

Now, Mr. President, here is the point, and then I will yield the floor because I understand that an agreement may have been worked out. If you are for set-asides, I think you ought to have courage enough to stand up and say it. If you believe that in America we ought to legislate unfairness for some reason, that we ought to reject merit, and that we ought to give people contracts based on their race, their color, their national origin, or their gender, it seems to me that you ought to do something that President Clinton did not have courage enough to do yesterday. That is, you ought to stand up and say it, and you ought to vote against my amendment.

It seems quite another thing to offer an amendment which basically says that you cannot give a contract to an unqualified person. The point is that many people—in fact, I would guess in almost every case the loser of competitive bidding every day in America in public contracting is qualified. It is not the point that they are not qualified. The point is they are not the best qualified. They did not offer the best bid. They did not offer the lowest price. Therefore, they should not have gotten the contract.

So if you vote for the Murray amendment, in my humble opinion, what you are doing is simply seeking political cover because you do not want to tell people you are for set-asides. I am opposed to set-asides. There is only one fair way in America to decide who gets a job; there is only one fair way to decide who gets promoted; there is only one fair way to decide who gets a contract, and that is merit.

And if you do it any other way than merit, it is inherently unfair, it is inherently divisive, and it ultimately pits people against each other based on their group. The genius of America is competition based on individual decision making and individual qualities. What makes America work is that in America we are not part of groups; we are individuals, and we have an opportunity to be judged as individuals based on our merit.

While some will say that trying to stop unfairness written into the law of the land, because for 25 years we have had unfairness written into the law of the land in set-asides and quotas, and people in America know it and they resent it and they want it changed, what we are doing when we eliminate set-asides is we are going back to the unifying principle of America. And that principle is merit.

What we are saying is that if any contractor in America wants to bid for a Government job, they have as good a chance to get that contract as anybody else. They have a chance to be judged on their merit on their bid. To do it any other way is totally and absolutely unfair. And I believe it should be rejected.

#### UNANIMOUS CONSENT AGREEMENT

Mr. GRAMM. Mr. President, I ask unanimous consent that there be 120 minutes for debate on the pending Gramm amendment, No. 1825, and the Murray amendment, which would be modified to reflect that it be added at the appropriate place in the bill, and that the time be equally divided between Senator Gramm and Senator Murray. And that following the conclusion or yielding back of time, the Senate proceed to vote on the Gramm amendment, to be followed immediately by a vote on the Murray amendment, as modified, and that no amendments be in order prior to the disposition of the two amendments, and that the Exon amendment, 1827, be withdrawn. Mr. President, I ask unanimous consent that the time already consumed by both sides be considered subtracted from the overall time limitation.

The PRESIDING OFFICER (Mr. BURNS). Is there objection?

Mrs. MURRAY. Reserving the right to object. Mr. President, I will not object. I would just like to know how much time would be left then on both sides?

The PRESIDING OFFICER. The Senator from Washington would have 1 hour and the Senator from Texas would have 44 minutes.

Mrs. MURRAY. Thank you, Mr. President.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Reserving the right to object. I would like the stipulation added to give this Senator 10 minutes.

The PRESIDING OFFICER. Would the Senator from Pennsylvania restate his request?

Mr. SPECTER. As I understand it, there is 1 hour on each side.

The PRESIDING OFFICER. The Senator from Washington has 1 hour. The Senator from Texas has 44 minutes.

Mr. SPECTER. Perhaps I can inquire of the Senator from Washington if I might have 10 minutes on your side?

Mrs. MURRAY. I would be willing to yield 10 minutes from my side to the Senator.

Mr. SPECTER. I thank the chair. I will not object.

The PRESIDING OFFICER. Is there objection?

Hearing none, so ordered.

So, the amendment (No. 1826), as modified, is as follows:

At the appropriate place in the bill, insert the following:

SEC. . None of the funds made available in this Act may be used for any program for the selection of Federal Government contractors when such program results in the award of Federal contracts to unqualified persons, in reverse discrimination, or in quotas, or is inconsistent with the decision of the Supreme Court of the United States in *Adarand Constructors, Inc. v. Pena* on June 12, 1995.

The PRESIDING OFFICER. Who yields time?

Mrs. MURRAY addressed the Chair.

Mrs. MURRAY. Mr. President, I sit here tonight and I think about the words "affirmative action," and I listened to the words on the floor. I wonder sometimes if we have all grown up in the same country because I grew up in a country that said you have equal opportunity, an equal chance and an equal ability in this life to get a good education, to get a good job and make it in this country.

Mr. President, that is what the affirmative action program means to this Senator from the State of Washington who stands here tonight on the floor of the Senate as one of eight women in this body.

Mr. President, when I hear the words "quotas," "reverse discrimination," "preferences for unqualified individuals," I am astounded because that is not what I see in affirmative action today. And I think it is a twisting of the debate to try and make people think this program is about something that it is not about. This program is about giving people an ability to make it in a country where we care about all individuals, no matter who they are or where they come from or what they look like.

And I think that is a particularly important agenda to retain in this country. It certainly is one I want for my children and my grandchildren who will follow me.

The amendment that I have put forward says quite clearly that no Federal funds can go to any affirmative action program that results in quotas, in reverse discrimination, or in the hiring of unqualified persons. The amendment makes it very clear to the agency that its affirmative action programs must be completely consistent with the Supreme Court's recent decision in the *Adarand* case that affirmative action programs could be justified only if they served a compelling interest and were narrowly tailored.

The amendment recognizes that the battle against discrimination in America has not yet been won. And I invite all of you to go out into our schools, to go out into our institutes of higher education, to go out into the workplace and see that it is not yet won for women and for minorities. And affirmative action programs are very important to winning that battle.

Mr. President, as I listen to the amendment that comes before us—and I heard my colleague from Texas say he was going to offer this amendment on every appropriations bill—I wonder how much money he is talking about and who he is going after. I did not have time, of course, to put this into a chart that all of you could see. Frankly, I thought I would save the Senate money because that is what we are trying to do. So I did not make a chart. But I will share with you what I have on this.

The total awards that are given in Government contracting, prime contracts, is \$160 billion. Of that, \$1.9 billion—\$1.9 billion—out of \$160 billion go

to women-owned business awards. That is who we are targeting in the underlying amendment. That is who—\$1.9 billion out of \$160 billion. A very small amount, \$6.1 billion to small disadvantaged business awards. A total of about \$8 billion out of \$160 billion—\$160 billion—\$8 billion going to small disadvantaged business and women-owned business. That is who we are targeting in the underlying amendment.

It seems very clear to me that it is a good goal in this country to assure that disadvantaged people, that people who do not have the same opportunities, are given the ability to move ahead in the workplace. And I urge my colleagues to defeat the Gramm amendment and to vote for the Murray amendment. That is a positive way to move in affirmative action in this Nation.

Mr. President, I ask the Senator from Maine how much time he would need?

Mr. COHEN. Ten minutes.

Mrs. MURRAY. I yield 10 minutes to the Senator from Maine.

Mr. COHEN. I thank my colleague for yielding.

Mr. President, I was intrigued with the Senator from Texas' comment toward the very end of his presentation where he said that for 25 years we have legislated unfairness. We have passed legislation not based on quality, but rather on race and gender.

The 25 years stood out in my mind because it tended to ignore that for 200 years we have tolerated and practiced unfairness. We said that all men are created equal. That is our defining document. Not "all women are created equal." Not "all blacks are created equal." They were not even treated as human but only three-fifths human, as slaves, as pack mules. We broke up their families, and we humiliated them for years and years—not 25 years—but a couple of hundred years or more. And suddenly we come back and say, "Well, it is all equal now. The field is completely level. We live in a colorblind society." Does anyone here really believe that, that we live in a colorblind society?

There was an item in the paper recently about "good ol' boys" getting together for a good old time. They were Federal employees—ATF, maybe FBI, maybe Secret Service, maybe IRS. Does anyone here truly believe that we do not live in a colorblind society today, that discrimination does not exist?

The Senator from Texas says that we should not let someone get a contract based on a preference. He believes that if you give someone a special preference, you impose a disadvantage on others. That is one side of the argument. How about whenever you impose on someone a special disadvantage by virtue of their race or gender? It seems to me that you give someone or another group a special advantage.

The Senator from Texas would like to have the best-qualified people receiving contracts. I agree. How about

Jackie Robinson, do you think he was the best-qualified player at the time? How about Satchel Paige, do you think he was the best-qualified pitcher at the time? Was he granted access to the professional leagues? Jackie Robinson, yes, he was the first to break through the color-barrier, after years and years of practiced racial discrimination. Satchel Paige played the prime of his career in the Negro Leagues, only making it into the big leagues after the color-barrier had been broken. But he made it to the Hall of Fame nonetheless.

The difficulty is, of course, that none of us believe in quotas, because quotas are arbitrary, they are capricious, they are without merit. But the Senator from Texas believes we should have not more group preferences. Well, how about veterans? Is that in the amendment? I do not think so. I hope not. But make no mistake, we grant preferences to many groups.

