recycling.

The inequity in current law is impeding recyclers' ability to provide the kind of environmentally beneficial recycling activities our society demands. The existing liability scheme exposes recyclers to financial risks that their competitors, virgin material suppliers, do not face. This restricts financing for expansion and makes it more difficult to respond to changing market conditions. In addition, many materials which can be properly recycled are now not being captured for reuse because of Superfund liability exposure.

Mr. President, I have been supportive of stimulating the private sector marketplace for recycled materials—and certainly believe that Federal legislation should not stall recycling efforts. Americans recognize that increased recycling means more efficient use of natural resources, which extends the

life of those resources. Because recycling utilizes significantly less energy than the use of virgin materials, recycling is a key step toward energy efficiency. The use of recyclables is also important to achieving the goals of pollution prevention and waste minimization.

Let me now address what this bill provides. The Superfund Recycling Equity Act recognizes that the Congress did not intend to apply Superfund liability to those who collect and process recyclables for sale as raw material feedstocks. The bill removes from liability those who collect, process and sell secondary paper, glass, plastic, metal, textiles, and rubber recyclables.

It should also be pointed out that this bill clarifies the application of liability regarding the sale of the recycler's products. The bill does not alter liability for contamination that is created by a recycler or owner, or operator liability for a facility. CERCLA's existing liability scheme remains in effect where a recycler is an owner/operator who contaminates a facility, or sends process waste for treatment or disposal which contributes to contamination. Furthermore, for the purposes of this bill, a series of tests or criteria are established to help determine if a bonafide recycling transaction has occurred.

During the Superfund legislation process in the previous Congress, I worked with a number of my colleagues to develop a recycling provision that addressed the problems discussed, while providing strong environmental protection.

As a number of the Committee on Environment and Public Works, I will continue to work with my colleagues as we work on reforming the Superfund program. I am introducing this legislation today to make clear my intention of clarifying the existing statute by placing supplies of recyclables on more equal footing with suppliers of virgin material.

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. 607

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 ''Superfund Recycling Equity Act of 1995''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to promote the reuse and recycling of scrap material, in furtherance of the goals of waste minimization and natural resource conservation, while protecting human health and the environment;

(2) to level the playing field between the use of virgin materials and recycled materials; and

(3) to remove the disincentives and impediments to recycling created by potential liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

SEC. 3. CLARIFICATION OF LIABILITY UNDER CERCLA FOR RECYCLING TRANSACTIONS.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

''SEC. 127. RECYCLING TRANSACTIONS.

''(a) DEFINITIONS.—In this section:

''(1) CONSUMING FACILITY.—The term 'consuming facility' means a facility where recyclable material is handled, processed, reclaimed, or otherwise managed by a person other than a person who arranges for the recycling of the recyclable material.

''(2) RECYCLABLE MATERIAL.—

''(A) IN GENERAL.—Subject to subparagraph (B), the term 'recyclable material' means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium, or other spent batteries, as well as minor quantities of material incident to or adhering to the scrap or spent material as a result of the normal and customary use of the material prior to the material becoming scrap or spent material.

''(B) PCBs.—The term 'recyclable material' does not include a material that contains polychlorinated biphenyls in excess of—

''(i) 50 parts per million; or

''(ii) any standard promulgated under Federal law after the date of enactment of this section.

''(3) SCRAP METAL.—The term 'scrap metal' means 1 or more bits or pieces of metal parts (such as a bar, turning, rod, sheet, or wire), or 1 or more metal pieces that may be combined together with bolts or soldering (such as a radiator, scrap automobile, or railroad box car), that, when worn or superfluous, can be recycled, except for—

''(A) a material that the Administrator excludes from the definition of scrap metal by regulation; and

''(B) a steel shipping container with a capacity of not less than 30 and not more than 3,000 liters, whether intact or not, that has any hazardous substance (but not metal bits or pieces) contained in or adhering to the container.

''(b) LIMITATION ON LIABILITY.—

''(1) IN GENERAL.—Subject to subsection (c), a person who arranges for the recycling of recyclable material shall not be liable under paragraph (3) or (4) of section 107(a).

''(2) TRANSACTIONS DEEMED TO BE RECYCLING OF A RECYCLABLE MATERIAL.—For purposes of this section, a transaction involving a recyclable material is considered to be arranging for recycling of recyclable material if the person arranging for the transaction can demonstrate, by a preponderance of the evidence, that, at the time of the transaction—

''(A) the recyclable material met a commercial specification grade;

''(B) a market existed for the recyclable material;

''(C) a substantial portion of the recyclable material was made available for use as a feedstock for the manufacture of a new saleable product;

''(D) the recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material;

''(E) in the case of a transaction occurring not later than 90 days after the date of enactment of this section, the person exercises reasonable care to determine that the consuming facility was in compliance with any substantive (and not procedural or administrative) provision of Federal, State, or local environmental law or regulation, and any compliance order or decree issued pursuant to the law or regulation, applicable to the handling, processing, reclamation, storage, or other management activity associated with the recyclable material;

''(F) in the case of a transaction involving scrap metal—

''(i) in the case of a transaction occurring after the effective date of the issuance of a regulation or standard regarding the storage, transport, management, or other activity associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) subsequent to the date of enactment of this section, the person acted in compliance with the regulation or standard; and

''(ii) the person did not melt the scrap metal prior to the transaction; and

''(G) in the case of a transaction involving a battery—

''(i) the person did not recover the valuable components of the battery;

''(ii) in the case of a transaction involving a lead-acid battery, the person acted in compliance with any applicable Federal environmental regulation or standard regarding the storage, transport, management, or other activity associated with the recycling of a spent lead-acid battery;

''(iii) in the case of a transaction involving a nickel-cadmium battery—

''(I) a Federal environmental regulation or standard is in effect regarding the storage, transport, management, or other activity associated with the recycling of a spent nickel-cadmium battery; and

''(II) the person acted in compliance with the regulation or standard; and

''(iv) with respect to a transaction involving a spent battery other than a lead-acid or nickel-cadmium battery—

''(I) a Federal environmental regulation or standard is in effect regarding the storage, transport, management, or other activity associated with the recycling of the spent battery; and

''(II) the person acted in compliance with the regulation or standard.

''(3) SWEATING.—For purposes of paragraph (2)(F)(ii), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in the melting points of the materials.

''(4) PROCESSING OF BATTERY BY THIRD PERSON.—For purposes of paragraph (2)(G)(i), a person who, by contract, arranges or pays for processing of a battery by an unrelated third person, and receives from the third person materials reclaimed from the battery, shall be considered not to have recovered the valuable components of the battery.

''(5) REASONABLE CARE.—For purposes of paragraph (2)(E), reasonable care shall be determined using criteria that include—

''(A) the price paid to or received by the person in the recycling transaction;

''(B) the ability of the person to detect the nature of the operations of the consuming facility concerning the handling, processing, reclamation, or other management activities associated with the recyclable material; and

''(C) the result of any inquiry made to an appropriate Federal, State, or local environmental agency regarding the past and current compliance of the consuming facility with substantive (and not procedural or administrative) provisions of Federal, State, and local environmental laws and regulations, and any compliance order or decree issued pursuant to the laws and regulations, applicable to the handling, processing, reclamation, storage, or other management activity associated with the recyclable material.

''(c) EXCLUSION FROM LIMITATION ON LIABILITY.—

''(1) IN GENERAL.—Subsection (b) shall not apply if the person arranging for recycling of a recyclable material—

''(A) had an objectively reasonable basis to believe at the time of the recycling transaction that—

''(i) the recyclable material would not be recycled;

''(ii) the recyclable material would be burned as fuel, or for energy recovery or incineration; or

''(iii) in the case of a transaction occurring not later than 90 days after the date of the enactment of this section, the consuming facility acting not in compliance with a substantive (and not a procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or a compliance order or decree issued pursuant to the law or regulation, applicable to the handling, processing, reclamation, or other management activity associated with the recyclable material;

''(B) added a hazardous substance to the recyclable material for purposes other than processing for recycling; or

''(C) failed to exercise reasonable care with respect to the management or handling of the recyclable material.

''(2) REASONABLE BASIS FOR BELIEF.—For purposes of paragraph (1)(A), an objectively reasonable basis for belief shall be determined using criteria that include—

''(A) the size of any business owned by the person;

''(B) the customary industry practices for any business owned by the person;

''(C) the price paid to or received by the person in the recycling transaction;

''(D) the ability of the person to detect the nature of the operations of the consuming facility concerning the handling, processing, reclamation, or other management activities associated with the recyclable material.

''(c) PERMIT REQUIREMENT.—For the purposes of this section, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with a recyclable material shall be considered to be a substantive provision.

''(d) REGULATIONS.—The Administrator may issue regulations to carry out this section.

''(e) LIABILITY FOR ATTORNEY FEES FOR CERTAIN ACTIONS.—Any person who commences an action for contribution against a person who is alleged to be liable under this Act but is found not to be liable as a result of this section shall be liable to the person defending the action for all reasonable costs of defending the action, including all reasonable attorney and expert witness fees.

''(f) EFFECT ON PENDING OR CONCLUDED ACTIONS.—This section shall not affect a judicial or administrative action concluded prior to the date of enactment of this section, or a pending judicial action initiated by the United States prior to the date of enactment of this section.

''(g) EFFECT ON OTHER LIABILITY.—Nothing in this section affects the liability of a person under paragraph (1) or (2) of section 107(a).

''(h) RELATIONSHIP TO LIABILITY UNDER OTHER LAWS.—Nothing in this section affects—

''(1) liability under any other Federal, State, or local law, or regulation promulgated pursuant to the law, including any requirement promulgated by the Administrator under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); or

''(2) the ability of the Administrator to promulgate a regulation under any other law, including the Solid Waste Disposal Act.''.

By Mr. KENNEDY (for himself and Mr. KERRY):

S. 608. A bill to establish the New Bedford Whaling National Historical Park in New Bedford, MA, and for other purposes; to the Committee on Energy and Natural Resources.

THE NEW BEDFORD WHALING NATIONAL PARK ACT OF 1995

Mr. KENNEDY. Mr. President, today Senator KERRY and I are introducing a bill to establish a Whaling National Historical Park in New Bedford, MA. This legislation is part of a bipartisan effort with Congressmen BARNEY FRANK and PETER BLUTE, who are introducing an identical bill today in the House of Representatives.

Our bill is similar to legislation introduced in 1994. However, we have made several changes to minimize the cost of this new park and enhance its public/private partnership components, in recognition of the current budget pressures on the National Park System. The original bill's funding level of $10.4 million for development and an estimated $6 million for operations in the first 5 years was based on the recommendations of a comprehensive study conducted by the Park Service. Our new legislation aims to achieve many of the same goals set forth in that study, but to do so at the lower cost of $2 million for development and an estimated $2 million for operations in the first 5 years.

The Park Service began its special resource study of New Bedford in 1990. The study, completed in November 1993, strongly endorsed the establishment of a national park unit in New Bedford. The Park Service noted the important role of the whaling industry in 19th-century American history. The study concluded that this theme is not currently represented in the National Park System, and New Bedford would be the ideal site for a park commemorating that history. As the former whaling capital of the world, New Bedford provided the oil that fueled the Nation's lamps and kept the wheels of the Industrial Revolution turning. So prosperous was the whaling industry there that, by the mid-19th century, New Bedford had become the wealthiest city, per capita, in the world.

New Bedford's whaling history raises many significant social and economic themes that are essential to a true understanding of our American heritage. Among these are the spirit of technological progress, the courage that motivated daring men and women to risk their lives on the seas, and the many cultures that took root here, brought by immigrants drawn from every corner of the globe. It was this diversity which contributed to New Bedford's position as a center of the abolitionist movement in the 19th century and made it a key stop for fugitive slaves on the underground railroad. Frederick Douglas spent his first 3 years of freedom in New Bedford, working as a caulker on the hulls of whaleboats.

New Bedford is also the port from which Herman Melville set sail aboard the whaler *Acushnet* in 1841. The voyage inspired ''Moby Dick,'' one of the greatest of all American novels. The streets that Melville and Ishmael wandered can still be seen in New Bedford today, as can the famous Seamen's Bethel, where the whalers attended religious services before setting off on their voyages.

Much of New Bedford's old whaling waterfront still exists in the city's National Historic Landmark District, and that 20-acre site has become a model for historic preservation. Businesses, residents, and tourists coexist in an environment of restored buildings, cobblestone streets, and brick sidewalks from the whaling era.

New Bedford also is the site of the Rotch-Jones-Duff House and Garden Museum, one of the finest examples of Greek Revival residential architecture in the country and the only surviving whaling era mansion open to the public complete with its original gardens and grounds.

New Bedford's historical and cultural assets are not limited to its streets and buildings. They also include outstanding collections of artworks and archives associated with the whaling era and located at the city's public library and the renowned whaling museum. The Museum houses a half-size model of the whaling bark *Lagoda* that can be boarded by visitors.

The city is also home port to the restored, 100-year-old National Historic Landmark vessel *Ernestina*, the oldest Grand Banks schooner in existence. The *Ernestina* has had a distinguished maritime career as a fishing vessel, as an Arctic exploration vessel under Capt. Bob Bartlett, and as a packet plying the route between the Cape Verde Islands and the United States. In her packet role, she was the last great sailing ship to bring immigrants to our shores.

National park designation will be a valuable economic stimulus for tourism and associated development for the city. While the proposed Federal funding level is modest, establishment of this national park will spur extensive private sector preservation efforts.

The whaling park in New Bedford will help protect a nationally significant historic treasure and stimulate the economy of a city in need. It is an investment in America's past and in a city's future. I urge my colleagues to support this important legislation.

Mr. KERRY. Mr. President, I am pleased once again to join my good friend and colleague senator KENNEDY in introducing legislation to establish a whaling national historical park in New Bedford, MA. Our initiative is based upon a special resource study completed by the National Park Service in 1993 which found that the New Bedford area meets the criteria for inclusion in the National Park System. However, this legislation, while similar to a bill we introduced last Congress, is

a much scaled-back version. Trying to balance the need for fiscal restraint with the importance of protecting our National heritage, our new bill calls for less than one-fifth of the Federal funding of our original initiative and would require significant matching contributions from other interested parties.

The city of New Bedford, tucked by the sea in the southeast corner of Massachusetts, has a rich and diverse history. For decades it was the center of our Nation's whaling industry. And although the whaling industry collapsed by the turn of the last century, New Bedford is to this day remembered for its seafaring heritage.

As a national park, the New Bedford National Historic Landmark District and surrounding area would enhance the National Park System by expanding its maritime history theme to include a focus on our Nation's whaling past. Particularly noteworthy are the historic town center, the waterfront with the National Historic Landmark Schooner *Ernestina*, and an array of over three dozen historically rehabilitated buildings which combine to provide a cultural resource that reflects the era of whaling.

Since 1962, a public/private partnership—initiated by the waterfront historic area league of New Bedford in cooperation with the Bedford Landing Taxpayers Association, the Old Dartmouth Historical Society, private property owners and the city of New Bedford, has already raised $6.4 million, rehabilitated 37 buildings and created over 40 new businesses and 200 new jobs. That is just the kind of local entrepreneurship that we should be supporting. Creating a New Bedford Whaling Park will preserve an important piece of seafarer heritage while simultaneously permitting the public/private partnership to expand and grow.

I am hopeful that the Senate will look favorably upon this new, streamlined initiative and I would encourage my colleagues to support this important, historically significant addition to our National Park System.

By Mr. WELLSTONE:

S. 609. A bill to assure fairness and choice to patients and health care providers, and for other purposes; to the Committee on Labor and Human Resources.

THE HEALTH CARE QUALITY AND FAIRNESS ACT OF 1995

• Mr. WELLSTONE. Mr. President, despite the flurry of efforts in the 103d Congress, many of us were deeply disappointed that healthcare reform legislation failed to be enacted. The American people, however, still are concerned about this issue, and feel that reform of our healthcare system should be a high priority for this Congress, although most feel that small steps, rather than giant leaps are now best. While we debate these issues in Congress, however, the number of uninsured continues to grow, particularly children, and health care costs, although moderating, may only be doing so transiently.

The private sector has not waited for Congress to act, and has been rapidly transforming the healthcare delivery system for those Americans who are fortunate enough to have access to, and the ability to pay for coverage. The proliferation of managed care systems has been extraordinary, although their ability to control healthcare costs in the long run, particularly as older, sicker patients join, remains to be proven. Health plan standards were included in many of the compromise bills that emerged during the 103d Congress. There was wide, bipartisan agreement that there should be Federal standards to level the playing field in the rapidly changing healthcare delivery environment. Such standards would assure fairness for consumers and providers, while still encouraging health plans to pursue innovative approaches to providing high-quality, cost effective care.

The Senate Committee on Labor and Human Resources recently conducted a 2-day hearing on healthcare reform. We heard witnesses who eloquently described the successes of our Nation's largest employers in negotiating with providers and health plans, and holding down the growth of health costs. These large businesses have developed demanding purchasing and performance standards that they use to select plans and develop provider networks. Unfortunately, however, small employers and individual purchasers often lack the expertise and resources necessary to navigate through the health plan maze. In order to ensure that health care of the highest quality is available to all consumers, it is essential that all health plans be required to meet minimum standards.

Discussions of these safeguards got lost in the tussle over larger and more contentious issues during the healthcare reform debate last year. I believe now more than ever, especially with talk of restructuring Medicare and Medicaid being framed along the lines of restraining the growth of costs while maintaining choice and quality, that provisions to ensure that consumers are adequately protected and informed are absolutely imperative.

With these thoughts in mind, today I am introducing the Health Care Quality and Fairness Act of 1995, which is designed to assure fairness and choice to patients and health care providers. Its scope would include all health plans including those that are self-funded, not just HMO's or managed care plans. Its major provisions include:

Protection of consumer choice by requiring an employer to offer a choice of at least three types of health plan—managed care, point-of-service, and traditional insurance. Currently, only about half of all Americans who get their health insurance through employers are offered more than one plan. Evidence suggests that employers are increasingly limiting their employees' choice of health plans, while this bill would assure adequate choice is provided;

Establishment of an Office of Consumer Information Counseling and Assistance to perform public outreach and provide education and assistance regarding consumer rights with regard to health insurance. This effort would build on an existing Medigap model that has been highly successful in a number of States;

Development of health plan standards, including utilization review activities, credentialing of health professionals, and handling of grievances by providers or consumers. These standards would ensure fairness in the interactions between health plans, consumers, and providers;

Requirements for health plan solvency standards to be developed to protect employees and individual purchasers from being left high and dry;

Provision of information on plan coverage, benefits, loss ratio, satisfaction statistics, and quality indicators to assist consumers in making wise purchasing decisions; and

Insurance market reforms including guaranteed issue and renewability, prohibitions on preexisting condition exclusions, and risk adjustment. Insurance reform, if carefully crafted, would stabilize premiums for small employers and individual purchasers and prevent plans from excluding those who most need coverage.

This legislation has broad support among provider groups, including the American Medical Association and the Advocates for Practitioner Equity Coalition which includes nonphysician provider groups like the American Optometric Association, the American Podiatric Medical Association, the American Occupational Therapy Association, and consumer groups, including Consumers Union and Citizen Action. Together these groups hope to form a partnership to work with health plans to assure that fair, high-quality care is delivered, utilizing the standards enacted in the Health Care Quality and Fairness Act.

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. 609

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as ''The Health Care Quality and Fairness Act of 1995''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—PROTECTION OF CONSUMER CHOICE

Sec. 101. Protection of consumer choice.
Sec. 102. Enrollment.

TITLE II—OFFICE FOR CONSUMER INFORMATION, COUNSELING AND ASSISTANCE
Sec. 201. Establishment.
TITLE III—UTILIZATION MANAGEMENT
Sec. 301. Definitions.
Sec. 302. Requirement for utilization review program.
Sec. 303. Standards for utilization review.
TITLE IV—HEALTH PLAN STANDARDS
Sec. 401. Health plan standards.
Sec. 402. Minimum solvency requirements.
Sec. 403. Information on terms of plan.
Sec. 404. Access.
Sec. 405. Credentialing for health professionals.
Sec. 406. Grievance procedures.
Sec. 407. Confidentiality standards.
Sec. 408. Discrimination.
Sec. 409. Prohibition on selective marketing.
TITLE V—HEALTH INSURANCE MARKET REFORM
Sec. 501. Guaranteed issue and renewability.
Sec. 502. Nondiscrimination based on health status.
Sec. 503. Adjustments based on age, geography and family size.
Sec. 504. Risk adjustment.
Sec. 505. Lifetime limits.
Sec. 506. Patient's right to self-determination.
Sec. 507. Affect on State law.
Sec. 508. Association plans.
TITLE VI—MISCELLANEOUS PROVISIONS
Sec. 601. Enforcement.
Sec. 602. Effective date.

