

he made South Carolina a better place. Our prayers are with his family during this difficult time. ●

STAMPING OUT THE LITTLE GUYS

Mr. SIMON. Mr. President, Victor Navasky, publisher of the *Nation* and many years ago an aide to Senator Ed Muskie, recently had an item in the *Washington Post* that we ought to be paying attention to; and I hope the Postal Rate Commission will look at carefully.

What the Postal Service should be doing is encouraging the free flow of ideas.

We talk about the melting pot strength of America sometimes as if it were a breeding process. The Italians marry the Germans and the Germans marry the Chinese and so forth. In fact the melting pot strength of America is the cross-fertilization of ideas. And anything that weakens that flow of ideas weakens America.

Journals like the *Nation* and their counterparts on the conservative side render a huge public service.

It is of interest to me to note that as you look at the rise in the rate of delivering packages containing everything from diapers to cashews, the increase in the rate of growth of sending these through the Postal Service has not been as great as the increase in sending ideas through the mail.

Frankly, Federal Express and United Postal Service and all their counterparts can deliver diapers and cashews just as well as the postal service. But the Postal Service provides the ideas that are important to the Nation.

One other item that I frankly was not aware of until I read Victor Navasky's column op-ed piece was that "periodicals heavy in editorial content * * * will for the first time be charged postage by the mile."

If that is accurate, and I am asking my staff to check that out right now, that is a great disservice. People in Alaska or Hawaii or the remotest U.S. territory should have the opportunity for ideas as much as people that live in Chicago or New York City or Washington, DC.

I ask that the Victor Navasky op-ed piece be printed in the *RECORD* and I urge my colleagues to read it.

The material follows:

STAMPING OUT THE LITTLE GUYS—DON'T LET POSTAL RATE REFORM CRUSH US SMALL OPINION MAGAZINES

(By Victor Navasky)

The Founding Fathers saw the circulation of opinion and intelligence as a condition of self-governance, and a postal service as the circulatory system of democracy. That is why, among other reasons, Benjamin Franklin agreed to serve as postmaster general. That is why Thomas Jefferson sought to persuade President Washington to appoint Thomas Paine as postmaster general. That is why Washington himself believed that all newspapers—which in those days were frequently partisan, radical and rabble-rousing—should be delivered free of charge.

And that is why (not to put myself in such illustrious company) I agreed to add my two

pence to the 17,000 pages of testimony accumulated by the Postal Rate Commission, which is considering a proposal that would undermine the postal principle deemed by the Founding Fathers to be essential to the enlightenment of the Republic. Namely, preferential treatment for carriers of information and opinion.

While we have heard too much about how Time Warner's rap records have contributed to the degradation of public discourse, we have heard too little about how lawyer-lobbyists for Time Warner and Dow Jones are pushing a proposed postal "reform." Its main consequence would be to reward advertising-crammed mass magazines and newspapers and penalize small periodicals. It would especially hurt those with the highest percentage of editorial content, such as the journal of opinion whose financially precarious business it is to carry on the policy debate that democracy requires. To German philosopher Juergen Habermas, such journals are house organs to the public sphere and their role is nothing less than "to set the standard for reasoned argumentation."

One would have thought that the Magazine Publishers of America, which in theory represents all magazines large and small, would sound the alarm. But no, that job has been left to the American Business Press, which represents mostly smaller publications. Whether or not it is because a minority of its members, including Time Warner, pay a majority of its dues, MPA, along with the Postal Service, has been aggressively promoting a reclassification scheme whose consequence will be a de facto transfer of expense from magazines with a circulation in the millions, like *People*, to magazines with comparatively small circulations, among them the *Nation*.

On the surface, the reclassification proposal makes free-market sense. The plan would divide what is now second-class mail into two sub-classes and reward those periodicals that save the Postal Service sorting time and shipping costs by giving them a lower rate. The catch, however, is that for the most part, only the nation's largest magazines will qualify for the lower rate. Periodicals that do not have 24 or more subscribers in 90 percent of the relevant ZIP codes need not apply. Magazines too small to print regional editions and hire private trucks to deliver them to regional post offices will suffer. So will periodicals heavy in editorial content (which will for the first time be charged postage by the mile, reversing nearly two centuries of postal policy favoring editorial content over advertising). And so too will those without the technology to do what is quaintly known as "pre-sortation" (sorting in advance by ZIP code, which the Nation does but some of our smaller siblings can't).

Time Warner and other biggies will save millions on their postal rates; journals of opinion and most magazines with circulations under 100,000 will pay at least 17 percent more. No wonder, then, that the Postal Rate Commission's own Office of the Consumer Advocate denounced the plan because it would offer "deeper discounts only to the largest and most technologically sophisticated mailers."

So the Postal Service would turn the historic mission of second-class mail on its head. Until now, the independent Postal Rate Commission has barred the door against those who would drive the public-interest factor out of the rate-making process. It would be a tragedy if, at a time of unprecedented media concentration, one of the few remaining institutions dedicated to the propagation, circulation and testing of new policy ideas—the journal of opinion—were the casualty of lobbying by the very forces mak-

ing it more important than ever that the independent voice be heard—whether the Nation, the New Republic or the new Weekly Standard.