We grant preferences to veterans because they have made a great sacrifice for this country. We take that into account and we grant them preferences, regardless of what their contribution was. Some served in combat. Some served as medics. Some served as flight assistants. Some served back in the United States. They all were willing to make the commitment, so we treat them as a group and we give them special consideration, as we should.

How about small businesses? Are we prepared to eliminate the small business set-aside, and give no more preferences in government contracts to small business? Should we let them go up against the giant conglomerates, without a care of how small or how capable they are. Even if they cannot compete against the big guys—tough luck, no special consideration.

I know that there is some disagreement about affirmative action, even within the minority community. There are some who feel that the very existence of affirmative action has stamped the red letters of "AA" on their foreheads; that they somehow have been stamped as affirmative action babies; that people believe they could not make it on their own, notwithstanding their capabilities; that they are seen only as the beneficiaries of affirmative action.

I watched a program just this evening where one very passionate individual said, "I don't want to support any program that infers or implies that I am somehow inferior." That really is not the issue, because he is not inferior. The problem is that he and others have been victims of societal discrimination. Others call it racism for that is what it is. The truth is that they were not judged based on their quality, they were not judged based on their merit, they were not judged based on the content of their character, but they were judged based on the color of their skin. That has been the practice over the centuries in this country.

Yes, progress has been made. But I listened to the stories of the Tuskegee

airmen and I remember the turmoil they experienced fighting in World War II, feeling they had to fight two enemies: one called Hitler, the other called racism in this country.

I listened and I remember very well Congressman LOUIS STOKES, who was a member of the Iran-Contra committee, speaking about what it felt like for him to make a contribution to his country in the service, but to be barred from eating and sleeping in the same barracks as his white counterparts. It did not matter that he was prepared to die on the battlefields; that was OK. You are equal out on the battlefields, you are just not equal in the barracks, you go to the other room, you go to the other fountain, you sleep in another place.

That has been changed, not through the marketplace, but through actual affirmative action on the part of the U.S. Congress. We changed that. We helped to legislate the beginnings of equality—not entirely, but we helped to legislate at least a part of the way. But it still exists day in and day out.

I can give you example after example of people who walk into places of employment who are turned down, not because they are not qualified or the best qualified, but simply because of the color of their skin or even their gender. So we have not arrived at a color-blind society. I know there are those on the floor who will say our goal must be a color-blind society, and I agree, but we are not there yet, not when you put Martin Luther King's photograph in the cross-hairs on a T-shirt, not when you put signs up that say, "No blacks"—and I am qualifying it a bit here—"are allowed to cross this line."

The Senator from Texas says this is simply a surgical strike on this particular piece of legislation. But he has already indicated there is going to be surgery after surgery. This is only one surgical strike. We have a bombardment coming until every aspect of any kind of remedial action for past, present and future discriminatory policies are eradicated.

So why have we had set-asides? We ought to face the issue, why have we had set-asides? It is because blacks and other minorities have been frozen out and women have been locked out of opportunities. We have had 200 years-plus of this discrimination, but only 30 years of trying to overcome that. We are not trying to put unqualified people into positions, but to give those people who are qualified an opportunity to break through the barriers that we have allowed to exist for a long, long time. The point of affirmative action is not to establish quotas, it is to allow qualified people to overcome discrimination.

So the Senator from Texas asked the question: If you believe we ought to legislate unfairness, then you support the amendment that has been offered as a substitute. I would put it another

way: If you believe we ought to ignore unfair practices, if you believe we ought to allow those who have been historically and to this day are treated unfairly in the marketplace to continue to be discriminated against, then you vote for the amendment of the Senator from Texas.

Mr. President, I think the choice is pretty clear. I hope when the vote finally comes that we will reject overwhelmingly the amendment of the Senator from Texas and support that of our colleague from the State of Washington.

The PRESIDING OFFICER. Who yields time?

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized. Who yields time?

Mrs. MURRAY. Mr. President, I thank my colleague from Maine for his very eloquent remarks and support. I hope all our colleagues had the opportunity to hear what he had to say. I yield as much time as she needs to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I thank the Senator from Washington for yielding.

At the outset, I want to tell you a little story that happened in my lifetime. When I was very young, 7 or 8 years old, we went south on the train from Chicago to the city of New Orleans. We were going through Alabama. We stopped at a train station, and there were water fountains. This is in the days Senator COHEN has referenced, the days when there was official segregation in this country.

We stopped at a train station. One of the water fountains was labeled "colored." My mother, because she did not want to start a ruckus in the train station, would not let us go to the colored fountain to get a drink of water, even though we were thirsty.

My little brother, however, who was about 5, laid out in the train station and had a temper tantrum because he wanted to have some colored water. He thought it was going to come out of the fountain pink, blue, green, yellow, and red, a rainbow of colors, and he was determined to have some colored water.

Mr. President, I want to suggest the amendment of the Senator from Texas is colored water. This amendment tries to convince us that it is an amendment in favor of fairness and an amendment in favor of diversity, an amendment in favor of America and the kind of country that we are, a diversity of people, people of all colors and genders and coming together, and that somehow or another this supports that vision of America.

But, in fact, just as we all knew that the water coming out of that fountain in that segregated train station in Alabama was not pink and green and blue, we knew in our hearts, we knew it was

just plain old water, but it was going to be set aside. It was different water. It was a segregated situation for those of us who were not white.

We know at the base that this amendment seeks to roll back the clock and turn back the gains that women and minorities—as limited as they may be—have made in this country in the last several decades.

You know, maybe we should thank the Senator from Texas because, quite frankly, this issue was bound to come to the floor. He has already said he is going to have it on every bill. Maybe we should have this debate on every bill. But I think it is of critical importance that we tell the truth about what this amendment is and point out to the American people that colored water is not pink and green. It is not a rainbow. Colored water is just that—it is something that is less than what is given to everybody else.

This amendment of the Senator from Texas is just that—it is something less. Yes, we are indeed clever enough to use his words to understand exactly what he is talking about in this amendment. And this world will understand exactly what he is talking about with this amendment.

The Senator from Maine talked about the past and the ugly history that we all know about in this room. Let me submit that the issue of affirmative action is not as much about the past, or even the present, as it is about the future—the future that these young people will have, the future that we give to the next generation of Americans.

If that future is going to allow for us to build as a nation on our diversity, as a strength of our Nation as opposed to weakness, then we must defeat this attempt by the Senator from Texas and every other one he or anybody else comes up with on this floor. If we are going to send a signal that we believe in opportunity for America, then we must defeat this attempt to roll back opportunity.

There is no question, as the Senator from Washington pointed out, affirmative action does not guarantee anything to anybody. It is not a carving stone where you get it just because of your belonging to a group. It is a principle based on merit. It is not about quotas.

Frankly, when we talk about preferences, the Senator from Maine is exactly right. We have all kinds of preferences. We have preferences for senior citizens; we have preferences for people, depending on where they live; we have preferences for people based on the fact that they served in the military, whether they ever saw a war or not; we award preferences because we think there is an objective, a value, if you will, that is important to promote.

So why, then, this argument that somehow or another, by allowing an opportunity to compete for women and minorities, that sets up some preference that may not be logically or

ethically or intellectually supported? Why, then? Given the history, and given where we are and the fact that the evidence makes it clear that discrimination and exclusion for women and minorities still exists, not only in our community, but also in our economy.

There were, in the report that the President had done, "The Affirmative Action Review," results from random testing. They make the point that there was a series of tests conducted between 1990 and 1992. It revealed that blacks were treated significantly worse than equally qualified whites 24 percent of the time, and Latinos were treated worse 22 percent of the time, et cetera, et cetera. It goes on.

So we know, everybody here knows that discrimination still exists, even though we are all, I hope, committed to its eradication. We all know that is a fact. But discrimination notwithstanding, the fact is that the numbers do speak for themselves. Why is it that we are still looking at a situation in which, for our procurement in this Nation, at this time 50 percent of the population being female, 1.21 percent of the contracts awarded in 1993 went to women-owned businesses—1.21 percent. The amendment of the Senator from Texas seeks to roll that back.

Now, does this suggest that 98.89 percent of the people that got the contracts were better qualified than that 1.21 percent of women-owned businesses? I think everybody in this room and everybody listening knows that there are other explanations for why that figure is so low.

So why, then, is it inappropriate to suggest that we give women-owned businesses, that we give minority-owned businesses a shot; that we give them a chance to compete, not based on any lack of qualifications, but, indeed, based on qualifications? Why are we suggesting that we close the door on that chance, that we shut down that opportunity and indeed cripple the diversity that I believe—and I hope my colleagues will concur—is at the heart of the future of America.

The fact of the matter is that that diversity has been talked about in many instances by businesses in this country as a business imperative. We are in a global economy with global markets, and not everybody in the world who does business is male, and not everybody in the world who does business is white, and not everybody who does business in the world speaks English, for that matter. So does it not make sense for us to, if you will, stir the competitive pot a little bit, to allow for an equality of opportunity for all Americans to participate in this economy and in building this Nation for this global economy and preparing our country to compete in this world market? Does it not make sense for all Americans to allow every child a chance to participate on an equal basis, to give everybody a shot—not that we guarantee a young person a chance

when we allow for a college scholarship. We do not guarantee them an "A" in chemistry, but we guarantee them a chance to get into the classroom so that possibly if they are an "A" student, our Nation will benefit from the contribution they can make.