SEC. 2. DEFINITIONS.

Unless specifically provided otherwise, as used in this Act:

(1) CARRIER.—The term ''carrier'' means a licensed insurance company, a hospital or medical service corporation (including an existing Blue Cross or Blue Shield organization, within the meaning of section 833(c)(2) of Internal Revenue Code of 1986 as in effect before the date of the enactment of this Act), a health maintenance organization, or other entity licensed or certified by the State to provide health insurance or health benefits.

(2) COVERED INDIVIDUAL.—The term ''covered individual'' means a member, enrollee, subscriber, covered life, patient or other individual eligible to receive benefits under a health plan.

(3) DEPENDENT.—The term ''dependent'' means a spouse or child (including an adopted child) of an enrollee in a health plan who is financially dependent upon the enrollee.

(4) EMERGENCY SERVICES.—The term ''emergency services'' means those health care services that are provided to a patient after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, and the absence of such immediate medical attention could reasonably be expected, to result in—

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily function; or

(C) serious dysfunction of any bodily organ or part.

(5) HEALTH PLAN.—The term ''health plan'' includes any organization that seeks to arrange for, or provide for the financing and coordinated delivery of, health care services directly or through a contracted health professional panel, and shall include health maintenance organizations, preferred provider organizations, single service health maintenance organizations, single service preferred provider organizations, other entities such as physician-hospital or hospital-physician organizations, employee welfare benefit plans (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and multiple employer welfare plans or other association plans, as well as carriers.

(6) HEALTH PROFESSIONAL.—The term ''health professional'' means individuals who are licensed, certified, accredited, or otherwise credentialed to provide health care items and services as authorized under State law.

(7) MANAGED CARE PLAN.—

(A) IN GENERAL.—The term ''managed care plan'' means a plan operated by a managed care entity (as defined in subparagraph (B)), that provides for the financing and delivery of health care services to persons enrolled in such plan through—

(i) arrangements with selected providers to furnish health care services;

(ii) explicit standards for the selection of participating providers;

(iii) organizational arrangements for ongoing quality assurance, utilization review programs, and dispute resolution; and

(iv) financial incentives for persons enrolled in the plan to use the participating providers and procedures provided for by the plan.

(B) MANAGED CARE ENTITY.—The term ''managed care entity'' includes a licensed insurance company, hospital or medical service plan (including physician and physician-hospital networks), health maintenance organization, an employer or employee organization, or a managed care contractor (as defined in subparagraph (C)), that operates a managed care plan.

(C) MANAGED CARE CONTRACTOR.—The term ''managed care contractor'' means a person that—

(i) establishes, operates, or maintains a network of participating providers;

(ii) conducts or arranges for utilization review activities; and

(iii) contracts with an insurance company, a hospital or medical service plan, an employer, an employee organization, or any other entity providing coverage for health care services to operate a managed care plan.

(8) PHYSICIAN.—The term ''physician'' means a doctor of medicine, a doctor of osteopathy, or a doctor of allopathy.

(9) PROVIDER.—The term ''provider'' means a physician, an organized group of physicians, a facility or any other health care professional licensed or certified by the State, where licensure or certification is required.

(10) PROVIDER NETWORK.—The term ''provider network'' means, with respect to a health plan that restricts access, those providers who have entered into a contract or agreement with the plan under which such providers are obligated to provide items and services under the plan to eligible individuals enrolled in the plan, or have an agreement to provide services on a fee-for-service basis.

(11) POINT-OF-SERVICE PLAN.—The term ''point-of-service plan'' means a plan that offers services to enrollees through a provider network and also offers additional services or access to care by network or non-network providers.

(12) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(13) SMALL GROUP MARKET.—

(A) IN GENERAL.—The term ''small group market'' means, with respect to a calendar year, employers (including sole proprietorships, firms, corporations, partnerships, or associations actively engaged in business) that, on at least 50 percent of its business days, employ at least one but not more than 50 employees. In determining the number of employees for purposes of this paragraph, entities that are affiliated, or that are eligible to file a combined tax return, shall be considered as a single employer.

(B) APPLICATION OF PROVISIONS.—Except as specifically provided otherwise, the requirements of this Act that apply to an employer in the small group market shall continue to apply to such employer through the end of the rating period in which the employer has failed to meet the requirements of subparagraph (A).

(14) SPECIALIZED TREATMENT EXPERTISE.—The term ''specialized treatment expertise'' means expertise in diagnosing and treating unusual diseases and condition, diagnosing and treating diseases and conditions that are usually difficult to diagnose or treat, and providing other specialized health care.

(15) SPONSOR.—The term ''sponsor'' means a carrier or employer that provides a health plan.

(16) TRADITIONAL INSURANCE PLAN.—The term ''traditional insurance plan'' includes plans that offer a health benefits package and that pay for medical services on a fee-for-service basis using a usual, customary, or reasonable payment methodology or a resource based relative value schedule, usually linked to an annual deductible and/or coinsurance payment on each allowed amount.

(17) UTILIZATION REVIEW.—The term ''utilization review'' means a set of formal techniques designed to monitor and evaluate the clinical necessity, appropriateness and efficiency of health care services, procedures, providers and facilities. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning and retrospective review.

TITLE I—PROTECTION OF CONSUMER CHOICE

SEC. 101. PROTECTION OF CONSUMER CHOICE.

(a) IN GENERAL.—Each employer, including a self-insured employer, who offers, provides, or makes available to employees a health plan must provide to each such employee a choice of health plans as required under subsection (b).

(b) OFFERING OF PLANS.—Each employer referred to in subsection (a) shall include among its health plan offerings at least one of each of the following types of health plans, where available:

(1) A managed care plan, including a health maintenance organization or preferred provider organization.

(2) A point-of-service plan.

(3) A traditional insurance plan (as defined in section 2).

SEC. 102. ENROLLMENT.

Each employer including a self-insured employer, who offers, provides, or makes available a health plan shall establish a process for enrollment in such plan which consists of—

(1) a general annual open enrollment period of at least 30 days; and

(2) special open enrollment periods for changes in enrollment as required by the Secretary.

TITLE II—OFFICE FOR CONSUMER INFORMATION, COUNSELING AND ASSISTANCE

SEC. 201. ESTABLISHMENT.

(a) IN GENERAL.—The Secretary shall award a grant to each State for the establishment of an Office for Consumer Information, Counseling and Assistance (hereafter referred to in this section as the ''Office'') in each such State. Each such Office shall perform public outreach and provide education and assistance concerning consumer rights with respect to health insurance as provided for in subsection (d).

(b) USE OF GRANT.—

(1) IN GENERAL.—A State shall use a grant under this section—

(A) to administer the Office and carry out the duties described in subsection (d);

(B) to solicit and award contracts to private, nonprofit organizations applying to the State to administer the Office and carry out the duties described in subsection (d); or

(C) in the case of a State operating a consumer information counseling and assistance program on the date of enactment of this Act, to expand and improve such program.

(2) CONTRACTS.—With respect to the contract described in paragraph (1)(B), the contract period shall be not less than 2 years and not more than 4 years.

(c) STAFF.—A State shall ensure that the Office has sufficient staff (including volunteers) and local offices throughout the State to carry out its duties under this section and a demonstrated ability to represent and work with a broad spectrum of consumers, including vulnerable and underserved populations.

(d) DUTIES.—An Office established under this section shall—

(1) establish a State-wide toll-free hotline to enable consumers to contact the Office;

(2) have the ability to provide appropriate assistance under this subsection to individuals with limited English language ability;

(3) develop outreach programs to provide health insurance information, counseling, and assistance;

(4) provide outreach and education relating to consumer rights and responsibilities under this Act, including the rights and services available through the Office;

(5) provide individuals with assistance in enrolling in health plans (including providing plan comparisons) or in obtaining services or reimbursements from health plans;

(6) provide individuals with assistance in filing applications for appropriate State health plan premium assistance programs;

(7) provide individuals with information concerning existing grievance procedures and institute systems of referral to appropriate Federal or State departments or agencies for assistance with problems related to insurance coverage (including legal problems);

(8) ensure that regular and timely access is provided to the services available through the Office;

(9) implement training programs for staff members (including volunteer staff members) and collect and disseminate timely and accurate health care information to staff members;

(10) not less than once each year, conduct public hearings to identify and address community health care needs;

(11) coordinate its activities with the staff of the appropriate departments and agencies of the State government and other appropriate entities within the State; and

(12) carry out any other activities determined appropriate by the Secretary.

(e) STATE DUTIES.—

(1) ACCESS TO INFORMATION.—The State shall ensure that, for purposes of carrying out the duties of the Office, the Office has appropriate access to relevant information, subject to the application of procedures to ensure confidentiality of enrollee and proprietary health plan information.

(2) REPORTING AND EVALUATION REQUIREMENTS.—

(A) REPORT.—The Office shall annually prepare and submit to the State a report on the nature and patterns of consumer complaints received by the Office during the year for which the report is prepared. Such report shall contain any policy, regulatory, and legislative recommendations for improvements in the activities of the Office together with a record of the activities of the Office.

(B) EVALUATION.—The State shall annually evaluate the quality and effectiveness of the Office in carrying out the activities described in subsection (d).

(3) CONFLICTS OF INTEREST.—The State shall ensure that no individual involved in selecting the entity with which to enter into a contract under subsection (b)(1)(B), or involved in the operation of the Office, or any delegate of the Office, is subject to a conflict of interest.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE III—UTILIZATION MANAGEMENT

SEC. 301. DEFINITIONS.

As used in this title:

(1) ADVERSE DETERMINATION.—The term ''adverse determination'' means a determination that an admission to or continued stay at a hospital or that another health care service that is required has been reviewed and, based upon the information provided, does not meet the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness.

(2) AMBULATORY REVIEW.—The term ''ambulatory review'' means utilization review of health care services performed or provided in an outpatient setting.

(3) APPEALS PROCEDURE.—The term ''appeals procedure'' means a formal process under which a covered individual (or an individual acting on behalf of a covered individual), attending physician, facility or applicable health care provider may appeal an adverse utilization review decision rendered by the health plan or its designee utilization review organization.

(4) CASE MANAGEMENT.—The term ''case management'' means a coordinated set of activities conducted for the individual patient management of serious, complicated, protracted or chronic health conditions that provides cost-effective and benefit-maximizing treatments for extremely resource-intensive conditions.

(5) CLINICAL REVIEW CRITERIA.—The term ''clinical review criteria'' means the recorded (written or otherwise) screening procedures, decision abstracts, clinical protocols and practice guidelines used by the health plan to determine necessity and appropriateness of health care services.

(6) CONCURRENT REVIEW.—The term ''concurrent review'' means utilization review conducted during a patient's hospital stay or course of treatment.

(7) DISCHARGE PLANNING.—The term ''discharge planning'' means the formal process for determining, coordinating and managing the care a patient receives following the discharge of the patient from a facility.

(8) FACILITY.—The term ''facility'' means an institution or health care setting providing the prescribed health care services under review. Such term includes hospitals and other licensed inpatient facilities, ambulatory surgical or treatment centers, skilled nursing facilities, residential treatment centers, diagnostic, laboratory and imaging centers and rehabilitation and other therapeutic health care settings.

(9) PROSPECTIVE REVIEW.—The term ''prospective review'' means utilization review conducted prior to an admission or a course of treatment.

(10) RETROSPECTIVE REVIEW.—The term ''retrospective review'' means utilization review conducted after health care services have been provided to a patient. Such term does not include the retrospective review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding and adjudication for payment.

(11) SECOND OPINION.—The term ''second opinion'' means an opportunity or requirement to obtain a clinical evaluation by a provider other than the provider originally making a recommendation for a proposed health service to assess the clinical necessity and appropriateness of the initial proposed health service.

(12) UTILIZATION REVIEW ORGANIZATION.—The term ''utilization review organization'' means an entity that conducts utilization review.

SEC. 302. REQUIREMENT FOR UTILIZATION REVIEW PROGRAM.

A health plan shall have in place a utilization review program that meets the requirements of this title and that is certified by the State.

SEC. 303. STANDARDS FOR UTILIZATION REVIEW.

(a) ESTABLISHMENT.—The Secretary shall establish standards for the establishment, operation, and certification and periodic recertification of health plan utilization review programs.

(b) ALTERNATIVE STANDARDS.—

(1) IN GENERAL.—A State may certify a health plan as meeting the standards established under subsection (a) if the State determines that the health plan has met the utilization standards required for accreditation as applied by a nationally recognized, independent, nonprofit accreditation entity.

(2) REVIEW BY STATE.—A State that makes a determination under paragraph (1) shall periodically review the standards used by the private accreditation entity to ensure that such standards meet or exceed the standards established by the Secretary under this title.

(c) UTILIZATION REVIEW PROGRAM REQUIREMENTS.—The standards developed by the Secretary under subsection (a) shall require that utilization review programs comply with the following:

(1) DOCUMENTATION.—A health plan shall provide a written description of the utilization review program of the plan, including a description of—

(A) the delegated and nondelegated activities under the program;

(B) the policies and procedures used under the program to evaluate medical necessity; and

(C) the clinical review criteria, information sources, and the process used to review and approve the provision of medical services under the program.

(2) PROHIBITION.—With respect to the administration of the utilization review program, a health plan may not employ utilization reviewers or contract with a utilization management organization if the conditions of employment or the contract terms include financial incentives to reduce or limit the medically necessary or appropriate services provided to covered individuals.

(3) REVIEW AND MODIFICATION.—A health plan shall develop procedures for periodically reviewing and modifying the utilization review of the plan. Such procedures shall provide for the participation of providers in the health plan in the development and review of utilization review policies and procedures.

(4) DECISION PROTOCOLS.—

(A) IN GENERAL.—A utilization review program shall develop and apply recorded (written or otherwise) utilization review decision protocols. Such protocols shall be based on sound medical evidence.

(B) PROTOCOL CRITERIA.—The clinical review criteria used under the utilization review decision protocols to assess the appropriateness of medical services shall be clearly documented and available to participating health professionals upon request. Such protocols shall include a mechanism for assessing the consistency of the application of the

criteria used under the protocols across reviewers, and a mechanism for periodically updating such criteria.

(5) REVIEW AND DECISIONS.—

(A) REVIEW.—The procedures applied under a utilization review program with respect to the preauthorization and concurrent review of the necessity and appropriateness of medical items, services or procedures, shall require that qualified medical professionals supervise review decisions. With respect to a decision to deny the provision of medical items, services or procedures, a physician shall conduct a subsequent review to determine the medical appropriateness of such a denial. Board certified physicians from the appropriate specialty areas of medicine and surgery shall be utilized in the review process as needed.

(B) DECISIONS.—All utilization review decisions shall be made in a timely manner, as determined appropriate when considering the urgency of the situation.

(C) ADVERSE DETERMINATIONS.—With respect to utilization review, an adverse determination or noncertification of an admission, continued stay, or service shall be clearly documented, including the specific clinical or other reason for the adverse determination or noncertification, and be available to the covered individual and the affected provider or facility. A health plan may not deny or limit coverage with respect to a service that the enrollee has already received solely on the basis of lack of prior authorization or second opinion, to the extent that the service would have otherwise been covered by the plan had such prior authorization or a second opinion been obtained.

(D) NOTIFICATION OF DENIAL.—A health plan shall provide a covered individual with timely notice of an adverse determination or noncertification of an admission, continued stay, or service. Such a notification shall include information concerning the utilization review program appeals procedure.

(6) REQUESTS FOR AUTHORIZATION.—A health plan utilization review program shall ensure that requests by covered individuals or physicians for prior authorization of a nonemergency service shall be answered in a timely manner after such request is received. If utilization review personnel are not available in a timely fashion, any medical services provided shall be considered approved.

(7) NEW TECHNOLOGIES.—A utilization review program shall implement policies and procedures to evaluate the appropriate use of new medical technologies or new applications of established technologies, including medical procedures, drugs, and devices. The program shall ensure that appropriate professionals participate in the development of technology evaluation criteria.

(8) SPECIAL RULE.—Where prior authorization for a service or other covered item is obtained under a program under this section, the service shall be considered to be covered unless there was fraud or incorrect information provided at the time such prior authorization was obtained. If a provider supplied the incorrect information that led to the authorization of medically unnecessary care, the provider shall be prohibited from collecting payment directly from the enrollee, and shall reimburse the plan and subscriber for any payments or copayments the provider may have received.

(d) HEALTH PLAN REQUIREMENTS.—

(1) DISCLOSURE OF INFORMATION.—

(A) PROSPECTIVE COVERED INDIVIDUALS.—A health plan shall, with respect to any materials distributed to prospective covered individuals, include a summary of the utilization review procedures of the plan.

(B) COVERED INDIVIDUALS.—A health plan shall, with respect to any materials distributed to newly covered individuals, include a clear and comprehensive description of utilization review procedures of the plan and a statement of patient rights and responsibilities with respect to such procedures.

(C) STATE OFFICIALS.—

(i) IN GENERAL.—A health plan shall disclose to the State insurance commissioner, or other designated State official, the health plan utilization review program policies, procedures, and reports required by the State for certification.

(ii) STREAMLINING OF PROCEDURES.—To the extent practicable, a State shall implement procedures to streamline the process by which a health plan documents compliance with the requirements of this Act, including procedures to condense the number of documents filed with the State concerning such compliance.

(2) TOLL-FREE NUMBER.—A health plan shall have a membership card which shall have printed on the card the toll-free telephone number that a covered individual should call to receive precertification utilization review decisions.

(3) EVALUATION.—A health plan shall establish mechanisms to evaluate the effects of the utilization review program of the plan through the use of member satisfaction data or through other appropriate means.

(e) EMERGENCY CARE.—

(1) IN GENERAL.—A health plan shall provide coverage for emergency services provided to an enrollee without regard to whether the health professional or provider furnishing such services has a contractual (or other arrangement) with the plan.

(2) PREAUTHORIZATION.—With respect to emergency services furnished in a hospital emergency department, a health plan shall not require prior authorization for the provision of such services if the enrollee arrived at the emergency department with symptoms that reasonably suggested an emergency medical condition, regardless of whether the hospital was affiliated with the health plan. All procedures performed during the evaluation and treatment of an emergency condition shall be covered under the health plan.

TITLE IV—HEALTH PLAN STANDARDS

SEC. 401. HEALTH PLAN STANDARDS.

(a) ESTABLISHMENT.—The Secretary shall establish standards for the certification and periodic recertification of health plans, including standards which require plans to meet the requirements of this title.

(b) STATE CERTIFICATION.—

(1) IN GENERAL.—A State shall provide for the certification of health plans if the certifying authority designated by the State determines that the plan meets the applicable requirements of this Act.

(2) REQUIREMENT.—Effective on January 1, 1997, a health plan sponsor may only offer a health plan in a State if such plan is certified by the State under paragraph (1).

(c) CONSTRUCTION.—Whenever in this title a requirement or standard is imposed on a health plan, the requirement or standard is deemed to have been imposed on the sponsor of the plan in relation to that plan.

SEC. 402. MINIMUM SOLVENCY REQUIREMENTS.

(a) IN GENERAL.—Except as provided in subsection (b), each State shall apply minimum solvency requirements to all health plans offered or operating with the State. A health plan shall meet the financial reserve requirements that are established by the State to assure proper payment for health care services provided under the plan.

(b) FEDERAL STANDARDS.—The Secretary shall establish minimum solvency standards that shall apply to all self-insured health plans. Such standards shall at least meet the solvency requirements established by the National Association of Insurance Commissioners.

SEC. 403. INFORMATION ON TERMS OF PLAN.