The Postal Service is chartered as a public service and, as economist Robert Nathan testified on behalf of the American Business Press, it cannot and should not adopt, "in the guise of abstract economics, the profit-maximizing strategies of private enterprise."

In September, Loren Smith, "chief marketing officer" of the Postal Service, sent a form letter extolling the reform proposals on cost-saving grounds, conceding that some magazines would get hit with higher costs but suggesting that even these might achieve savings through "co-mailing."

Thus, when I appeared before the Postal Rate Commission in October to make the case I have outlined above, I was not surprised to be asked why the *Nation* couldn't qualify for the lower rate category either by co-mailing with other weeklies (time and logistics would make that impractical) or by cutting isolated subscribers from our rolls (business and social policy considerations would make that invidious).

What I didn't expect was to be cross-examined (on colonial history, yet) by counsel from both Time Warner and Dow Jones. They made much of the fact that in the 1790s Congress had singled out newspapers but not magazines for preferred treatment. That is a neat debater's point, but as historian Donald Stewart has documented, by far the greatest number of newspapers in those days were weeklies, the line between newspapers and magazines was murky at best (both were called journals), and the highly partisan colonial press was the equivalent of today's journal of opinion.

When asked, *inter alia*, the source for my assertion that Jefferson had nominated Paine for postmaster general, I happily cited a Jan. 31, 1974, editorial commentary by Arthur Schlesinger Jr. from the *Wall Street Journal's* editorial page. This perhaps is what prompted counsel to ask, in the three-and-a-half-hour colloquy's most esoteric query: Could I name any job from which citizen Paine had not been fired? I thought the question a non sequitur, but it did occur to me that these too are times that try men's souls.

CLARIFICATION OF VA AUTHORITY

● Mr. ROCKEFELLER. Mr. President, earlier this week, I heard the Senator from Texas [Mrs. HUTCHISON], both on the floor and elsewhere, express her view that VA has existing authority to pay veterans' benefits during this time of the shutdown of the Federal Government. In some of those statements, she indicated that she had received legal opinions, including from the Congressional Research Service, which supported this position.

Because I was vitally interested in this issue, I asked Veterans' Affairs Committee staff to acquire copies of these opinions and advise me of their content. Initial inquiries found that CRS had not issued any opinion on this issue. However, today, an opinion, authored by Morton Rosenberg, Specialist in American Public Law in the American Law Division of CRS, was issued. In the most relevant passage, the opinion states—

Veterans' benefits are entitlements, but since they are entitlements that require annual appropriations, the absence of spending

authority, either through an appropriations measure or a continuing resolution, appears to preclude the scheduled payments by VA or by the Treasury Department through the tapping of a trust fund.

This certainly seems clear to me and should resolve any lingering confusion over VA's authority to pay benefits during this period when there is no appropriation in effect.

Mr. President, I ask that the full text of the opinion be printed in the RECORD.

The material follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, November 17, 1995.

Subject: Necessity of Appropriations Legislation to Pay Compensation and Pension Benefits By The Department of Veterans' Affairs on December 1, 1995.

Author: Morton Rosenberg, Specialist in American Public Law.

The Department of Veterans Affairs (VA) has advised that if a continuing resolution is not enacted into law by November 22, 1995, compensation and benefit checks scheduled to be mailed on December 1 would be delayed. Two questions are raised. First, are veterans' compensation and premium benefits entitlements? Second, if they are entitlements, isn't the government obligated to pay them on time, even if appropriations for the payments have not been passed, such as by tapping the civil service retirement fund? Veterans' benefits are entitlements, but since they are entitlements that require annual appropriations, the absence of spending authority, either through an appropriations measure or a continuing resolution, appears to preclude the scheduled payments by VA or by the Treasury Department through the tapping of a trust fund.

Both the Constitution and federal statutory law place specific limits on what government entities may do in the absence of appropriated funds. The Constitution prohibits the withdrawal of any money from the Treasury "but in Consequence of Appropriations made by the Law," U.S. Const. art. I, sec. 9, cl. 7. By the terms of this clause, government entities may continue to obligate funds during a temporary lapse in appropriations, but they may not pay out any monies. This gap has been closed by the Antideficiency Act which prohibits the obligation of funds under such circumstances. Under that Act, it is a crime for an official or employee of the United States Government or of the District of Columbia to make expenditures in excess of appropriations or involve the Government "in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. 1341(a)(1) (1988). The Act also prohibits any officer from accepting "voluntary services," or "employ[ing] personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of Property". 31 U.S.C. 1342. The exceptions clause was amended in 1990 to specifically preclude "ongoing, regular functions of the government the suspension of which would not imminently threaten the safety of human life or the protection of property." *Id.* Thus on its face the Act appears to leave little room for the continuance of most government functions in advance of appropriations.