Well, that is the whole point of affirmative action, Mr. President. That is the whole point of the kind of initiatives that have been taken to provide, if you will, sheltered markets for women and minorities, and it is not as though anybody has abused any of this. There are only 1.21 percent women-owned businesses.

Last year, Senator HUTCHISON and I worked to pass legislation calling for a 5 percent procurement goal—goal, not quota; not a guarantee, but a goal—for women-owned business. Five percent. Half of the population in this country are female. We said, How about 5 percent? This amendment would roll that back and say, you have 1.21 percent now and last year we thought it would be a good idea to move the goalposts and allow you to at least compete, to try to get to 5 percent. And now we are going to say, well, all bets are off, here is your colored water, drink it and be happy. I do not think that is the will of this U.S. Senate. At least, I certainly hope not.

I would go further to say that the position that is expressed in the Gramm amendment has already been rejected by seven out of nine of the Supreme Court Justices in the recent case of Adarand versus Peña. I would like to read what Justice O'Connor said in Adarand. I think it is something we need to hear. This was the author of the majority opinion that said race-based classification had to withstand strict scrutiny. She said:

The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and Government is not disqualified from acting in response to it.

Yesterday, President Clinton made a statement in which he said we are going to comply with the law, with Adarand; we are not going to allow for any quotas. We are going to make sure the programs, where they have not worked appropriately, are going to work right. We are going to do this right. He called upon the American people, really, to speak to the higher angels of our nature, to what kind of future do we want to see. Do we want a future in which diversity becomes part of the energy of this country, where if you, again, stir the competitive pot and allow minorities to participate in the economy and allow women to participate in the economy and allow Americans all to participate in this economy and to participate in making our Nation strong? The President thought that was a sensible approach.

I daresay, Senator MURRAY's amendment, which I strongly support, underscores that notion. Her amendment

says that "none of the funds in this act may be used for any program when such program results in the award to unqualified persons in reverse discrimination, or in quotas, or is inconsistent with the decision of the Supreme Court in Adarand."

So her amendment says we are going to do this right, do it consistent with the law. Senator GRAMM's amendment, on the other hand, says we are just going to knock the feet from underneath the table of opportunity, and we are going to tell women and minorities, "Do not bother to come around. We have nothing for you. And, indeed, if you are going to compete, you are going to have to do it as though you were not female, minority, or as though you were starting on a level playing field."

I think everybody knows that is colored water.

Now, I mentioned appealing to the higher angels of our nature. I know many other people are waiting to speak on this. I would like to yield the floor so that they can. But I would like to refer to Abraham Lincoln, who, of course, was a U.S. President from my State of Illinois. I like to refer to him because he was one of the greatest Presidents this country has ever had. He said in an 1862 address to Congress:

Fellow-citizens, we cannot escape history. We of this Congress and this administration will be remembered in spite of ourselves. No personal significance or insignificance can spare one or another of us. The fiery trial through which we pass will light us down, in honor or dishonor, to the last generation. . . . We—even we here—hold the power and bear the responsibility. In giving freedom to the slave, we assure freedom to the free—honorable alike in what we give and what we preserve. We shall nobly save or meanly lose the last, best hope of earth. Other means may succeed; this could not fail. The way is plain, peaceful, generous, just—a way which, if followed, the world will forever applaud, and God must forever bless.

Mr. President, Abraham Lincoln was talking about the great conflagration that this country went through. At the same time, I think that we are right now at another kind of crossroads in this country that will determine whether or not we will go forward, we will nobly save or meanly lose the last, best hope of Earth.

This Nation's future will depend on whether or not we can open our arms, and whether or not we can provide for equality of opportunity, a chance for every American. I appeal to my colleagues not to close that chance down, not to shut the door on the efforts that have begun by women and minorities to integrate themselves as full participants in the economic and cultural and social life of this great Nation.

Our future is at stake in this vote and the following votes. I encourage my colleagues to take the high road and to support the Murray amendment and to reject this attempt—reject this attempt—to divide us and to send us back to a day which, I think, is one that none of us will be proud to visit

again. Thank you very much. I yield the floor.

Mr. GRAMM. Mr. President, I always love it when Abraham Lincoln is quoted. I think everyone in this body agrees with the quote that we just heard. In fact, the Nation fought a bloody civil war over it and ended up the winner from having settled the issue, which had to be settled, and was settled correctly.

That is not what Abraham Lincoln said about fairness. In fact, there is another Lincoln quote that goes right to the heart of this issue. That Abraham Lincoln quote is where Abraham Lincoln sought to say, what is the objective of government in providing fairness? On this issue, which applies directly to this point, Abraham Lincoln said, "The best that a government can guarantee is a fair chance and an open way."

I do not believe, Mr. President, that any living Lincoln scholar would argue that if Abraham Lincoln stood here on the floor of the Senate today, he would support a provision that gave one American an advantage over another when the American who lost the advantage had merit on his side.

I do not believe that Abraham Lincoln would have argued that two wrongs make a right, which is an argument that we heard earlier today presented, as well as a bad argument can be presented. But it is a bad argument, nonetheless.

Let me begin by trying to answer each of the points that were made. First of all, the Adarand decision. Senator MURRAY's amendment conforms to Adarand because it has no choice but to conform to it because it was based on the Constitution of the United States.

Contrary to the distinguished Senator from Illinois, my amendment is written in total conformity with Adarand. In fact, it has written on page 3 language consistent with the Adarand decision. That is, if the court finds that a contractor was subject to discrimination, the court may provide a remedy with a set-aside to correct the impact of that particular discrimination.

My amendment has the core of the Adarand decision written right into it. In no way is it inconsistent with Adarand, nor could it be, since the Adarand decision is now binding.

Now, let me go through the points. One of the things I want to thank my colleagues for is that nobody argued that the Murray amendment was a real amendment. We heard arguments that my amendment would end set-asides, and that set-asides should not be ended, that people should be given preference, and that it is perfectly acceptable in America to give contracts to people who are not the low bidder and who might not have merit. I want to thank them for doing that, because that is something that Bill Clinton did not have the courage to do in his speech the other day.

Nobody here tried to argue that, to say that you could not give a contract

to someone who was unqualified, somehow represented a real alternative to the amendment. Everybody that has spoken thus far has made it very clear that this is an issue about set-asides, and that they are for them, and that they believe that preferences are right, and that they are somehow justified.

Now, here is how they are justified. Senator MURRAY says they are justified because under 8(A) contracting there is only \$8 billion, that they are justified because we are giving only \$8 billion on a noncompetitive basis, and we are spending so much money, and that is so little money, so the unfairness involved here is relatively small, and, therefore, we ought to continue to do it.

Now, it does not take into account all the other contracts that have some set-aside written in them. Just about every highway contract in America has a set-aside for subcontractors. Set-asides create unfairness. That is what the Adarand decision was about.

The second argument is an argument that 90 percent agree there has been terrible unfairness in our country. I think everyone realizes that. I think it is part of our history. I think the greatness of America is that we have worked to overcome it. I am proud of that. I take a back seat to no one in hating bigots and hating racism and hating prejudice. Hate is a strong word, and I use it advisedly.

Two wrongs do not make a right. We cannot correct inequity in America by making inequity the law of the land. We cannot correct things that happened 200 years ago by discriminating against people in America in 1995.

The only way to have a clean break with the unfairness of the past is to purge unfairness from the present and the future. I believe we need to be absolutely relentless in enforcing the civil rights laws. It is fundamentally wrong to give somebody a job when someone else is better qualified. It is fundamentally wrong to promote someone based on some privilege they are granted, rather than promoting the person who had the better record.

It is profoundly wrong, in fact it is un-American, to give somebody a contract when they were not the low bidder, when they were not the high quality bidder. I do not believe that two wrongs make a right. I think what we have to do is relentlessly pursue fairness. You cannot have fairness by legislating unfairness. That is what this debate is about.

The next argument is that women get only 1.21 percent of the contracts. I remind my colleagues, women own over half the wealth in America. It is almost certainly true that, given the fact that women own over half of General Motors and General Electric and General Dynamics, trying to take the set-asides in a particular program of the SBA and say that those are the only contracts that women are getting is inaccurate. Women are running large corporations, women are running busi-

nesses that are not applying for contracts under set-asides and which get contracts in America every day.

The next argument is: Allow people to have a shot. Continue set-asides so that people have an opportunity to compete.

People have an opportunity to compete in America because our system today, and we thank God that it is so, is based on merit and competition. Not that it is perfect. Not that we do not need to work relentlessly to make it closer to being perfect. But the point is, people are allowed to compete. And to say that people cannot compete unless they are given a special privilege, I think, perverts the whole idea of equality. The idea that by ending set-asides we are saying to women and to minorities, "Do not come around," assumes that only with set-asides can women and minorities compete.