(a) IN GENERAL.—A health plan shall provide prospective covered individuals with written information concerning the terms and conditions of the health plan to enable such individuals to make informed decisions with respect to a certain system of health care delivery. Such information shall be standardized so that prospective covered individuals may compare the attributes of all such plans offered within the coverage area.

(b) UNDERSTANDABILITY.—Information provided under this section, whether written or oral shall easily understandable, truthful, linguistically appropriate and objective with respect to the terms used. Descriptions provided in such information shall be consistent with standards developed for supplemental insurance coverage under title XVIII of the Social Security Act.

(c) REQUIRED INFORMATION.—Information required under this section shall include information concerning—

(1) coverage provisions, benefits, and any exclusions by category of service or product;

(2) plan loss ratios with an explanation that such ratios reflect the percentage of the premiums expended for health services;

(3) prior authorization or other review requirements including preauthorization review, concurrent review, post-service review, post-payment review and procedures that may lead the patient to be denied coverage for, or not be provided, a particular service or product;

(4) an explanation of how plan design impacts enrollees, including information on the financial responsibility of covered individuals for payment for coinsurance or other out-of-plan services;

(5) covered individual satisfaction statistics, including disenrollment statistics;

(6) advance directives and organ donation;

(7) the characteristics and availability of health care professionals and institutions participating in the plan, including descriptions of the financial arrangements or contractual provisions with hospitals, utilization review organizations, physicians, or any other provider of health care services that would affect the services offered, referral or treatment options, or physician's fiduciary responsibility to patients, including financial incentives regarding the provision of medical or other services; and

(8) quality indicators for the plan and for participating health professionals and providers under the plan, including population-based statistics such as immunization rates and performance measures such as survival after surgery, adjusted for case mix.

SEC. 404. ACCESS.

(a) IN GENERAL.—A health plan shall demonstrate that the plan has a sufficient number, distribution, and variety of qualified health care providers to ensure that all covered health care services will be available and accessible in a timely manner to adults, infants, children, and individuals with disabilities enrolled in the plan.

(b) AVAILABILITY OF SERVICES.—A health plan shall ensure that services covered under the plan are available in a timely manner that ensures a continuity of care, are accessible within a reasonable proximity to the residences of the enrollees, are available within reasonable hours of operation, and include emergency and urgent care services when medically necessary and available which shall be accessible within the service area 24-hours a day, seven days a week.

(c) SPECIALIZED TREATMENT.—A health plan shall demonstrate that plan enrollees have access, when medically or clinically indicated in the judgment of the treating

health professional, to specialized treatment expertise.

(d) CHRONIC CONDITIONS.—

(1) IN GENERAL.—Any process established by a health plan to coordinate care and control costs may not impose an undue burden on enrollees with chronic health conditions. The plan shall ensure a continuity of care and shall, when medically or clinically indicated in the judgment of the treating health professional, ensure direct access to relevant specialists for continued care.

(2) CARE COORDINATOR.—In the case of an enrollee who has a severe, complex, or chronic condition, the health plan shall determine, based on the judgment of the treating health professional, whether it is medically or clinically necessary or appropriate to use a care coordinator from an interdisciplinary team or a specialist to ensure continuity of care.

(e) REQUIREMENT.—

(1) IN GENERAL.—The requirements of this section may not be waived and shall be met in all areas where the health plan has enrollees, including rural areas. With respect to children, such services shall include pediatric services.

(2) OUT-OF-NETWORK SERVICES.—If a health plan fails to meet the requirements of this section, the plan shall arrange for the provision of out-of-network services to enrollees in a manner that provides enrollees with access to services in accordance with this section.

SEC. 405. CREDENTIALING FOR HEALTH PROFESSIONALS.

(a) IN GENERAL.—A health plan shall credential health professionals furnishing health care services under the plan.

(b) CREDENTIALING PROCESS.—

(1) IN GENERAL.—A health plan shall establish a credentialing process. Such process shall ensure that a health professional is credentialed prior to that professional being listed as a health professional in the health plan's marketing materials, in accordance with recorded (written or otherwise) policies and procedures.

(2) RESPONSIBILITY OF MEDICAL DIRECTOR.—The medical director of the health plan, or another designated health professional, shall have responsibility for the credentialing of health professionals under the plan.

(3) UNIFORM APPLICATIONS.—A State shall develop a basic uniform application that shall be used by all health plans in the State for credentialing purposes.

(4) CREDENTIALING COMMITTEE.—

(A) ESTABLISHMENT.—The health plan shall establish a credentialing committee that shall be composed of licensed physicians and other health professionals to review credentialing information and supporting documents.

(B) REQUIREMENT.—The credentialing process shall provide for the review of an application for credentialing by a credentialing committee with appropriate representation of the applicant's medical specialty.

(5) STANDARDS.—

(A) IN GENERAL.—Credentialing decisions under a health plan shall be based on objective standards with input from health professionals credentialed under the plan. Information concerning all application and credentialing policies and procedures shall be made available for review by the health professional involved upon written request.

(B) REQUIREMENT.—The standards referred to in subparagraph (A) shall include determinations as to—

(i) whether the health professional has a current valid license to practice the particular health profession involved;

(ii) whether the health professional has clinical privileges in good standing at the hospital designated by the practitioner and the primary admitting facility, as applicable;

(iii) whether the health professional has a valid DEA or CDS certificate, as applicable;

(iv) whether the health professional has graduated from medical school and completed a residency, or received Board certification, as applicable;

(v) the work history of the health professional;

(vi) whether the health professional has current, adequate malpractice insurance in accordance with the policy of the health plan; and

(vii) the professional liability claims history of the health professional.

(C) RIGHT TO REVIEW INFORMATION.—A health professional who undergoes the credentialing process shall have the right to review the basis information, including the sources of that information, that was used to meet the designated credentialing criteria.

SEC. 406. GRIEVANCE PROCEDURES.

(a) IN GENERAL.—A health plan shall adopt a timely and organized system for resolving complaints and formal grievances filed by covered individuals. Such system shall include—

(1) recorded (written or otherwise) procedures for registering and responding to complaints and grievances in a timely manner;

(2) documentation concerning the substance of complaints, grievances, and actions taken concerning such complaints and grievances, which shall be in writing, and be available upon request to the Office for Consumer Information, Counseling and Assistance;

(3) procedures to ensure a resolution of a complaint or grievance;

(4) the compilation and analysis of complaint and grievance data;

(5) procedures to expedite the complaint process if the complaint involves a dispute about the coverage of an immediately and urgently needed service; and

(6) procedures to ensure that if an enrollee orally notifies a health plan about a complaint, the plan (if requested) must send the enrollee a complaint form that includes the telephone numbers and addresses of member services, a description of the plan's grievance procedure, and the telephone number of the Officer for Consumer Information, Counseling and Assistance where enrollees may register complaints.

(b) APPEAL PROCESS.—A health plan shall adopt an appeals process to enable covered individuals to appeal decisions that are adverse to the individuals. Such a process shall include—

(1) the right to a review by a grievance panel;

(2) the right to a second review with a different panel, independent from the health plan, or to a review through an impartial arbitration process which shall be described in writing by the plan; and

(3) an expedited process for review in emergency cases.

The Secretary shall develop guidelines for the structure and requirements applicable to the independent review panel and impartial arbitration process described in paragraph (2).

(c) NOTIFICATION.—With respect to the complaint, grievance, and appeals processes required under this section, a health plan shall, upon the request of a covered individual, provide the individual a written decision concerning a complaint, grievance, or appeal in a timely fashion.

(d) NON-IMPEDIMENT TO BENEFITS.—The complaint, grievance, and appeals processes established in accordance with this section may not be used in any fashion to discourage or prevent a covered individual from receiving medically necessary care in a timely manner.

(e) DUE PROCESS WITH RESPECT TO CREDENTIALING.—

(1) RECEIPT OF INFORMATION.—A health professional who is subject to credentialing under section 405 shall, upon written request, receive from the health plan any information obtained by the plan during the credentialing process that, as determined by the credentialing committee, does not meet the credentialing standards of the plan, or that varies substantially from the information provided to the health plan by the health professional.

(2) SUBMISSION OF CORRECTIONS.—A health plan shall have a formal, recorded (written or otherwise) process by which a health professional may submit supplemental information to the credentialing committee if the health professional determines that erroneous or misleading information has been previously submitted. The health professional may request that such information be reconsidered in the evaluation for credentialing purposes.

(3) NO ENTITLEMENT.—

(A) IN GENERAL.—A health professional is not entitled to be selected or retained by a health plan as a participating or contracting provider whether or not such professional meets the credentialing standards established under section 405.

(B) ECONOMIC CONSIDERATIONS.—If economic considerations, including the health care professional's patterns of expenditure per patient, are part of a selection decision, objective criteria shall be used in examining such considerations and a written description of such criteria shall be provided to applicants, participating health professionals, and enrollees. Any economic profiling of health professionals must be adjusted to recognize case mix, severity of illness, and the age of patients of a health professional's practice that may account for higher or lower than expected costs, to the extent appropriate data in this regard is available to the health plan.

(4) TERMINATION, REDUCTION OR WITHDRAWAL.—

(A) PROCEDURES.—A health plan shall develop and implement procedures for the reporting, to appropriate authorities, of serious quality deficiencies that result in the suspension or termination of a contract with a health professional.

(B) REVIEW.—A health plan shall develop and implement policies and procedures under which the plan reviews the contract privileges of health professionals who—

(i) have seriously violated policies and procedures of the health plan;

(ii) have lost their privilege to practice with a contracting institutional provider; or

(iii) otherwise pose a threat to the quality of service and care provided to the enrollees of the health plan.

At a minimum, the policies and procedures implemented under this subparagraph shall meet the requirements of the Health Care Quality Improvement Act of 1986.

(C) DUE PROCESS.—The policies and procedures implemented under subparagraph (B) shall include requirements for the timely notification of the affected health professional of the reasons for the reduction, withdrawal, or termination of privileges, and provide the health professional with the right to appeal the determination of reduction, withdrawal, or termination.

(D) AVAILABILITY.—A written copy of the policies and procedures implemented under this paragraph shall be made available to a health professional on request prior to the time at which the health professional contracts to provide services under the plan.

SEC. 407. CONFIDENTIALITY STANDARDS.

(a) IN GENERAL.—A health plan shall ensure that the confidentiality of specified enrollee patient information and records is protected.

(b) POLICIES AND PROCEDURES.—A health plan shall have written confidentiality policies and procedures. Such policies and procedures shall, at a minimum—

(1) maintain the confidentiality of enrollee patient information within the administrative structure of the health plan;

(2) protect medical record information;

(3) protect claim information;

(4) establish requirements for the release of information; and

(5) inform employees of the confidentiality policies and procedures.

(c) PATIENT CARE PROVIDERS AND FACILITIES.—A health plan shall ensure that providers, offices and facilities responsible for providing covered items or services to plan enrollees have implemented policies and procedures to prevent the unauthorized or inadvertent disclosure of confidential patient information to individuals who should not have access to such information.

(d) RELEASE OF INFORMATION.—An enrollee in a health plan shall have the opportunity to approve or disapprove the release of identifiable personal patient information by the health plan, except where such release is required under applicable law.

SEC. 408. DISCRIMINATION.

(a) ENROLLEES.—A health plan (network or non-network) may not discriminate or engage (directly or through contractual arrangements) in any activity, including the selection of service area, that has the effect of discriminating against an individual on the basis of race, national origin, gender, language, socio-economic status, age, disability, health status, or anticipated need for health services.

(b) PROVIDERS.—A health plan may not discriminate in the selection of members of the health professional or provider network (and in establishing the terms and conditions for membership in the network) of the plan based on—

(1) the race, national origin, or disability of the health professional;

(2) the socio-economic status, disability, health status, or anticipated need for health services of the patients of the health professional or provider; or

(3) the health professional or provider's lack of affiliation with, or admitting privileges at, a hospital.

(c) LICENSE OR CERTIFICATION.—A health plan may not discriminate in participation, reimbursement, or indemnification against a health professional who is acting within the scope of the license or certification of the professional under applicable State law solely on the basis of the license or certification of the health professional. A health plan may not discriminate in participation, reimbursement, or indemnification against a health provider that is providing services within the scope of services that it is authorized to perform under State law.

SEC. 409. PROHIBITION ON SELECTIVE MARKETING.

A health plan may not engage in marketing or other practices intended to discourage or limit the issuance of health plans to individuals on the basis of health condition, geographic area, industry, or other risk factors.

TITLE V—HEALTH INSURANCE MARKET REFORM

SEC. 501. GUARANTEED ISSUE AND RENEWABILITY.

(a) GUARANTEED ISSUE.—Except as otherwise provided in this section, a health plan sponsor offering a health plan to a class of individuals shall offer such plan to any individual within such class who applies for coverage (either directly with the plan or through an employer) under such plan. A health plan may not engage in any practice that has the effect of attracting or limiting enrollees on the basis of personal characteristics, such as occupation or affiliation with any person or entity.

(b) RENEWABILITY.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a health plan sponsor may not refuse to renew, or may not terminate, coverage under a health plan with respect to any individual or family.

(2) GROUNDS FOR REFUSAL TO RENEW OR TERMINATE.—Paragraph (1) shall not apply in the case of—

(A) nonpayment of premiums;

(B) fraud on the part of the individual relating to such plan;

(C) misrepresentation of material facts on the part of the individual relating to an application for coverage or claim for benefits; or

(D) the occurrence of other acts as prescribed in standards developed by the National Association of Insurance Commissioners.

(3) TERMINATION OF PLANS.—The Secretary, in consultation with the National Association of Insurance Commissioners, shall develop standards under which a health plan sponsor may terminate a health plan.

SEC. 502. NONDISCRIMINATION BASED ON HEALTH STATUS.

(a) NO LIMITS ON COVERAGE; NO PRE EXISTING CONDITION LIMITS.—Except as provided in subsection (b), a health plan may not—

(1) terminate, restrict, or limit coverage or establish premiums based on the health status, medical condition, claims experience, receipt of health care, medical history, anticipated need for health care services, disability, genetic predisposition to medical conditions, or lack of evidence of insurability of an individual;

(2) terminate, restrict, or limit coverage in any portion of the plan's coverage area;

(3) except as provided in section 501(b)(2), cancel coverage for any individual until that individual is enrolled in another applicable health plan;

(4) impose waiting periods before coverage begins; or

(5) impose a rider that serves to exclude coverage of particular individuals or particular health conditions.

(b) TREATMENT OF PREEXISTING CONDITION EXCLUSIONS.—

(1) IN GENERAL.—A health plan may impose a limitation or exclusion of benefits relating to treatment of a condition based on the fact that the condition preexisted the effective date of the plan with respect to an individual if—

(A) the condition was diagnosed or treated during the 3-month period ending on the day before the date of enrollment under the plan;

(B) the limitation or exclusion extends for a period not more than 6 months after the date of enrollment under the plan;

(C) the limitation or exclusion does not apply to an individual who, as of the date of birth, was covered under the plan; or

(D) the limitation or exclusion does not relate to pregnancy.

(2) CONTINUOUS COVERAGE.—A health plan shall provide that if an individual under such plan is in a period of continuous coverage with respect to particular services as of the date of enrollment under such plan, any period of exclusion of coverage with respect to a preexisting condition as permitted under paragraph (1) shall be reduced by 1 month for each month in the period of continuous coverage.

(3) DEFINITIONS.—As used in this subsection:

(A) PERIOD OF CONTINUOUS COVERAGE.—The term ''period of continuous coverage'' means the period beginning on the date an individual is enrolled under a health plan or health care program which provides benefits equivalent to those provided by the plan in which the individual is seeking to enroll with respect to coverage of a preexisting condition and ends on the date the individual is not so enrolled for a continuous period of more than 3 months.

(B) PREEXISTING CONDITION.—The term ''preexisting condition'' means, with respect to coverage under a health plan, a condition which was diagnosed, or which was treated, within the 3-month period ending on the day before the first date of such coverage (without regard to any waiting period).

SEC. 503. ADJUSTMENTS BASED ON AGE, GEOGRAPHY AND FAMILY SIZE.

(a) IN GENERAL.—With respect to health plan premiums, the Secretary, in consultation with the NAIC, shall specify uniform age, geography, and family size categories and maximum rating increments for age, geography, and family size adjustment factors that reflect the relative actuarial costs of benefit packages among enrollees.

(b) AGE FACTORS.—With respect to age adjustment factors established under subsection (a), for individuals who have attained age 18 but not age 65, the highest age adjustment factor may not exceed twice the lowest age adjustment factor.

(c) PHASE-IN PERIOD.—The Secretary, in consultation with the NAIC, shall establish a schedule for the phase-in of age-adjusted community rates so as to minimize disruption of the insurance market.

(d) APPLICATION.—A health plan shall ensure that the factors developed under this section are applied uniformly across each of the small group and individual markets.

SEC. 504. RISK ADJUSTMENT.

(a) IN GENERAL.—A health plan shall participate in a risk adjustment program developed by the State involved under standards established by the Secretary in consultation with the National Association of Insurance Commissioners. Such a risk adjustment program shall—

(1) with respect to a plan offered within the small group market; or

(2) with respect to a plan offered within the individual market,

provide for adjustments based on risk within the market in which the plan is marketed.

(b) PROCESS.—A program developed under subsection (a) shall include a process designed to share the risk associated with, or to equalize, high cost claims, claims of high cost individuals, costs of variations among carriers based on demographic factors associated with the individuals insured which correlate with such cost variations, to protect health plans from the disproportionate adverse risks of offering coverage to all applicants. Risk adjustment mechanisms under the program shall, to the maximum extent practicable, be prospective to minimize the uncertainty associated with the setting of premiums by health plans to maintain consumer choice from among multiple health plans based on rates that reflect the relative medical and administrative efficiencies of health plans.

SEC. 505. LIFETIME LIMITS.

A health plan may not impose a lifetime limitation on the amount or provision of benefits under the plan.

SEC. 506. PATIENT'S RIGHT TO SELF-DETERMINATION.

A health plan shall be considered to be an eligible organization under title XVIII of the Social Security Act for purposes of applying the rules under section 1866(f) of such Act (42 U.S.C. 1395cc(f)).

SEC. 507. AFFECT ON STATE LAW.

(a) PREEMPTION.—The requirements of this title do not preempt any State law unless such State law directly conflicts with such requirements. The provision of additional consumer protections under State law shall not be considered to directly conflict with such requirements. Such State consumer protection laws which are not preempted under this title include—

(1) laws that limit the exclusions for preexisting medical conditions to periods that are less than those provided for in section 502;

(2) laws that limit variations in premium rates beyond the variations permitted under section 503; and

(3) laws that would expand the small group market.

(b) STATE REFORM MEASURES.—Nothing in this title shall be construed as prohibiting a State from enacting health care reform measures that exceed the measures established under this title, including reforms that expand access to health care services, control health care costs, and enhance the quality of care.

SEC. 508. ASSOCIATION PLANS.

With respect to health plans offered to small employers and individuals through associations or other intermediaries, such plans shall meet the requirements of this title.

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. ENFORCEMENT.

(a) IN GENERAL.—A State shall prohibit the offering or issuance of any health plan in such State if such plan does not—

(1) have in place a utilization review program that is certified by the State as meeting the requirements of title III;

(2) comply with the standards developed under title IV;

(3) have in place a credentialing program that meets the requirements of section 405;

(4) comply with the requirements of title V; and

(5) meet any other requirements determined appropriate by the Secretary.

(b) SELF-INSURED PLANS.—The Secretary of Labor shall develop health plan standards, consistent with this Act, that are applicable to self-insured plans. The Secretary of Labor may take corrective action to terminate or disqualify a self-insured plan that does not meet the standards developed under this subsection.

SEC. 602. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, this Act shall take effect on the date of enactment of this Act.

(b) STANDARDS.—The standards and programs required under this Act shall apply to health plans beginning on January 1, 1997.

(c) OFFICE FOR CONSUMER INFORMATION, COUNSELING AND ASSISTANCE.—A State shall have in place the Office required under section 201 on January 1, 1997. The Secretary may award grants for the establishment of such Offices beginning on the date of enactment of this Act.