It is clear that veterans' compensation and pension benefits are "entitlements". See, e.g., 38 U.S.C. 310. However, there are two types of entitlements: (1) Those that have permanent appropriations contained in authorizing legislation. These do not require

funding through annual appropriation acts. The leading example is social security legislation and its trust funds mechanism. See 42 U.S.C. 401. (2) Also, there are those entitlements authorized in basic legislation for which funding is provided in annual appropriations acts. Veterans' compensation and pension benefits fall within this latter category. See Departments of Veterans' Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, Pub. L. 103-327. As a consequence, the congressional failure to enact an annual appropriation act or a further continuing resolution constrains the VA's authority to spend, both with respect to the benefits themselves and the personnel necessary to administer the programs. VA therefore appears to be acting within the parameters of the Department of Justice and Office of Management and Budget guidelines for funding lapses. There are no "no-year or multi-year or other funds available". However, if funding legislation is passed, even after November 22, VA would then be properly authorized to issue checks and personnel necessary to issue them would be available.

The coincidence of the current debt limit situation provides no additional option for payment of the benefits. Reaching the debt limit and the failure to provide appropriations are distinctly different problems that are accompanied by different consequences and solutions. By law the total amount of government debt that may be outstanding is limited to \$4.9 trillion. 31 U.S.C. 3101(b). When that limit is reached, if Congress has not increased it, the government must rely on taxes and miscellaneous receipts such as loan deposits and fees to replenish its operating balances. In essence, it must go on a cash basis. The statutory debt ceiling, therefore, limits the *ability* of government agencies to exercise spending authority that they have received in a appropriations measure because the Treasury will, at some point, not take in sufficient receipts to pay for all appropriated actions.

In contrast, a funding lapse involves the *authority* of agencies to spend money. Thus appropriations lapses and reaching the debt ceiling limit present distinct budgetary and legal issues for VA. The Department's decision to delay payments rests upon its lack of spending authority in the first place. There is no question of inability to pay. Indeed, in the absence of appropriations we are not aware of any legal basis for making the benefits payments by tapping, for instance, the civil service retirement fund for such and *unfunded* purpose. Stated differently, the lack of VA spending authority leaves Treasury without any apparent legal authority to use retirement trust fund resources or any other available monies for activities which have not been authorized "in Consequence of Appropriations made by the Law". What the Treasury is doing now is paying obligations that have come due either by using current revenues or by tapping the civil service retirement fund or the G fund, as authorized by statutes governing those funds. These obligations—unlike the VA entitlements—arise from activities for which appropriations have been enacted.●

UNANIMOUS-CONSENT REQUEST—
H.R. 2127

Mr. HARKIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2127, the Labor-HHS appropriations bill, and that the language on page 21, lines 3 to 10, relating to striker replacement, be stricken; that

all other committee amendments be agreed to en bloc; that the bill be read a third time and passed; and that the motion to reconsider be laid upon the table, with the above occurring without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Mr. President, I object to that at this point.

The PRESIDING OFFICER. Objection is heard.

Mr. HARKIN. Mr. President, I will not take much time. I knew that would be objected to. I just want to say we had hot lined this on our side and hot lined it on the Republican side.

I just want the RECORD to show that there are no objections to this unanimous consent request on the Democratic side.

I will also state for the RECORD, I repeat from the RECORD of September 29, 1995, in a colloquy among this Senator, Senator SPECTER and Senator DOLE, the majority leader, when we tried to bring up the Labor-HHS appropriations bill.

Senator DOLE, the Senate majority leader, said and I quote from the RECORD of September 29, 1995:

I agree with the Senator from Pennsylvania and the Senator from Iowa that we ought to pass that bill on a voice vote. We cannot get cloture. There are two votes, 54-46 party line votes.

And he is referring here to the striker replacement votes.

So my view is we ought to do it, pass it and find out what happens after the veto in the next round.

Mr. President, I just want to point out that these riders that we have on the Labor-HHS bill can be dropped. For example, this week the Republicans have dropped their effort to attach the Istook antilobbying rider to the Treasury-Postal conference agreement, thereby clearing the bill for congressional approval.

They agreed to a compromise to the abortion rider on the defense appropriations conference agreement, also clearing it for approval in both Houses. And they dropped all 17 House-approved EPA riders on the HUD-VA conference agreement.

So this unanimous-consent request that I propounded—and I also want to state, Mr. President, that I had checked with the chairman of the Appropriations subcommittee, Senator SPECTER. I am the ranking member on that. I used to be chairman and he was ranking member. I checked with him earlier. He is in favor of this unanimous-consent request, and I asked if I could have his permission to so state that for the RECORD, and he said yes.

Again, Mr. President, I want to point out, on this side of the aisle, we have no objections to bringing up Labor-HHS and simply passing it on a voice vote if these riders are dropped, just as I pointed out riders were dropped from other bills, clearing them for action.

With that I thank the Senator from Mississippi.