Finally, the argument for equal opportunity is completely turned on its head here. What my amendment seeks to do is to bring fairness back to the American system of contracting. For 35 years in America, beginning with an Executive order under Lyndon Johnson, compounded by an Executive order under Richard Nixon, and now written into numerous laws and regulations, we have written in quotas and set-asides. We have written in a system that consistently, in terms of the programs that are targeted for this purpose, grants contracts not based on merit but grants contracts based on privilege. That is fundamentally un-American. It is fundamentally wrong and it needs to end.

The American people, by overwhelming margins, are opposed to set-asides. We are spending the taxpayers' money. How can we be good stewards of the taxpayers' money when we grant a contract to someone who was not the high-quality or low-cost bidder? I think we cannot.

It is fundamentally unfair to give a contract to someone who did not win it on merit. What my amendment seeks to do, and does it explicitly, is this. It preserves our ability to spend money to recruit, to educate, to help. Under my amendment we can go out and advertise contracting all over the country. We can target the advertising to specific groups. We can help specific groups in learning how to do Government contracting. We can help them get onto the playing field. But that is where help ends and competition begins. Because under my amendment, unlike the amendment of Senator MURRAY, once people are on the playing field, once the contracts are submitted, we are then forced to make the judgment on merit and merit alone.

I conclude by simply saying this. There is no other way to make decisions that are fair, other than on merit. As long as we make decisions on any basis other than merit, they are inherently unfair. As long as we make decisions on any other basis besides merit, then we are judging our fellow

Americans as part of groups rather than as individuals. When the whole world is torn apart with struggles where people feel themselves more part of a group than part of a nation, I think this is a destructive policy that divides Americans. And I think it needs to end.

Our goal as Americans has always been that people would be judged as individuals. As a great American once said, "that they would be judged by the content of their character and not the color of their skin."

Set-asides are wrong. They are unfair. They are un-American. And they should end.

I reserve the remainder of my time.

Mr. SPECTER. Will the Senator from Texas yield for a question?

Mr. GRAMM. The Senator has 10 minutes. I would be happy if he uses his time. I will preserve mine. I have people coming to speak.

Mr. SPECTER. If I may ask the Senator from Texas a question on my time?

The PRESIDING OFFICER. Who yields time?

Mrs. MURRAY. Mr. President, I yield 10 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. On my time, then, I ask the Senator from Texas this question.

He makes the comment that his amendment is consistent with Adarand, and said further that it would have to be.

I will call the attention of the Senator from Texas to the opinion of Justice O'Connor, saying,

The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality and Government is not disqualified from acting in response to it.

Then, Justice O'Connor goes on to say,

When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the "narrow tailoring" test set out in this Court's previous cases.

Well, the first question would be: Having stated that the Senator from Texas agrees with Adarand, then would the Senator from Texas not agree with what Justice O'Connor has said, that a race-based preference is appropriate when it is narrowly tailored to satisfy a compelling State interest?

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me pose a parliamentary inquiry. Is it in order for a Senator on his time to ask me a question?

The PRESIDING OFFICER. If unanimous consent is given.

Mr. GRAMM. Mr. President, let me try to answer this one. Then I will go with the regular order. I am not objecting.

Let me say this: What I have done in section B on page 3 is simply made it clear that if a set-aside is granted as a remedy to an act of discrimination that has occurred where the party that is being subject to the set-aside committed discrimination, then clearly it would be allowed under section B. I believe that is consistent with the Adarand ruling. And I believe it is consistent with what I am trying to achieve here.

My objective is not to ratify the Adarand ruling; my objective is to end set-asides—except in those cases where the court might order them as a specific remedy to discrimination which has been committed by the party that the set-aside is being imposed on. For example, if the courts found that a contractor had engaged in discrimination against a subcontractor, under my amendment they would have the potential remedy to order that the contractor grant a set-aside of the contract to the party that has been discriminated against. But under my amendment, they could not order that the contractor—or my amendment would not order that the contractor have a set-aside program for people who have never been discriminated against by him and may never have been discriminated against by anyone else.

Mr. SPECTER. Mr. President, that is very interesting but not a response to my question. And with 10 minutes I cannot engage in a dialog with the Senator from Texas.

I submit to the body that under the standards articulated by the Senator from Texas in the Adarand case, his amendment must fail because where there is a preference based on action by the Government, or where there is a preference based where a previous court order has not been complied with, that is satisfied under Adarand.

And Justice O'Connor goes on to point out that in the Paradise Case, *United States versus Paradise*, in 1987, every Justice of this Court—that would include Justice Scalia—agreed that the Alabama Department of Public Safety's "persuasive, systematic and obstinate discriminatory conduct" justified the narrowly tailored race-based remedy.

One of the difficulties, Mr. President, in considering a matter of this complexity within the confines of a 2-hour time limit is that it does not give nearly enough opportunity to go into depth on these very intricate issues. And I think it is worth noting that both the Speaker of the House of Representatives and the majority leader of the U.S. Senate decided not to take up this complex question in this session until, as the Speaker put it, there could be other determinations made to help women and minority groups in America.

The first notice I had of the amendment by the Senator from Texas was shortly before he presented it on the floor. It is a very, very complex mat-

ter, it is a very serious matter, and it is one really where the Senate cannot deal intelligently in the course of 2 hours of debate.

My own view, Mr. President, is that it would be vastly preferable to deal with discrimination on an individualized basis, and that we really ought to have an EEOC which did not have a backlog of 100,000 cases. I am very much opposed to discrimination in any form, and that includes reverse discrimination, as the Supreme Court of the United States struck down reverse discrimination against white males in the Memphis firefighters case, when the layoff orders discriminatorily applied to white males.

But there are situations where the unanimous Supreme Court has decided that where there has been a situation where the Court has ordered a remedy, and it has been disregarded, or when there is State action such as the activity of the Alabama State Police, that a remedy is required and a remedy is entirely in order.

The comments by Justice O'Connor, it should be noted, were concurred in by Chief Justice Rehnquist and by Justice Anthony Kennedy. And it is a very important fact, as noted by the Court, that the persistence of both the practice and the lingering effects of race discrimination against minority groups in this country constitute an unfortunate reality, and Government is not disqualified from acting in response to it.

I must say, Mr. President, that on short order, the amendment offered by the Senator from Washington cannot really be considered appropriately, and at sufficient length either. But it is my hope that this body does not act summarily and hastily in an effort to deal with the very important point involved here.

In the last few seconds that I have, let me ask the Senator from Texas one further question as to whether he would agree that a preference based on race would be justified in the case of *United States versus Paradise*, where, as noted, the Alabama Department of Public Safety had a pervasive, systematic, and obstinate discriminatory conduct by consistently refusing to hire any African American, which a unanimous Court, including Justice Scalia, said justified the narrow race-based remedy, whether the Senator from Texas would agree that that is proper, and that it is not within the confines of his amendment but in fact would be prohibited on the face of his amendment.

Mr. GRAMM. Mr. President, if I might respond, let me say that the case that is referred to by our distinguished colleague from Pennsylvania has to do with quotas. My amendment has to do with set-asides. So they are entirely different subjects.

But let me say that I refer him to section B on the page where I specifically in my amendment provide a remedy based on a finding of discrimina-

tion by a person to whom the order applies.

So that if a contractor, which is the relevant subject here, engages in discrimination, a remedy that the Court can use under this amendment is to impose a set-aside, and clearly in that case, different than a quota case which would have no application here, it would be permissible.

The PRESIDING OFFICER (Mr. FRIST). The time yielded to the Senator from Pennsylvania has expired.

Mr. SPECTER. May I have 1 additional minute?

Mrs. MURRAY. Yes. I yield 1 additional minute.

Mr. SPECTER. Since the Senator from Texas bases the distinction of set-aside as contrasted with quotas—this Senator is very much opposed to quotas—then would he agree that a preference based on race would be justified in the face of a discriminatory practice as indicated by the State of Alabama?

Mr. GRAMM. I believe that, if it is proven that an employer is engaged in discrimination, a justifiable remedy is to set a quantifiable goal whereby they demonstrate as a way of undoing that discrimination that it no longer exists. The point is in my amendment I specifically allow that with regard to set-asides.

Mr. SPECTER. That would be a preference.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I have a number of speakers who want to speak on my side. I would like to know how much time is left on both sides.

The PRESIDING OFFICER. The Senator from Washington has 18 minutes 45 seconds. The Senator from Texas has 32 minutes 39 seconds.

Mrs. MURRAY. I would be happy to let the Senator from Texas use his time since I have a number of speakers. We do not have much time at this point.

Mr. GRAMM. Mr. President, let me make a couple of points. And then, since the distinguished Senator from Washington has those here who want to speak, she can go ahead and allow them to do it.

The distinguished Speaker of the House has endorsed this amendment. This amendment is expected to be offered to the defense appropriations bill by Congressman GARY FRANKS, and the principal cosponsor is the Speaker of the House. What the Speaker of the House is going to do, in addition to supporting this amendment, is to support other independent programs that are aimed at doing two things: No. 1, creating more opportunity; No. 2, relentlessly pursuing the civil rights laws of the land. But it is clearly incorrect, and verifiably so, to say that the Speaker of the House does not support this approach. In fact, he is a cosponsor of the amendment that will be offered by Congressman GARY FRANKS. Congressman FRANKS and I have joined together on this effort.