(d) OTHER REQUIREMENTS.—The requirements of titles I and V shall apply to health plans beginning on January 1, 1997.●

By Mr. LOTT:

S. 610. A bill to provide for an interpretive center at the Civil War Battlefield of Corinth, Mississippi, and for other purposes; to the Committee on Energy and Natural Resources.

CORINTH MISSISSIPPI BATTLEFIELD ACT

Mr. LOTT. Mr. President, I rise today to introduce legislation relevant to historic preservation. This legislation proposes to establish an interpretive center at the Siege and Battle of Corinth sites in Corinth, MS. The battlefield of Corinth is a significant part of our Nation's history. Corinth was the scene of a monumental battle during the War between the States.

I would like my colleagues to know, that on two occasions during the 103d Congress, legislation for this proposed interpretive center was favorably reported out of the Senate Energy and Natural Resources Committee. In addition, legislation for this proposed interpretive center was passed twice in the 103d Congress, by the full Senate. This legislation needs to come to closure. It needs to be passed by both Chambers of Congress and signed into law. It is long overdue.

The Siege and Battle of Corinth sites are the only sites in my home State of Mississippi, which have been included on a Department of the Interior's American Battlefield Protection Program. Also, the sites are two of only twenty-five nationwide placed on a list of Priority Civil War Battlefields for preservation by former Secretary of the Interior, Manuel Lujan.

The Battle of Corinth, the largest to take place in Mississippi, and the Siege of Corinth, both rank, in terms of aggregate numbers of troops involved, among the largest in the history of the Western Hemisphere.

Of all the major Civil War crusades, the Battle of Corinth and the Corinth Siege are indisputably the least known and definitely the least recognized. The site area has already received National Historic Landmark designation. It is time to go one step further to ensure that this important chapter of American history is preserved.

It is most appropriate that we safeguard our national heritage and protect this significant battlefield upon which our ancestors lost life and limb in pursuit of their most fundamental ideals. I encourage my colleagues to join me in supporting the passage of this legislation.

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. 610

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 ''Corinth, Mississippi, Battlefield Act of 1995''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the sites located in the vicinity of Corinth, Mississippi, that were designated as a National Historic Landmark by the Secretary of the Interior in 1991 represent nationally significant events in the Siege and Battle of Corinth during the Civil War; and

(2) the Landmark sites should be preserved and interpreted for the benefit, inspiration, and education of the people of the United States.

(b) PURPOSE.—The purpose of this Act is to provide for a center for the interpretation of the Siege and Battle of Corinth and other Civil War actions in the region and to enhance public understanding of the significance of the Corinth Campaign in the Civil War relative to the Western theater of operations, in cooperation with State or local governmental entities and private organizations and individuals.

SEC. 3. ACQUISITION OF PROPERTY AT CORINTH, MISSISSIPPI.

(a) IN GENERAL.—The Secretary of the Interior (referred to in this Act as the ''Secretary'') shall acquire by donation, purchase with donated or appropriated funds, or exchange, such land and interests in land in the vicinity of the Corinth Battlefield, in the State of Mississippi, as the Secretary determines to be necessary for the construction of an interpretive center to commemorate and interpret the 1862 Civil War Siege and Battle of Corinth.

(b) PUBLICLY OWNED LAND.—Land and interests in land owned by the State of Mississippi or a political sub-division of the State of Mississippi may be acquired only by donation.

SEC. 4. INTERPRETIVE CENTER AND MARKING.

(a) INTERPRETIVE CENTER.—

(1) CONSTRUCTION OF CENTER.—The Secretary shall construct, operate, and maintain on the property acquired under section 3 a center for the interpretation of the Siege and Battle of Corinth and associated historical events for the benefit of the public.

(2) DESCRIPTION.—The center shall contain approximately 5,300 square feet, and include interpretive exhibits, an auditorium, a parking area, and other features appropriate to public appreciation and understanding of the site.

(b) MARKING.—The Secretary may mark sites associated with the Siege and Battle of Corinth National Historic Landmark, as designated on May 6, 12991, if the sites are determined by the Secretary to be protected by State or local governmental agencies.

(c) ADMINISTRATION.—The land and interests in land acquired, and the facilities constructed and maintained pursuant to this Act, shall be administered by the Secretary as a part of Shiloh National Military Park, subject to the appropriate laws (including regulations) applicable to the park, the Act entitled ''An Act to establish a National Park Service, and for other purposes'', approved August 25, 1916 (16 U.S.C. 1 et seq.), and the Act entitled ''an Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance and for other purposes'', approved August 21, 1935 (16 U.S.C. 461 et seq.).

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subject to subsection (b), there are authorized to be appropriated such sums as are necessary to carry out this Act.

(b) CONSTRUCTION.—Of the amounts made available to carry out this Act, not more than $6,000,000 may be used to carry out section 4(a).

ADDITIONAL COSPONSORS

S. 12

At the request of Mr. ROTH, the names of the Senator from New Hampshire [Mr. GREGG] and the Senator from New Hampshire [Mr. SMITH] were added as cosponsors of S. 12, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

S. 170

At the request of Mr. DASCHLE, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 170, a bill to amend the Public Health Service Act to provide a comprehensive program for the prevention of Fetal Alcohol Syndrome, and for other purposes.

S. 181

At the request of Mr. HATCH, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 181, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage small investors, and for other purposes.

S. 182

At the request of Mr. HATCH, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 182, a bill to amend the Internal Revenue Code of 1986 to encourage investment in the United States by reforming the taxation of capital gains, and for other purposes.

S. 190

At the request of Mr. PRESSLER, the names of the Senator from Indiana [Mr. COATS] and the Senator from Colorado [Mr. BROWN] were added as cosponsors of S. 190, a bill to amend the Fair Labor Standards Act of 1938 to exempt employees who perform certain court reporting duties from the compensatory time requirements applicable to certain public agencies, and for other purposes.

S. 216

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

S. 354

At the request of Mr. BREAUX, the names of the Senator from Connecticut [Mr. DODD] and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 354, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage the preservation of low-income housing.

S. 440

At the request of Mr. WARNER, the names of the Senator from Nevada [Mr. BRYAN] and the Senator from Missouri [Mr. ASHCROFT] were added as cosponsors of S. 440, a bill to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

S. 469

At the request of Mr. GREGG, the name of the Senator from Missouri [Mr. ASHCROFT] was added as a cosponsor of S. 469, a bill to eliminate the National Education Standards and Improvement Council and opportunity-to-learn standards.

S. 495

At the request of Mrs. KASSEBAUM, the name of the Senator from New Hampshire [Mr. GREGG] was added as a cosponsor of S. 495, a bill to amend the Higher Education Act of 1965 to stabilize the student loan programs, improve congressional oversight, and for other purposes.

S. 511

At the request of Mr. ABRAHAM, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 511, a bill to require the periodic review and automatic termination of Federal regulations.

S. 584

At the request of Mr. ROBB, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 584, a bill to authorize the award of the Purple Heart to persons who were prisoners of war on or before April 25, 1962.

SENATE JOINT RESOLUTION 26

At the request of Mr. SIMPSON, the names of the Senator from Indiana [Mr. LUGAR] and the Senator from Florida [Mr. MACK] were added as cosponsors of Senate Joint Resolution 26, a joint resolution designating April 9, 1995, and April 9, 1996, as ''National Former Prisoner of War Recognition Day.''

SENATE CONCURRENT RESOLUTION 9

At the request of Mr. MURKOWSKI, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of Senate Concurrent Resolution 9, a concurrent resolution expressing the sense of the Congress regarding a private visit by President Lee Teng-hui of the Republic of China on Taiwan to the United States.

SENATE RESOLUTION 85

At the request of Mr. CHAFEE, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of Senate Resolution 85, a resolution to express the sense of the Senate that obstetrician-gynecologists should be included in Federal laws relating to the provision of health care.

AMENDMENT NO. 348

At the request of Mr. BYRD his name was added as a cosponsor of Amendment No. 348 proposed to S. 4, a bill to grant the power to the President to reduce budget authority.

SENATE RESOLUTION 91—RELATIVE TO TURKEY

Mr. PELL (for himself, Mr. KERRY, Mr. FEINGOLD, and Ms. SNOWE) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 91

Whereas as a signatory to the Charter of the United Nations, the Government of Turkey is obligated to maintain international peace and security,to develop friendly relations among states based on respect for the principle of equal rights and self-determination of peoples, and to achieve international cooperation through the promotion and encouragement of respect for human rights and fundamental freedoms for all;

Whereas the Government of Turkey, as a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, has made additional and firm commitments to observe and uphold the rights of all peoples;

Whereas as a member of the North Atlantic Treaty Organization, the Government of Turkey undertook to refrain in international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations;

Whereas as a member of the Organization of for Security and Cooperation in Europe, Turkey is obliged to respect the territorial integrity of other states, and to support the human rights, fundamental freedoms and the self-determination of peoples;

Whereas on March 21, 1995, more than 35,000 Turkish military troops, with tanks, armored personnel carriers, and air support, began an invasion of Northern Iraq;

Whereas the Government of Turkey declares that the invasion is in response to acts of terrorism by the Kurdistan Workers Party, also known as the PKK, and constitutes the hot pursuit of terrorists;

Whereas reports indicate that the Turkish army has penetrated 25 miles into Iraq along a 150 mile front, and that hundreds of ethnic Kurds have been killed thus far;

Whereas independent international observers claim that some of those killed are innocent civilians, and accuse Turkey of torturing prisoners, and of forcibly evacuating and destroying villages;

Whereas U.S. government officials have suggested that Turkey's invasion could last more than 3 weeks in duration;

Whereas in scope, scale and duration, Turkey's invasion of Iraqi Kurdistan appears to be an illegal act of aggression and inconsistent with Turkey's obligations under the U.N. Charter;

Whereas Turkey's actions jeopardize U.S. and international efforts under Operation Provide Comfort in Northern Iraq, and threaten the provision of vital humanitarian assistance by nongovernmental organizations to the Kurds;

Whereas the U.S. Department of State reports that the general human rights situation in Turkey ''worsened significantly'' in 1994, and that in many human rights case, the specific ''targets of abuse were ethnic Kurds or their supporters;''

Whereas according to the U.S. Government, specific violations of human rights by the Government of Turkey in its campaign against the PKK include the illegal use of torture, excessive force, and political and extrajudicial killings of non-combatants;

Now, therefore be it resolved, That the Senate—

(1) Condemns Turkey's invasion of Northern Iraq as an illegal act of aggression and a violation of international law, inconsistent with Turkey's obligations under the Charter of the United Nations, the North Atlantic Treaty, and other international agreements;

(2) Calls upon the President of the United States to express strong U.S. opposition to Turkey's invasion of Northern Iraq;

(3) Urges the United States at the United Nations Security Council to condemn Turkey's illegal act of aggression and bring about an immediate and unconditional withdrawal;

(4) Denounces Turkey's consistent pattern of human rights violations against ethnic Kurds;

(5) Condemns all acts of terror, including those by PKK forces against Turkish civilian, military and other targets;

(6) Supports the maintenance of Operation Provide Comfort and the continuation of other non-governmental humanitarian assistance for the Kurds of Northern Iraq.

Mr. PELL. Mr. President, five years ago, when Iraqi forces crossed the border and invaded Kuwait, the international community—with the United States at the forefront—condemned the aggression and vowed that it would not stand. This week, more than 35,000 Turkish forces invaded Iraqi Kurdistan under the assertion of being engaged in hot pursuit of Kurdish terrorists. The truth is that Turkey's action is no less a violation of international law than Iraq's invasion of Kuwait.

The official United States position is that Turkey faces a legitimate threat from the Kurdish Workers Party—also known as the PKK—a Kurdish separatist group based in Turkey that advocates the establishment of an independent Kurdish state.

The PKK is a terrorist organization, and Turkey has a right to defend its citizens against the unlawful use of terror. Where I draw the line, however, is Turkey's use of terrorism as a pretense for its full-scale invasion of Iraqi Kurdistan and as justification for its consistent pattern of human rights violations against innocent Kurdish civilians in southeast Turkey.

There is no way that the Turkish forces can distinguish between the Turkish Kurds and Iraqi Kurds that presently reside in Northern Iraq. Nor can they reasonably determine which Turkish Kurd is an armed terrorist, and which is an innocent civilian refuges. The result is that innocent Kurds—be they Iraqi or Kurdish—are being harassed, terrorized, and killed by Turkish forces.

I think that there is a fundamental truth that Turkey attempts to obscure in its approach to the Kurdish issue. The fact is that Kurdish experiment with self-rule in Northern Iraq threatens and undermines Turkey's identity. By conducting this invasion, Turkey has exposed that it cares little about Iraq's territorial integrity, and only wants to keep the Kurdish people in check.

The United States apparently has given the green light to Prime Minister Ciller's military adventure. Moreover, it is nearly certain that the Turkish military is using equipment and supplies of United States origin in its brutal war against the Kurds.

Turkey's militaristic policy towards the Kurds goes beyond the pale of civilized behavior. It is time for the United States to take a principled stand, express its opposition to Turkey's invasion of Iraqi Kurdistan, and cut off supplies of United States military equipment to Turkey. If, as reports today suggest, this operation is to extend for the next 3 to 5 weeks, then it is an outright falsehood to say that Turkey is engaged in hot pursuit. We should condemn this invasion for what it truly is—a clear act of aggression and a threat to international peace.

In this regard, I am submitting today with Senators KERRY, FEINGOLD, and SNOWE a resolution that does just that. In addition to condemning the invasion, the resolution calls upon the President to oppose Turkey's action, and urges the United States to lead an effort at the United Nations Security Council calling for an immediate and unconditional withdrawal. The resolution denounces both Turkey's consistent pattern of human rights violations against the Kurds and the violence perpetrated by terrorists, including the PKK. Finally, the resolution calls for the continuation of Operation Provide Comfort, which is crucial to the protection of civilians in Iraqi Kurdistan.

Mr. President, I would urge my colleague to join me in sponsoring this resolution.

NOTICES OF HEARINGS

SUBCOMMITTEE ON FORESTS AND PUBLIC LANDS MANAGEMENT

Mr. CRAIG. Mr. President, I would like to announce for the public that in addition to the hearing on ''the Mining Law Reform Act of 1995'', S. 506, ''the Mineral Exploration and Development Act of 1995'', S. 504, will also be considered before the Subcommittee on Forests and Public Lands Management.

The hearing will take place in SD–366 of the Dirksen Senate Office Building on Thursday, March 30, 1995 at 9:30 a.m. in Washington, D.C.

Those wishing to testify or who wish to submit written statements should write to the Subcommittee on Forests and Public Lands Management, U.S. Senate, Washington, D.C 20510. For further information, please call Michael Flannigan at (202) 224–6170.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. NICKLES. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Energy Production and Regulation.

The hearing will take place Thursday, March 30, 1995 at 2 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, D.C.

The purpose of this hearing is to receive testimony on S. 283, a bill to provide for the extension of the deadline under the Federal Power Act applicable to two hydroelectric projects in Pennsylvania, and for other purposes, S. 468, a bill to provide for the extension of the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Ohio, and for other purposes, S. 543, a bill to provide for the extension of the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Oregon, and for other purposes, S. 547, a bill to provide for the extension of the deadlines applicable to certain hydroelectric projects under the Federal Power Act, and for other purposes, S. 549, a bill to provide for the extension of the deadline under the Federal Power Act applicable to the construction of three hydroelectric projects in the State of Arkansas, S. 552, a bill to provide for the refurbishment and continued operation of a small hydroelectric facility in central Montana by adjusting the amount of charges to be paid to the United States under the Federal Power Act and for other purposes, S. 595, a bill to provide for the extension of a hydroelectric project located in the State of West Virginia.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C. 20510. For further information, please call Howard Useem at (202) 224–6567.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. COATS. Mr. President, I ask unanimous consent that the committee on armed services be authorized to meet on Thursday, March 23, 1995, at 2 p.m. in open session, to receive testimony on the Department of Defense Medical Program and related health care issues in review of the defense authorization request for fiscal year 1996 in the future years defense program.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. COATS. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be allowed to meet during the Thursday, March 23, 1995 session of the Senate for the purpose of conducting an executive session and markup.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. COATS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, March 23, 1995, for purposes of conducting a Full Committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to consider S. 575, a bill to provide Outer Continental Shelf [OCS] Impact Assistance to State and local governments, and S. 158, a bill to encourage production of domestic oil and gas resources in deep water on the OCS.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. COATS. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be granted permission to meet for a business meeting Thursday, March 23, at 9:30 a.m. to consider S. 534, S. 268, S. 503, and other pending business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. COATS. 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 23, 1995, at 10 a.m. to hold a hearing on Reorganization and Revitalization of America's Foreign Affairs Institution.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. COATS. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, March 23 at 10 a.m. for a markup on S. 291, the Regulatory Reform Act of 1995, and S. 343, the Comprehensive Regulatory Reform Act of 1995.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. COATS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, March 23, 1995.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON MEDICAID AND HEALTH CARE FOR LOW INCOME FAMILIES

Mr. COATS. Mr. President, I ask unanimous consent that the Subcommittee on Medicaid and Health Care for Low Income Families of the Finance Committee be permitted to meet on Thursday, March 23, 1995, beginning at 2 p.m. in room SD–215, to conduct a hearing on Medicaid 1115 Waivers.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. COATS. Mr. President, I ask unanimous consent that the Subcommittee on Transportation and Infrastructure be granted permission to meet Thursday, March 23, at 2 p.m. to conduct a hearing on legislation to approve the National Highway System and transportation issues related to clean air conformity requirements.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

THE NATION OF BELARUS

• Mr. D'AMATO. Mr. President, I rise today to express my continued support for the nation of Belarus and its citizens on the upcoming 77th anniversary of the creation of their great country.

On March 25, 1918, in the final months of World War I, the nation of Belarus was founded. Shortly after the war ended, the Red Army of the Soviet Union seized Belarus, beginning Belarus' long hard battle against Soviet communism. During World War II 25 percent of Belarus' population was obliterated while fighting the Axis Powers of Germany and Italy. Untold numbers died at the hands of the Soviets as well.

For over 70 years the Belarusan people were forced to live under the iron fist of Communist rule. The Communist-led Soviet Union held no regard for the lives of any of its citizens, and the brutal Soviet dictators routinely incarcerated or shot anyone not conforming to their rule.

Then in 1990 the years of enslavement for Belarus came to an end as Belarusan freedom fighters issued a declaration of sovereignty, detailing their goal to become a neutral, nonnuclear state. On December 25, 1991, the United States recognized independent Belarus as a sovereign nation, allowing the people of Belarus to hold their heads high once again.

The end of one exhausting journey signifies the beginning of another. The people of Belarus must now fight to maintain their right to liberty and territorial sovereignty. Extremists within the current Russian regime are once again attempting to control Belarus through unfair economic and military treaties. This attempt to destroy the natural rights of the people of Belarus, a people who fought and overcame one of the most oppressive regimes in the history of man, must not be allowed to occur.

Mr. President, I want the Belarusan people, both in Belarus and here in the United States of America to know that I stand with them in their fight to maintain the right to freedom and self-determination that was denied them for so long.•

SESQUICENTENNIAL ANNIVERSARY OF WINSLOW TOWNSHIP, NJ

• Mr. BRADLEY. Mr. President, I rise today to commemorate the 150th anniversary of the founding of Winslow Township, New Jersey. Originally a sleepy farming community, Winslow has developed into a unique hybrid, encompassing both rural and urban elements within its 54 square miles.

With roots firmly planted in New Jersey's farming community, Winslow has played an increasingly important role in the State's agricultural industry throughout the years. It is Winslow Township's renowned peaches that help make New Jersey fourth in the Nation in production of this crop. Blessed not only with fertile farmland, the Winslow Township area also enjoys a close relationship with two of New Jersey's greatest natural resources, the Pinelands and the Great Egg Harbor River. The magnificent Pine Barrens, a national wilderness preserve, is popular with hikers, nature enthusiasts, and canoeists. The Great Egg Harbor River is also a favorite with canoeists and fishermen, and is home to hundreds of different species of fish, mammals, reptiles, birds, and amphibians.