One of the distinctions that continues to be made, which is a distinction that cannot sustain any rational analysis, is an effort to say that some people can be given preference without engaging in reverse discrimination against others.

This, Mr. President, is falling back into this rhetoric barrage from the President yesterday where the President gave a wonderful, passionate speech against discrimination in America. I could have given 90 percent of that speech and have felt as passionate as the President did. But when he got down to the heart of matter, this mumbo jumbo terminology comes into effect.

And what the President said—and what we have seen touched on here on two occasions—is the following: I am for giving some people preference. But I am not against creating—I am not for treating anybody else unfairly. I want to, in the process—it seems to me that our colleagues who oppose ending set-asides in America are saying—I want to give these groups preference because I believe that they deserve it either based on past actions in the country or based on the fact that in the big scheme of things this is not that much money, but it is not my intention in doing that to discriminate against anybody else.

That basically is what is being said.

That is a nonsensical statement, Mr. President, because if we have a contract bid and we have the five of us who are here and we all have a bid on the contract, and if Senator DOMENICI is given the contract because a preference is given to people from New Mexico, when in fact the Senator from Illinois has submitted the low bid, and let us say, to make the case as clear as possible, we are all qualified to do the job, by the very act of giving Senator DOMENICI the contract, anyone who had a lower bid than he did has been discriminated against.

The point is you cannot give preference to one group or to one individual without discriminating against another individual or group. This is the nonsensical position that the President has sought to argue.

There is only one way to decide who ought to get a contract in America, and that way is merit. There is only one way to fairly decide who gets a job, who gets a promotion, or who gets a contract, and that is merit. When you decide it on any other basis, you are inherently unfair and you are inherently discriminating against people who would have won the contest on merit. Once you start doing this, you are building unfairness into the system.

We need to end set-asides. We need to be relentless in our pursuit of the equality of opportunity. You cannot promote fairness by legislating unfairness. We cannot correct the ills of the country 10 years ago, 20 years ago, 200 years ago or even yesterday by writing the same unfairness into the law of the land. If someone is discriminated

against, the courts have the power, under my amendment, to use a specific set-aside to remedy it, but they cannot simply argue that they are part of a group that is given preference.

What my amendment does is end set-asides. What the amendment of the Senator from Washington does is cloud the issue by saying that contracts cannot be given to people who are unqualified.

The issue is not that the bidder who gets the contract is unqualified. The issue is when you have a set-aside, the bidder who gets the contract is not necessarily the best qualified. And that is a key distinction. That is why one amendment is trying to end set-asides and why the other amendment is a ruse to protect them, to foster and to continue the unfairness that is imposed on the system.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, civil rights remains the unfinished business of America. We have taken very bold steps in recent decades toward racial and gender equality, but discrimination in this Nation persists, sometimes in very obvious forms, and sometimes, in very subtle forms.

The recent report of the Labor Department's Glass Ceiling Commission highlights the many problems still encountered by victims of discrimination seeking to move up the ladder in firms across America. That study, which resulted from legislation sponsored by Senator DOLE, reported that 97 percent of the top executive positions in Fortune 1500 companies were held by white men, who are just 43 percent of the work force.

According to U.S. Department of Labor statistics, black and Hispanic men in 1993 were about half as likely as white men to be employed as managers or professionals and much more likely to be employed as operators, fabricators, and laborers. Black and Hispanic women were much more likely than white women to be employed in generally lower paid service occupations.

In the Nation's largest companies, only six-tenths of 1 percent of senior management positions are held by African-Americans, four-tenths of 1 percent by Hispanic-Americans, three-tenths of a percent by Asian-Americans. White males make up 43 percent of our work force, but hold 95 percent of these jobs. Only 9 percent of American Indians in the work force hold college degrees.

These are just a few statistics that indicate that a level playing field does not exist in the American work force. Much remains to be done. We will not eradicate race and gender bias in the work force by ignoring it—we must continue our efforts to increase the participation of individuals who traditionally have been excluded. Only then can we claim to be a nation of opportunity. Only then can our diversity truly become our strength.

We are now in the midst of a significant debate over how best to fight dis-

crimination. This debate is sometimes very difficult, and often very painful.

The issue of discrimination is too important to be grist for the mill of partisan politics. We must examine the methods of fighting discrimination, but we should not question the goal of realizing truly equal opportunity for all Americans.

Affirmative action is one of our most effective means and best hopes for realizing that goal, and for rooting out bias based on race and gender.

The President said it best: "When done right, affirmative action works. It contributes to greater diversity in environments where none existed. It provides opportunity for individuals who have been denied opportunity through hatred, exclusivity, and ignorance."

Civil rights is and has always been a bipartisan issue in Congress. The Party of Lincoln has produced many stalwart supporters of strong civil rights legislation: former Senators Everett Dirksen, Jacob Javits, Lowell Weicker, and Jack Danforth have led the way in the past, and many of our Republican colleagues carry on that distinguished tradition today.

We must continue that bipartisan effort in the ongoing battle against discrimination in all its ugly forms.

If there have been abuses of affirmative action, then we need to review and address those abuses. Every Federal affirmative action program should be reviewed to determine whether it has been effective or detrimental.

But we must be careful to protect those programs that have worked and that continue to work well.

President Clinton is right to broaden set-asides, to oppose quotas, to reject preferences for unqualified individuals and reverse discrimination, and to end programs that have been unsuccessful.

And he is right to support the continuation of a program that continues to make a difference in the lives of those who would otherwise remain on the fringes of society, despite their qualifications, their education, their hard work, and their integrity. Those principles are the essence of the Murray amendment, and I urge the Senate to approve it.

Long ago, our forefathers founded this Nation with the fundamental promise of equal justice for all. We as a nation have not yet achieved that promise, but we have taken bold steps toward its fulfillment. We must not retreat from that promise.

Ms. MIKULSKI. Mr. President, I rise to oppose the amendment offered by Senator GRAMM to kill affirmative action initiatives in Federal contracts, and I support the second degree amendment offered by my colleague, Senator MURRAY.

I oppose the Gramm amendment because we cannot walk away from the people in our society who have either been left out or pushed aside. We must have tools to deal with persistent bias.

Mr. President, the second degree amendment is very clear. No Federal

funds can go to any affirmative action program that results in quotas, in reverse discrimination or in hiring of unqualified persons.

It makes very clear that affirmative action programs must be completely consistent with the Supreme Court's recent Adarand decision. That decision says that affirmative action programs could be justified.

The second degree amendment recognizes that the war against discrimination is not won. It still exists today.

And affirmative action is just one tool needed to help win that fight. But, other tools are needed too—education, employment, and Federal contracts.

Mr. President, I support enforcing the law. That means no quotas because they are illegal. That means no discrimination because it is illegal—and totally unacceptable.

Mr. President, affirmative action is about persistent bias in our system, bias in our government agencies, and unfortunately bias in the hearts of many people.

I'm talking about persistent bias against minorities, against women, and against economic empowerment.

What do I mean when I say persistent bias? I mean when people are told throughout their lives "no" based on their race, gender, or ethnicity.

When they are told no you can't go to that school, no you can't belong to that club, no you can't go to that college, no you can't have that job, no you can't have that promotion, no you can't have that salary.

Persistent bias exists. The Supreme Court knows it. Statistics show it. And every day, someone in the United States feels it.

Mr. President, statistics prove that persistent bias exists. The Glass Ceiling report shows the disparity against minorities and women.

Black men with professional degrees earn 79 percent of what white men make with the same degree and in the same job.

The report states that white men make up 43 percent of the work force, but hold 95 percent of the senior management positions.

And women and minorities who do make it to the top, make less than their male counterparts. Why is this the case? Persistent bias.

It's not just about race, it's about gender too.

Exactly how far have women come? Only 5 percent of senior managers in Fortune 2000 industrial and service companies are women.

Women are over 99.3 percent of dental hygienists, but are only 10.5 percent of dentists. Women are 48 percent of all journalists, but hold only 6 percent of the top jobs in journalism. And it's 1995.

Mr. President, with facts and statistics like these, the need for affirmative action programs is crystal clear.

I'm against discrimination. Everybody else says they are too. But the problem is that many people don't practice what they preach.

Throughout America, growing and pervasive economic insecurity has created immense anger and anxiety. We've heard it all. Some say that minorities and women are the problem. And so, many attack affirmative action.

Everyone is afraid of losing their job, being downsized or being left behind.

Blacks and whites, men and women are being pitted against each other—most often for political gain. But, let's be clear. Scapegoating takes us nowhere.

Look at how we all benefit from having an inclusive society where everyone has the opportunity to achieve and compete. Affirmative action has just begun the process of opening up the competition to everyone.

Between 1982 and 1987, the number of women-owned businesses rose more than 58 percent.

And now we see more women and minorities in law enforcement, firefighting, skilled construction work, and as doctors, and lawyers. But, it's not enough.

Discrimination is still alive and well. My constituents write me repeatedly about discrimination in our Federal Government agencies and right here in our own U.S. Congress.

Mr. President, We must provide an opportunity ladder. The Gramm amendment cuts off that opportunity.