Coexisting with Winslow's natural riches are urban areas of great diversity. Described by its residents as a ''microcosm of America,'' Winslow is ethnically, racially, and socioeconomically diverse. The small town belief that fellow residents are actually friends and family has allowed Winslow's different groups to live harmoniously as their community has grown. Different communities and forces have influenced the development of Winslow Township, and the town has profited from them. The rolling farmlands and local winery shape Winslow Township as surely as the new pockets of urban development. Children of New Jersey's most recent immigrants share classes in Winslow's outstanding school system with the great-great-grandchildren of the Italian farmers who helped found the town.

Winslow Township may be a small town, but the lessons it offers us in community and modern living are broad in scope. These lessons are simple, for they are all rooted in one common theme and that theme is respect. Respect for the beauty and riches of our environment, from which we can derive both pleasure in recreation and products with which to earn a living; respect for diversity and the lessons we cannot afford to ignore about the larger world in which we live; and finally, respect for community—the civil society in which all Americans make their homes, sustain their marriages, raise their families, hang out with their friends, meet their neighbors, educate their children, and worship their God.

Mr. President, I congratulate Winslow Township once again, on their sesquicentennial anniversary.•

TRIBUTE TO COMMANDER LORENZO ''PETE'' CASALEGNO

• Mr. WARNER. Mr. President, I rise to recognize the dedication, public service, and patriotism of Comdr. ''Pete'' Casalegno, U.S. Navy, for 30 years of unselfish service to our Nation in both the U.S. Air Force and the U.S. Navy.

Commander Casalegno's military service began in 1965 when he enlisted in the U.S. Air Force and served as a weather observer and forecaster. A veteran of the Vietnam war, he served as a member of the combat weather team at Tan Son Nhut, Vietnam, from December 1967 to December 1968.

Upon graduation from the University of San Francisco, Commander Casalegno was commissioned and subsequently designated as a naval flight officer. After completion of advanced training in the E–2 Hawkeye aircraft, Commander Casalegno was assigned to Carrier Airborne Early Warning Squadron 114 and completed two overseas deployments onboard the U.S.S. *Kitty Hawk* (CV–63) and the U.S.S. *Coral Sea* (CV–43). During this assignment, Commander Casalegno completed arduous qualifications as officer of the deck and tactical action officer.

After graduating from the United States Postgraduate School in 1981 with a master of science in systems engineering, Commander Casalegno was assigned to the staff of Cruiser Destroyer Group Three as assistant air

operations and electronic warfare officer. Involved in frequent deployments to both the Western Pacific and Southwest Asia, Commander Casalengo participated in military operations following the fall of the Shah of Iran, and numerous humanitarian operations.

In 1985, Commander Casalegno reported to Carrier Airborne Early Warning Squadron 116, where he served as operations officer and maintenance officer during deployments to the Western Pacific and Southwest Asia. Commander Casalegno was involved in operations which included escorting U.S. merchant ships through the Straits of Hormuz and retributive strikes on Iranian oil facilities.

Following this tour, Commander Casalegno was assigned to the staff of Commander Allied Forces Southern Europe in Naples, Italy. As a staff officer, he was involved in numerous North American Treaty Organization operations, including support of allied forces during Operations Desert Shield and Desert Storm.

In 1990, Commander Casalegno was assigned as the United States Navy Exchange Officer to the Royal Navy's Maritime Tactical School in Portsmouth, England, where he trained senior allied officials in the employment of naval forces. In 1994, Commander Casalegno returned to the United States to serve at the Navy's Tactical Training Group, Atlantic Fleet, as the air defense instructor.

Commander Casalegno, his wife Marla, and his sons Cory and Phillip are stalwart Americans whom have sacrificed greatly for the past 30 years. Commander Casalegno has honorably and faithfully upheld the Nation's special trust and confidence conveyed through his military commission. In every way, he has lived up to his oath of office and bore true faith and allegiance to our Constitution and the Nation. It gives me great pleasure to recognize Commander Casalegno before my colleagues and wish him all of our best in his retirement.●

REGARDING IRAN

● Mr. D'AMATO. Mr. President, I rise today to briefly discuss Iran. As we have all read, Iran has placed chemical weapons on disputed islands in the Strait of Hormuz. They have also placed at least 6,000 troops on these islands. It is becoming very clear that Iran is not content with projecting its twisted criminal acts of terrorism through third parties. They are now, like with the case of the placement of Hawk missiles a few weeks ago, issuing a direct challenge to the West in the waterway so vital to the flow of oil: the Persian Gulf.

As I have spoken on other occasions regarding Iran, we face a dangerous situation there. To compound this, we are forced to admit that Iran's military and terrorist operations are being subsidized by the purchase of Iranian oil by overseas subsidiaries of American oil companies, with the oil being resold overseas. This practice, stemming from a loophole in the regulations governing our embargo with Iran, is perfectly legal. This, however, does not make it morally right.

It is precisely for this reason that I introduced S. 277, the Comprehensive Iran Sanctions Act of 1995. We need a total United States trade embargo against Iran. We can no longer subsidize vast military buildups and terrorist operations sponsored by Iran against United States interests and United States allies.

In this regard, I ask that a statement by Prof. Patrick Clawson of the Institute for National Strategic Studies of the National Defense University, be printed in the RECORD, following the text of my remarks.

In this, ''Policy Watch'' statement of the Washington Institute, Professor Clawson details effects of a total trade ban on Iran. I urge my colleagues to read it to help them determine how we might best deal with this burgeoning threat from Iran.

The statement follows:

ESTIMATING THE EFFECTS OF COMPREHENSIVE UNITED STATES SANCTIONS ON IRAN

(By Patrick Clawson)

Secretary of Defense Perry's statements in Bahrain today highlighting the ''potential threat'' of Iran's deployment of ''8,000 military personnel * * * anti-ship missiles, air-defense missiles and chemical weapons'' on disputed Persian Gulf islands will renew debate over imposing comprehensive economic sanctions on Iran. A key element of that debate is the argument that sanctions would have no effect on Tehran but would impose a considerable burden on the United States. This claim is not accurate: unilateral U.S. sanctions would cost Iran money. Lost revenue could affect Iranian actions, and the forgone business would be no great loss to the U.S. economy.

HOW SANCTIONS WOULD COST IRAN MONEY

Comprehensive U.S. sanctions on Iran would reduce Iran's foreign exchange receipts several ways:

Oil Trade. Iran sells about one-fourth of its exported oil to U.S.-owned firms. In the event of sanctions, Iran would have to sell this oil to other oil companies. Iran would have no difficulty finding other buyers for the oil, but the loss of access to U.S. firms will have a price for Iran. U.S. firms are prepared to offer slightly better terms than firms from other countries, which is exactly the reason why Iran has been selling to the U.S. companies. When it can no longer sell to the U.S. firms, Iran will lose that extra margin. The exact size of its margin is unclear, but most probably less than $50 million per year—admittedly small relative to Iran's oil income ($12–15 billion, depending on oil prices).

Planned Oil Swaps Involving Iran and Former Soviet States. The U.S.-led consortiums producing oil in Kazakhstan and Azerbaijan are planning to ship oil to Iran across the Caspian Sea. Iran would use that oil in its northern cities, especially Tehran, while increasing the export of Iranian oil from the Gulf. This swap arrangement, which could start in a matter of months, is supposed to be temporary. But nothing lasts as long as a temporary deal. Iran will earn several tens of millions of dollars a year in profits and cost-savings from this arrangement. These swaps have all the earmarkings of being another Conoco case—the U.S. government signals the U.S. oil firms that the deal is permissible, but when the public announcement is made, the political reaction is such that the U.S. government has to feign shocked indignation.

Oil Field Renovation and Expansion. Iran's oil fields are old; production will decline unless Iran develops more difficult-to-reach offshore areas and/or uses sophisticated techniques to recover more oil from aging fields. European oil technology is about as good as the United States, but Iran has found that U.S. firms offer good terms for oil equipment, as testified by Iran's desire to use Conoco over the French firm Total for developing the fields off Sirri Island. Now that President Clinton has ordered U.S. firms not to invest, European firms will step in, at somewhat higher cost to Iran.

Investor Confidence. Comprehensive U.S. sanctions will add to the impression that Iran is a politically risky place to do business. European investors and bankers are already hesitant about Iran because of its heavy indebtedness, and Iranian businessmen are worried about increasing government restrictions. It is possible that comprehensive U.S. sanctions would trigger a further run on Iranian currency, which has already lost a third of its value in the last three months.

In short, sanctions would cost Iran tens of millions, if not a hundred million or more dollars a year in export revenues and in capital invested in the country.

AND THE EFFECT ON THE ISLAMIC REPUBLIC'S BEHAVIOR

Because comprehensive U.S. sanctions could reduce Iran's income by several tens of millions of dollars each year, the pressure on the Iranian budget, already under tight constraints, would be even greater. This could force Iran to decrease its military spending, given the difficulties of making adjustments elsewhere, e.g., on food supports and social welfare projects.

Indeed, one of the unsung accomplishments of the current U.S. policy towards Iran is its success in forcing Iran to curtail its ambitious 1989 plan for acquiring a large-scale modern military. Iran planned to buy $10 billion in arms in 1989–1993, primarily from the Soviet Union. The arms purchases had to be cut in half when Iran was locked out of world capital markets, thanks to both its own incompetent economic practices and to U.S. pressure not to make politically-motivated loans to Iran. The difference in military potential is highly significant. Today Iran is a threat in certain areas, mostly terrorism and weapons of mass destruction. Had Iran carried out its 1989 plan, its conventional forces would pose an even more urgent and worrisome threat than they currently do.

The impact of comprehensive U.S. sanctions should not be oversold, however. While they may reduce Iranian military spending some, there is no prospect that the Islamic Republic would fall because of sanctions. The fate of the Islamic Republic will be decided largely by internal factors, over which the U.S. has little or no influence.

IRAN'S SHRINKING ECONOMIC RELEVANCE

Some argue that the U.S. should woo Iran because it is the strategic prize in the Persian Gulf region. As far as economics are concerned, this view is outdated: Iran is no longer a country with great economic significance.

Iran is not an oil superpower. Iran produces less oil today than it did in 1970. While production has soared in other parts of the world, it has steadily declined in Iran. In 1970, Iran produced almost 9 percent of the world's oil; today, it produces only about 5 percent. Moreover, it has to invest several

billion dollars a year just to maintain its present output.

Iran is not a lucrative market. Iran's imports in 1994 were little more than $12 billion, which was less than it imported in 1977. Iran's imports in 1994 were less than one-half of one percent of world imports, whereas in 1977, its imports were 1.5 percent of the world total. The simple fact is that Iran's economic importance faded along with its oil wealth.

No one action itself will bring about the change Washington wishes to see in Iran and in Iranian behavior. But the best chances of success, especially over the long term, come from a firm stance in defense of U.S. principles. The bitter lesson of the last 15 years, learned from experiences like the Iran-Contra affair, is that the United States cannot expect moderation in Iranian foreign policy if it extends a hand of friendship.

A TRIBUTE TO LARRY PLOTT AN OUTSTANDING IDAHOAN

• Mr. KEMPTHORNE. Mr. President, I rise today to honor Mr. Larry Plott, the current director of the Idaho Peace Officers Standards and Training Academy, who has announced that he will be retiring March 31, 1995, after 37 years of service to the State of Idaho. Larry has had a distinguished career in law enforcement, and I would like to enumerate a number of his achievements and accomplishments.

Though he was born in Kansas, Larry was raised on a farm south of the city of Twin Falls. Although he liked farming, he always had a dream of being an Idaho State patrolman. Upon graduation from Twin Falls High School in 1956, he went to San Francisco where he attended the City College of San Francisco, graduating with a degree in criminology.

At this point, he returned to Twin Falls where he was hired to work as a dispatcher and jailer with the Twin Falls County Sheriff's Office. He married Marilyn Ruhter from Filer on March 1, 1959, and was promoted to roving deputy that same year. It was at this time that he began an illustrious career of revolver and automatic handgun shooting. Over the 25 years that Larry shot competitively, he garnered over 250 trophies for State and regional championships and was awarded the Distinguished Pistol Shooting Medal for .22 .38 and .45 caliber by the United States Army Reserve, one of only four Idahoans ever to receive this honor. He also has been a member of the FBI's Possible Club since 1972. To achieve a Possible, one must shoot a perfect score over a 50-yard course from various positions using both the left and right hand. Larry also augmented his shooting expertise by learning the art of quick-draw. In the early 1970's he met Officer Dan Combs from the Oklahoma Highway Patrol, who was a national quick-draw specialist. Inspired by Combs' influence, Larry not only learned and mastered quick-draw himself, but he then incorporated a demonstration of the technique into his firearms safety programs at local schools and other community and civic events.

In April 1960, Larry joined the Idaho State Police (ISP) and was stationed at the Huetter Port of Entry in Coeur d'Alene. After a year there, he returned to Twin Falls and worked at the Hollister Port of Entry until 1962, at which time his dream came true and he was promoted to the ISP patrol. Driving the familiar black and white stripped car #476, with two whip antennas flipping in the back, Larry became a familiar site throughout the District #4 Twin Falls area. After three years he was transferred to the Wood River Valley as the ISP resident patrolman, where he stayed until 1969.

In January 1970, he was offered a position as a training coordinator at the newly created Peace Officers Standards and Training (POST) Academy in Pocatello, then under the auspices of the Idaho State University. He resigned from the ISP, and moved his family to Pocatello. After two years as training coordinator he was promoted to Director of POST, a position where he has been responsible for training all the law enforcement officers throughout the entire state of Idaho.

Since his installment as Director of POST, Larry has supervised and instructed at all of the 105 sessions that have come through the training academy. Officers in a session attend POST for seven weeks, and upon completion of the basic course, are awarded a diploma of certification. These officers come from all the law enforcement agencies in the state including the Idaho State Police, the Idaho Fish & Game, Idaho Parks & Recreation, port-of-entry officers, prosecuting attorneys, and all county and city officers. Idaho law requires that an officer must be certified by POST to remain in law enforcement.

As Director of POST, Larry has set new exemplary training standards that other states are now attempting to follow. In 1972, Larry attended the FBI Academy in Quantico, Virginia, and was impressed by the high quality of training given to the agents. There, attention was not only given to firearms expertise, but to physical fitness and knowledge of the law. Larry has focused on all three of these areas at POST, and has developed the Idaho POST Academy into one of the finest police academies in the United States.

The programs and changes that have been implemented by Larry since he took over as Director of POST and numerous and impressive. He:

Instituted the first mandatory physical fitness requirements for the POST program in the United States.

Compiled/assembled the first Abridged Edition of the Idaho Criminal Code for Idaho police officers.

Developed the first law enforcement career camps for Idaho youth. For this he received the Kiwanis International Award for Service to the Community and the Citizens of Idaho.

Brought the first Executive Command College to Idaho, taught by the FBI.

Developed requirements for 15 categories of training certification and classification for police, deputies, and detention officers. He also developed a classification program for dispatchers and jailers.

Created a spouse relationship program for police officers, which was the first of its kind in Idaho and the United States.

Originated the Governor's Ten pistol competition.

Authored, proposed, and was instrumental in getting a fee assessment passed through the Idaho legislature for funding of the POST Academy.

Obtained college credit approval for courses taught at POST, allowing officers to earn up to 12 college credits.

Developed a public open house at the POST Academy.

Designed the following training certificates: Basic, Intermediate, Advanced, Master, Supervisor, Management, Executive, Jailer, Canine, Reserve, Marine Deputies, and Dispatchers.

Not only has Larry strived for a higher level of excellence for all the police officers in Idaho, but has applied those standards to himself, and is one of the best examples of an individual who practices what he preaches. For example, he not only designed the training certificates awarded by POST, but earned several of them himself, including the Basic, Intermediate, Advanced, Supervisor, Management, and Instructor. The Idaho Department of Law Enforcement recently awarded him the Outstanding Administrator Award, one of their highest honors.

Larry has written and had numerous articles published in various bulletins and magazines including: The FBI Bulletin, The Winning Edge, and The IPOA Magazine. He has also written special segments for the Idaho Association of Counties and Cities, and for the past 18 years has published the POST Bulletin. He is currently the President of the International Association of State Law Enforcement Training Directors (IASLET) for the northwest Region, and is the Past President of the National Association of State Directors of Law Enforcement Training (NASDLET). Larry also served as President of the Idaho Peace Officers Association (IPOA), and is currently a board member of the Law Enforcement Television Network (LETN).

Always urging his officers to stay physically fit, Larry began running in 1975 and has continued to this day. He has competed in several races since then, and won Gold, Silver and Bronze medals in varying events at both the World Police/Fire Olympic Games in Vancouver, and the northwest regional Games. He also served as Director for the 1990 Northwest Police/Fire Olympic Games in Boise, and is a current board member for the northwest region. In 1983 he ran the Great Potato Marathon

in Boise. He and his wife Marilyn have already announced their intent to hike the entire Appalachian Trail this year which extends from Georgia to Maine.

Finally, I would like to commend Larry not only for his brilliant career in law enforcement, but for his outstanding contribution to the officers and individuals who have been blessed by his service. He and his wife Marilyn have raised four beautiful children, Angela, Tony, Stacey, and Marty, who are now pursuing careers and raising families of their own.

Larry's contribution to Idaho has been great and extensive. However, I know that his retirement from the POST Academy will be the opening of another door and a new challenge for this very exceptional individual. I am proud to have had the opportunity to honor him here today.●

UNANIMOUS CONSENT AGREEMENT—H.R. 831

Mr. GRASSLEY. Mr. President, further on behalf of the majority leader, I ask unanimous consent that at 10 a.m. on Friday, March 24, the Senate begin consideration of calendar No. 34, H.R. 831, the self-employed health insurance bill, and that it be considered under the following agreement: 5 hours on the bill, to be equally divided in the usual form; that no amendments be in order other than the committee-reported substitute.

I further ask that following the conclusion or yielding back of time, the Senate proceed to a vote on the committee substitute, to be followed by third reading and final passage, all without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. 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. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ACCOLADES TO SENATOR McCAIN

Mr. BIDEN. Mr. President, I rise to make a very brief statement and ask for a speech to be printed in the RECORD. I attended the National Veterans of Foreign Wars Convention and heard a speech delivered by one of our colleagues that I think is one of the finest speeches I have ever heard any of our colleagues deliver, although it was not on the Senate floor. It was delivered before several thousand veterans of foreign wars.

It was delivered by our colleague, JOHN MCCAIN, from the State of Arizona, in response to being the recipient of Legislator of the Year, picked by the veterans, the VFW.

I strongly commend it to my colleagues, because it is the most articulate statement I have ever heard, and I believe one of the most articulate they will ever read, about what it means to serve one's country.

I will say now what I said to JOHN MCCAIN after he delivered that speech, after listening to him: That is the JOHN MCCAIN that I knew 20 years ago. I am glad to see it is still the same JOHN MCCAIN.

I ask unanimous consent that the address by our colleague, Senator JOHN MCCAIN, at the National Veterans of Foreign Wars Convention, March 7, 1995, be printed in the RECORD at this point.

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

ADDRESS BY SENATOR JOHN MCCAIN, BEFORE THE VETERANS OF FOREIGN WARS, MARCH 7, 1995

Thank you. I fear I cannot adequately express my deep gratitude for the great honor you have done me by giving me this award. As often as we are the targets of public abuse, politicians also often find we are the recipients of undeserved acclaim. After a while, one learns to keep both scorn and praise in perspective. They come with the job.

Tonight is different. I am deeply moved to be recognized for some small service by you who have distinguished yourselves by your service to our country in war. For most of us, it has been many years since we wore the uniform. But it is still the opinion of those who wore the uniform that matters most to us. I want to thank you very much for choosing me to receive the VFW's Congressional Award. It is an honor I will long cherish.

I will also long remember the honor the people of Arizona have bestowed upon me by trusting me to represent their interests in Congress. I believe they would understand, however, when I say that I once knew a greater honor. It is an honor I share with all of you, an honor we learned about in America, but experienced in someone else's country. It is the great honor of knowing your duty and ransoming your life to its accomplishment.

I was blessed to have been born into a family who made their living at sea in defense of their country's cause. My grandfather was a naval aviator; my father a submariner. They were my first heroes, and their respect for me has been the most lasting ambition of my life. It was nearly pre-ordained that I would someday find a place in my family's profession, and that my fate would carry me to war.