You don't have to sacrifice quality when you pursue equality. Affirmative action is not a guarantee for those who could not otherwise succeed. It's simply an opportunity to compete. I support giving everyone that opportunity.

I'm going to fight for equality, fairness, and a merit-based society, with real opportunity structure so that people can make it, and the end of persistent bias. We have to show people that we are on their side.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I ask unanimous consent to add Senator DODD and Senator FEINSTEIN as cosponsors of the amendment.

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

Mrs. MURRAY. I yield 5 minutes to the Senator from Illinois [Mr. SIMON].

Mr. SIMON. Mr. President and my colleagues, I thank my colleague from Washington for yielding. I rise in strong support of her amendment and in opposition to the amendment of the senior Senator from Texas.

Let me give you a very practical example. When I was in the State legislature, a young African-American contractor just starting off wanted to do a little bit of curbing work at Scott Air Force Base. He could not get a bond. I went to bat for him. I could not believe the barriers that were there for this person to get a surety bond so he could get a construction job.

We finally, after screaming and hollering, broke through, and he built up a business and eventually moved to Atlanta and became one of the 10 wealthiest

African-Americans in our country. The barriers are there for a great many people, and surety bonds are a good illustration.

I introduced a bill last session—I believe I have introduced it again this session—to say you cannot discriminate in the issuance of surety bonds. Why, you would think a little bill like that would have no trouble at all. What a storm of opposition it got.

We have to make opportunity for people. Has anyone here ever heard of a country club that is all white and all male? Well, they are all over the place. We know it. And that is where a lot of business gets done.

Can affirmative action be abused? Of course, it can be abused, like education and religion and a lot of other things, but it is sound.

We are talking about opportunity. I heard my friend, Rev. Joseph Lowery, from Atlanta, on NPR yesterday. He heads the Southern Christian Leadership Conference. On affirmative action, he said those who resist, they push somebody outside; you have to stay out in the rain all night. Then in the daytime you invite them in, and they are standing on the oriental rug and we say, "Sorry, we cannot give you any business because you are wet."

We have to recognize that there have been some abuses in our society.

Let me just give you one example. Today, the average woman who works makes 72 cents as much as the average male. That is not good. But it used to be 59 cents. That is progress. I have seen a lot of progress in our society, and if this is adopted, this is just one step down the road to knocking out other affirmative action.

We all practice some affirmative action. It is very interesting that in Senator GRAMM's amendment, he accepts that we are going to have affirmative action for historically black colleges and universities. I applaud him for taking that step, but what is true for historically black colleges and universities ought to be true for women and minorities who are in business also.

What we have to do in our society is make opportunity for people. The amendment offered by our colleague from Washington moves on some of the abuses without saying let us stop doing this. And make no mistake, if this is adopted, there will be other amendments in the future.

When my friend from Texas says, well, people can go to court and get this resolved, let us say you are a small contractor and you cannot get a surety bond. No. 1, you probably cannot afford to go to court. No. 2, going to court sounds like an easy remedy—and I see I am getting the look from the Presiding Officer here now—but the reality is that it is just not a realistic option. The Gramm amendment should be defeated.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mrs. MURRAY. Mr. President, I yield 5 minutes to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, Senator GRAMM knows that I hold him in high respect, but frankly I do not think this is the way we ought to handle a matter of this importance. Everybody that is speaking tonight in the Chamber obviously is well motivated, but from my standpoint there is an awful lot of discussion in the Chamber that ignores reality.

The reality is that the U.S. Supreme Court, while it said we have to do these things differently, acknowledged that there is discrimination in the United States. I believe there is. I believe we are doing better. And clearly we are better than we were 100 years ago and better than 50 years ago.

Mr. President and fellow Senators, there is no question that this is an important issue—discrimination. And to come to the floor on an appropriations bill, no public hearings that I know of, no committee hearings that I am aware of, and to suggest that on each appropriations bill we are going to tailor some way to get rid of affirmative action in the United States, in my opinion, is as apt to miss the point as it is to solve anything.

Frankly, in the United States of America, we cannot rely solely upon the discrimination laws of this land to bring equity and fairness to Americans. In fact, many of us would stand up and say society is already overburdened by antidiscriminatory legislation and that there ought to be a better way to bring some equity into this system.

Now, I am a staunch proponent of capitalism, but I tell you, to come to the floor and say that the capitalist system will break down if everything is not based on competition and merit, is to ignore reality.

There is plenty of rule and regulation of the capitalist system that sets apart many things that are not based upon either merit or competition. And the truth of the matter is we ought to find a way to comply with the Supreme Court's decision and do something about discrimination from the standpoint of opportunity. Not from the standpoint of going to court to enforce one's rights.

And I submit we can find some ways. It certainly is not what we are doing today. And it is not what either of these amendments will accomplish in my opinion.

The Senator from Washington yielded time to me, and I will say to my good friend, I was not for her amendment either. It is too difficult to understand. We ought not be debating it here at 9:20 with 10 or 15 minutes per speaker. This is an important issue, really. And perceptionwise, it is a gigantic issue. And I do not know why we have to do it this way. I do not know why we have to say to the millions of Americans who are worried about discrimination, "It is just plain and simple. There is nothing to it. Just come to the floor.

And I have 16, 20 words. We will fix it all up."

My friend from Texas is a great wordsmith and I have great respect for him. But I submit to him this is not the way to do business. I will not convince him because he is convinced that this is a most important issue. And for that, I admire him. He has always spoken his piece. But this is not the way to address this issue in the United States of America on an hour's notice on an appropriations bill about the legislature of the United States and how we pay for it. And we ought not do it. Both amendments ought to be defeated. And we ought to pass a legislative appropriations bill tonight.

I yield the floor.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Let me thank my colleague from New Mexico. And I agree with him we should not be legislating on this appropriations bill. As the ranking member on this committee, I did not chose this evening and this time to have this debate. It was certainly brought before us by the Senator from Texas. And under that I offered my amendment to second degree it. I am not afraid to debate this. But I agree with you. It should not be done on a legislative appropriations bill.

I thank the Senator.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. I could not disagree with my colleague more strongly. We are getting ready to spend billions of dollars in the first appropriations bill of this year. The American people have debated this issue. The President of the United States spoke at great length on it yesterday. It has been an element in the platform of my party for over a quarter of a century.

This is an issue which is well understood and it is not complicated. The issue here is, should we have contracting through the Federal Government, in this case through the legislative branch of our Government, that part that we control directly—should we be letting contracts as a Congress not on merit but rather on race, color, national origin, or gender?

I say no. The American people say, overwhelmingly, no. And if we let these appropriations bills pass without ending set-asides, then we are continuing a practice that the American people clearly rejected in the 1994 election, and that, by huge a majority, the American people want fixed.

This is not an amendment that was born out of thin air. This is the amendment that has been worked on by many, many people. It is a joint effort that I have undertaken with Congressman GARY FRANKS in the House. His cosponsor is NEWT GINGRICH and the amendment is supported by the entire House leadership. And what the amendment says is very, very simple. It says that none of the money we are going to

be spending under this bill can be used for the purpose of granting contracts that are awarded in total or in part based on race, color, national origin or gender.

My amendment clearly allows for an outreach program. The Government can spend any amount of money, helping people learn how to bid, helping people to get to the site of the bidding, helping people put together their bid. But, under this amendment, once the bids are offered, the contract has to go to the most qualified contractor. The contract cannot be given to someone on the basis of preference rather than on the basis of merit. The amendment is drafted so as to allow the courts to grant a specific remedy when a person is discriminated against. Now let me touch on several other issues that have been raised by other speakers before I yield the floor.

No. 1, there have been abuses in the past. No one disagrees with that. No one could live in America and not understand that there have been abuses in the past. The point is, by legislating abuses and unfairness in the present and in the future, do we correct the unfairness of the past? Do two wrongs make a right? If two wrongs make a right, then the adage we learned as children must be incorrect.

Second, a point was made it is difficult for some contractors to go to court. That is equally true for contractors who are discriminated against by set-asides.

The Senator claims to be offering an amendment as an alternative to mine, which says that programs cannot be awarded to unqualified persons. The issue here is not whether the person who gets the contract is qualified, the issue is, are they the best qualified?

The fact that the Court said under Adarand that certain types of quotas could be allowed under the Constitution does not mean that the Court said they have to be used. We are able to set by law whether we want quotas or not. And I do not want them. We are able to set by law whether we want set-asides or not. And I do not want them. I think merit is the only fair way to decide who gets a contract in America. And the fact that the Adarand case said that it is constitutional for Congress to have very narrowly focused set-asides does not mean that the Court said Congress has to have them. It simply said that it would allow them to stand under the Constitution. But no one questions that we have the right to limit them.

Quite frankly, my amendment does not totally ban set-asides. In the case where a subcontractor or a contractor can prove that they were discriminated against in the past, on the basis of that proof a set-aside could be used to remedy a specific wrong which is proven.

The idea that some have argued here is that we have a pure system of capitalism that breaks down when there are impurities in it—I make no such argument tonight. America can survive

set-asides. America has survived quotas and set-asides for 25 years. I never cease to be amazed that our system overcomes not only the illness but the absurd prescription of the doctor. It survives not only the natural problems we have, but the problems we impose on ourselves. But the point is, do we want to continue to allocate contracts in America, spending the taxpayers' money, on a discriminatory basis or do we want to demand merit? I want to demand merit.

Final point. This is not a difficult issue to understand. And I want to emphasize this one more time because I am certain that there will be those when the vote is cast who will look at the Murray amendment and say, well, I voted to fix this problem. But the issue here is very simple. Under my amendment we ban set-asides based on race, color, national origin, or gender, period. Under the substitute amendment which is going to be voted in sequence, what it bans is granting an award to an unqualified person. The issue in set-asides is not that the person who gets the contract is unqualified, the issue is that they are not necessarily the best qualified. Is it fair to give a contract to a qualified person when another person is better qualified? If you have two qualified builders, and one submits a bid for \$100,000 and one submits a bid for \$200,000, is it OK to give the contract to the one who bids \$200,000 simply because they are qualified?

The point is, and I am very proud of the fact that nobody here has claimed that in opposing my amendment, they are doing anything other than supporting set-asides, period. That is what the issue is.

There is going to be one real vote on one real amendment. If you are against set-asides in contracts and you want a merit system, then you want to vote for my amendment. If you are not against set-asides, you want to vote "no." If you simply believe that we ought to continue discrimination written into the law of the land, as long as the person who is getting the privilege is qualified, even if they are less qualified, even if they have a higher bid on their contract, then you could find the Murray amendment acceptable. But this is a very clear issue. I think everybody understands what it is about.

Again, when we are spending money is the time that we ought to talk about the conditions under which it is going to be spent. If my amendment is adopted, every contract that we let through the legislative branch of Government will be done on merit, and the contractor with the highest quality work and the lowest price will get the contract. That is the only fair way to do it. The American people support it. It is the American way, and I think it is time we get back to it.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Will the Senator from Texas yield for a question on his time?

Mr. GRAMM. How much time does the Senator have?

The PRESIDING OFFICER. The Senator from Texas has 16 minutes, 52 seconds, and the Senator from Washington, 8 minutes, 45 seconds.

Mr. GRAMM. Mr. President, if the Senator uses her time up, I will, at that point, yield for a question.

The PRESIDING OFFICER. Who yields time?

Mrs. MURRAY. Mr. President, I yield 5 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I may not take all 5 minutes because I know others want to be heard as well.

If he had not said it, I think I would have said it. I want to commend our colleague from New Mexico this evening for his comments. I will support the Murray amendment, which is the one distinction, and I do that because I think having an alternative is necessary.

Frankly, as the Senator from Washington and the Senator from New Mexico have said, we ought not to be considering any of these amendments. I say, with all due respect to my colleague from Texas, that it was once said by some sage that for every complex problem, there is oftentimes offered a simple solution, and it is usually wrong.

With all due respect, I suggest to my friend from Texas that people have debated and discussed and thought about this issue for a great deal of time on how we try and deal with what the Senator from New Mexico has very appropriately and properly said, regrettably, deeply so, there is still racism in our country, there is still discrimination based on gender. Anyone who thinks otherwise is living on a different planet than I am. That is a fact.

No one has yet come up with a perfect solution as to how we solve these problems. The Senator from Washington has offered something on which I think all of us agree. Maybe we ought to this evening support that amendment, because I hear the debate all the time about quotas and reverse discrimination. Her amendment at least puts us on record on those issues. I think that is worthy of support.

We had the President yesterday give a major speech on this issue. He has been under significant pressure for some months to come up with some ideas and solutions on how we might address the issue of affirmative action. Whether or not you agree with everything he said in his speech, he has laid out a roadmap, a plan on how we might deal with these issues.

I think it is only fitting and proper that we in this body at least exercise a modicum of the same degree of deliberation as we look at these issues. To suggest in the space of an hour or hour

and a half, with an amendment thrown up this evening, that we are going to solve this problem once and for all, I think is terribly, terribly shortsighted.

So I urge my colleagues this evening, whether you agree philosophically with the Senator from Texas or not, this amendment ought to be rejected, and the people, through this body and the legislative process, can decide what best action we ought to take.

Mr. President, let me say for my part, I happen to think that affirmative action in this country has made us a stronger, a better, a richer nation, because we have reached out to people. Merely look in your own neighborhoods and communities and recognize today what a better country this is than it was even 2 or 3 decades ago when major portions of our population were denied public access to basic facilities.

We are not talking 100 years ago. We have come a long way as a people. The great strength of our country is our diversity, and we need to grope and figure out how we can constantly be more inclusive. That is our strength. It is not our weakness.

Too often when people address this issue, they appeal to the emotions of people. There are people who are troubled today, worried, frustrated about jobs and their families and their futures, and it is so easy to come along and to point to some problem as the reason for their difficulties and then to appeal to those emotions. This is not a time for that. We need to figure out together, in this body and elsewhere, in the private sector and public sector, how we can come together and help address this difficulty.

This is not the way to go about this. This is not the answer, no matter how appealing the language may be. This is not going to help us solve our problems. It divides us, and that is not what we ought to be about in the U.S. Senate. We ought to be seeking the common ground that the President talked about the other night and that the Senator from New Mexico addressed in his brief remarks.

The Senator from New Mexico is right; this is not the time or the place. There is a place, there is a time, but this is not the answer to it. So I urge my colleagues to reject the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me just respond very briefly. I do not think there is anyone here who argues that there is no racism in America or that we do not have any discrimination today. I think we all know that, thank God, there is not as much as there used to be, but if there is any, and there clearly is, it is too much.

The point is, however, that we cannot correct unfairness in America by making unfairness the law of the land. We cannot correct injustices of the present

or the past by legislating injustice in the present to carry us into the future.

The point is that any time people are judged on the basis of anything but merit, it is unfair. That is our definition of discrimination. That is our definition of prejudice.

What we are doing with set-asides is legislating discrimination into the law of the land, the idea being that if wrongs have existed, if wrongs exist today, that somehow we can correct them by making another wrong the law of the land. I reject that. I think that is faulty logic, and making unfairness the law of the land, it seems to me, simply holds the system up as being corrupt.

Second, I want to make it clear that I have not used the term "affirmative action" once in this debate, and I never use the term "affirmative action." When Lyndon Johnson chose the term "affirmative action" in 1965, it is clear to me that he chose it for one and only one reason: Nobody knew what it meant. And it is equally clear that nobody knows what it means today.

I have sought to deal with one issue, set-asides, the granting of contracts on the basis of something other than merit. I make it very clear in the amendment, something that I have worked on with Members of the House and the Senate and outside groups, that there is nothing in this amendment that prohibits outreach, that prohibits recruitment.

The legislative branch of Government could spend an unlimited amount of money trying to get people to bid on contracts, trying to help them bid, trying to outreach to them, trying to school them, trying to be of assistance to them. All of that is perfectly allowable under this amendment. But where this amendment draws the line is that once the contracts are submitted, you cannot decide who gets the contract on the basis of race, color, national origin, or gender. You have to decide it on merit. That is the American way of doing things. Any other way is inherently unfair, is inherently discriminatory, and it is discrimination written into the law of the land.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mrs. MURRAY. Will the Senator yield for a question at this time?

Mr. GRAMM. Yes, I will yield.

Mrs. MURRAY. I thank the Senator. I wanted to ask the Senator specifically about his amendment. Obviously, we are dealing with the legislative branch appropriations here. What programs funded under legislative appropriations are there that concern the Senator and that brought this amendment to us at this time?

Mr. GRAMM. Mr. President, reclaiming my time to respond, we have, throughout our appropriations process, through Executive order and through law, set up a system where routinely contracts are granted on a nonmerit basis.

I did not choose this bill. This bill happens to be the first appropriations bill that came up. But I think the good thing about choosing it is we begin by practicing what we preach, because all the other appropriations bills have to do with the executive branch of Government.

So what I am saying here is that any contract let, whether we are doing construction work on the Capitol, or whether we are doing work at the Library of Congress, or whether we are doing work at the Congressional Research Service, or whether we are building the new dorm for pages—a dorm that I did not even know existed, which is why I always vote against this bill, because there is always something in these legislative appropriations—or has been until this year, and I have more confidence now than in the past—that I do not know about. So what this would say is, to give you an example, in the subcontracting or the contracting on the page dorm, that contracts have to be let on a merit basis. They cannot be let on the basis of a set-aside, clear and simple.

Mrs. MURRAY. Will the Senator further yield for a question?

Mr. GRAMM. I will yield for one last question.

Mrs. MURRAY. I appreciate that because I wanted to ask the Senator this. Under the legislative branch appropriations in fiscal year 1995, the Library of Congress awarded five contracts for a total of \$10 million that would be affected by your amendment. Out of, I believe it is, well over \$266 million total contracts, only five of those would be affected by your amendment. I am curious as to why you are approaching that for such a minute number on this appropriations bill.