Such was not the case for most of you. Your ambitions did not lead you to war; the honors you first sought were not kept hidden on battlefields. Most of you were citizen-soldiers. You answered the call when it came; took up arms for your country's sake; and fought to the limit of your ability because you believed your country's welfare was as much your responsibility as it was the professional soldier's.

I did what I had been prepared for most of my life to do. You did what I did but without the advantages of training and experience that I possessed. You were kids when you saw combat. I was thirty years old. I believe you outranked me.

I do not mean to dismiss the virtues of the professional soldier. I consider my inclusion in their ranks to be the great honor of my life. The Navy was and yet remains the world I know best and love most. The Navy took me to war.

Unless you are a veteran you might find it odd that I would be indebted to the Navy for sending me to war. You might mistakenly conclude that the secret veterans' share is that they enjoyed war.

We do share a secret, but it is not a romantic remembrance of war. War is awful. When nations seek to resolve their differences by force of arms, a million tragedies ensue. Nothing, not the valor with which it is fought nor the nobility of the cause it serves, can glorify war. War is wretched beyond description. Whatever gains are secured by war, it is loss that the veteran remembers. Only a fool or a fraud sentimentalizes the cruel and merciless reality of war.

Neither do we share a nostalgia for the exhilaration of combat. That exhilaration, after all, is really the sensation of choking back fear. I think we are all proud to have once overcome the paralysis of terror. But few of us are so removed from the memory of that terror to mistake it today for a welcome thrill.

What we share is something harder to explain. It is in part a pride for having sacrificed together for a cause greater than our individual pursuits; pride for having your courage and honor tested and affirmed in a fearsome moment of history; pride for having replaced comfort and security with misery and deprivation and not been broken by the experience.

We also share—and this is harder to explain—the survivors' humility. That's a provocative statement, I know, and the non-veteran may easily mistake its meaning. I am not talking about shame. I know of no shame in surviving combat. But every combat veteran remembers those comrades whose sacrifice was eternal. Their loss taught us everything about tragedy and everything about duty.

I suspect that at one time or another almost everyone in this room has been called a hero for having done their duty. It is at that moment that we feel most keenly the memory of our comrades who did not return with us to the country we love so dearly. I cannot help but wince a little when heroism is ascribed to me. For I once watched men pay a much higher price for that honor than was asked of me.

I am grateful, as we all are, to have come home alive. I prayed daily for deliverance from war. No one of my acquaintance ever chose death over homecoming. But I witnessed some men choose death over dishonor. The memory of them, of what they bore for country and honor helped me to see the virtue in my own humility.

It is in that humility—and only in that humility—that the memory of almost all human experiences—love and hate, loss and redemption, joy and despair, suffering and release, regret and gratitude—reside. In the end, that is the secret that veterans share.

It is a surpassing irony that war, for all its unspeakable horrors, provides the combatant with every conceivable human experience. Experiences that usually take a lifetime to know are all felt—and felt intensely—in one brief moment of life. Anyone who loses a loved one knows what great loss feels like. Anyone who gives life to a child knows what great joy feels like. The veteran knows what great joy and great loss feel like when they occur in the same moment, in the same experience.

That is why when we are asked about our time at war, we often offer the contradictory response that it was an experience that, if given the choice, we would neither trade nor repeat. The meaning behind that response is powerful, and I fear that my own powers of expression have failed to explain it clearly.

But you know what I am talking about, and in gratitude for the honor you have bestowed on me, I wanted to this evening talk about things I more often leave unexpressed.

Perhaps, I should talk about the veterans issues before the 104th Congress. But no doubt you have by this point in your convention heard from both Congress and the Administration a great many promises to protect and advance the interests of American veterans. For my part, I would simply affirm that the sacrifices borne by veterans deserve to be memoralized in something more lasting than marble or bronze or in the fleeting effect of a politician's speech. Your valor and your devotion to duty have earned your country's abiding concern for your well-being. I am, I assure you, committed to honoring that debt.

I suspect you already knew that or you would not have honored me with this award. And, as I said, I wanted to talk of other things as well tonight, of the experiences we share and the memory that holds us to one another.

Let me talk now of what you gave your country, the contribution for which the nation is in your debt. It is more than the battles you won. More than Iwo Jima or Midway or the Battle of the Bulge. More than the Chosin Reservoir or Inchon. More than flights over that most heavily defended enemy capital, Hanoi. More than Khe San or the I Drang.

All these battles, all these grim tests of courage and character have made a legend of the American fighting man's devotion to duty in every community in America. And it is the lesson of your courage that will help instruct those who will defend our country tomorrow in their duty. For they will seek to immortalize in their own devotion to duty your valor and the long and noble history of a free people's defense of their liberty. Their character will be derived in part from their appreciation of your character.

You know, as well as I, that the world in which they shoulder their responsibilities is an uncertain one. Our familiarity with man's inhumanity to man assures us that Americans will be asked someday to again bear sacrifices that only the brave can endure. That burden will be their honor, as it was once ours.

I have memories of that honor that caution me to this day to be careful when asking such sacrifices of others. But I fear that the day will come when my caution is overcome by necessity.

Last June, the free world celebrated one of the greatest battles in the long struggle against tyranny—the invasion of Normandy. President Clinton, quite appropriately, memorialized the occasion by recognizing the profound debt the world owes to the veterans of D Day. In the President's words: ''they saved the world.''

Our world, then and now, is indeed the consequence of their suffering on killing grounds that were once and are again quiet beaches in a peaceful corner of the free world. But the memory of their sacrifice, and the memories of sacrifice that are held by all of you, caution us always to never assume that peace is the normal state of world affairs.

I have memories of a place so far removed from the comforts of this blessed country that I have forgotten some of the anguish it once brought me. But my happiness these last twenty years has not let me forget the friends who did not come home with me. The memory of them, of what they bore for honor and country, causes me to look in every prospective conflict for the shadow of Vietnam.

I do not let that shadow hold me in fear from my duty as I have been given light to see that duty. Yet, it no longer falls to me to bear arms in my country's defense. It falls to our children, and our children's children. I pray that if the time comes for them to answer a call to arms, the battle will be necessary and the field well chosen. But that will not be their responsibility. As it once was for us, their honor is in their answer, not their summons.

I trust in their willingness and ability to answer the call faithfully. I hold that trust in deference to memories of brave men lost long ago. I hold that trust in deference to you and the courage with which you came of age during a moment of violence and terror. I know that the cause which you defended will not suffer in our children's hands. They are born into the same traditions, with the same values that empowered us.

I know that on some fitting, distant occasion, young men and women will be instructed in their duty by recalling our children's and our grandchildren's example. And on a quiet beach somewhere, many years from now, the liberated will again gather to pay tribute to the liberators, look upon their seasoned faces and say: they were warriors once and very brave. You and I know how great an honor that is.

Thank you for this award. I will always try to remain worthy of the honor. Good night and God bless you.

ORDERS FOR FRIDAY, MARCH 24, 1995

Mr. GRASSLEY. Mr. President, again for the majority leader, I would ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:45 a.m. Friday, March 24, 1995; that following the prayer, the Journal of proceedings be deemed approved to date; 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 routine morning business not to extend beyond the hour of 10 a.m, with Senator MCCAIN to be recognized for up to 10 minutes. I further ask that at the hour of 10 a.m, the Senate proceed to the consideration of H.R. 831, the self-employed health deduction bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. GRASSLEY. Again, Mr. President, for our leader, for the information of my colleagues, tomorrow the Senate will consider the self-employed health deduction bill under a previous concept agreement. Senators should be aware that there will be no rollcall votes during Friday's session of the Senate.

On Monday, the majority leader has indicated it will be his intention to proceed to S. 219, the regulation moratorium bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS

Mr. GRASSLEY. Now, if there is no further business to come before the Senate, I ask that following Senator DASCHLE's statement, the Senate stand in recess under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

FURTHER THOUGHTS ON LINE-ITEM VETO

Mr. DASCHLE. Mr. President, I did not want to take the remaining moments prior to the time people had the opportunity to vote on the line-item veto, but I did want to speak before the end of the day for a couple of reasons.

First of all, to commend the distinguished Senator from Nebraska and the distinguished Senator from West Virginia, on our side, for their admirable leadership in the effort over the last many days. Their leadership, their expertise, the remarkable contribution that they made to this debate I think lent service to the entire body. I am very grateful to them.

Let me also commend the distinguished Senators from Arizona and Indiana for their work. Certainly as a result of their leadership and commitment they made to this issue for many years, we have now reached the point where this legislation passed tonight on a vote of 69–29.

Mr. President, I voted in favor of this legislation, very, very reluctantly. It is no secret that I have had some very significant concerns about this particular version of line-item veto.

A week ago tomorrow I went to the floor to express my grave concern about the practicality of separate enrollment, about its constitutionality, and about the shift in the balance of power away from Congress and to the White House. I addressed some of those concerns again on several occasions, the latest of which was last evening. I have said all along it was my view that a legislative line-item veto, if done properly, was a very important tool, budgetarily and legislatively.

I have consistently supported the line-item veto on a number of occasions over the past 16 years. So my vote tonight was consistent with that record. But I cast it, as I said, with some reservation.

I did so with the satisfaction that we also achieved some compromise over the course of the last several days. We achieved a better understanding of what would be included in the bill's tax expenditure provisions. In our view, the Republicans have come some distance in accommodating our concern with regard to ensuring that tax expenditures be included in this bill, that special-interest tax breaks be exposed to the same critical review by the President as other spending.

We were also able to ensure that the savings generated here would be locked in, locked in to deficit reduction and nothing else. I was disappointed with the vote tonight on the Byrd amendment, because I thought that would go even further toward ensuring that our purpose in this regard would be clearly understood from the very beginning. I

thought the leadership provided by the Senator from West Virginia was very important in articulating clearly our desire to have all savings designated for purposes of deficit reduction and nothing else.

I was pleased, as well, that we were able to accommodate the concern that many had about separate enrollment. While this was not a perfect solution, at least we may have a little more practical understanding of how this bill, with its many pieces, would be packaged and sent to the President in a form that may allow us constitutionally to deal with the issue of separate enrollment, if not practically.

I still have some fundamental concerns about the practicality of requiring separate enrollment and separate signatures, about the practicality of, line by line, taking a simple bill and making it as complex as the separate enrollment process will make it.

Clearly, it is a start. It is an effort at compromise. Indeed, I believe that we have accommodated that concern to the extent that it was possible at the end of this debate.

In terms of the constitutionality of this proposal, I think it is important that we approved an amendment ensuring judicial review of the proposal. The courts will now have the ability to assess the constitutionality of this legislation.

The constitutionality of this particular version of line-item veto may be in doubt. But we have a provision in place now that will allow Members to review and to come to some conclusion about the constitutional viability of this legislation at an early date. That, too, in my view, was an improvement in this piece of legislation.

Third, let me say that I think it is very important that everyone understand this bill has a life—a life and a death, frankly. When the year 2000 approaches, we will have a much better understanding of whether or not this worked, whether or not it was practical, certainly whether or not it was constitutional, whether or not we have succeeded in preserving the balance of legislative responsibility between the President and the Congress. So, in the year 2000, knowing all of that, we will be in a much better position to determine whether or not this ought to be extended, whether or not it ought to be given a new life.

So that sunset provision, in my view, was critical to coming to the conclusion I did about this particular piece of legislation. This is not permanent. It is an experiment. It is an opportunity for us to see whether it will work.

Senator BYRD and others have raised some very legitimate concerns, both constitutionally and in many other ways. We will learn, over the course of the next 5 years, whether they need to be addressed, to what degree they should be addressed, and ultimately what if any changes may be necessary prior to the time this legislation is extended for any length of time after the year 2000.

Finally, let me say I am very concerned about the budgetary implications of what we do here. We have had a very vigorous debate on a constitutional amendment to balance the budget, on proposals to lay out a plan by which we achieve a balanced Federal budget by a date certain. We all recognize we have to make some tough decisions about what will be spent, how it will be spent, what if any tax changes we make—ultimately, what conclusions we can make with regard to the difficult, vexing problem we face with regard to the deficit in the oncoming years. If we do not have the tools available to us to make those decisions in a meaningful way, then I fear we will never achieve what we all say we want.

This is a tool. It may be a blunt instrument. It may be a precision tool. We do not know yet. But we do know it ought to give us yet one more opportunity to say with some confidence that, indeed, we are going to get our hands on the budget, our grip on the deficit, in a way that will allow us a greater degree of confidence that indeed we can succeed in these coming years.

It may not be the tool I would have chosen first. It may not be the tool I believe ought to ultimately be preserved in law in perpetuity. But it is a tool that will allow us for the next 5 years to make some effort to do what we desperately need to do, and that is find a way to reduce the deficit, find a meaningful way to assess our expenditures, find a way to ensure that we pass the best possible piece of legislation each and every time it involves spending. That is what this allows us to do, and I am very hopeful that we have made the right decision tonight.

This has been another in an ongoing series of debates about how best to accomplish deficit reduction and a meaningful plan for balancing the budget. I hope that our colleagues can now come together on other issues, as well, especially on that which we have felt all along is needed, if indeed this or anything else is going to work, and that is a budget plan that will accomplish the deficit reduction we need.

There are now 8 days left before the legal deadline, before the Budget Committee must report a budget resolution. There are 23 days prior to the time this body must act on a budget resolution. We tell the American people they need to pay their taxes by April 15. The law also requires that we pass a budget resolution by April 15. That, too, is a tool. That, too, ought to be something that has the priority that the line-item veto had this week.

I am hopeful we still can meet that goal. I am not optimistic. But whether it is April 15 or some time shortly thereafter, let us use that tool as well to achieve what we know we must. We know we must make the tough decisions and it is time we get on with it.

We have made a tough decision tonight. I think, all things considered, it was the right decision.

Again, let me commend those who had a role to play in the debate. It was a good debate, a debate that educated the American people and certainly our colleagues with regard to the implications of this legislation.

I think the Congress has served its role very well. I commend those involved and I now yield the floor.

RECESS UNTIL 9:45 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate now stands in recess until 9:45 a.m. tomorrow, March 24, 1995.

Thereupon, the Senate, at 10:05 p.m, recessed until Friday, March 24, 1995, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate March 23, 1995:

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

MARY S. FURLONG, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 1999, VICE DANIEL W. CASEY, TERM EXPIRED.

EXECUTIVE OFFICE OF THE PRESIDENT

JEFFREY M. LANG, OF MARYLAND, TO BE DEPUTY UNITED STATES TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR, VICE RUFUS HAWKINS YERXA, RESIGNED.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

JEROME A. STRICKER, OF KENTUCKY, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING SEPTEMBER 25, 1998, VICE SHIRLEY CHILTON-O'DELL, TERM EXPIRED.

FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE DEPARTMENT OF COMMERCE FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

ROBERT A. KOHN, OF MARYLAND
JERRY K. MITCHELL, OF MARYLAND

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE, AS INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

CAROLS F. POZA, OF FLORIDA
YING PRICE, OF MARYLAND
ROBERT A. TAFT, OF CONNECTICUT

THE JUDICIARY

CARLOS F. LUCERO, OF COLORADO, TO BE U.S. CIRCUIT JUDGE FOR THE TENTH CIRCUIT, VICE A NEW POSITION CREATED BY PUBLIC LAW 101–650, APPROVED DECEMBER 1, 1990.

WENONA Y. WHITFIELD, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ILLINOIS, VICE WILLIAM L. BEATTY, RETIRED.

IN THE ARMY

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE. THE OFFICERS INDICATED BY ASTERISK ARE ALSO NOMINATED FOR APPOINTMENT IN THE REGULAR ARMY IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATE CODE:

JUDGE ADVOCATE GENERAL'S CORPS

To be Major

ADAMS, JOHN A., 000–00–0000
*ALLEN, NORMAN F., 000–00–0000
*BALDWIN, GREGORY T., 000–00–0000
BARNES, TRACY A., 000–00–0000
*BECKER, PETER G., 000–00–0000
BRENNER-BECK, DRU A., 000–00–0000
*BROWN, RICHARD O., I, 000–00–0000
*BUTLER, STEVEN E., 000–00–0000

*CHIARELLA, LOUIS A., 000–00–0000
*CHITWOOD, MITCHELL, 000–00–0000
*CORE, DAVID A., 000–00–0000
*CORN, GEOFFREY S., 000–00–0000
*COZZIE, ROBERT M., 000–00–0000
*DOSS, ANN M., 000–00–0000
*ECONOM, SHELLEY R., 000–00–0000
EINWECHTER, JOHN P., 000–00–0000
*FORD, FRED K., 000–00–0000
*GARRETT, JAMES F., 000–00–0000
*GERESKI, JOHN T., 000–00–0000
*HAWK, SAMUEL D., 000–00–0000
*HAYES, CHARLES D., JR., 000–00–0000
*KEE, CONRAD S., I, 000–00–0000
*KERN, WILLIAM R., 000–00–0000
*KEY, JAMES D., 000–00–0000
*KRIVDA, MARY K., 000–00–0000
*LAHM, DAVID M., 000–00–0000
*LERCH, CHRISTINE, 000–00–0000
MARTIN, EDWARD J., 000–00–0000
*MC CORD, MARY M., 000–00–0000
*MURPHY, JEROME A., 000–00–0000
*NANCE, JEFFERY R., 000–00–0000
*NICASTO, ANTHONY P., 000–00–0000
O'BRIEN, EDWARD J., 000–00–0000
*PARK, KATHRYN S., 000–00–0000
*PARKER, CURTIS A., 000–00–0000
*PEDE, CHARLES N., 000–00–0000
*PERRITT, BILLY D., 000–00–0000
*PODLASKI, KEVIN P., 000–00–0000
*REDMON, STEPHEN T., 000–00–0000
*RISCH, STUART W., 000–00–0000
*SAINSBURY, MICHAEL, 000–00–0000
*SAVAGE, ANGELA S., 000–00–0000
*SEITSINGER, MARK W., 000–00–0000
*SHEERAN, EDWARD J., 000–00–0000
*SIEMIETKOWSKI, JOHN, 000–00–0000
*SMITH, MICHAEL E., 000–00–0000
STOREY, ERIC G., 000–00–0000
*STRUNCK, THOMAS F., 000–00–0000
*TOZZI, KENNETH J., 000–00–0000
*TURNEY, PAUL H., 000–00–0000
*WALTERS, STEVEN M., 000–00–0000
*WILKERSON, LAUREL L., 000–00–0000
*WOLLSCHLAEGER, DARI, 000–00–0000

IN THE MARINE CORPS

THE FOLLOWING-NAMED OFFICERS OF THE MARINE CORPS RESERVE FOR TRANSFER INTO THE REGULAR MARINE CORPS UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 531: U.S. MARINE CORPS AUGMENTATION LIST.