Mr. GRAMM. The Senator has said that under SBA there are only \$8 or \$9 billion of set-asides. But my response is that this is a matter of principle, it is not a matter of money. It is a matter of principle. The principle is, if it were one nickel, if it were one penny, do we want to be on record in the greatest deliberative body in the history of the world, in the greatest democracy that the world has ever known, saying that we want money we expend—in this case on legislative branch activities—spent in a discriminatory way?

So you can argue that there were only \$10 million of contracts here and \$8 billion there, and there may have been some in subcontracts. But the point is not the money. The point is the principle. This is not a complicated issue. This is something we should be doing because the principle is as clear as the morning Sun.

Should contracts be let on merit? Or should they be let on a system of preference? In America, do we have competition among individuals? Or do we have competition among groups? That is the issue here. It is a very fundamental issue. It is a very simple issue.

I want to be relentless in our pursuit of equality of opportunity, and we can-

not pursue equality of opportunity by legislating bias, by legislating discrimination, by legislating unfairness. The American way is merit. No other way is acceptable. It is not an issue about money. It is an issue about principle because it goes to the very heart of who we are as a people and what we stand for.

I yield the floor.

Mrs. MURRAY. I have one quick additional question. Would the Senator yield?

Mr. GRAMM. How much time remains?

The PRESIDING OFFICER. The Senator from Texas has 8 minutes 36 seconds. The Senator from Washington has 4 minutes.

Mr. GRAMM. I will yield for one last question.

Mrs. MURRAY. I just wanted to know if veterans preferences were acceptable to the Senator.

Mr. GRAMM. A veterans preference is a preference we have set out in law as an inducement for people to serve in the military. It is part of the reward that they get for service. Any American can join the military if they can meet the mental and physical requirements, and in doing so, they know as part of their package that they not only get the pay, they not only get the retirement, but they get a veterans preference in terms of public employment.

It is perfectly reasonable that our Nation has set out a goal of encouraging people to join the military, and many people have taken the opportunity to serve. In fact, the veterans preference now brings diversity to the Federal Government. It is a preference that promotes the very objectives that our colleagues claim they want. But it is an objective that is promoted through service. It is an earned benefit. That is the distinction.

The PRESIDING OFFICER. Who yields time?

Mrs. MURRAY. I yield 2 minutes to the Senator from Minnesota.

Mr. WELLSTONE. Thank you, Mr. President. I guess that having 2 minutes really proves the point that Senator DOMENICI from New Mexico made earlier with a considerable amount of eloquence. This is an important, really fundamental issue that goes to the core of who we are as a people and a society. It really should not be debated tonight on an appropriations bill—the legislative appropriations bill.

I guess about all I can say in 2 minutes is that I wish it was the case when I visit hospitals—now being a grandfather with two small grandchildren—that I could look at a child and feel reassured that that child, regardless of gender, or regardless of race, or regardless of disability, would have the same opportunity. That is called equality of opportunity. I am the son of a Jewish immigrant from Russia, and I think that is one of the most important principles to me in our country, which is why I love our country so much. But, Mr. President, that is not the case.

I think that we ought to think long and hard before we pass an amendment which, I believe, is very extreme, and I believe that its effect—I do not know about purpose—turns the clock back a good many decades. I think it would be a profound mistake for us to support the Gramm amendment. I think that the Murray/Cohen/Daschle/Moseley-Braun amendment, if we are going to have this debate tonight, should and must be the prudent middle ground for us.

Mr. GRAMM. Mr. President, for 30 years we have had unfairness built into the law of the land. I am trying to turn the clock forward to the future, where not only do we have a goal of equal opportunity and merit as a nation, but that our laws reflect it.

In terms of what we all wish when we see our children, I think we all hope for them a society where ultimately merit triumphs. We have heard a lot tonight about problems in America's past, and there are a lot of them. But I think, also, we have to give ourselves credit. America is the greatest, freest country in the history of the world. Since our colleague brought up looking at his grandchildren and thinking about their future, let me conclude on that remark by talking about America in action.

My wife's grandfather came to this country as an indentured laborer to work in the sugarcane fields in Hawaii. I do not know whether they let him vote during that period or not. But they certainly let him work, and he worked off that contract.

His son, my wife's father, became the first Asian American ever to be an officer of a sugar company in the history of Hawaii. Under President Reagan and President Bush, his granddaughter, my wife, became chairman of the Commodity Futures Trading Commission, where she oversaw the trading of all commodities and commodity futures, including the same sugarcane her grandfather came to this country to harvest so long ago.

That is not the story of an extraordinary family. That is the story of a very ordinary family in a very extraordinary country. I want every child born in this country to have the same opportunities that my wife's grandfather had when he came to America. But we are not going to grant those opportunities by writing unfairness into the law of the land. We are not going to fix problems and unfairness in the past by writing unfairness into the law.

There is only one fair way to decide who gets a job, who gets a promotion, and who gets a contract. That fair way is merit, and merit alone.

What my amendment tries to do is go back to merit. This is not a sweeping amendment. This amendment applies to this bill, this year. What this amendment says, very simply, is this, that in letting contracts—it does not apply to contracts that already are in existence, but on the contracts that we will enter into through the funds that we appropriate this year, new con-

tracts—that the letting of those contracts will be on a fair, competitive basis, where merit will be the determining factor.

This is not a revolutionary idea. Although, I guess in a sense it is a revolutionary idea. It is the most revolutionary idea in history. It is the American idea. It is the American ideal. Merit should be the basis of selection and award. That is what my amendment says.

The amendment which is offered, the alternative, says that you should not give contracts to people who are not qualified, but that begs the question of whether someone else was better qualified. Merit is what I seek in this amendment. If you believe in it, I think you should support the amendment. If you support set-asides, I believe you should vote against my amendment and you should vote for the amendment of the Senator from Washington [Mrs. MURRAY].

I reserve the balance of my time.

Mrs. MURRAY. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Washington has 2 minutes and the Senator from Texas, 3 minutes.

Mrs. MURRAY. I yield 1 minute to the Senator from Illinois.

Ms. MOSELEY-BRAUN. Thank you very much, Mr. President, and I thank the Senator from Washington. I will be very brief.

The Senator from Texas keeps referring to two wrongs not making a right. We all know that the first wrong which he refers to, the history as well as the present experience that we had in this Nation, was discrimination.

Let me submit to everyone who is listening, the second wrong is not affirmative action. It is not our effort to fix that tragic legacy. The second wrong lies in this amendment in shutting the door, closing down the small efforts, the small steps we have taken, to remedy, to provide for opportunity, to give people a shot, to give people a chance.

I say to my colleagues, as someone who is both minority and female, I am not comforted at the notion that by getting rid of affirmative action anybody is doing me a favor. So I encourage my colleagues to defeat the amendment from the Senator from Texas.

#### UNANIMOUS-CONSENT AGREEMENT

Mr. MACK. Mr. President, I have a consent agreement that has been approved on both sides of the aisle on a matter other than this bill.

Mr. DOLE. Mr. President, as some of my colleagues may know, I am in the process of preparing legislation that is designed to get the Federal Government out of the business of granting group-preferences. I will be introducing this legislation next week.

This legislation will stand for a simple proposition—that the Federal Government should neither discriminate against, nor grant preferences to, individuals on the basis of race, color, gender, or ethnic background.

Whether it is employment, or contracting, or any other federally conducted program, our Government in Washington should work to bring its citizens together, not to divide us. Our focus should be protecting the rights of individuals, not the rights of certain groups.

The amendment offered by my distinguished colleague from Texas is consistent with the approach embodied in the bill I will be introducing next week. And of course, I look forward to working with him as well with all of my colleagues on both sides of the aisle.

Rather than the piecemeal approach of amending each of the appropriations bills, I would prefer to address this very, very important issue more thoroughly and as a separate matter—and that's the point of my bill—to serve as a starting point for this discussion.

This legislation may not be perfect, but it is my hope that it can act as the basis for a serious, rational, and, yes, optimistic dialog on one of the most contentious issues of our time.

Of course, our country's history has many sad chapters—slavery, Jim Crow, separate but equal. And, of course, discrimination persists today. We do not live in a color-blind society. I understand this.

But, Mr. President, fighting discrimination should not be an excuse for abandoning the color-blind ideal. The goal of expanding opportunity should not be used to divide Americans by race, by gender, or by ethnic background. Discrimination is wrong, and preferential treatment is wrong, as well.

So, Mr. President, our goal should be to provide equal opportunity—but not through quotas, set-asides, and other group preferences that are inimical to the principles upon which our country was founded.

A relevant civil rights agenda means conscientiously enforcing the anti-discrimination laws. It means outreach and recruitment. And it means knocking down regulatory barriers to economic opportunity, including repeal of the discriminatory Davis-Bacon Act; enacting school choice programs for low income innercity families; and fighting the scourge of violent crime that is unquestionably one of the biggest causes of poverty today.

This is the agenda upon which dreams can be built—and it is an agenda that this Congress should be relentlessly pursuing.

#### UNANIMOUS-CONSENT REQUEST— H.R. 1944

Mr. MACK. Mr. President, I have a consent agreement that has been approved on both sides of the aisle on a matter other than this bill.

I ask unanimous consent that following the disposition of the legislative appropriations bill, the Senate turn to