To be captain

ALLEN, DAVID F., 000–00–0000
ALPERT, CHRISTOPHER J., 000–00–0000
ANDERSON, JAMES P., 000–00–0000
ARAUJO, THEODORE L., 000–00–0000
ASKEW, JAMES B., 000–00–0000
ATKINS, CYNTHIA M., 000–00–0000
AUDSLEY, WALTER W., 000–00–0000
BARGER, DANIEL P., 000–00–0000
BARR, ROBERT S., 000–00–0000
BEUKE, JAMES F., JR., 000–00–0000
BLAU, JEFFREY L., 000–00–0000
BLESSING, MICHAEL A., 000–00–0000
BLOT, HAROLD W., JR., 000–00–0000
BOOS, GERALD F., JR., 000–00–0000
BOYER, RICHARD T., 000–00–0000
BOZEMAN, KENNETH M., 000–00–0000
BRENNAN, JAMES C., 000–00–0000
BRIGHT, JAMES M., 000–00–0000
BROUGHTON, ALLEN D., 000–00–0000
BROWN, GREGORY R., 000–00–0000
BROWN, WILLIAM M., JR., 000–00–0000
BUDDE, MARK V., 000–00–0000
BULLARD, KIMBALL S., III, 000–00–0000
BULMAN, TIMOTHY P., 000–00–0000
BURLINGAME, JOHN C., 000–00–0000
BURTON, DAN E., 000–00–0000
CANNION, DWAYNE K., 000–00–0000
CANTRELL, THOMAS L., 000–00–0000
CAPUTO, RICHARD L., JR., 000–00–0000
CARTER, MICHAEL L., 000–00–0000
CASSIDY, TIMOTHY M., 000–00–0000
CEDERHOLM, MICHAEL S., 000–00–0000
CHABOLLA, MIGUEL, 000–00–0000
CHATMAN, ALEXANDER A., JR., 000–00–0000
CHENAIL, KEVIN M., 000–00–0000
CHRISTENSEN, JERRY T., 000–00–0000
CLARK, ALAN B., 000–00–0000
CLARK, BART W., 000–00–0000
CLARK, JAMES C., 000–00–0000
CLARKSON, JOHN B., 000–00–0000
CLOSE, BRADLEY C., 000–00–0000
COKE, CHRISTOPHE P., 000–00–0000
COKER, STEVEN K., 000–00–0000
CONLEY, SEAN P., 000–00–0000
CORDELL, ROGER L., 000–00–0000
COTE, JOHN D., 000–00–0000
COTE, ROBERT P., 000–00–0000
COX, MICHAEL E., 000–00–0000
CROSS, KENNETH H., 000–00–0000
CURATOLA, JOHN M., 000–00–0000
DARCY, PATRICK J., 000–00–0000
DEFFENBAUGH, LANCE D., 000–00–0000
DELACRUZ, STEVE A., 000–00–0000
DEMERS, JEFFREY R., 000–00–0000
DEVLIN, JEFFREY S., 000–00–0000
DIBENEDETTO, ANTHONY P., JR., 000–00–0000
DICKERSON, WILLIAM N., 000–00–0000
DINGEE, ANDREW J., 000–00–0000
DUNKIN, STEVE M., 000–00–0000
DUNN, JEFFREY M., 000–00–0000
EGENOLF, ROBERT W., 000–00–0000
EHNOW, ROBERT M., 000–00–0000
EVERETT, CURTIS J., 000–00–0000
EZYK, DAVID A., 000–00–0000
FACUNDUS, JOHN E., 000–00–0000
FAIRCLOTH, JOHN K., JR., 000–00–0000
FEENEY, JAMES P., 000–00–0000
FEGARD, STEPHEN A., 000–00–0000
FERNANDEZ, MICHAEL M., 000–00–0000
FLANERY, PATRICK S., 000–00–0000
FOGG, MICHAEL D., 000–00–0000
FORCUM, LYLE E., 000–00–0000
FORD, ROBERT B., 000–00–0000
FRENCH, CHRISTOPHER L., 000–00–0000
GAITHER, MICHAEL S., 000–00–0000
GALLAGHER, JOSEPH V., III, 000–00–0000
GALLIGAN, PATRICK J., 000–00–0000
GARFIELD, PETER J., 000–00–0000
GASKILL, THOMAS M., 000–00–0000
GEISLER, MATTHEW J., 000–00–0000
GILLCRIST, EDWARD, 000–00–0000
GILMORE, ANDREW J., 000–00–0000
GIUDICE, RICHARD J., 000–00–0000
GORSKI, ROBERT B., 000–00–0000
GOULET, JOSEPH R., 000–00–0000
GRASSO, DOMINIC A., 000–00–0000
GREENWOOD, FREDERIC J., 000–00–0000
GROGAN, PETER A., 000–00–0000
GRUTER, JESSE L., 000–00–0000
GUZMAN, RANDOLPH A., 000–00–0000
HAHN, CHET P., 000–00–0000
HARDMAN, KYLE E., 000–00–0000
HARGIS, DARREN L., 000–00–0000
HATHAWAY, SETH A., 000–00–0000
HENDERSON, CHARLES R., 000–00–0000
HENRY, JOHN M., 000–00–0000
HERRERA, JAMES H., 000–00–0000
HESFORD, JOHN P., JR., 000–00–0000
HITCHCOCK, MICHAEL C., 000–00–0000
HOGAN, JOHN S., 000–00–0000
HUTCHINSON, MICHAEL T., 000–00–0000
HYAMS, HENRY M., III, 000–00–0000
JACKSON, BRIAN L., 000–00–0000
JENKINS, OLIVER G., 000–00–0000
JENNINGS, STEPHANIE C., 000–00–0000
JESSUP, KARLA M., 000–00–0000
JOHNSON, BRANDON F., 000–00–0000
JOHNSON, THOMAS V., 000–00–0000
JOHNSON, JAMES C., JR., 000–00–0000
KEENEY, JEROME T., III, 000–00–0000
KIEFNER, MATTHEW A., 000–00–0000
KILLEA, KEVIN J., 000–00–0000
KIMBROUGH, RONALD S., 000–00–0000
KING, LONNIE F., 000–00–0000
KNABEL, JOHN F., 000–00–0000
KNUTH, MARK D., 000–00–0000
KOCHANSKI, ROBERT J., 000–00–0000
KOJAC, JEFFREY S., 000–00–0000
KRAFFT, JOHN C., 000–00–0000
KREKEL, ROBERT A., 000–00–0000
KU, BRIAN L., 000–00–0000
KUDSIN, MICHEL W., 000–00–0000
KUHN, BRIAN E., 000–00–0000
KUMAGAI, KIRK J., 000–00–0000
LANDECHE, LANCE K., 000–00–0000
LAO, RAMON, 000–00–0000
LARSON, KURT B., 000–00–0000
LEMONS, GREGORY L., 000–00–0000
LIBERACE, JAMES P., 000–00–0000
LIZOTTE, BRIAN B., 000–00–0000
LOFTESNES, GREGORY C., 000–00–0000
LUCAS, WILLIAM S., 000–00–0000
MAC DOUGALL, KEVIN M., 000–00–0000
MACKIE, THOMAS J., 000–00–0000
MAC TOUGH, ROBERT B., JR., 000–00–0000
MANIS, CHRISTOPHER S., 000–00–0000
MARQUISE, DANIEL R., 000–00–0000
MARRON, JOSEPH A., 000–00–0000
MAXWELL, WILLIAM H., 000–00–0000
MC CARTHY, MICHAEL A., 000–00–0000
MC CLELLAND, MARC A., 000–00–0000
MC CONNELL, MARK G., 000–00–0000
MC COY, MICHAEL G., 000–00–0000
MC HENRY, FREDERICK S., 000–00–0000
MC KAY, RAYMOND N., 000–00–0000
MC LENNAN, SCOTT L., 000–00–0000
MC NAMARA, BRIAN F., 000–00–0000
MC NAMARA, JOHN J., 000–00–0000
MELLOTT, WILLIAM C., 000–00–0000
MERCADO, LUIS A., 000–00–0000
MICHAUD, ROBERT C., 000–00–0000
MICHELSEN, CHRISTOPHER J., 000–00–0000
MILES, SCOTT G., 000–00–0000
MILLER, MICHAEL C., 000–00–0000
MITCHELL, BONNIE J., 000–00–0000
MOCKBEE, THOMAS B., 000–00–0000
MONTGOMERY, EDWARD M., 000–00–0000
MONTGOMERY, JAY B., 000–00–0000
MORRIS, RONALD M., 000–00–0000
MORSE, LOUIS J., JR., 000–00–0000
MYRICK, RICHARD E., 000–00–0000
NELSON, MARK W., 000–00–0000
NELSON, TROY L., 000–00–0000
NEMETH, THOMAS J., III, 000–00–0000
NESTER, WALTER J., III, 000–00–0000
NEWMAN, STEPHEN C., 000–00–0000
O'CONNOR, KEVIN S., 000–00–0000
O'LEARY, THOMAS J., 000–00–0000
OWEN, DAVID M., 000–00–0000
PATTERSON, PAUL D., JR., 000–00–0000
PERLAK, JOSEPH R., 000–00–0000
PERRY, DUANE B., 000–00–0000
PERRY, MICHAEL W., 000–00–0000
PETERS, MARK E., 000–00–0000
PFISTERER, DAVID P., 000–00–0000
PIERSON, JOSEPH C., 000–00–0000
PINNEY, CHARLES D., 000–00–0000
POHLMAN, DAVID L., 000–00–0000
POMATTO, MICHAEL P., 000–00–0000
PRIMM, STEPHEN W., 000–00–0000
PUGH, FRANKLIN L., JR., 000–00–0000
PUSKAR, JOHN M., 000–00–0000
RAY, EDDIE S., 000–00–0000
REYES, JOHN D., 000–00–0000
RILEY, PATRICK T., 000–00–0000
RILEY, RICHARD J., 000–00–0000
ROSENBERG, ANDRE J., 000–00–0000
ROSS, SYLVIA D., 000–00–0000
RUBLE, SAMUEL L., 000–00–0000
RUTLEDGE, JOSEPH, 000–00–0000
SALAS, BRYAN F., 000–00–0000
SCALISE, MICHAEL L., 000–00–0000
SEILHAMER, MARK E., 000–00–0000
SELLECK, RICHARD M., 000–00–0000
SEXTON, CLARENCE E., JR., 000–00–0000
SHARP, JOSEPH W., 000–00–0000
SHELBURNE, JON W., 000–00–0000
SHENBERGER, MICHAEL C., 000–00–0000
SIMPSON, STEPHEN A., 000–00–0000
SINIFF, DEAN T., 000–00–0000
SISSON, JOHN A., 000–00–0000
SMITH, HORACE W., 000–00–0000
SMITH, JEFFREY A., 000–00–0000
SMITH, KENNETH 000–00–0000
SOLLNER, JOHN F., 000–00–0000
STANTON, JOHN A., 000–00–0000
STEININGER, ROBERT M., 000–00–0000
STENBERG, ROLLAND E., 000–00–0000
STERLING, DONALD G., 000–00–0000
STOUT, CHARLES D., 000–00–0000
SULLIVAN, CHRISTOPHE G., 000–00–0000
SWAN, STUART M., 000–00–0000
SWARTZ, PETER G., 000–00–0000
SWEITZER, DOUGLAS J., 000–00–0000
TAYLOR, TROY D., 000–00–0000
THIRY, JEFFREY A., 000–00–0000
THOMAS, JOHN J., 000–00–0000
TIMBERLAKE, THOMAS B., 000–00–0000
VARA, JOHN C., 000–00–0000
VESELY, DALE S., 000–00–0000
VISTED, WILLIAM A., 000–00–0000
WALKERWICZ, RONALD C., 000–00–0000
WALSH, MICHAEL J., 000–00–0000
WALSH, THOMAS F., III, 000–00–0000
WANG, ALBERT C., 000–00–0000
WARIS, JAMES R., 000–00–0000
WELLING, JAMES L., 000–00–0000
WERTZ, SCOTT C., 000–00–0000
WHITE, JACK R., 000–00–0000
WILCOX, ANDREW G., 000–00–0000
WILEY, DONALD J., 000–00–0000
WILKES, HERMAN L., JR., 000–00–0000
WILLIAMS, BRIAN A., 000–00–0000
WILLIAMS, CHRISTOPHE W., 000–00–0000
WILLIAMS, JOHN P., 000–00–0000
WILLSON, BRENT S., 000–00–0000
WINICKI, ANTHONY A., 000–00–0000
WOLFE, EDWIN A., 000–00–0000
WOLFE, RICHARD T., JR., 000–00–0000
WOODARD, KENNETH M., 000–00–0000
WOOTEN, MICHAEL E., 000–00–0000
YOSTEN, BERNARD J., 000–00–0000

To be first lieutenant

ABBOTT, PATRICK J., 000–00–0000
AKERS, DARRELL L., 000–00–0000
ALBERTS, CLINTON D., 000–00–0000
AMELSE, STEVEN P., 000–00–0000
ANDERSON, JAMES H., II, 000–00–0000
ARLEDGE, CARA S., 000–00–0000
ARMELLINO, JOHN, JR., 000–00–0000
AZEVEDO, ROGER S., 000–00–0000
BAIRD, ROBERT A., 000–00–0000
BAKER, DEADRICK D., 000–00–0000
BARNES, LEWIS R., 000–00–0000
BARTELT, BRAD S., 000–00–0000
BASH, GARY L., JR., 000–00–0000
BECK, STEPHEN R., JR., 000–00–0000
BEETH, CLANTON D., 000–00–0000
BELLON, DAVID G., 000–00–0000
BEST, WILLIE J., 000–00–0000
BIANCA, ANTHONY J., 000–00–0000
BIEN, STEFAN E., 000–00–0000
BLACKBURN, JAMES M., 000–00–0000
BLIGH, EDWARD W., 000–00–0000
BOARDMAN, AMY C., 000–00–0000
BOTUCHIS, LISA M., 000–00–0000
BOWEN, JOHN R., 000–00–0000
BRADLEY, TIMOTHY 000–00–0000
BRINEGAR, THOMAS J., 000–00–0000
BRUUN, DOUGLAS B., 000–00–0000
CALEY, JAMES C., 000–00–0000
CAMDEN, SCOTT E., 000–00–0000
CARPENTIERO, MICHAEL A., 000–00–0000
CASSERLY, LAWRENCE A., 000–00–0000
CEPEDA, SALVADOR E., 000–00–0000
CHERRY, IAN G., 000–00–0000
CHERRY, SEAN T., 000–00–0000
CHRISTOPHER, JOHN P., 000–00–0000
CLARK, VINCENT E., 000–00–0000
COBLE, NEAL S., 000–00–0000
COCHRAN, DOUGLAS S., 000–00–0000
CONGDON, WILLIAM J., 000–00–0000
COOK, BRENDAN G., 000–00–0000
COOK, MATTHEW S., 000–00–0000
CORBETT, JOSEPH M., 000–00–0000
CORCORAN, KEVIN M., 000–00–0000
CORDOVA, KIRK F., 000–00–0000
GOUGHLIN, KEVIN M., 000–00–0000
COUNTS, DWIGHT N., 000–00–0000
CURTIS, JENS A., 000–00–0000
DALLMAN, JON M., 000–00–0000
DAVIES, EVAN W., 000–00–0000
DAYZIE, LADANIEL 000–00–0000
DEPPA, BRIAN N., 000–00–0000

DEWYEA, THOMAS P., 000–00–0000
DILL, JEFFREY J., 000–00–0000
DISNEY, JAMES W., 000–00–0000
DIXON, CHRISTOPHE G., 000–00–0000
EATON, DUSTIN C., 000–00–0000
EBELING, WILLIAM S., 000–00–0000
EHLERT, CHARLES E., 000–00–0000
ESTEPP, JACK E., 000–00–0000
ETTIEN, STEVEN D., 000–00–0000
FARRIS, DAVID L., 000–00–0000
FERRIS, TRENT J., 000–00–0000
FIELD, GEOFFREY H., 000–00–0000
FOSTER, JONATHAN D., 000–00–0000
FOSTER, ROGER A., 000–00–0000
FRAMPTON, JAMES S., 000–00–0000
FREDERICK, THOMAS E., 000–00–0000
GANN, MICHAEL J., II, 000–00–0000
GAUL, DAVID E., 000–00–0000
GIBSON, HAROLD K., 000–00–0000
GOODES, JEFFERY, O., 000–00–0000
GRAHAM, WILLIAM L., 000–00–0000
GRAY, DONALD E., JR., 000–00–0000
GRIGGS, DUDLEY R., 000–00–0000
GRUENDEL, DARREN J., 000–00–0000
GUARNIERI, CHRIS T., 000–00–0000
HAIRSTON, REGINALD L., 000–00–0000
HALLSTROM, SCOTT V., 000–00–0000
HARRISON, LYLE M., 000–00–0000
HARWELL, BRETT A., 000–00–0000
HAWKINS, DOUGLAS A., 000–00–0000
HAYES, KENT W., 000–00–0000
HEARN, JEFFERY M., 000–00–0000
HENDERSON, SCOTT H., 000–00–0000
HENSEY, DAVID A., 000–00–0000
HENSIEN, JAMES R., 000–00–0000
HIGGINS, RONALD M., 000–00–0000
HOLLON, ROY F., 000–00–0000
HOSMER, MARK N., 000–00–0000
HOTTENDORF, JOSEPH K., 000–00–0000
HOWARD, TONY L., 000–00–0000
HUBBARD, MICHAEL P., 000–00–0000
HUMPHREY, RUSSELL W., 000–00–0000
HUNT, JEFFREY L., 000–00–0000
HUNTLEY, PETER D., 000–00–0000
INGRAM, DENNIS J., 000–00–0000
IULO, JAMES T., 000–00–0000
JACKSON, MICHAEL S., 000–00–0000
JACOBS, JON M., 000–00–0000
JAKOVICH, EDWARD K., III, 000–00–0000
JENKINS, ROBERT P., JR., 000–00–0000
JENSEN, LARS D., 000–00–0000
JOERGER, CHARLES A., 000–00–0000
JOHNSON, JEFFREY J., 000–00–0000
JOHNSTON, KEVIN O., 000–00–0000
KAVANAGH, KEVIN J., 000–00–0000
KEELER, CURTIS R., 000–00–0000
KEOUGH, LAURENCE L., III, 000–00–0000
KERZIE, TODD A., 000–00–0000
KETCHEM, MATTHEW D., 000–00–0000
KING, JAMES A., 000–00–0000
KNAPP, SCOTT F., 000–00–0000
KNARR, KENNETH A., 000–00–0000
KOONS, DAVID G., 000–00–0000
KREBS, DAVID A., 000–00–0000
KUHN, THOMAS E., 000–00–0000
LADOUCEUR, DAVID L., 000–00–0000
LANCASTER, DAVID W., 000–00–0000
LAND, OMAR D., 000–00–0000
LAUGHEAD, PAUL A., 000–00–0000
LEFAN, BRUCE W., 000–00–0000
LEIBA, HOWARD A., 000–00–0000
LENOX, PAUL T., 000–00–0000
LEONARD, SCOTT D., 000–00–0000
LESHO, PAVEL T., 000–00–0000
LEVY, MICHAEL J., 000–00–0000
LIMON, SALVADOR L., III, 000–00–0000
LITTLE, JOHN A., 000–00–0000
LIZOTTE, MARIA C., 000–00–0000
LONGWELL, DANIEL E., 000–00–0000
LUIZ, ANTHONY R., 000–00–0000
LUKEZ, FRANK A., 000–00–0000
LUPER, PHILLIP T., 000–00–0000
LYNNE, REX D., 000–00–0000
MAC INTYRE, DOUGLAS J., 000–00–0000
MADSEN, JOHN C., 000–00–0000
MALEC, MICHAEL W., 000–00–0000
MANNING, MICHAEL A., 000–00–0000
MANSON, JOHN M., II, 000–00–0000
MANUEL, ANTHONY J., 000–00–0000
MARBLE, ERIC S., 000–00–0000
MARKAKOS, PETER S., 000–00–0000
MARTIN, MICHAEL S., 000–00–0000
MATOS, JOSEPH A., 000–00–0000
MATTHES, DANIEL W., 000–00–0000
MC BRIDE, SEAN M., 000–00–0000
MC CARTHY, KYLE B., 000–00–0000
MC CARTHY, ROBERT E., III, 000–00–0000
MC CONNELL, STEWART C., 000–00–0000
MC DONNELL, MICHAEL T., 000–00–0000
MC DONOUGH, JOHN E., 000–00–0000
MC GOWAN, BRANDON D., 000–00–0000
MC KNELLY, LAWRENCE S., 000–00–0000
MC KNIGHT, JOHN G., 000–00–0000
MC LELLAN, ARCHIBALD M., 000–00–0000
MC NAMARA, CRAIG P., 000–00–0000
MEANS, FLOYD M., JR., 000–00–0000
MEZAORTEGA, GUILLERMO G., 000–00–0000
MILBURN, ANDREW R., 000–00–0000
MILLER, LINDA A., 000–00–0000
MONTALVO, WILLIAM C., 000–00–0000
MOOREFIELD, DAVID C., 000–00–0000
MORRIS, DAN E., 000–00–0000
MURPHY, MARK A., 000–00–0000
NASH, CHRISTOPHE B., 000–00–0000
NYKANEN, MICHAEL D., 000–00–0000
O'HORA, DANIEL P., 000–00–0000
O'NEAL, MICHAEL S., 000–00–0000
OSBORNE, JEFFREY D., 000–00–0000
OSKAR, DANIEL R., 000–00–0000
PALOMBO, STEVEN G., 000–00–0000
PARDUE, CLINTON E., 000–00–0000
PARK, ROBERT Y., 000–00–0000
PASAGIAN, ARTHUR J., 000–00–0000
PATALINO, PATRICK M., 000–00–0000
PEMBER, MYLES F., IV, 000–00–0000
PERKINS, LIONEL P., III, 000–00–0000
PETERS, NICHOLAS W., 000–00–0000
PETERSON, TYROME A., 000–00–0000
PETIT, PAUL T., III, 000–00–0000
PHILLIPS, RICHARD L., II, 000–00–0000
PIERSON, GRAHAM C., 000–00–0000
POWELL, DOUGLAS M., 000–00–0000
PRATT, PAUL J., 000–00–0000
PRIEST, THOMAS E., 000–00–0000
RALSTON, MINTER B., IV, 000–00–0000
RASMUSSEN, JOHN, G., II, 000–00–0000
REID, DESMOND A., JR., 000–00–0000
REVENTLOW, KEITH D., 000–00–0000
RICE, JAY N., 000–00–0000
RICHARDSON, DEREK G., 000–00–0000
RICHARDSON, PAUL W., 000–00–0000
RINE, ERIC L., 000–00–0000
ROBINSON, GREGORY L., 000–00–0000
ROMASKO, EDWARD H., 000–00–0000
ROSS, RANDY W., 000–00–0000
RUNYAN, MICHAEL A., 000–00–0000
RUOCCO, JOHN F., 000–00–0000
RUSH, RICHARD C., 000–00–0000
SALVADORE, ANTHONY M., 000–00–0000
SAYER, BRICE D., 000–00–0000
SBRAGIA, CHAD L., 000–00–0000
SCHAFFER, BRENT C., 000–00–0000
SCHMID, STEVEN J., 000–00–0000
SCHOLER, MARK T., 000–00–0000
SCHWEITER, HERBERT E., 000–00–0000
SCOTT, CHRISTOPHE B., 000–00–0000
SEEK, DWIGHT C., 000–00–0000
SEIFFERT, BRIAN F., 000–00–0000
SHARKEY, JOHN J., JR., 000–00–0000
SHERMAN, BRETT T., 000–00–0000
SIDES, CHARLES L., 000–00–0000
SIMMONS, DEREK E., 000–00–0000
SISAK, THOMAS J., 000–00–0000
SKINNER, GREGG, 000–00–0000
SMITH, HOWARD P., JR., 000–00–0000
SPATARO, JOSEPH P., 000–00–0000
STALLWORTH, CLAUDE A., 000–00–0000
STEHLY, JOSEPH A., 000–00–0000
STOCKS, JAMES A., 000–00–0000
SULLIVAN, DANIEL R., 000–00–0000
SULLIVAN, PAUL A., 000–00–0000
SVENDSEN, STEVEN R., 000–00–0000
TAVUCHIS, CHRISTOPHE A., 000–00–0000
THOENE, MAX E., 000–00–0000
THORNTON, PAUL, R., III, 000–00–0000
TODD, KEVIN L., 000–00–0000
TONTINI, JEFFREY S., 000–00–0000
TRAMONT, ROBERT L., 000–00–0000
TWOHIG, BELINDA L., 000–00–0000
URIBE, RICK A., 000–00–0000
VANMESSEL, JOHN A., 000–00–0000
VINCENT, ERIC L., 000–00–0000
WALTER, MARK M., 000–00–0000
WARD, WALTER D., 000–00–0000
WARE, HUGH R., 000–00–0000
WARE, STEVEN C., 000–00–0000
WASHBURN, JAMES S., 000–00–0000
WEICK, DANIEL H., 000–00–0000
WELCH, JERALD R., 000–00–0000
WENDLING, FRANK E., 000–00–0000
WEST, JERRY J., II, 000–00–0000
WESTER, SEAN D., 000–00–0000
WHALEY, STEVEN L., 000–00–0000
WHEELER, KENT E., 000–00–0000
WHITESIDE, DWAYNE A., 000–00–0000
WILLIAMS, KARL E., 000–00–0000
WISCHMEYER, WILLIAM D., JR., 000–00–0000
WOODCOCK, JONATHAN A., 000–00–0000
WOODS, JEFFREY K., 000–00–0000
WORTH, CALVERT L., JR., 000–00–0000
WOULFE, JAMES B., 000–00–0000
WRIGHT, ARTHUR L., 000–00–0000
WRIGHT, BRIAN P., 000–00–0000
WRIGHT, CARL M., III, 000–00–0000
WYNN, GERARD A., JR, 000–00–0000
ZELLER, SIDNEY G., 000–00–0000
ZUCHRISTIAN, CHRISTOPHE M., 000–00–0000
ZURLINI, CRAIG R., 000–00–0000

To be second lieutenant

BURTON, TIMOTHY G., 000–00–0000
FERARES, FREDERICK G., 000–00–0000
HASLE, CARLTON W., 000–00–0000
RINEHART, KURT A., 000–00–0000
STEPHENS, THOMAS S., JR., 000–00–0000
WANDO, WILLIAM M., 000–00–0000

THE FOLLOWING-NAMED LIMITED DUTY OFFICERS OF THE REGULAR MARINE CORPS FOR APPOINTMENT AND DESIGNATION AS UNRESTRICTED OFFICERS IN THE REGULAR MARINE CORPS UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 531 AND 5589: U.S. MARINE CORPS UNRESTRICTED LIST.

To be major

CLARKE, HOWARD P., 000–00–0000

To be captain

PETRUZZIELLO, MICHAEL A., 000–00–0000

THE FOLLOWING-NAMED OFFICER OF THE U.S. NAVY FOR TRANSFER INTO THE REGULAR MARINE CORPS UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 531:

To be captain

WILLIAMS, EUSEEKERS, JR., 000–00–0000

IN THE NAVY

THE FOLLOWING-NAMED CAPTAIN IN THE LINE OF THE U.S. NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL (LOWER HALF), PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS, THEREFORE, AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICER

To be rear admiral (lower half)

JOHN B. PADGETT III, 000–00–0000

THE FOLLOWING-NAMED COMMANDERS IN THE LINE OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF CAPTAIN, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICERS

To be captain

ANDREWS, VINCENT J., 000–00–0000
ARROWOOD, ROGER A., 000–00–0000
BADGER, CARLOS S., 000–00–0000
BAKER, JEFFREY W., 000–00–0000
BELCHER, CHARLES G., 000–00–0000
BERTSCH, FRED S., III, 000–00–0000
BOOKERT, REUBIN B., 000–00–0000
BOYER, JAMES C., 000–00–0000
BOZIN, STANLEY D., 000–00–0000
BRADO, ROBERT F., 000–00–0000
BRANNON, ROBERT B., 000–00–0000
BRIGGS, ALFRED N., III, 000–00–0000
BROWN, JERRY J., 000–00–0000
BURLINGNAME, NEIL C., 000–00–0000
CALLAND, ALBERT M., III, 000–00–0000
CAMPBELL, JAMES L., 000–00–0000
CAREN, MARK S., 000–00–0000
CASSIAS, JEFFREY B., 000–00–0000
CHRISTENSON, JOHN D., 000–00–0000
CHRISTMAN, WILLIAM E., 000–00–0000
CLARK, FRANK N., 000–00–0000
COOPER, JAMES S., 000–00–0000
CORRIGAN, DENNIS M., 000–00–0000
CRAFT, WILLIAM P. 000–00–0000
DAVIDSON, LYAL B. 000–00–0000
DEARTH, RANDOLPH S., 000–00–0000
DEASARO, LOUIS P. 000–00–0000
DENIS, DAVID A., 000–00–0000
DESTEFANO, ROBERT, 000–00–0000
DEWEY, BRIAN E., 000–00–0000
DONNELLY, JOHN J., 000–00–0000
DONOVAN, THOMAS J., 000–00–0000
DONOVAN, WALTER J., JR., 000–00–0000
DOUGLASS, STANLEY W., 000–00–0000
DUFFIE, DAVID A., 000–00–0000
ECKELBERRY, JOHN R., 000–00–0000
EVANOFF, JOHN D., II, 000–00–0000
FABER, GERALD W., 000–00–0000
FALZETTA, OTTAVIO A., 000–00–0000
FLAMMANG, HAROLD J., JR., 000–00–0000
FOLLY, FRANK E., 000–00–0000
FOREMAN, DAVID E., 000–00–0000
FOSTER, RICHARD P., 000–00–0000
FUQUA, MICHAEL T., 000–00–0000
FURSMAN, THOMAS M., 000–00–0000
GALLAGHER, RICHARD K., 000–00–0000
GARRETT, CARL E., JR., 000–00–0000
GARRETT, GENE W., 000–00–0000
GIBSON, JAMES H., 000–00–0000
GOVE, DAVID A., 000–00–0000
GREGORY, THOMAS J., 000–00–0000
GUTH, JAMES D., 000–00–0000
HAEFNER, ALAN M., 000–00–0000
HALLOWELL, PAUL E., JR., 000–00–0000
HARDEMAN, EDWARD L., 000–00–0000
HAWKS, LEE A., 000–00–0000
HEATH, RONALD Y., 000–00–0000
HEELY, TIMOTHY L., 000–00–0000
HEINE, DAVID G., 000–00–0000
HERBERT, MAURICE M., 000–00–0000
HICKS, WILLIAM M., 000–00–0000
HILL, GEORGE C., 000–00–0000
HOLT, ROBERT L., 000–00–0000
HOPPOCK, RONALD E., 000–00–0000
HORSMAN, JOHN P., JR., 000–00–0000
HOVATTER, PATRICK J., 000–00–0000
HUFFINE, CHARLES H., 000–00–0000
HUNT, PATRICK W., 000–00–0000
JABLONSKI, EDWARD R., 000–00–0000
JAGOE, DONALD A., 000–00–0000
JASKOT, RICHARD D., 000–00–0000
JENSEN, RICHARD J., 000–00–0000
JOHNSON, SCOTT T., 000–00–0000
JONES, GARY R., 000–00–0000
JORDAN, WILL H., 000–00–0000
JOYCE, MAURICE S., 000–00–0000
KASER, ROBERT D., JR., 000–00–0000
KASKY, PHILIP C., 000–00–0000
KIRCHER, HARTMANN J., IV, 000–00–0000
KNIGHT, JAMES T., 000–00–0000
KNOUSE, CRAIG R., 000–00–0000
KOLLMORGEN, LELAND S., 000–00–0000
KRULL, RODGER P., 000–00–0000
KUPPERS, ROBERT H., JR., 000–00–0000
LEE, JAMES E., JR., 000–00–0000
LEGHART, MARTIN J.S., 000–00–0000
LEMEN, JON F., 000–00–0000
LENCI, MARK R., 000–00–0000
LINSCOTT, JEFFREY D., 000–00–0000
LIPPERT, ROLLIN G., 000–00–0000
LOHOSKI, EDWARD F., JR., 000–00–0000
LONG, LINDA D., 000–00–0000

LOPEZ, DAVID R., 000–00–0000
LUCK, CHARLES W., 000–00–0000
LUKE, RICHARD T., 000–00–0000
LYNCH, JOHN, 000–00–0000
LYONS, JAMES E., 000–00–0000
MACINTYRE, JOHN M., 000–00–0000
MATHEWS, MICHAEL J., 000–00–0000
MAULDIN, RICHARD J., 000–00–0000
MAUNEY, CARL V., 000–00–0000
MAWHINNEY, DAVID A., 000–00–0000
MAYER, GEORGE E., 000–00–0000
MCCARTHY, WILLIAM J., 000–00–0000
MCDONOUGH, ROBERT J., 000–00–0000
MCKINLEY, GARY M., 000–00–0000
MCNAMARA, CHRISTOPHER P., 000–00–0000
MERRILL, ROY A., III, 000–00–0000
MILLER, BRUCE E., 000–00–0000
MORRELL, KENNETH A., JR., 000–00–0000
MORRIS, LOUIS F., 000–00–0000
MOYE, WILLIAM C., 000–00–0000
NATALE, JOSEPH J., 000–00–0000
NELSON, ARNE J., 000–00–0000
NORTON, CARLETON P., 000–00–0000
NOWAKOWSKI, MICHEAL P., 000–00–0000
O'BRIEN, DAVID R., 000–00–0000
O'CONNOR, THOMAS J., JR., 000–00–0000
OFFER, DEREK F., 000–00–0000
OWSLEY, ROBERT C., 000–00–0000
PATTOON, DANIEL C., 000–00–0000
PERKINS, RICHARD C., 000–00–0000
PETERSON, GARY A., 000–00–0000
PURCELL, MARC L., 000–00–0000
READE, ANTHONY R., 000–00–0000
ROGERS, EDWARD J., III, 000–00–0000
SALTER, LARRY G., 000–00–0000
SCHERER, ROBERT J., JR., 000–00–0000
SCHOULTZ, ROBERT P., 000–00–0000
SCHUTZENHOFER, ROBERT R. 000–00–0000
SERFASS, PAUL T., JR., 000–00–0000
SHARP, MICHAEL A., 000–00–0000
SLOSS, DANIEL D., 000–00–0000
SMITH, JOHN W., 000–00–0000
SNYDER, JAMES S., 000–00–0000
SQUICCIARINI, PETER D., 000–00–0000
STAFFORD, JOE N., 000–00–0000
STAIR, GERALD K., JR., 000–00–0000
STANLEY, PAUL S., 000–00–0000
STANTON, PAUL E., 000–00–0000
STARK, JAMES K., JR., 000–00–0000
STROTT, JOHN B., 000–00–0000
SWEENEY, ROBERT L., III, 000–00–0000
SWEET, WILLIAM J., 000–00–0000
TAYLOR, DAVID C., 000–00–0000
TEATES, JOHN F., 000–00–0000
TENGA, RICHARD 000–00–0000
THOMAS, DAVID L., 000–00–0000
TOWNER, RICHARD L., 000–00–0000
TRACY, MICHAEL C., 000–00–0000
TUOHY, MATTHEW W., 000–00–0000
VERNON, ROBERT J., 000–00–0000
WALLACE, JUSTIN, L., 000–00–0000
WALSH, JOHN J., 000–00–0000
WALTERS, CLYDE T., 000–00–0000
WEAVER, KEITH T., II, 000–00–0000
WEBBER, CHARLES F., 000–00–0000
WEGNER, BRIAN J., 000–00–0000
WELLOCK, STEPHEN M., 000–00–0000
WEST, ROBERT C., 000–00–0000
WETHERBEE, JAMES D., 000–00–0000
WILLIAMS, RICHARD B., 000–00–0000
WILLIAMS, RUSSELL T., 000–00–0000
WILLIS, MONTGOMERY P., 000–00–0000
WOODS, JAMES A., JR., 000–00–0000
WYATT, CHARLES A., 000–00–0000
ZACHARIAS, DAVID A., 000–00–0000
ZAZWORSKY, DANIEL S., 000–00–0000
ZELLER, RNADEL L., 000–00–0000

ENGINEERING DUTY OFFICERS

To be captain

ARMSTRNG, DAVID T., JR., 000–00–0000
BOURNE, CARLTON M., 000–00–0000
BROOKS, JEFFREY A., 000–00–0000
BUTLER, JOHN D., 000–00–0000
CONNELL, ROGER J., JR., 000–00–0000
EDWARDS, JOHN A., 000–00–0000
HAMMER, DAVID A., 000–00–0000
LANGAN, JOHN R., 000–00–0000
LUEBKE, WILLIAM H., 000–00–0000
LYMAN, KATHLEEN M., 000–00–0000
MARSH, BERT, 000–00–0000
MASON, BRADLEY J., 000–00–0000
NOLLIE, THOMAS C., JR., 000–00–0000
O'HARE, MARK S., 000–00–0000
PARKER, FREDERICK H., 000–00–0000
RIES, DANIEL E., 000–00–0000
SCHWARTING, RICHARD A., 000–00–0000
SIEDBAND, MARC A., 000–00–0000
TODD, GREGORY B., 000–00–0000
VIOLETTE, THOMAS F., 000–00–0000
WEBB, KENNETH R., 000–00–0000
WILHOIT, GEORGE Z., 000–00–0000

AEROSPACE ENGINEERING DUTY OFFICERS (ENGINEERING)

To be captain

CURTIS, JOHN T., 000–00–0000
GAGNON, DONALD R., 000–00–0000
JEWETT, CHARLES E., 000–00–0000
KUPOVITS, TERRY M., 000–00–0000
LANGFORD, JOHN D., JR., 000–00–0000
LEEDY, DAVID H., 000–00–0000
MESSERSMITH, ROGER J., 000–00–0000
MOEBIUS, RICHARD C., 000–00–0000
NOVAK, PAUL M., 000–00–0000
ROGERS, WALTER L., 000–00–0000
SPILMAN, THEODORE L., III, 000–00–0000
THUOT, PIERRE J., 000–00–0000

AEROSPACE ENGINEERING DUTY OFFICERS (MAINTENANCE)

To be captain

CLAWITER, JAMES H., 000–00–0000
GIBSON, STEVEN B., 000–00–0000
MARKS, KENNETH A., 000–00–0000
WEAKLEY, RANDY G., 000–00–0000

SPECIAL DUTY OFFICERS (CRYPTOLOGY)

To be captain

BERNAS, BARRY L., 000–00–0000
KURZANSKI, EDWARD J., 000–00–0000
MCDONALD, MELVYN K., 000–00–0000
NEWMAN, JAMES S., 000–00–0000
PEYRONEL, SHARON A., 000–00–0000
SCAGNELLI, MICHAEL L., 000–00–0000

SPECIAL DUTY OFFICERS (INTELLIGENCE)

To be captain

ABBOTT, EDWIN D., 000–00–0000
DOVE, THOMAS E., 000–00–0000
LAWRENCE, MARK S., 000–00–0000
MYERS, ERIC M., 000–00–0000
RICHASON, STEVEN K., 000–00–0000
VAUGHN, HOLLY A., 000–00–0000
WEIDMAN, ROBERT P., 000–00–0000
WILSON, WALTER E., 000–00–0000

SPECIAL DUTY OFFICERS (PUBLIC AFFAIRS)

To be captain

ARTERBURN, GEORGE K., JR., 000–00–0000
CARMAN, JOHN W., 000–00–0000
GRAHAM, SHEILA A., 000–00–0000
HONDA, STEPHEN, 000–00–0000
KUDLA, JAMES M., 000–00–0000
PRITCHARD, ROBERT S., 000–00–0000
VANDYKE, MARK A., 000–00–0000

SPECIAL DUTY OFFICERS (FLEET SUPPORT)

To be captain

AUGUSTINE, MARILYN J., 000–00–0000
BAILEY, ROSALIND T., 000–00–0000
BAIVIER, ANITA G., 000–00–0000
BEATTY, FLORENCE E., 000–00–0000
BROWN, NANCY E., 000–00–0000
CRAWFORD, BILLIE E., 000–00–0000
CRISP, DONNA L., 000–00–0000
DRISLANE, PATRICIA A., 000–00–0000
FICHTE, SUSAN D., 000–00–0000
HINE, CATHERINE E., 000–00–0000
HONEY, NANCY E., 000–00–0000
ILLIG, CHRISTINA F., 000–00–0000
JACOB, JODEE C., 000–00–0000
MAYBAUMWISNIEWSKI, SUSAN C., 000–00–0000
MCCULLOM, SARAH S., 000–00–0000
OAKLEAF, ANN C., 000–00–0000
STARZY, VIRGINIA L., 000–00–0000
USHER, JILL R., 000–00–0000
WEST, CAROL, 000–00–0000
WHITEHEAD, CORNELIA D.G., 000–00–0000
YATES, SANDRA J., 000–00–0000

SPECIAL DUTY OFFICERS (OCEANOGRAPHY)

To be captain

CLARK, ROBERT L., 000–00–0000
DONALDSON, THOMAS Q.V., 000–00–0000
RANELLI, PETER H., 000–00–0000
SWAYKOS, JOSEPH W., 000–00–0000

LIMITED DUTY OFFICERS (LINE)

To be captain

GLIDDEN, ERIC S., 000–00–0000
HANSON, JAMES H., 000–00–0000
JAEH, ROLAND, H., 000–00–0000
PROCTOR, DANNY L., 000–00–0000
REA, JERRY F., 000–00–0000